
SENATE BILL 5154

State of Washington

61st Legislature

2009 Regular Session

By Senators Kline and Rockefeller; by request of Uniform Legislation Commission

Read first time 01/15/09. Referred to Committee on Judiciary.

1 AN ACT Relating to revising Article 7 of the Uniform Commercial
2 Code, documents of title; amending RCW 62A.7-101, 62A.7-102, 62A.7-103,
3 62A.7-104, 62A.7-105, 62A.7-201, 62A.7-202, 62A.7-203, 62A.7-204,
4 62A.7-205, 62A.7-206, 62A.7-207, 62A.7-208, 62A.7-209, 62A.7-210,
5 62A.7-301, 62A.7-302, 62A.7-303, 62A.7-304, 62A.7-305, 62A.7-307,
6 62A.7-308, 62A.7-309, 62A.7-401, 62A.7-402, 62A.7-403, 62A.7-404,
7 62A.7-501, 62A.7-502, 62A.7-503, 62A.7-504, 62A.7-505, 62A.7-506,
8 62A.7-507, 62A.7-508, 62A.7-509, 62A.7-601, 62A.7-602, 62A.7-603,
9 62A.1-201, 62A.1-201, 62A.2-103, 62A.2-104, 62A.2-310, 62A.2-323,
10 62A.2-401, 62A.2-503, 62A.2-505, 62A.2-506, 62A.2-509, 62A.2-605,
11 62A.2-705, 62A.2A-103, 62A.2A-514, 62A.2A-526, 62A.4-104, 62A.4-210,
12 62A.8-103, 62A.9A-102, 62A.9A-203, 62A.9A-207, 62A.9A-208, 62A.9A-301,
13 62A.9A-310, 62A.9A-312, 62A.9A-313, 62A.9A-314, 62A.9A-317, 62A.9A-338,
14 and 62A.9A-601; adding a new section to chapter 62A.7 RCW; creating new
15 sections; repealing RCW 62A.10-104; and providing contingent effective
16 dates.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

18 **PART I**
19 **GENERAL**

1 **Sec. 101.** RCW 62A.7-101 and 1965 ex.s. c 157 s 7-101 are each
2 amended to read as follows:

3 SHORT TITLE. This article (~~((shall be known and))~~) may be cited as
4 Uniform Commercial Code-~~Documents~~ of Title.

5 **Sec. 102.** RCW 62A.7-102 and 1965 ex.s. c 157 s 7-102 are each
6 amended to read as follows:

7 DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this article, unless
8 the context otherwise requires:

9 (a) "Bailee" means (~~((the))~~) a person (~~((who))~~) that by a warehouse
10 receipt, bill of lading, or other document of title acknowledges
11 possession of goods and contracts to deliver them.

12 (b) "Carrier" means a person that issues a bill of lading.

13 (c) "Consignee" means (~~((the))~~) a person named in a bill of lading to
14 (~~((whom))~~) which or to whose order the bill promises delivery.

15 (~~((e))~~) (d) "Consignor" means (~~((the))~~) a person named in a bill of
16 lading as the person from (~~((whom))~~) which the goods have been received
17 for shipment.

18 (~~((d))~~) (e) "Delivery order" means a (~~((written))~~) record that
19 contains an order to deliver goods directed to a (~~((warehouseman))~~)
20 warehouse, carrier, or other person (~~((who))~~) that in the ordinary course
21 of business issues warehouse receipts or bills of lading.

22 (~~((e))~~) "~~Document~~" means ~~document of title as defined in the general~~
23 ~~definitions in Article 1 (RCW 62A.1-201).~~)

24 (f) "Good faith" means honesty in fact and the observance of
25 reasonable commercial standards of fair dealing.

26 (g) "Goods" means all things (~~((which))~~) that are treated as movable
27 for the purposes of a contract (~~((of))~~) for storage or transportation.

28 (~~((g))~~) (h) "Issuer" means a bailee (~~((who))~~) that issues a document
29 (~~((except that))~~) of title or, in (~~((relation to))~~) the case of an
30 unaccepted delivery order (~~((it means))~~), the person (~~((who))~~) that orders
31 the possessor of goods to deliver. (~~((Issuer))~~) The term includes
32 (~~((any))~~) a person for (~~((whom))~~) which an agent or employee purports to
33 act in issuing a document if the agent or employee has real or apparent
34 authority to issue documents, (~~((notwithstanding that))~~) even if the
35 issuer (~~((received no))~~) did not receive any goods (~~((or that))~~), the goods
36 were misdescribed, or (~~((that))~~) in any other respect the agent or
37 employee violated (~~((his))~~) the issuer's instructions.

1 ~~((h) "Warehouseman" is)~~ (i) "Person entitled under the document"
2 means the holder, in the case of a negotiable document of title, or the
3 person to which delivery of the goods is to be made by the terms of, or
4 pursuant to instructions in a record under, a nonnegotiable document of
5 title.

6 (j) "Record" means information that is inscribed on a tangible
7 medium or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

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

- 11 (i) To execute or adopt a tangible symbol; or
- 12 (ii) To attach to or logically associate with the record an
13 electronic sound, symbol, or process.

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

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

18 ~~(2) ((Other definitions applying to this Article or to specified~~
19 ~~Parts thereof, and the sections in which they appear are:~~

- 20 ~~"Duly negotiate". RCW 62A.7-501.~~
- 21 ~~"Person entitled under the document". RCW 62A.7-403(4).~~

22 ~~(3))~~ Definitions in other articles applying to this article and
23 the sections in which they appear are:

- 24 (a) "Contract for sale". RCW 62A.2-106((~~-~~));
- 25 ~~(("Overseas". RCW 62A.2-323.))~~ (b) "Lessee in ordinary course of
26 business," RCW 62A.2A-103; and
- 27 (c) "Receipt" of goods((~~-~~)). RCW 62A.2-103.

28 ~~((4))~~ (3) In addition, Article 1 contains general definitions and
29 principles of construction and interpretation applicable throughout
30 this article.

31 **Sec. 103.** RCW 62A.7-103 and 1965 ex.s. c 157 s 7-103 are each
32 amended to read as follows:

33 RELATION OF ARTICLE TO TREATY(~~(~~-~~)~~) OR STATUTE(~~(~~-~~—TARIFF,~~
34 ~~CLASSIFICATION OR REGULATION))~~. ~~((To the extent that))~~ (1) This
35 article is subject to any treaty or statute of the United States(~~(~~-~~)~~)
36 or regulatory statute of this state (~~(or tariff, classification or~~

1 ~~regulation filed or issued pursuant thereto)) to the extent the treaty,~~
2 ~~statute, or regulatory statute is applicable((, the provisions of this~~
3 ~~Article are subject thereto)).~~

4 (2) This article does not modify or repeal any law prescribing the
5 form or content of a document of title or the services or facilities to
6 be afforded by a bailee, or otherwise regulating a bailee's business in
7 respects not specifically treated in this article. However, violation
8 of such a law does not affect the status of a document of title that
9 otherwise is within the definition of a document of title.

10 (3) This act modifies, limits, and supersedes the federal
11 electronic signatures in global and national commerce act (15 U.S.C.
12 Sec. 7001, et seq.) but does not modify, limit, or supersede section
13 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize electronic
14 delivery of any of the notices described in section 103(b) of that act
15 (15 U.S.C. Sec. 7003(b)).

16 **Sec. 104.** RCW 62A.7-104 and 1965 ex.s. c 157 s 7-104 are each
17 amended to read as follows:

18 ~~NEGOTIABLE AND NON-NEGOTIABLE ((WAREHOUSE RECEIPT, BILL OF LADING~~
19 ~~OR OTHER)) DOCUMENT OF TITLE. (1) ((A warehouse receipt, bill of~~
20 ~~lading or other document of title is negotiable~~

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

24 ~~(b) where recognized in overseas trade, if it runs to a named~~
25 ~~person or assigns.~~

26 ~~(2) Any other document)).~~

27 (2) A document of title other than one described in subsection (1)
28 of this section is non-negotiable. A bill of lading ((~~in which it is~~
29 stated)) that states that the goods are consigned to a named person is
30 not made negotiable by a provision that the goods are to be delivered
31 only against ((~~a written~~)) an order in a record signed by the same or
32 another named person.

33 (3) A document of title is non-negotiable if, at the time it is
34 issued, the document has a conspicuous legend, however expressed, that
35 it is non-negotiable.

1 **Sec. 105.** RCW 62A.7-105 and 1965 ex.s. c 157 s 7-105 are each
2 amended to read as follows:

3 (~~CONSTRUCTION AGAINST NEGATIVE IMPLICATION.~~) REISSUANCE IN
4 ALTERNATIVE MEDIUM. (~~The omission from either Part 2 or Part 3 of~~
5 ~~this Article of a provision corresponding to a provision made in the~~
6 ~~other Part does not imply that a corresponding rule of law is not~~
7 ~~applicable.~~) (1) Upon request of a person entitled under an electronic
8 document of title, the issuer of the electronic document may issue a
9 tangible document of title as a substitute for the electronic document
10 if:

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

13 (b) The tangible document when issued contains a statement that it
14 is issued in substitution for the electronic document.

15 (2) Upon issuance of a tangible document of title in substitution
16 for an electronic document of title in accordance with subsection (1)
17 of this section:

18 (a) The electronic document ceases to have any effect or validity;
19 and

20 (b) The person that procured issuance of the tangible document
21 warrants to all subsequent persons entitled under the tangible document
22 that the warrantor was a person entitled under the electronic document
23 when the warrantor surrendered control of the electronic document to
24 the issuer.

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

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

30 (b) The electronic document when issued contains a statement that
31 it is issued in substitution for the tangible document.

32 (4) Upon issuance of an electronic document of title in
33 substitution for a tangible document of title in accordance with
34 subsection (3) of this section:

35 (a) The tangible document ceases to have any effect or validity;
36 and

37 (b) The person that procured issuance of the electronic document
38 warrants to all subsequent persons entitled under the electronic

1 document that the warrantor was a person entitled under the tangible
2 document when the warrantor surrendered possession of the tangible
3 document to the issuer.

4 NEW SECTION. **Sec. 106.** A new section is added to chapter 62A.7
5 RCW to be codified as RCW 62A.7-106 to read as follows:

6 CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (1) A person has control
7 of an electronic document of title if a system employed for evidencing
8 the transfer of interests in the electronic document reliably
9 establishes that person as the person to which the electronic document
10 was issued or transferred.

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

14 (a) A single authoritative copy of the document exists which is
15 unique, identifiable, and, except as otherwise provided in (d), (e),
16 and (f) of this subsection, unalterable;

17 (b) The authoritative copy identifies the person asserting control
18 as:

19 (i) The person to which the document was issued; or
20 (ii) If the authoritative copy indicates that the document has been
21 transferred, the person to which the document was most recently
22 transferred;

23 (c) The authoritative copy is communicated to and maintained by the
24 person asserting control or its designated custodian;

25 (d) Copies or amendments that add or change an identified assignee
26 of the authoritative copy can be made only with the consent of the
27 person asserting control;

28 (e) Each copy of the authoritative copy and any copy of a copy is
29 readily identifiable as a copy that is not the authoritative copy; and

30 (f) Any amendment of the authoritative copy is readily identifiable
31 as authorized or unauthorized.

32 **PART II**

33 **WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**

34 **Sec. 201.** RCW 62A.7-201 and 1965 ex.s. c 157 s 7-201 are each
35 amended to read as follows:

1 ((WHO)) PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER
2 ((GOVERNMENT)) BOND. (1) A warehouse receipt may be issued by any
3 ((warehouseman)) warehouse.

4 (2) ((Where)) If goods, including distilled spirits and
5 agricultural commodities, are stored under a statute requiring a bond
6 against withdrawal or a license for the issuance of receipts in the
7 nature of warehouse receipts, a receipt issued for the goods ((has like
8 effect as)) is deemed to be a warehouse receipt even ((though)) if
9 issued by a person ((who)) that is the owner of the goods and is not a
10 ((warehouseman)) warehouse.

11 **Sec. 202.** RCW 62A.7-202 and 2000 c 58 s 1 are each amended to read
12 as follows:

13 FORM OF WAREHOUSE RECEIPT; ((ESSENTIAL TERMS; OPTIONAL TERMS))
14 EFFECT OF OMISSION. (1) A warehouse receipt need not be in any
15 particular form.

16 (2) Unless a warehouse receipt ((embodies within its written,
17 printed, or electronic terms)) provides for each of the following, the
18 ((warehouseman)) warehouse is liable for damages caused ((by the
19 omission)) to a person injured ((thereby)) by its omission:

20 (a) A statement of the location of the warehouse facility where the
21 goods are stored;

22 (b) The date of issue of the receipt;

23 (c) The ((consecutive number)) unique identification code of the
24 receipt;

25 (d) A statement whether the goods received will be delivered to the
26 bearer, to a ((specified)) named person, or to a ((specified)) named
27 person or ((his)) its order;

28 (e) The rate of storage and handling charges, ((except that where))
29 unless goods are stored under a field warehousing arrangement, in which
30 case a statement of that fact is sufficient on a non-negotiable
31 receipt;

32 (f) A description of the goods or ((of)) the packages containing
33 them;

34 (g) The signature of the ((warehouseman, which may be made by his
35 authorized)) warehouse or its agent;

36 (h) If the receipt is issued for goods ((of which the warehouseman

1 ~~is owner~~) that the warehouse owns, either solely ~~((or))~~, jointly, or
2 in common with others, a statement of the fact of ~~((such))~~ that
3 ownership; and

4 (i) A statement of the amount of advances made and of liabilities
5 incurred for which the ~~((warehouseman))~~ warehouse claims a lien or
6 security interest ~~((RCW 62A.7-209). If)~~, unless the precise amount
7 of ~~((such))~~ advances made or ~~((of such))~~ liabilities incurred ~~((is))~~,
8 at the time of the issue of the receipt, is unknown to the
9 ~~((warehouseman))~~ warehouse or to ~~((his))~~ its agent ~~((who issues it,))~~
10 that issued the receipt, in which case a statement of the fact that
11 advances have been made or liabilities incurred and the purpose
12 ~~((thereof))~~ of the advances or liabilities is sufficient.

13 (3) A ~~((warehouseman))~~ warehouse may insert in ~~((his))~~ its receipt
14 any ~~((other))~~ terms ~~((which))~~ that are not contrary to the provisions
15 of this title and do not impair ~~((his))~~ its obligation of delivery
16 ~~((RCW 62A.7-403) or his))~~ under RCW 62A.7-403 or its duty of care
17 ~~((+))~~ under RCW 62A.7-204~~((+))~~. Any contrary provision~~((s shall be))~~
18 is ineffective.

19 **Sec. 203.** RCW 62A.7-203 and 1965 ex.s. c 157 s 7-203 are each
20 amended to read as follows:

21 LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION. A party to or
22 purchaser for value in good faith of a document of title, other than a
23 bill of lading ~~((relying in either case))~~, that relies upon the
24 description ~~((therein))~~ of the goods in the document may recover from
25 the issuer damages caused by the non-receipt or misdescription of the
26 goods, except to the extent that:

27 (1) The document conspicuously indicates that the issuer does not
28 know whether ~~((any))~~ all or part ~~((or all))~~ of the goods in fact were
29 received or conform to the description, such as ~~((where))~~ a case in
30 which the description is in terms of marks or labels or kind, quantity,
31 or condition, or the receipt or description is qualified by "contents,
32 condition and quality unknown", "said to contain" or ~~((the like))~~ words
33 of similar import, if ~~((such))~~ the indication ~~((be))~~ is true~~((7))~~; or

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

1 **Sec. 204.** RCW 62A.7-204 and 1981 c 13 s 1 are each amended to read
2 as follows:

3 DUTY OF CARE; CONTRACTUAL LIMITATION OF ~~((WAREHOUSEMAN'S))~~
4 WAREHOUSE'S LIABILITY. (1) A ~~((warehouseman))~~ warehouse is liable for
5 damages for loss of or injury to the goods caused by ~~((his))~~ its
6 failure to exercise ~~((such))~~ care ~~((in))~~ with regard to ~~((them-as))~~
7 the goods that a reasonably careful ~~((man))~~ person would exercise under
8 ~~((like))~~ similar circumstances ~~((but)).~~ Unless otherwise agreed
9 ~~((he)),~~ the warehouse is not liable for damages ~~((which))~~ that could
10 not have been avoided by the exercise of ~~((such))~~ that care.

11 (2) Damages may be limited by a term in the warehouse receipt or
12 storage agreement limiting the amount of liability in case of loss or
13 damage~~((, and setting forth a specific liability per article or item,~~
14 ~~or value per unit of weight,))~~ beyond which the ~~((warehouseman shall))~~
15 warehouse is not ~~((be))~~ liable~~((; provided, however, that such~~
16 ~~liability may on written)).~~ Such a limitation is not effective with
17 respect to the warehouse's liability for conversion to its own use. On
18 request of the bailor in a record at the time of signing ~~((such))~~ the
19 storage agreement or within a reasonable time after receipt of the
20 warehouse receipt, the warehouse's liability may be increased on part
21 or all of the goods ~~((thereunder, in which))~~ covered by the storage
22 agreement or the warehouse receipt. In this event, increased rates may
23 be charged based on ~~((such))~~ an increased valuation~~((, but that no such~~
24 ~~increase shall be permitted contrary to a lawful limitation of~~
25 ~~liability contained in the warehouseman's tariff, if any. No such~~
26 ~~limitation is effective with respect to the warehouseman's liability~~
27 ~~for conversion to his own use))~~ of the goods.

28 (3) Reasonable provisions as to the time and manner of presenting
29 claims and ~~((instituting))~~ commencing actions based on the bailment may
30 be included in the warehouse receipt or ~~((tariff))~~ storage agreement.

31 (4) This section does not ~~((impair or repeal the duties of care or~~
32 ~~liabilities or penalties for breach thereof as provided in))~~ modify or
33 repeal the provisions of chapters 22.09 and 22.32 RCW.

34 **Sec. 205.** RCW 62A.7-205 and 1965 ex.s. c 157 s 7-205 are each
35 amended to read as follows:

36 TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. A buyer
37 in ~~((the))~~ ordinary course of business of fungible goods sold and

1 delivered by a ~~((warehouseman who))~~ warehouse that is also in the
2 business of buying and selling such goods takes the goods free of any
3 claim under a warehouse receipt even ~~((though it))~~ if the receipt is
4 negotiable and has been duly negotiated.

5 **Sec. 206.** RCW 62A.7-206 and 1965 ex.s. c 157 s 7-206 are each
6 amended to read as follows:

7 TERMINATION OF STORAGE AT ~~((WAREHOUSEMAN'S))~~ WAREHOUSE'S OPTION.

8 (1) A ~~((warehouseman may on notifying))~~ warehouse, by giving notice to
9 the person on whose account the goods are held and any other person
10 known to claim an interest in the goods, may require payment of any
11 charges and removal of the goods from the warehouse at the termination
12 of the period of storage fixed by the document ~~((r))~~ of title or, if
13 ~~((no))~~ a period is not fixed, within a stated period not less than
14 thirty days after the ~~((notification))~~ warehouse gives notice. If the
15 goods are not removed before the date specified in the ~~((notification))~~
16 notice, the ~~((warehouseman))~~ warehouse may sell them ~~((in accordance~~
17 ~~with the provisions of the section on enforcement of a warehouseman's~~
18 ~~lien -))~~ pursuant to RCW 62A.7-210 ~~((+))~~.

19 (2) If a ~~((warehouseman))~~ warehouse in good faith believes that
20 ~~((the))~~ goods are about to deteriorate or decline in value to less than
21 the amount of ~~((his))~~ its lien within the time ~~((prescribed))~~ provided
22 in subsection (1) ~~((for notification, advertisement))~~ of this section
23 and ~~((sale))~~ RCW 62A.7-210, the ~~((warehouseman))~~ warehouse may specify
24 in the ~~((notification))~~ notice given under subsection (1) of this
25 section any reasonable shorter time for removal of the goods and ~~((in~~
26 ~~ease))~~, if the goods are not removed, may sell them at public sale held
27 not less than one week after a single advertisement or posting.

28 (3) If as a result of a quality or condition of the goods of which
29 ~~((warehouseman had no))~~ warehouse did not have notice at the time
30 of deposit, the goods are a hazard to other property ~~((or to))~~, the
31 warehouse facilities, or ~~((to))~~ other persons, the ~~((warehouseman))~~
32 warehouse may sell the goods at public or private sale without
33 advertisement or posting on reasonable notification to all persons
34 known to claim an interest in the goods. If the ~~((warehouseman))~~
35 warehouse, after a reasonable effort, is unable to sell the goods
36 ~~((he))~~, it may dispose of them in any lawful manner and ~~((shall))~~ does
37 not incur ~~((no))~~ liability by reason of ~~((such))~~ that disposition.

1 (4) (~~The warehouseman must~~) A warehouse shall deliver the goods
2 to any person entitled to them under this article upon due demand made
3 at any time (~~prior to~~) before sale or other disposition under this
4 section.

5 (5) (~~The warehouseman~~) A warehouse may satisfy (~~his~~) its lien
6 from the proceeds of any sale or disposition under this section but
7 (~~must~~) shall hold the balance for delivery on the demand of any
8 person to (~~whom he~~) which the warehouse would have been bound to
9 deliver the goods.

10 **Sec. 207.** RCW 62A.7-207 and 1965 ex.s. c 157 s 7-207 are each
11 amended to read as follows:

12 GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS. (1) Unless the
13 warehouse receipt provides otherwise (~~provides, a warehouseman must~~),
14 a warehouse shall keep separate the goods covered by each receipt so as
15 to permit at all times identification and delivery of those goods
16 (~~except that~~). However, different lots of fungible goods may be
17 commingled.

18 (2) If different lots of fungible goods (~~so~~) are commingled, the
19 goods are owned in common by the persons entitled thereto and the
20 (~~warehouseman~~) warehouse is severally liable to each owner for that
21 owner's share. (~~Where~~) If, because of over-issue, a mass of fungible
22 goods is insufficient to meet all the receipts (~~which~~) the
23 (~~warehouseman~~) warehouse has issued against it, the persons entitled
24 include all holders to (~~whom~~) which overissued receipts have been
25 duly negotiated.

26 **Sec. 208.** RCW 62A.7-208 and 1965 ex.s. c 157 s 7-208 are each
27 amended to read as follows:

28 ALTERED WAREHOUSE RECEIPTS. (~~Where~~) If a blank in a negotiable
29 tangible warehouse receipt has been filled in without authority, a
30 good-faith purchaser for value and without notice of the (~~want~~) lack
31 of authority may treat the insertion as authorized. Any other
32 unauthorized alteration leaves any tangible or electronic warehouse
33 receipt enforceable against the issuer according to its original tenor.

34 **Sec. 209.** RCW 62A.7-209 and 1987 c 395 s 1 are each amended to
35 read as follows:

1 LIEN OF ((WAREHOUSEMAN)) WAREHOUSE. (1) A ((warehouseman))
2 warehouse has a lien against the bailor on the goods covered by a
3 warehouse receipt or storage agreement or on the proceeds thereof in
4 ((his)) its possession for charges for storage or transportation ((+))
5 including demurrage and terminal charges((+)), insurance, labor, or
6 other charges, present or future, in relation to the goods, and for
7 expenses necessary for preservation of the goods or reasonably incurred
8 in their sale pursuant to law. If the person on whose account the
9 goods are held is liable for ((like)) similar charges or expenses in
10 relation to other goods whenever deposited and it is stated in the
11 warehouse receipt or storage agreement that a lien is claimed for
12 charges and expenses in relation to other goods, the ((warehouseman))
13 warehouse also has a lien against ((him)) the goods covered by the
14 warehouse receipt or storage agreement or on the proceeds thereof in
15 its possession for ((such)) those charges and expenses, whether or not
16 the other goods have been delivered by the ((warehouseman)) warehouse.
17 ((But)) However, as against a person to ((whom)) which a negotiable
18 warehouse receipt is duly negotiated, a ((warehouseman's)) warehouse's
19 lien is limited to charges in an amount or at a rate specified ((on))
20 in the warehouse receipt or, if no charges are so specified ((then)),
21 to a reasonable charge for storage of the specific goods covered by the
22 receipt subsequent to the date of the receipt. ((A warehouseman's lien
23 as provided in this chapter takes priority over all other liens and
24 perfected or unperfected security interests.))

25 (2) ((The warehouseman)) A warehouse may also reserve a security
26 interest against the bailor for ((a)) the maximum amount specified on
27 the receipt for charges other than those specified in subsection (1) of
28 this section, such as for money advanced and interest. ((Such a)) The
29 security interest is governed by ((the Article on Secured Transactions
30 (Article 9)) chapter 62A.9A RCW.

31 (3) A ((warehouseman's)) warehouse's lien for charges and expenses
32 under subsection (1) of this section or a security interest under
33 subsection (2) of this section is also effective against any person
34 ((who)) that so entrusted the bailor with possession of the goods that
35 a pledge of them by ((him)) the bailor to a good faith purchaser for
36 value would have been valid ((but is not effective against a person as
37 to whom the document confers no right in the goods covered by it under
38 RCW 62A.7-503.

1 ~~(4) A warehouseman loses his lien on any goods which he voluntarily~~
2 ~~delivers or which he)). However, the lien or security interest is not~~
3 ~~effective against a person that before issuance of a document of title~~
4 ~~had a legal interest or a perfected security interest in the goods and~~
5 ~~that did not:~~

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

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

9 (ii) Power to obtain delivery under RCW 62A.7-403; or

10 (iii) Power of disposition under RCW 62A.2-403, 62A.2A-304(2),
11 62A.2A-305(2), 62A.9A-320, or 62A.9A-321(c) or other statute or rule of
12 law; or

13 (b) Acquiesce in the procurement by the bailor or its nominee of
14 any document.

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

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

23 **Sec. 210.** RCW 62A.7-210 and 1965 ex.s. c 157 s 7-210 are each
24 amended to read as follows:

25 ENFORCEMENT OF (~~WAREHOUSEMAN'S~~) WAREHOUSE'S LIEN. (1) Except as
26 otherwise provided in subsection (2) of this section, a
27 (~~warehouseman's~~) warehouse's lien may be enforced by public or
28 private sale of the goods, in (~~block~~) bulk or in (~~parcels~~) packages,
29 at any time or place and on any terms which are commercially
30 reasonable, after notifying all persons known to claim an interest in
31 the goods. (~~Such~~) The notification must include a statement of the
32 amount due, the nature of the proposed sale and the time and place of
33 any public sale. The fact that a better price could have been obtained
34 by a sale at a different time or in a (~~different~~) different
35 from that selected by the (~~warehouseman~~) warehouse is not of itself
36 sufficient to establish that the sale was not made in a commercially
37 reasonable manner. The warehouse sells in a commercially reasonable

1 manner if the (~~warehouseman either~~) warehouse sells the goods in the
2 usual manner in any recognized market therefor, (~~or if he~~) sells at
3 the price current in (~~such~~) that market at the time of (~~his~~) the
4 sale, or (~~if he has~~) otherwise (~~sold~~) sells in conformity with
5 commercially reasonable practices among dealers in the type of goods
6 sold(~~, he has sold in a commercially reasonable manner~~). A sale of
7 more goods than apparently necessary to be offered to (~~insure~~) ensure
8 satisfaction of the obligation is not commercially reasonable, except
9 in cases covered by the preceding sentence.

10 (2) A (~~warehouseman's~~) warehouse may enforce its lien on goods,
11 other than goods stored by a merchant in the course of (~~his~~) its
12 business (~~may be enforced~~), only (~~as follows~~) if the following
13 requirements are satisfied:

14 (a) All persons known to claim an interest in the goods must be
15 notified.

16 (b) (~~The notification must be delivered in person or sent by~~
17 ~~registered or certified letter to the last known address of any person~~
18 ~~to be notified.~~

19 (~~e~~) The notification must include an itemized statement of the
20 claim, a description of the goods subject to the lien, a demand for
21 payment within a specified time not less than ten days after receipt of
22 the notification, and a conspicuous statement that unless the claim is
23 paid within that time the goods will be advertised for sale and sold by
24 auction at a specified time and place.

25 (~~d~~) (c) The sale must conform to the terms of the notification.

26 (~~e~~) (d) The sale must be held at the nearest suitable place to
27 (~~that~~) where the goods are held or stored.

28 (~~f~~) (e) After the expiration of the time given in the
29 notification, an advertisement of the sale must be published once a
30 week for two weeks consecutively in a newspaper of general circulation
31 where the sale is to be held. The advertisement must include a
32 description of the goods, the name of the person on whose account
33 (~~they~~) the goods are being held, and the time and place of the sale.
34 The sale must take place at least fifteen days after the first
35 publication. If there is no newspaper of general circulation where the
36 sale is to be held, the advertisement must be posted at least ten days
37 before the sale in not (~~less~~) fewer than six conspicuous places in
38 the neighborhood of the proposed sale.

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

7 (4) (~~(The warehouseman)~~) A warehouse may buy at any public sale
8 held pursuant to this section.

9 (5) A purchaser in good faith of goods sold to enforce a
10 (~~(warehouseman's)~~) warehouse's lien takes the goods free of any rights
11 of persons against (~~(whom)~~) which the lien was valid, despite the
12 warehouse's noncompliance (~~(by the warehouseman)~~) with (~~(the~~
13 ~~requirements of)~~) this section.

14 (6) (~~(The warehouseman)~~) A warehouse may satisfy (~~(his)~~) its lien
15 from the proceeds of any sale pursuant to this section but (~~(must)~~)
16 shall hold the balance, if any, for delivery on demand to any person to
17 (~~(whom he)~~) which the warehouse would have been bound to deliver the
18 goods.

19 (7) The rights provided by this section (~~(shall be)~~) are in
20 addition to all other rights allowed by law to a creditor against
21 (~~(his)~~) a debtor.

22 (8) (~~(Where)~~) If a lien is on goods stored by a merchant in the
23 course of (~~(his)~~) its business, the lien may be enforced in accordance
24 with (~~(either)~~) subsection (1) or (2) of this section.

25 (9) (~~(The warehouseman)~~) A warehouse is liable for damages caused
26 by failure to comply with the requirements for sale under this section
27 and, in case of willful violation, is liable for conversion.

28 PART III

29 BILLS OF LADING: SPECIAL PROVISIONS

30 **Sec. 301.** RCW 62A.7-301 and 1965 ex.s. c 157 s 7-301 are each
31 amended to read as follows:

32 LIABILITY FOR NON-RECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN";
33 "SHIPPER'S WEIGHT, LOAD, AND COUNT"; IMPROPER HANDLING. (1) A
34 consignee of a non-negotiable bill (~~(who)~~) of lading which has given
35 value in good faith, or a holder to (~~(whom)~~) which a negotiable bill
36 has been duly negotiated, relying (~~(in either case)~~) upon the

1 description (~~(therein)~~) of the goods(~~()~~) in the bill or upon the date
2 (~~(therein)~~) shown in the bill, may recover from the issuer damages
3 caused by the misdating of the bill or the nonreceipt or misdescription
4 of the goods, except to the extent that the (~~(document)~~) bill indicates
5 that the issuer does not know whether any part or all of the goods in
6 fact were received or conform to the description, such as (~~(where)~~) in
7 a case in which the description is in terms of marks or labels or kind,
8 quantity, or condition or the receipt or description is qualified by
9 "contents or condition of contents of packages unknown"(~~()~~) "said to
10 contain"(~~()~~) "shipper's weight, load and count" or (~~(the-like)~~)
11 words of similar import, if (~~(such)~~) that indication (~~(be)~~) is true.

12 (2) (~~(When)~~) If goods are loaded by (~~(an)~~) the issuer (~~(who is a~~
13 ~~common carrier,~~) of a bill of lading:

14 (a) The issuer (~~(must)~~) shall count the packages of goods if
15 (~~(package freight)~~) shipped in packages and ascertain the kind and
16 quantity if shipped in bulk (~~(freight. In)~~); and

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

21 (3) (~~(When)~~) If bulk (~~(freight is)~~) goods are loaded by a shipper
22 (~~(who)~~) that makes available to the issuer of a bill of lading adequate
23 facilities for weighing (~~(such freight, an)~~) those goods, the issuer
24 (~~(who is a common carrier must)~~) shall ascertain the kind and quantity
25 within a reasonable time after receiving the (~~(written)~~) shipper's
26 request (~~(of the shipper)~~) in a record to do so. (~~(In such cases)~~) In
27 that case, "shipper's weight" or (~~(other)~~) words of (~~(like purport)~~)
28 similar import are ineffective.

29 (4) The issuer (~~(may)~~) of a bill of lading, by (~~(inserting)~~)
30 including in the bill the words "shipper's weight, load and count" or
31 (~~(other)~~) words of (~~(like purport)~~) similar import, may indicate that
32 the goods were loaded by the shipper(~~()~~) and if (~~(such)~~) that
33 statement (~~(be)~~) is true, the issuer (~~(shall)~~) is not (~~(be)~~) liable for
34 damages caused by the improper loading. (~~(But their)~~) However,
35 omission of such words does not imply liability for (~~(such)~~) damages
36 caused by improper loading.

37 (5) (~~(The)~~) A shipper (~~(shall be deemed to have guaranteed to the)~~)
38 guarantees to an issuer the accuracy at the time of shipment of the

1 description, marks, labels, number, kind, quantity, condition, and
2 weight, as furnished by ~~((him))~~ the shipper, and the shipper shall
3 indemnify the issuer against damage caused by inaccuracies in ~~((such))~~
4 those particulars. ~~((The))~~ This right of ~~((the issuer to such))~~
5 indemnity ~~((shall in no way))~~ does not limit ~~((his))~~ the issuer's
6 responsibility ~~((and))~~ or liability under the contract of carriage to
7 any person other than the shipper.

8 **Sec. 302.** RCW 62A.7-302 and 1965 ex.s. c 157 s 7-302 are each
9 amended to read as follows:

10 THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE. (1) The
11 issuer of a through bill of lading or other document of title embodying
12 an undertaking to be performed in part by ~~((persons))~~ a person acting
13 as its agent~~((s))~~ or by ~~((connecting carriers))~~ a performing carrier,
14 is liable to ~~((anyone))~~ any person entitled to recover on the bill or
15 other document for any breach by ~~((such other persons or by a~~
16 ~~connecting))~~ the other person or the performing carrier of its
17 obligation under the bill or other document ~~((but))~~. However, to the
18 extent that the bill or other document covers an undertaking to be
19 performed overseas or in territory not contiguous to the continental
20 United States or an undertaking including matters other than
21 transportation, this liability for breach by the other person or the
22 performing carrier may be varied by agreement of the parties.

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

32 (3) The issuer of ~~((such))~~ a through bill of lading or other
33 document ~~((shall be))~~ of title described in subsection (1) of this
34 section is entitled to recover from the ~~((connecting))~~ performing
35 carrier, or ~~((such))~~ other person in possession of the goods when the
36 breach of the obligation under the bill or other document
37 occurred~~((r))~~:

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

5 (b) The amount of any expense reasonably incurred by ~~((it)) the~~
6 issuer in defending any action ~~((brought)) commenced~~ by ~~((anyone)) any~~
7 person entitled to recover on the ~~bill or other~~ document ~~((therefor))~~
8 for the breach.

9 **Sec. 303.** RCW 62A.7-303 and 1965 ex.s. c 157 s 7-303 are each
10 amended to read as follows:

11 DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS. (1) Unless the
12 bill of lading otherwise provides, ~~((the)) a~~ carrier may deliver the
13 goods to a person or destination other than that stated in the bill or
14 may otherwise dispose of the goods, without liability for misdelivery,
15 on instructions from:

16 (a) The holder of a negotiable bill; ~~((or))~~

17 (b) The consignor on a non-negotiable bill ~~((notwithstanding)),~~
18 even if the consignee has given contrary instructions ~~((from the~~
19 consignee)); ~~((or))~~

20 (c) The consignee on a non-negotiable bill in the absence of
21 contrary instructions from the consignor, if the goods have arrived at
22 the billed destination or if the consignee is in possession of the
23 tangible bill or in control of the electronic bill; or

24 (d) The consignee on a non-negotiable bill, if ~~((he)) the consignee~~
25 is entitled as against the consignor to dispose of ~~((them)) the goods.~~

26 (2) Unless ~~((such))~~ instructions described in subsection (1) of
27 this section are ~~((noted on))~~ included in a negotiable bill of lading,
28 a person to ~~((whom))~~ which the bill is duly negotiated ~~((can))~~ may hold
29 the bailee according to the original terms.

30 **Sec. 304.** RCW 62A.7-304 and 1965 ex.s. c 157 s 7-304 are each
31 amended to read as follows:

32 TANGIBLE BILLS OF LADING IN A SET. (1) Except ~~((where))~~ as
33 customary in ~~((overseas)) international~~ transportation, a tangible bill
34 of lading ~~((must)) may~~ not be issued in a set of parts. The issuer is
35 liable for damages caused by violation of this subsection.

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

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

13 (4) (~~Any~~) A person (~~who~~) that negotiates or transfers a single
14 part of a tangible bill of lading (~~drawn~~) issued in a set is liable
15 to holders of that part as if it were the whole set.

16 (5) The bailee (~~is obliged to~~) shall deliver in accordance with
17 (~~Part 4 of this Article~~) RCW 62A.7-401 through 62A.7-404 against the
18 first presented part of a tangible bill of lading lawfully (~~drawn~~)
19 issued in a set. (~~Such~~) Delivery in this manner discharges the
20 bailee's obligation on the whole bill.

21 **Sec. 305.** RCW 62A.7-305 and 1965 ex.s. c 157 s 7-305 are each
22 amended to read as follows:

23 DESTINATION BILLS. (1) Instead of issuing a bill of lading to the
24 consignor at the place of shipment, a carrier (~~may~~), at the request
25 of the consignor, may procure the bill to be issued at destination or
26 at any other place designated in the request.

27 (2) Upon request of (~~anyone~~) any person entitled as against
28 (~~the~~) a carrier to control the goods while in transit and on
29 surrender of possession or control of any outstanding bill of lading or
30 other receipt covering (~~such~~) the goods, the issuer, subject to RCW
31 62A.7-105, may procure a substitute bill to be issued at any place
32 designated in the request.

33 **Sec. 306.** RCW 62A.7-307 and 1965 ex.s. c 157 s 7-307 are each
34 amended to read as follows:

35 LIEN OF CARRIER. (1) A carrier has a lien on the goods covered by
36 a bill of lading or on the proceeds thereof in its possession for

1 charges (~~subsequent to~~) after the date of (~~its~~) the carrier's
2 receipt of the goods for storage or transportation (~~(+)~~), including
3 demurrage and terminal charges(~~(+)~~), and for expenses necessary for
4 preservation of the goods incident to their transportation or
5 reasonably incurred in their sale pursuant to law. (~~But~~) However,
6 against a purchaser for value of a negotiable bill of lading, a
7 carrier's lien is limited to charges stated in the bill or the
8 applicable tariffs(~~(-)~~) or, if no charges are stated (~~then to~~),
9 a reasonable charge.

10 (2) A lien for charges and expenses under subsection (1) of this
11 section on goods (~~which~~) that the carrier was required by law to
12 receive for transportation is effective against the consignor or any
13 person entitled to the goods unless the carrier had notice that the
14 consignor lacked authority to subject the goods to (~~such~~) those
15 charges and expenses. Any other lien under subsection (1) of this
16 section is effective against the consignor and any person (~~who~~) that
17 permitted the bailor to have control or possession of the goods unless
18 the carrier had notice that the bailor lacked (~~such~~) authority.

19 (3) A carrier loses (~~his~~) its lien on any goods (~~which he~~) that
20 it voluntarily delivers or (~~which he~~) unjustifiably refuses to
21 deliver.

22 **Sec. 307.** RCW 62A.7-308 and 1965 ex.s. c 157 s 7-308 are each
23 amended to read as follows:

24 ENFORCEMENT OF CARRIER'S LIEN. (1) A carrier's lien on goods may
25 be enforced by public or private sale of the goods, in (~~block~~) bulk or
26 in (~~parcels~~) packages, at any time or place and on any terms
27 (~~which~~) that are commercially reasonable, after notifying all persons
28 known to claim an interest in the goods. (~~Such~~) The notification
29 must include a statement of the amount due, the nature of the proposed
30 sale, and the time and place of any public sale. The fact that a
31 better price could have been obtained by a sale at a different time or
32 in a method different (~~method~~) from that selected by the carrier is
33 not of itself sufficient to establish that the sale was not made in a
34 commercially reasonable manner. The carrier sells goods in a
35 commercially reasonable manner if the carrier (~~either~~) sells the
36 goods in the usual manner in any recognized market therefor (~~or if~~
37 ~~he~~), sells at the price current in (~~such~~) that market at the time of

1 ((his)) the sale, or ((if he has)) otherwise ((sold)) sells in
2 conformity with commercially reasonable practices among dealers in the
3 type of goods sold ((he has sold in a commercially reasonable manner)).
4 A sale of more goods than apparently necessary to be offered to ensure
5 satisfaction of the obligation is not commercially reasonable, except
6 in cases covered by the preceding sentence.

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

13 (3) ((The)) A carrier may buy at any public sale pursuant to this
14 section.

15 (4) A purchaser in good faith of goods sold to enforce a carrier's
16 lien takes the goods free of any rights of persons against ((whom))
17 which the lien was valid, despite the carrier's noncompliance ((by the
18 carrier)) with ((the requirements of)) this section.

19 (5) ((The)) A carrier may satisfy ((his)) its lien from the
20 proceeds of any sale pursuant to this section but ((must)) shall hold
21 the balance, if any, for delivery on demand to any person to ((whom
22 he)) which the carrier would have been bound to deliver the goods.

23 (6) The rights provided by this section ((shall be)) are in
24 addition to all other rights allowed by law to a creditor against
25 ((his)) a debtor.

26 (7) A carrier's lien may be enforced ((in accordance with))
27 pursuant to either subsection (1) of this section or the procedure set
28 forth in subsection (2) of RCW 62A.7-210.

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

32 **Sec. 308.** RCW 62A.7-309 and 1965 ex.s. c 157 s 7-309 are each
33 amended to read as follows:

34 DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.
35 ((Save as otherwise provided in RCW 81.29.010 and 81.29.020))

36 (1) A carrier ((who)) that issues a bill of lading, whether
37 negotiable or non-negotiable ((must)), shall exercise the degree of

1 care in relation to the goods which a reasonably careful (~~man~~) person
2 would exercise under (~~like~~) similar circumstances. This subsection
3 does not affect any statute, regulation, or rule of law that imposes
4 liability upon a common carrier for damages not caused by its
5 negligence.

6 (2) Damages may be limited by a (~~provision~~) term in the bill of
7 lading or in a transportation agreement that the carrier's liability
8 (~~shall~~) may not exceed a value stated in the (~~document~~) bill or
9 transportation agreement if the carrier's rates are dependent upon
10 value and the consignor (~~by the carrier's tariff~~) is afforded an
11 opportunity to declare a higher value (~~or a value as lawfully provided~~
12 ~~in the tariff, or where no tariff~~) and the consignor is (~~filed he is~~
13 ~~otherwise~~) advised of (~~such~~) the opportunity(~~;- but no~~). However,
14 such a limitation is not effective with respect to the carrier's
15 liability for conversion to its own use.

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

20 **PART IV**

21 **WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS**

22 **Sec. 401.** RCW 62A.7-401 and 1965 ex.s. c 157 s 7-401 are each
23 amended to read as follows:

24 IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.
25 The obligations imposed by this article on an issuer apply to a
26 document of title (~~regardless of the fact that~~) even if:

27 (~~(a)~~) (1) The document (~~may~~) does not comply with the
28 requirements of this article or of any other (~~law~~) statute, rule, or
29 regulation regarding its (~~issue~~) issuance, form, or content; (or

30 ~~(b)~~) (2) The issuer (~~may have~~) violated laws regulating the
31 conduct of (~~his~~) its business; (~~or~~

32 ~~(c)~~) (3) The goods covered by the document were owned by the
33 bailee (~~at the time~~) when the document was issued; or

34 (~~(d)~~) (4) The person issuing the document (~~does not come within~~
35 ~~the definition of warehouseman if it~~) is not a warehouse but the
36 document purports to be a warehouse receipt.

1 **Sec. 402.** RCW 62A.7-402 and 1965 ex.s. c 157 s 7-402 are each
2 amended to read as follows:

3 DUPLICATE RECEIPT OR BILL; OVERISSUANCE. ~~((Neither))~~ A duplicate
4 ~~((nor))~~ or any other document of title purporting to cover goods
5 already represented by an outstanding document of the same issuer does
6 not confer~~((s))~~ any right in the goods, except as provided in the case
7 of tangible bills of lading in a set of parts, overissue of documents
8 for fungible goods ~~((and))~~, substitutes for lost, stolen, or destroyed
9 documents, or substitute documents issued pursuant to RCW 62A.7-105.
10 ~~((But))~~ The issuer is liable for damages caused by ((his)) its
11 overissue or failure to identify a duplicate document ((as such)) by a
12 conspicuous notation ((on its face)).

13 **Sec. 403.** RCW 62A.7-403 and 1965 ex.s. c 157 s 7-403 are each
14 amended to read as follows:

15 OBLIGATION OF ~~((WAREHOUSEMAN OR CARRIER))~~ BAILEE TO DELIVER;
16 EXCUSE. (1) ~~((The))~~ A bailee ((must)) shall deliver the goods to a
17 person entitled under ~~((the))~~ a document ((who)) of title if the person
18 complies with subsections (2) and (3) of this section, unless and to
19 the extent that the bailee establishes any of the following:

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

22 (b) Damage to or delay, loss or destruction of the goods for which
23 the bailee is not liable;

24 (c) Previous sale or other disposition of the goods in lawful
25 enforcement of a lien or on ((warehouseman's)) a warehouse's lawful
26 termination of storage;

27 (d) The exercise by a seller of ((his)) its right to stop delivery
28 pursuant to ((the provisions of the Article on Sales (-))RCW
29 62A.2-705((+)) or by a lessor of its right to stop delivery pursuant to
30 RCW 62A.2A-526;

31 (e) A diversion, reconsignment, or other disposition pursuant to
32 ((the provisions of this Article (-))RCW 62A.7-303((-) or tariff
33 regulating such right));

34 (f) Release, satisfaction, or any other ((fact affording a))
35 personal defense against the claimant; or

36 (g) Any other lawful excuse.

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

5 (3) Unless (~~(the)~~) a person claiming the goods is (~~(one)~~) a person
6 against (~~(whom)~~) which the document (~~(confers no)~~) of title does not
7 confer a right under RCW 62A.7-503(1)(~~(, he must surrender for~~
8 ~~cancellation or notation of partial deliveries any outstanding~~
9 ~~negotiable document covering the goods, and)~~):

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

13 (b) The bailee (~~(must)~~) shall cancel the document or conspicuously
14 (~~(note)~~) indicate in the document the partial delivery (~~(thereon or~~
15 ~~be)~~) or the bailee is liable to any person to (~~(whom)~~) which the
16 document is duly negotiated.

17 (~~(4) "Person entitled under the document" means holder in the case~~
18 ~~of a negotiable document, or the person to whom delivery is to be made~~
19 ~~by the terms of or pursuant to written instructions under a non-~~
20 ~~negotiable document.)~~)

21 **Sec. 404.** RCW 62A.7-404 and 1965 ex.s. c 157 s 7-404 are each
22 amended to read as follows:

23 NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO (~~(RECEIPT OR~~
24 ~~BILL)~~) DOCUMENT OF TITLE. A bailee (~~(who in)~~) that in good faith
25 (~~(including observance of reasonable commercial standards)~~) has
26 received goods and delivered or otherwise disposed of (~~(them)~~) the
27 goods according to the terms of (~~(the)~~) a document of title or pursuant
28 to this article is not liable (~~(therefor. This rule applies even~~
29 ~~though)~~) for the goods even if:

30 (1) The person from (~~(whom he)~~) which the bailee received the goods
31 (~~(had no)~~) did not have authority to procure the document or to dispose
32 of the goods (~~(and even though)~~); or

33 (2) The person to (~~(whom he)~~) which the bailee delivered the goods
34 (~~(had no)~~) did not have authority to receive (~~(them)~~) the goods.

35 **PART V**

1 **WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER**

2 **Sec. 501.** RCW 62A.7-501 and 1965 ex.s. c 157 s 7-501 are each
3 amended to read as follows:

4 FORM OF NEGOTIATION AND REQUIREMENTS OF ~~((=))~~DUE NEGOTIATION~~((=))~~.

5 (1) The following rules apply to a negotiable tangible document of
6 title ~~((running))~~:

7 (a) If the document's original terms run to the order of a named
8 person, the document is negotiated by ~~((his))~~ the named person's
9 indorsement and delivery. After ~~((his))~~ the named person's indorsement
10 in blank or to bearer, any person ~~((can))~~ may negotiate ~~((it))~~ the
11 document by delivery alone.

12 ~~((2)(a) A negotiable document of title is also negotiated by~~
13 ~~delivery alone when by its original terms it runs to bearer;~~

14 ~~(b) when a document running))~~

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

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

20 ~~((3))~~ (d) Negotiation of ~~((a negotiable))~~ the document ~~((of~~
21 ~~title))~~ after it has been indorsed to a ~~((specified))~~ named person
22 requires indorsement by the ~~((special indorsee as well as))~~ named
23 person and delivery.

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

32 ~~((5))~~ (2) The following rules apply to a negotiable electronic
33 document of title:

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

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

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

11 (3) Indorsement of a non-negotiable document of title neither makes
12 it negotiable nor adds to the transferee's rights.

13 ~~((+6))~~ (4) The naming in a negotiable bill of lading of a person
14 to be notified of the arrival of the goods does not limit the
15 negotiability of the bill ~~((nor))~~ or constitute notice to a purchaser
16 ~~((thereof))~~ of the bill of any interest of ~~((such))~~ that person in the
17 goods.

18 **Sec. 502.** RCW 62A.7-502 and 1965 ex.s. c 157 s 7-502 are each
19 amended to read as follows:

20 RIGHTS ACQUIRED BY DUE NEGOTIATION. (1) Subject to ~~((the following~~
21 ~~section and to the provisions of))~~ RCW 62A.7-205 ~~((on fungible goods))~~
22 and 62A.7-503, a holder to ~~((whom))~~ which a negotiable document of
23 title has been duly negotiated acquires thereby:

24 (a) Title to the document;

25 (b) Title to the goods;

26 (c) All rights accruing under the law of agency or estoppel,
27 including rights to goods delivered to the bailee after the document
28 was issued; and

29 (d) The direct obligation of the issuer to hold or deliver the
30 goods according to the terms of the document free of any defense or
31 claim by ~~((him))~~ the issuer except those arising under the terms of the
32 document or under this article~~((-))~~, but in the case of a delivery
33 order, the bailee's obligation accrues only upon the bailee's
34 acceptance of the delivery order and the obligation acquired by the
35 holder is that the issuer and any indorser will procure the acceptance
36 of the bailee.

1 (2) Subject to (~~the following section~~) RCW 62A.7-503, title and
2 rights (~~so~~) acquired by due negotiation are not defeated by any
3 stoppage of the goods represented by the document of title or by
4 surrender of (~~such~~) the goods by the bailee(~~er~~) and are not impaired
5 even (~~though~~) if:

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

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

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

14 **Sec. 503.** RCW 62A.7-503 and 2000 c 250 s 9A-814 are each amended
15 to read as follows:

16 DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. (1) A
17 document of title confers no right in goods against a person (~~who~~)
18 that before issuance of the document had a legal interest or a
19 perfected security interest in (~~them and who neither~~) the goods and
20 that did not:

21 (a) (~~delivered or entrusted them~~) Deliver or entrust the goods or
22 any document of title covering (~~them~~) the goods to the bailor or
23 (~~his~~) the bailor's nominee with:

24 (i) Actual or apparent authority to ship, store, or sell (~~or with~~)
25);

26 (ii) Power to obtain delivery under (~~this Article~~) RCW
27 62A.7-403(~~er~~); or (~~with~~)

28 (iii) Power of disposition under (~~this Title~~) RCW 62A.2-403
29 (~~and 62A.9A-320~~), 62A.2A-304(2), 62A.2A-305(2), 62A.9-320,
30 62A.9-321(c), or other statute or rule of law; (~~nor~~) or

31 (b) (~~acquiesced~~) Acquiesce in the procurement by the bailor or
32 (~~his~~) its nominee of any document (~~of title~~).

33 (2) Title to goods based upon an unaccepted delivery order is
34 subject to the rights of (~~anyone to whom~~) any person to which a
35 negotiable warehouse receipt or bill of lading covering the goods has
36 been duly negotiated. (~~Such a~~) That title may be defeated under

1 ((the next section)) RCW 62A.7-504 to the same extent as the rights of
2 the issuer or a transferee from the issuer.

3 (3) Title to goods based upon a bill of lading issued to a freight
4 forwarder is subject to the rights of ((~~anyone to whom~~)) any person to
5 which a bill issued by the freight forwarder is duly negotiated((~~+~~
6 ~~but~~)). However, delivery by the carrier in accordance with ((~~Part 4 of~~
7 ~~this Article~~)) RCW 62A.7-401 through 62A.7-404 pursuant to its own bill
8 of lading discharges the carrier's obligation to deliver.

9 **Sec. 504.** RCW 62A.7-504 and 1965 ex.s. c 157 s 7-504 are each
10 amended to read as follows:

11 RIGHTS ACQUIRED IN ((THE)) ABSENCE OF DUE NEGOTIATION; EFFECT OF
12 DIVERSION; ((SELLER'S)) STOPPAGE OF DELIVERY. (1) A transferee of a
13 document of title, whether negotiable or non-negotiable, to ((~~whom~~))
14 which the document has been delivered but not duly negotiated, acquires
15 the title and rights ((~~which his~~)) that its transferor had or had
16 actual authority to convey.

17 (2) In the case of a transfer of a non-negotiable document of
18 title, until but not after the bailee receives ((~~notification~~)) notice
19 of the transfer, the rights of the transferee may be defeated:

20 (a) By those creditors of the transferor ((~~who~~)) which could treat
21 the ((~~sale~~)) transfer as void under RCW ((~~62A.7-402; or~~)) 62A.2-402 or
22 62A.2A-308;

23 (b) By a buyer from the transferor in ordinary course of business
24 if the bailee has delivered the goods to the buyer or received
25 notification of ((~~his~~)) the buyer's rights; ((~~or~~))

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

29 (d) As against the bailee, by good faith dealings of the bailee
30 with the transferor.

31 (3) A diversion or other change of shipping instructions by the
32 consignor in a non-negotiable bill of lading which causes the bailee
33 not to deliver the goods to the consignee defeats the consignee's title
34 to the goods if ((~~they~~)) the goods have been delivered to a buyer in
35 ordinary course of business or a lessee in ordinary course of business
36 and, in any event, defeats the consignee's rights against the bailee.

1 (4) Delivery of the goods pursuant to a non-negotiable document of
2 title may be stopped by a seller under RCW 62A.2-705(~~(, and)~~) or a
3 lessor under RCW 62A.2A-526, subject to the requirements of due
4 notification (~~(there provided)~~) in those statutes. A bailee
5 (~~(honoring)~~) that honors the seller's or lessor's instructions is
6 entitled to be indemnified by the seller or lessor against any
7 resulting loss or expense.

8 **Sec. 505.** RCW 62A.7-505 and 1965 ex.s. c 157 s 7-505 are each
9 amended to read as follows:

10 INDORSER NOT A GUARANTOR FOR OTHER PARTIES. The indorsement of a
11 tangible document of title issued by a bailee does not make the
12 indorser liable for any default by the bailee or (~~(by)~~) previous
13 indorsers.

14 **Sec. 506.** RCW 62A.7-506 and 1965 ex.s. c 157 s 7-506 are each
15 amended to read as follows:

16 DELIVERY WITHOUT INDORSEMENT: RIGHT TO COMPEL INDORSEMENT. The
17 transferee of a negotiable tangible document of title has a
18 specifically enforceable right to have (~~(his)~~) its transferor supply
19 any necessary indorsement but the transfer becomes a negotiation only
20 as of the time the indorsement is supplied.

21 **Sec. 507.** RCW 62A.7-507 and 1965 ex.s. c 157 s 7-507 are each
22 amended to read as follows:

23 WARRANTIES ON NEGOTIATION OR (~~(TRANSFER OF RECEIPT OR BILL)~~)
24 DELIVERY OF DOCUMENT OF TITLE. (~~(Where)~~) If a person negotiates or
25 (~~(transfers)~~) delivers a document of title for value, otherwise than as
26 a mere intermediary under (~~(the next following section, then)~~) RCW
27 62A.7-508, unless otherwise agreed (~~(he warrants to his immediate~~
28 ~~purchaser only)~~), the transferor, in addition to any warranty made in
29 selling or leasing the goods, warrants to its immediate purchaser only
30 that:

- 31 (a) (~~(that)~~) The document is genuine; (~~(and)~~)
- 32 (b) (~~(that he has no)~~) The transferor does not have knowledge of
33 any fact (~~(which)~~) that would impair (~~(its)~~) the document's validity or
34 worth; and

1 (c) ~~((that his))~~ The negotiation or ~~((transfer))~~ delivery is
2 rightful and fully effective with respect to the title to the document
3 and the goods it represents.

4 **Sec. 508.** RCW 62A.7-508 and 1965 ex.s. c 157 s 7-508 are each
5 amended to read as follows:

6 WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. A
7 collecting bank or other intermediary known to be entrusted with
8 documents of title on behalf of another or with collection of a draft
9 or other claim against delivery of documents warrants by ~~((such))~~ the
10 delivery of the documents only its own good faith and authority~~((-~~
11 ~~This rule applies))~~ even ~~((though))~~ if the collecting bank or other
12 intermediary has purchased or made advances against the claim or draft
13 to be collected.

14 **Sec. 509.** RCW 62A.7-509 and 1965 ex.s. c 157 s 7-509 are each
15 amended to read as follows:

16 ~~((RECEIPT OR BILL: WHEN))~~ ADEQUATE COMPLIANCE WITH COMMERCIAL
17 CONTRACT. ~~((The question))~~ Whether a document of title is adequate to
18 fulfill the obligations of a contract for sale, a contract for lease,
19 or the conditions of a letter of credit is ~~((governed by the Articles~~
20 ~~on Sales (Article 2) and on Letters of Credit (Article 5))~~) determined
21 by chapter 62A.2, 62A.2A, or 62A.5 RCW.

22 **PART VI**

23 **WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS**

24 **Sec. 601.** RCW 62A.7-601 and 1965 ex.s. c 157 s 7-601 are each
25 amended to read as follows:

26 LOST ~~((AND MISSING))~~, STOLEN, OR DESTROYED DOCUMENTS OF TITLE. (1)
27 If a document ~~((has been))~~ of title is lost, stolen, or destroyed, a
28 court may order delivery of the goods or issuance of a substitute
29 document and the bailee may without liability to any person comply with
30 ~~((such))~~ the order. If the document was negotiable ~~((the claimant must~~
31 ~~post security approved by the))~~, a court ~~((to indemnify))~~ may not order
32 delivery of the goods or issuance of a substitute document without the
33 claimant's posting security unless it finds that any person ~~((who))~~
34 that may suffer loss as a result of non-surrender of possession or

1 control of the document is adequately protected against the loss. If
2 the document was ~~((not negotiable, such))~~ non-negotiable, the court may
3 require security ~~((may be required at the discretion of the court))~~.
4 The court may also ~~((in its discretion))~~ order payment of the bailee's
5 reasonable costs and ~~((counsel))~~ attorneys' fees in any action under
6 this subsection.

7 (2) A bailee ~~((who))~~ that, without a court order, delivers goods to
8 a person claiming under a missing negotiable document of title is
9 liable to any person injured thereby~~((, and))~~. If the delivery is not
10 in good faith ~~((becomes))~~, the bailee is liable for conversion.
11 Delivery in good faith is not conversion if ~~((made in accordance with~~
12 ~~a filed classification or tariff or, where no classification or tariff~~
13 ~~is filed, if))~~ the claimant posts security with the bailee in an amount
14 at least double the value of the goods at the time of posting to
15 indemnify any person injured by the delivery ~~((who))~~ which files a
16 notice of claim within one year after the delivery.

17 **Sec. 602.** RCW 62A.7-602 and 1965 ex.s. c 157 s 7-602 are each
18 amended to read as follows:

19 ~~((ATTACHMENT OF))~~ JUDICIAL PROCESS AGAINST GOODS COVERED BY ~~((A))~~
20 NEGOTIABLE DOCUMENT OF TITLE. ~~((Except where the))~~ Unless a document
21 of title was originally issued upon delivery of the goods by a person
22 ~~((who had no))~~ that did not have power to dispose of them, ~~((no))~~ a
23 lien ~~((attaches))~~ does not attach by virtue of any judicial process to
24 goods in the possession of a bailee for which a negotiable document of
25 title is outstanding unless possession or control of the document
26 ~~((be))~~ is first surrendered to the bailee or ~~((its))~~ the document's
27 negotiation is enjoined~~((, and))~~. The bailee ~~((shall))~~ may not be
28 compelled to deliver the goods pursuant to process until possession or
29 control of the document is surrendered to ~~((him or impounded by))~~ the
30 bailee or to the court. ~~((One who purchases))~~ A purchaser of the
31 document for value without notice of the process or injunction takes
32 free of the lien imposed by judicial process.

33 **Sec. 603.** RCW 62A.7-603 and 1965 ex.s. c 157 s 7-603 are each
34 amended to read as follows:

35 CONFLICTING CLAIMS; INTERPLEADER. If more than one person claims
36 title to or possession of the goods, the bailee is excused from

1 delivery until ((he)) the bailee has ((had)) a reasonable time to
2 ascertain the validity of the adverse claims or to ((bring an action to
3 ~~compel all claimants to interplead and may compel such~~) commence an
4 action for interpleader. The bailee may assert an interpleader, either
5 in defending an action for non-delivery of the goods, or by original
6 action((, ~~whichever is appropriate~~)).

7 **PART VII**

8 **MISCELLANEOUS PROVISIONS**

9 **Sec. 701.** RCW 62A.1-201 and 2001 c 32 s 9 are each amended to read
10 as follows:

11 GENERAL DEFINITIONS. Subject to additional definitions contained
12 in the subsequent articles of this title which are applicable to
13 specific articles or parts thereof, and unless the context otherwise
14 requires, in this title:

15 (1) "Action" in the sense of a judicial proceeding includes
16 recoupment, counterclaim, set-off, suit in equity and any other
17 proceedings in which rights are determined.

18 (2) "Aggrieved party" means a party entitled to resort to a remedy.

19 (3) "Agreement" means the bargain of the parties in fact as found
20 in their language or by implication from other circumstances including
21 course of dealing or usage of trade or course of performance as
22 provided in this title (RCW 62A.1-205, RCW 62A.2-208, and RCW 62A.2A-
23 207). Whether an agreement has legal consequences is determined by the
24 provisions of this title, if applicable; otherwise by the law of
25 contracts (RCW 62A.1-103). (Compare "Contract".)

26 (4) "Bank" means any person engaged in the business of banking.

27 (5) "Bearer" means ((the)) a person in control of a negotiable
28 electronic document of title or a person in possession of an
29 instrument, a negotiable tangible document of title, or a certificated
30 security payable to bearer or indorsed in blank.

31 (6) "Bill of lading" means a document of title evidencing the
32 receipt of goods for shipment issued by a person engaged in the
33 business of directly or indirectly transporting or forwarding goods((,
34 ~~and includes an airbill. "Airbill" means a document serving for air~~
35 ~~transportation as a bill of lading does for marine or rail~~

1 ~~transportation, and includes an air consignment note or air waybill)).~~
2 The term does not include a warehouse receipt.

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

5 (8) "Burden of establishing" a fact means the burden of persuading
6 the triers of fact that the existence of the fact is more probable than
7 its non-existence.

8 (9) "Buyer in ordinary course of business" means a person that buys
9 goods in good faith, without knowledge that the sale violates the
10 rights of another person in the goods, and in the ordinary course from
11 a person, other than a pawnbroker, in the business of selling goods of
12 that kind. A person buys goods in the ordinary course if the sale to
13 the person comports with the usual or customary practices in the kind
14 of business in which the seller is engaged or with the seller's own
15 usual or customary practices. A person that sells oil, gas, or other
16 minerals at the wellhead or minehead is a person in the business of
17 selling goods of that kind. A buyer in ordinary course of business may
18 buy for cash, by exchange of other property, or on secured or unsecured
19 credit, and may acquire goods or documents of title under a pre-
20 existing contract for sale. Only a buyer that takes possession of the
21 goods or has a right to recover the goods from the seller under Article
22 62A.2 RCW may be a buyer in ordinary course of business. A person that
23 acquires goods in a transfer in bulk or as security for or in total or
24 partial satisfaction of a money debt is not a buyer in ordinary course
25 of business.

26 (10) "Conspicuous" (~~(:—A term or clause is conspicuous when it is~~
27 ~~so written that a reasonable person against whom it is to operate ought~~
28 ~~to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE~~
29 ~~BILL OF LADING) is conspicuous. Language in the body of a form is~~
30 ~~"conspicuous" if it is in larger or other contrasting type or color.~~
31 ~~But in a telegram any stated term is "conspicuous"))~~, with reference to
32 a term, means so written, displayed, or presented that a reasonable
33 person against which it is to operate ought to have noticed it.
34 Whether a term (~~or clause~~) is "conspicuous" or not is (~~for~~) a
35 decision (~~by~~) for the court. Conspicuous terms include the
36 following:

37 (a) A heading in capitals equal to or greater in size than the

1 surrounding text, or in contrasting type, font, or color to the
2 surrounding text of the same or lesser size; and

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

8 (11) "Contract" means the total legal obligation which results from
9 the parties' agreement as affected by this title and any other
10 applicable rules of law. (Compare "Agreement".)

11 (12) "Creditor" includes a general creditor, a secured creditor, a
12 lien creditor and any representative of creditors, including an
13 assignee for the benefit of creditors, a trustee in bankruptcy, a
14 receiver in equity and an executor or administrator of an insolvent
15 debtor's or assignor's estate.

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

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

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

1 record consisting of information that is inscribed on a tangible
2 medium.

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

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

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

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

13 (20) "Holder" (~~((with respect to a negotiable instrument,))~~) means:

14 (a) The person in possession ((if the)) of a negotiable instrument
15 that is payable either to bearer or((, in the case of an instrument
16 payable)) to an identified person((, if the identified)) that is the
17 person ((is)) in possession((.—"Holder" with respect to a document of
18 title means));

19 (b) The person in possession of a negotiable tangible document of
20 title if the goods are deliverable either to bearer or to the order of
21 the person in possession; or

22 (c) The person in control of a negotiable electronic document of
23 title.

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

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

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

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

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

3 (a) (~~(he or she)~~) Has actual knowledge of it; (~~or~~)

4 (b) (~~(he or she)~~) Has received a notice or notification of it; or

5 (c) From all the facts and circumstances known to (~~him or her~~)
6 the person at the time in question (~~(he or she)~~), has reason to know
7 that it exists.

8 A person "knows" or has "knowledge" of a fact when (~~(he or she)~~) the
9 person has actual knowledge of it. "Discover" or "learn" or a word or
10 phrase of similar import refers to knowledge rather than to reason to
11 know. The time and circumstances under which a notice or notification
12 may cease to be effective are not determined by this title.

13 (26) A person "notifies" or "gives" a notice or notification to
14 another person by taking such steps as may be reasonably required to
15 inform the other person in ordinary course, whether or not (~~(such)~~) the
16 other person actually comes to know of it. Subject to subsection (27)
17 of this section, a person "receives" a notice or notification when:

18 (a) It comes to (~~(his or her)~~) that person's attention; or

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

23 (27) Notice, knowledge, or a notice or notification received by an
24 organization is effective for a particular transaction from the time
25 when it is brought to the attention of the individual conducting that
26 transaction, and in any event, from the time when it would have been
27 brought to (~~(his or her)~~) the individual's attention if the
28 organization had exercised due diligence. An organization exercises
29 due diligence if it maintains reasonable routines for communicating
30 significant information to the person conducting the transaction and
31 there is reasonable compliance with the routines. Due diligence does
32 not require an individual acting for the organization to communicate
33 information unless such communication is part of (~~(his or her)~~) the
34 individual's regular duties or (~~(unless he or she)~~) the individual has
35 reason to know of the transaction and that the transaction would be
36 materially affected by the information.

37 (28) "Organization" includes a corporation, government or

1 governmental subdivision or agency, business trust, estate, trust,
2 partnership or association, two or more persons having a joint or
3 common interest, or any other legal or commercial entity.

4 (29) "Party", as distinct from "third party", means a person who
5 has engaged in a transaction or made an agreement within this title.

6 (30) "Person" includes an individual or an organization (See RCW
7 62A.1-102).

8 (31) "Presumption" or "presumed" means that the trier of fact must
9 find the existence of the fact presumed unless and until evidence is
10 introduced which would support a finding of its nonexistence.

11 (32) "Purchase" includes taking by sale, discount, negotiation,
12 mortgage, pledge, lien, security interest, issue or re-issue, gift or
13 any other voluntary transaction creating an interest in property.

14 (33) "Purchaser" means a person who takes by purchase.

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

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

20 (36) "Rights" includes remedies.

21 (37) "Security interest" means an interest in personal property or
22 fixtures which secures payment or performance of an obligation, except
23 for lease-purchase agreements under chapter 63.19 RCW. The term also
24 includes any interest of a consignor and a buyer of accounts, chattel
25 paper, a payment intangible, or a promissory note in a transaction that
26 is subject to Article 9A. The special property interest of a buyer of
27 goods on identification of such goods to a contract for sale under RCW
28 62A.2-401 is not a "security interest", but a buyer may also acquire a
29 "security interest" by complying with Article 9A. Except as otherwise
30 provided in RCW 62A.2-505, the right of a seller or lessor of goods
31 under Article 2 or 2A to retain or acquire possession of the goods is
32 not a "security interest," but a seller or lessor may also acquire a
33 "security interest" by complying with Article 9A. The retention or
34 reservation of title by a seller of goods notwithstanding shipment or
35 delivery to the buyer (RCW 62A.2-401) is limited in effect to a
36 reservation of a "security interest."

37 Whether a transaction creates a lease or security interest is
38 determined by the facts of each case. However, a transaction creates

1 a security interest if the consideration the lessee is to pay the
2 lessor for the right to possession and use of the goods is an
3 obligation for the term of the lease not subject to termination by the
4 lessee, and:

5 (a) The original term of the lease is equal to or greater than the
6 remaining economic life of the goods;

7 (b) The lessee is bound to renew the lease for the remaining
8 economic life of the goods or is bound to become the owner of the
9 goods;

10 (c) The lessee has an option to renew the lease for the remaining
11 economic life of the goods for no additional consideration or nominal
12 additional consideration upon compliance with the lease agreement; or

13 (d) The lessee has an option to become the owner of the goods for
14 no additional consideration or nominal additional consideration upon
15 compliance with the lease agreement.

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

18 (a) The present value of the consideration the lessee is obligated
19 to pay the lessor for the right to possession and use of the goods is
20 substantially equal to or is greater than the fair market value of the
21 goods at the time the lease is entered into;

22 (b) The lessee assumes risk of loss of the goods, or agrees to pay
23 taxes, insurance, filing, recording, or registration fees, or service
24 or maintenance costs with respect to the goods;

25 (c) The lessee has an option to renew the lease or to become the
26 owner of the goods;

27 (d) The lessee has an option to renew the lease for a fixed rent
28 that is equal to or greater than the reasonably predictable fair market
29 rent for the use of the goods for the term of the renewal at the time
30 the option is to be performed;

31 (e) The lessee has an option to become the owner of the goods for
32 a fixed price that is equal to or greater than the reasonably
33 predictable fair market value of the goods at the time the option is to
34 be performed; or

35 (f) The amount of rental payments may or will be increased or
36 decreased by reference to the amount realized by the lessor upon sale
37 or disposition of the goods.

38 For purposes of this subsection (37):

1 (a) Additional consideration is not nominal if (i) when the option
2 to renew the lease is granted to the lessee the rent is stated to be
3 the fair market rent for the use of the goods for the term of the
4 renewal determined at the time the option is to be performed, or (ii)
5 when the option to become the owner of the goods is granted to the
6 lessee the price is stated to be the fair market value of the goods
7 determined at the time the option is to be performed. Additional
8 consideration is nominal if it is less than the lessee's reasonably
9 predictable cost of performing under the lease agreement if the option
10 is not exercised;

11 (b) "Reasonably predictable" and "remaining economic life of the
12 goods" are to be determined with reference to the facts and
13 circumstances at the time the transaction is entered into; and

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

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

23 (a) To deposit in the mail or deliver for transmission by any other
24 usual means of communication with postage or cost of transmission
25 provided for and properly addressed and, in the case of an instrument
26 to an address specified thereon or otherwise agreed, or if there (~~be~~)
27 is none to any address reasonable under the circumstances(~~(.---The~~
28 receipt of any writing)); or

29 (b) In any other way to cause to be received any record or notice
30 within the time (~~at which~~) it would have arrived if properly sent
31 (~~has the effect of a proper sending~~)).

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

34 (40) "Surety" includes guarantor.

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

37 (42) "Term" means that portion of an agreement which relates to a
38 particular matter.

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

3 (44) "Value". Except as otherwise provided with respect to
4 negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-
5 210, and RCW 62A.4-211) a person gives "value" for rights if he or she
6 acquires them:

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

11 (b) As security for or in total or partial satisfaction of a
12 preexisting claim; or

13 (c) By accepting delivery pursuant to a pre-existing contract for
14 purchase; or

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

17 (45) "Warehouse receipt" means a (~~receipt~~) document of title
18 issued by a person engaged in the business of storing goods for hire.

19 (46) "Written" or "writing" includes printing, typewriting or any
20 other intentional reduction to tangible form.

21 **Sec. 702.** RCW 62A.1-201 and 2001 c 32 s 9 are each amended to read
22 as follows:

23 GENERAL DEFINITIONS. Unless the context otherwise requires, words
24 or phrases defined in this section, or in the additional definitions
25 contained in other articles of the Uniform Commercial Code that apply
26 to particular articles or parts thereof, have the meanings stated.

27 Subject to (~~additional~~) definitions contained in (~~the~~
28 ~~subsequent~~) other articles of (this Title which are applicable to
29 ~~specific~~) the Uniform Commercial Code that apply to particular
30 articles or parts thereof(~~, and unless the context otherwise requires,~~
31 ~~in this Title~~):

32 (1) "Action₁" in the sense of a judicial proceeding₁ includes
33 recoupment, counterclaim, set-off, suit in equity₁ and any other
34 proceeding(~~s~~) in which rights are determined.

35 (2) "Aggrieved party" means a party entitled to (~~resort to~~)
36 pursue a remedy.

1 (3) "Agreement," as distinguished from "contract," means the
2 bargain of the parties in fact, as found in their language or (~~by~~
3 ~~implication~~) inferred from other circumstances, including course of
4 performance, course of dealing, or usage of trade (~~or course of~~
5 ~~performance~~) as provided in (~~this Title (RCW 62A.1-205, RCW 62A.2-~~
6 ~~208, and RCW 62A.2A-207)~~. ~~Whether an agreement has legal consequences~~
7 ~~is determined by the provisions of this Title, if applicable; otherwise~~
8 ~~by the law of contracts (RCW 62A.1-103))~~ RCW 62A.1-303. (~~(Compare~~
9 ~~"Contract".)~~)

10 (4) "Bank" means (~~any~~) a person engaged in the business of
11 banking and includes a savings bank, savings and loan association,
12 credit union, and trust company.

13 (5) "Bearer" means (~~the~~) a person in control of a negotiable
14 electronic document of title or a person in possession of (~~an~~) a
15 negotiable instrument, negotiable tangible document of title, or
16 certificated security that is payable to bearer or indorsed in blank.

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

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

26 (8) "Burden of establishing" a fact means the burden of persuading
27 the trier(~~s~~) of fact that the existence of the fact is more probable
28 than its (~~non-existence~~) nonexistence.

29 (9) "Buyer in ordinary course of business" means a person that buys
30 goods in good faith, without knowledge that the sale violates the
31 rights of another person in the goods, and in the ordinary course from
32 a person, other than a pawnbroker, in the business of selling goods of
33 that kind. A person buys goods in the ordinary course if the sale to
34 the person comports with the usual or customary practices in the kind
35 of business in which the seller is engaged or with the seller's own
36 usual or customary practices. A person that sells oil, gas, or other
37 minerals at the wellhead or minehead is a person in the business of
38 selling goods of that kind. A buyer in ordinary course of business may

1 buy for cash, by exchange of other property, or on secured or unsecured
2 credit, and may acquire goods or documents of title under a (~~pre-~~
3 ~~existing~~) preexisting contract for sale. Only a buyer that takes
4 possession of the goods or has a right to recover the goods from the
5 seller under Article 62A.2 RCW may be a buyer in ordinary course of
6 business. "Buyer in the ordinary course of business" does not include
7 a person that acquires goods in a transfer in bulk or as security for
8 or in total or partial satisfaction of a money debt (~~is not a buyer in~~
9 ordinary course of business)).

10 (10) "Conspicuous," (~~(÷)~~) with reference to a term (~~or clause is~~
11 conspicuous when it is), means so written, displayed, or presented
12 that a reasonable person against (~~whom~~) which it is to operate ought
13 to have noticed it. (~~A printed heading in capitals (as: NON-~~
14 NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a
15 form is "conspicuous" if it is in larger or other contrasting type or
16 color. But in a telegram any stated term is "conspicuous".) Whether
17 a term (~~or clause~~) is "conspicuous" or not is (~~for~~) a decision
18 (~~by~~) for the court. Conspicuous terms include the following:

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

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

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

29 (12) "Contract," as distinguished from "agreement," means the total
30 legal obligation (~~which~~) that results from the parties' agreement as
31 (~~affected~~) determined by (~~this Title and~~) the Uniform Commercial
32 Code as supplemented by any other applicable (~~rules of~~) laws.
33 (~~Compare "Agreement".)~~

34 (~~12~~) (13) "Creditor" includes a general creditor, a secured
35 creditor, a lien creditor, and any representative of creditors,
36 including an assignee for the benefit of creditors, a trustee in
37 bankruptcy, a receiver in equity, and an executor or administrator of
38 an insolvent debtor's or assignor's estate.

1 ~~((+13+))~~ (14) "Defendant" includes a person in the position of
2 defendant in a ~~((cross-action-or))~~ counterclaim, cross-claim, or third-
3 party claim.

4 ~~((+14+))~~ (15) "Delivery," with respect to an electronic document of
5 title means voluntary transfer of control and with respect to an
6 instrument(~~(s)~~), a tangible document(~~(s)~~) of title, or chattel paper(~~(-~~
7 or certificated securities)) means voluntary transfer of possession.

8 ~~((+15+))~~ (16) "Document of title" ~~((includes bill of lading, dock~~
9 ~~warrant, dock receipt, warehouse receipt or order for the delivery of~~
10 ~~goods, and also any other document which))~~ means a record (a) that in
11 the regular course of business or financing is treated as adequately
12 evidencing that the person in possession or control of ((it)) the
13 record is entitled to receive, control, hold, and dispose of the
14 ((document)) record and the goods ((it)) the record covers(~~(. To be a~~
15 ~~document of title a document must purport to be issued by or addressed~~
16 ~~to a bailee and purport to cover goods in the bailee's possession which~~
17 ~~are either identified or are fungible portions of an identified mass))~~
18 and (b) that purports to be issued by or addressed to a bailee and to
19 cover goods in the bailee's possession which are either identified or
20 are fungible portions of an identified mass. The term includes a bill
21 of lading, transport document, dock warrant, dock receipt, warehouse
22 receipt, and order for delivery of goods. An electronic document of
23 title means a document of title evidenced by a record consisting of
24 information stored in an electronic medium. A tangible document of
25 title means a document of title evidenced by a record consisting of
26 information that is inscribed on a tangible medium.

27 ~~((+16+))~~ (17) "Fault" means a default, breach, or wrongful act(~~(-)~~
28 or omission (~~(or breach)~~)).

29 ~~((+17+))~~ (18) "Fungible goods" ~~((with respect to goods or~~
30 ~~securities))~~ means:

31 (a) Goods (~~(or securities)~~) of which any unit ((is)), by nature or
32 usage of trade, is the equivalent of any other like unit(~~(-)~~); or

33 (b) Goods (~~(which are not fungible shall be deemed fungible for the~~
34 purposes of this Title to the extent)) that ((under a particular)) by
35 agreement (~~(or document unlike units)~~) are treated as equivalent(~~(s)~~).

36 ~~((+18+))~~ (19) "Genuine" means free of forgery or counterfeiting.

37 ~~((+19+))~~ (20) "Good faith," except as otherwise provided in Article

1 5, means honesty in fact ~~((in the conduct or transaction concerned))~~
2 and the observance of reasonable commercial standards of fair dealing.

3 ~~((+20))~~ (21) "Holder" with respect to a negotiable instrument,
4 means:

5 (a) The person in possession ~~((if the))~~ of a negotiable instrument
6 that is payable either to bearer or ~~((, in the case of an instrument~~
7 ~~payable to an identified person, if the))~~ to an identified person that
8 is the person in possession ~~((—"Holder" with respect to));~~

9 (b) The person in possession of a negotiable tangible document of
10 title ~~((means the person in possession))~~ if the goods are deliverable
11 either to bearer or to the order of the person in possession; or

12 (c) The person in control of a negotiable electronic document of
13 title.

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

17 (22) "Insolvency proceeding~~((s))~~" includes ~~((any))~~ an assignment
18 for the benefit of creditors or other proceeding~~((s))~~ intended to
19 liquidate or rehabilitate the estate of the person involved.

20 (23) ~~((A person is))~~ "Insolvent" ~~((who either has))~~ means:

21 (a) Having generally ceased to pay ~~((his or her))~~ debts in the
22 ordinary course of business ~~((or cannot))~~ other than as a result of a
23 bona fide dispute;

24 (b) Being unable to pay ~~((his or her))~~ debts as they become due; or
25 ~~((is))~~

26 (c) Being insolvent within the meaning of ~~((the))~~ federal
27 bankruptcy law.

28 (24) "Money" means a medium of exchange currently authorized or
29 adopted by a domestic or foreign government ~~((and))~~. The term includes
30 a monetary unit of account established by an intergovernmental
31 organization or by agreement between two or more ~~((nations))~~ countries.

32 (25) ~~((A person has "notice" of a fact when~~

33 ~~(a) he or she has actual knowledge of it; or~~

34 ~~(b) he or she has received a notice or notification of it; or~~

35 ~~(c) from all the facts and circumstances known to him or her at the~~
36 ~~time in question he or she has reason to know that it exists.~~

37 ~~A person "knows" or has "knowledge" of a fact when he or she has actual~~
38 ~~knowledge of it. "Discover" or "learn" or a word or phrase of similar~~

1 ~~import refers to knowledge rather than to reason to know. The time and~~
2 ~~circumstances under which a notice or notification may cease to be~~
3 ~~effective are not determined by this Title.~~

4 ~~(26) A person "notifies" or "gives" a notice or notification to~~
5 ~~another by taking such steps as may be reasonably required to inform~~
6 ~~the other in ordinary course whether or not such other actually comes~~
7 ~~to know of it. A person "receives" a notice or notification when~~

8 ~~(a) it comes to his or her attention; or~~

9 ~~(b) it is duly delivered at the place of business through which the~~
10 ~~contract was made or at any other place held out by him or her as the~~
11 ~~place for receipt of such communications.~~

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

25 ~~(28)) "Organization" ((includes a corporation, government or~~
26 ~~governmental subdivision or agency, business trust, estate, trust,~~
27 ~~partnership or association, two or more persons having a joint or~~
28 ~~common interest, or any other legal or commercial entity)) means a~~
29 ~~person other than an individual.~~

30 ~~((+29)) (26) "Party_L"((~~τ~~)) as ((distinct)) distinguished from~~
31 ~~"third party_L"((~~τ~~)) means a person ((who)) that has engaged in a~~
32 ~~transaction or made an agreement ((within this Title)) subject to the~~
33 ~~Uniform Commercial Code.~~

34 ~~((+30)) (27) "Person" ((includes)) means an individual ((or an~~
35 ~~organization (See RCW 62A.1-102)).~~

36 ~~(31) "Presumption" or "presumed" means that the trier of fact must~~
37 ~~find the existence of the fact presumed unless and until evidence is~~
38 ~~introduced which would support a finding of its nonexistence.~~

1 ~~(32))~~, corporation, business trust, estate, trust, partnership,
2 limited liability company, association, joint venture, government,
3 governmental subdivision, agency, or instrumentality, public
4 corporation, or any other legal or commercial entity.

5 (28) "Present value" means the amount as of a date certain of one
6 or more sums payable in the future, discounted to the date certain by
7 use of either an interest rate specified by the parties if that rate is
8 not manifestly unreasonable at the time the transaction is entered into
9 or, if an interest rate is not so specified, a commercially reasonable
10 rate that takes into account the facts and circumstances at the time
11 the transaction is entered into.

12 (29) "Purchase" (~~includes~~) means taking by sale, lease, discount,
13 negotiation, mortgage, pledge, lien, security interest, issue or (~~re-~~
14 issue) reissue, gift, or any other voluntary transaction creating an
15 interest in property.

16 ~~((33))~~ (30) "Purchaser" means a person (~~who~~) that takes by
17 purchase.

18 ~~((34))~~ (31) "Record" means information that is inscribed on a
19 tangible medium or that is stored in an electronic or other medium and
20 is retrievable in perceivable form.

21 (32) "Remedy" means any remedial right to which an aggrieved party
22 is entitled with or without resort to a tribunal.

23 ~~((35))~~ (33) "Representative" (~~includes~~) means a person
24 empowered to act for another, including an agent, an officer of a
25 corporation or association, and a trustee, executor, or administrator
26 of an estate(~~, or any other person empowered to act for another~~)).

27 ~~((36))~~ (34) "Right(~~s~~)" includes (~~remedies~~) remedy.

28 ~~((37))~~ (35) "Security interest" means an interest in personal
29 property or fixtures which secures payment or performance of an
30 obligation(~~, except for lease purchase agreements under chapter 63.19~~
31 RCW. ~~The term also~~)). "Security interest" includes any interest of a
32 consignor and a buyer of accounts, chattel paper, a payment intangible,
33 or a promissory note in a transaction that is subject to Article 9A.
34 "Security interest" does not include the special property interest of
35 a buyer of goods on identification of (~~such~~) those goods to a
36 contract for sale under RCW 62A.2-401 (~~is not a "security interest"~~),
37 but a buyer may also acquire a "security interest" by complying with
38 Article 9A. Except as otherwise provided in RCW 62A.2-505, the right

1 of a seller or lessor of goods under Article 2 or 2A to retain or
2 acquire possession of the goods is not a "security interest," but a
3 seller or lessor may also acquire a "security interest" by complying
4 with Article 9A. The retention or reservation of title by a seller of
5 goods notwithstanding shipment or delivery to the buyer ((+)) under RCW
6 62A.2-401((+)) is limited in effect to a reservation of a "security
7 interest." Whether a transaction in the form of a lease creates a
8 ((lease or)) "security interest" is determined ((by the facts of each
9 case. — However, a transaction creates a security interest if the
10 consideration the lessee is to pay the lessor for the right to
11 possession and use of the goods is an obligation for the term of the
12 lease not subject to termination by the lessee, and:

13 (a) ~~The original term of the lease is equal to or greater than the~~
14 ~~remaining economic life of the goods;~~

15 (b) ~~The lessee is bound to renew the lease for the remaining~~
16 ~~economic life of the goods or is bound to become the owner of the~~
17 ~~goods;~~

18 (c) ~~The lessee has an option to renew the lease for the remaining~~
19 ~~economic life of the goods for no additional consideration or nominal~~
20 ~~additional consideration upon compliance with the lease agreement; or~~

21 (d) ~~The lessee has an option to become the owner of the goods for~~
22 ~~no additional consideration or nominal additional consideration upon~~
23 ~~compliance with the lease agreement.~~

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

26 (a) ~~The present value of the consideration the lessee is obligated~~
27 ~~to pay the lessor for the right to possession and use of the goods is~~
28 ~~substantially equal to or is greater than the fair market value of the~~
29 ~~goods at the time the lease is entered into;~~

30 (b) ~~The lessee assumes risk of loss of the goods, or agrees to pay~~
31 ~~taxes, insurance, filing, recording, or registration fees, or service~~
32 ~~or maintenance costs with respect to the goods;~~

33 (c) ~~The lessee has an option to renew the lease or to become the~~
34 ~~owner of the goods;~~

35 (d) ~~The lessee has an option to renew the lease for a fixed rent~~
36 ~~that is equal to or greater than the reasonably predictable fair market~~
37 ~~rent for the use of the goods for the term of the renewal at the time~~
38 ~~the option is to be performed;~~

1 ~~(e) The lessee has an option to become the owner of the goods for~~
2 ~~a fixed price that is equal to or greater than the reasonably~~
3 ~~predictable fair market value of the goods at the time the option is to~~
4 ~~be performed; or~~

5 ~~(f) The amount of rental payments may or will be increased or~~
6 ~~decreased by reference to the amount realized by the lessor upon sale~~
7 ~~or disposition of the goods.~~

8 ~~For purposes of this subsection (37):~~

9 ~~(a) Additional consideration is not nominal if (i) when the option~~
10 ~~to renew the lease is granted to the lessee the rent is stated to be~~
11 ~~the fair market rent for the use of the goods for the term of the~~
12 ~~renewal determined at the time the option is to be performed, or (ii)~~
13 ~~when the option to become the owner of the goods is granted to the~~
14 ~~lessee the price is stated to be the fair market value of the goods~~
15 ~~determined at the time the option is to be performed. Additional~~
16 ~~consideration is nominal if it is less than the lessee's reasonably~~
17 ~~predictable cost of performing under the lease agreement if the option~~
18 ~~is not exercised;~~

19 ~~(b) "Reasonably predictable" and "remaining economic life of the~~
20 ~~goods" are to be determined with reference to the facts and~~
21 ~~circumstances at the time the transaction is entered into; and~~

22 ~~(c) "Present value" means the amount as of a date certain of one or~~
23 ~~more sums payable in the future, discounted to the date certain. The~~
24 ~~discount is determined by the interest rate specified by the parties if~~
25 ~~the rate is not manifestly unreasonable at the time the transaction is~~
26 ~~entered into; otherwise, the discount is determined by a commercially~~
27 ~~reasonable rate that takes into account the facts and circumstances of~~
28 ~~each case at the time the transaction was entered into)) pursuant to~~
29 ~~RCW 62A.1-203.~~

30 ~~((+38)) (36) "Send" in connection ((with any)) a writing, record,~~
31 ~~or notice means:~~

32 (a) To deposit in the mail or deliver for transmission by any other
33 usual means of communication with postage or cost of transmission
34 provided for and properly addressed and, in the case of an instrument,
35 to an address specified thereon or otherwise agreed, or if there be
36 none to any address reasonable under the circumstances (.~~The receipt~~
37 ~~of any writing)); or~~

1 (b) In any other way to cause to be received any record or notice
2 within the time ~~((at which))~~ it would have arrived if properly sent
3 ~~((has the effect of a proper sending))~~.

4 ~~((+39))~~ (37) "Signed" includes any symbol executed or adopted ~~((by~~
5 ~~a party))~~ with present intention to ~~((authenticate))~~ adopt or accept a
6 writing.

7 ~~((+40))~~ (38) "State" means a State of the United States, the
8 District of Columbia, Puerto Rico, the United States Virgin Islands, or
9 any territory or insular possession subject to the jurisdiction of the
10 United States.

11 (39) "Surety" includes a guarantor or other secondary obligor.

12 ~~((+41) "Telegram" includes a message transmitted by radio,~~
13 ~~teletype, cable, any mechanical method of transmission, or the like.~~

14 ~~(+42))~~ (40) "Term" means ~~((that))~~ a portion of an agreement
15 ~~((which))~~ that relates to a particular matter.

16 ~~((+43))~~ (41) "Unauthorized~~((=))~~ signature" means ~~((one))~~ a
17 signature made without actual, implied, or apparent authority ~~((and))~~.
18 The term includes a forgery.

19 ~~((+44) "Value". Except as otherwise provided with respect to~~
20 ~~negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-~~
21 ~~210, and RCW 62A.4-211) a person gives "value" for rights if he or she~~
22 ~~acquires them~~

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

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

29 ~~(c) by accepting delivery pursuant to a pre-existing contract for~~
30 ~~purchase; or~~

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

33 ~~(+45))~~ (42) "Warehouse receipt" means a ~~((receipt))~~ document of
34 title issued by a person engaged in the business of storing goods for
35 hire.

36 ~~((+46) "Written" or))~~ (43) "Writing" includes printing,
37 typewriting, or any other intentional reduction to tangible form.

38 "Written" has a corresponding meaning.

PART VIII

AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 2

Sec. 801. RCW 62A.2-103 and 2000 c 250 s 9A-803 are each amended to read as follows:

DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this article unless the context otherwise requires:

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

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

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

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

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

"Acceptance."	RCW 62A.2-606.
"Banker's credit."	RCW 62A.2-325.
"Between merchants."	RCW 62A.2-104.
"Cancellation."	RCW 62A.2-106(4).
"Commercial unit."	RCW 62A.2-105.
"Confirmed credit."	RCW 62A.2-325.
"Conforming to contract."	RCW 62A.2-106.
"Contract for sale."	RCW 62A.2-106.
"Cover."	RCW 62A.2-712.
"Entrusting."	RCW 62A.2-403.
"Financing agency."	RCW 62A.2-104.
"Future goods."	RCW 62A.2-105.
"Goods."	RCW 62A.2-105.
"Identification."	RCW 62A.2-501.
"Installment contract."	RCW 62A.2-612.
"Letter of credit."	RCW 62A.2-325.
"Lot."	RCW 62A.2-105.
"Merchant."	RCW 62A.2-104.
"Overseas."	RCW 62A.2-323.
"Person in position of seller."	RCW 62A.2-707.

1	"Present sale."	RCW 62A.2-106.
2	"Sale."	RCW 62A.2-106.
3	"Sale on approval."	RCW 62A.2-326.
4	"Sale or return."	RCW 62A.2-326.
5	"Termination."	RCW 62A.2-106.

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

8	"Check."	RCW 62A.3-104.
9	"Consignee."	RCW 62A.7-102.
10	"Consignor."	RCW 62A.7-102.
11	<u>"Control."</u>	<u>RCW 62A.7-106.</u>
12	"Consumer goods."	RCW 62A.9A-102.
13	"Dishonor."	RCW 62A.3-502.
14	"Draft."	RCW 62A.3-104.

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

18 **Sec. 802.** RCW 62A.2-104 and 1965 ex.s. c 157 s 2-104 are each
19 amended to read as follows:

20 DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING
21 AGENCY."((-)) (1) "Merchant" means a person who deals in goods of the
22 kind or otherwise by his or her occupation holds himself or herself out
23 as having knowledge or skill peculiar to the practices or goods
24 involved in the transaction or to whom such knowledge or skill may be
25 attributed by his or her employment of an agent or broker or other
26 intermediary who by his or her occupation holds himself or herself out
27 as having such knowledge or skill.

28 (2) "Financing agency" means a bank, finance company or other
29 person who in the ordinary course of business makes advances against
30 goods or documents of title or who by arrangement with either the
31 seller or the buyer intervenes in ordinary course to make or collect
32 payment due or claimed under the contract for sale, as by purchasing or
33 paying the seller's draft or making advances against it or by merely
34 taking it for collection whether or not documents of title accompany or

1 are associated with the draft. "Financing agency" includes also a bank
2 or other person who similarly intervenes between persons who are in the
3 position of seller and buyer in respect to the goods (RCW 62A.2-707).

4 (3) "Between merchants" means in any transaction with respect to
5 which both parties are chargeable with the knowledge or skill of
6 merchants.

7 **Sec. 803.** RCW 62A.2-310 and 1965 ex.s. c 157 s 2-310 are each
8 amended to read as follows:

9 OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER
10 RESERVATION. Unless otherwise agreed:

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

14 (b) If the seller is authorized to send the goods he or she may
15 ship them under reservation, and may tender the documents of title, but
16 the buyer may inspect the goods after their arrival before payment is
17 due unless such inspection is inconsistent with the terms of the
18 contract (RCW 62A.2-513); and

19 (c) If delivery is authorized and made by way of documents of title
20 otherwise than by subsection (b) of this section then payment is due
21 regardless of where the goods are to be received (1) at the time and
22 place at which the buyer is to receive delivery of the tangible
23 documents ((regardless of where the goods are to be received)) or (2)
24 at the time the buyer is to receive delivery of the electronic
25 documents and at the seller's place of business or if none, the
26 seller's residence; and

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

31 **Sec. 804.** RCW 62A.2-323 and 1965 ex.s. c 157 s 2-323 are each
32 amended to read as follows:

33 FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT; "OVERSEAS."

34 (1) Where the contract contemplates overseas shipment and contains a
35 term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise

1 agreed must obtain a negotiable bill of lading stating that the goods
2 have been loaded on board or, in the case of a term C.I.F. or C.&F.,
3 received for shipment.

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

10 (a) Due tender of a single part is acceptable within the provisions
11 of this article on cure of improper delivery (subsection (1) of RCW
12 62A.2-508); and

13 (b) Even though the full set is demanded, if the documents are sent
14 from abroad the person tendering an incomplete set may nevertheless
15 require payment upon furnishing an indemnity which the buyer in good
16 faith deems adequate.

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

21 **Sec. 805.** RCW 62A.2-401 and 1965 ex.s. c 157 s 2-401 are each
22 amended to read as follows:

23 PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF
24 THIS SECTION. Each provision of this article with regard to the
25 rights, obligations and remedies of the seller, the buyer, purchasers
26 or other third parties applies irrespective of title to the goods
27 except where the provision refers to such title. Insofar as situations
28 are not covered by the other provisions of this article and matters
29 concerning title become material the following rules apply:

30 (1) Title to goods cannot pass under a contract for sale prior to
31 their identification to the contract (RCW 62A.2-501), and unless
32 otherwise explicitly agreed the buyer acquires by their identification
33 a special property as limited by this title. Any retention or
34 reservation by the seller of the title (property) in goods shipped or
35 delivered to the buyer is limited in effect to a reservation of a
36 security interest. Subject to these provisions and to the provisions

1 of the Article on Secured Transactions (~~((Article 9))~~) chapter 62A.9
2 RCW), title to goods passes from the seller to the buyer in any manner
3 and on any conditions explicitly agreed on by the parties.

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

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

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

16 (3) Unless otherwise explicitly agreed where delivery is to be made
17 without moving the goods(~~((τ))~~):

18 (a) If the seller is to deliver a tangible document of title, title
19 passes at the time when and the place where he or she delivers such
20 documents and if the seller is to deliver an electronic document of
21 title, title passes when the seller delivers the document; or

22 (b) If the goods are at the time of contracting already identified
23 and no documents of title are to be delivered, title passes at the time
24 and place of contracting.

25 (4) A rejection or other refusal by the buyer to receive or retain
26 the goods, whether or not justified, or a justified revocation of
27 acceptance reverts title to the goods in the seller. Such reversioning
28 occurs by operation of law and is not a "sale."~~((τ))~~

29 **Sec. 806.** RCW 62A.2-503 and 1965 ex.s. c 157 s 2-503 are each
30 amended to read as follows:

31 MANNER OF SELLER'S TENDER OF DELIVERY. (1) Tender of delivery
32 requires that the seller put and hold conforming goods at the buyer's
33 disposition and give the buyer any notification reasonably necessary to
34 enable him or her to take delivery. The manner, time and place for
35 tender are determined by the agreement and this article, and in
36 particular:

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

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

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

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

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

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

17 (b) Tender to the buyer of a non-negotiable document of title or of
18 a (~~written direction to~~) record directing the bailee to deliver is
19 sufficient tender unless the buyer seasonably objects, and except as
20 otherwise provided in chapter 62A.9 RCW, receipt by the bailee of
21 notification of the buyer's rights fixes those rights as against the
22 bailee and all third persons; but risk of loss of the goods and of any
23 failure by the bailee to honor the non-negotiable document of title or
24 to obey the direction remains on the seller until the buyer has had a
25 reasonable time to present the document or direction, and a refusal by
26 the bailee to honor the document or to obey the direction defeats the
27 tender.

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

29 (a) He or she must tender all such documents in correct form,
30 except as provided in this article with respect to bills of lading in
31 a set (subsection (2) of RCW 62A.2-323); and

32 (b) Tender through customary banking channels is sufficient and
33 dishonor of a draft accompanying or associated with the documents
34 constitutes non-acceptance or rejection.

35 **Sec. 807.** RCW 62A.2-505 and 1965 ex.s. c 157 s 2-505 are each
36 amended to read as follows:

1 SELLER'S SHIPMENT UNDER RESERVATION. (1) Where the seller has
2 identified goods to the contract by or before shipment:

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

8 (b) A non-negotiable bill of lading to himself or herself or his or
9 her nominee reserves possession of the goods as security but except in
10 a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-
11 negotiable bill of lading naming the buyer as consignee reserves no
12 security interest even though the seller retains possession or control
13 of the bill of lading.

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

20 **Sec. 808.** RCW 62A.2-506 and 1965 ex.s. c 157 s 2-506 are each
21 amended to read as follows:

22 RIGHTS OF FINANCING AGENCY. (1) A financing agency by paying or
23 purchasing for value a draft which relates to a shipment of goods
24 acquires to the extent of the payment or purchase and in addition to
25 its own rights under the draft and any document of title securing it
26 any rights of the shipper in the goods including the right to stop
27 delivery and the shipper's right to have the draft honored by the
28 buyer.

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

34 **Sec. 809.** RCW 62A.2-509 and 1965 ex.s. c 157 s 2-509 are each
35 amended to read as follows:

1 RISK OF LOSS IN THE ABSENCE OF BREACH. (1) Where the contract
2 requires or authorizes the seller to ship the goods by carrier:

3 (a) If it does not require him or her to deliver them at a
4 particular destination, the risk of loss passes to the buyer when the
5 goods are duly delivered to the carrier even though the shipment is
6 under reservation (RCW 62A.2-505); but

7 (b) If it does require him or her to deliver them at a particular
8 destination and the goods are there duly tendered while in the
9 possession of the carrier, the risk of loss passes to the buyer when
10 the goods are there duly so tendered as to enable the buyer to take
11 delivery.

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

14 (a) On his or her receipt of possession or control a negotiable
15 document of title covering the goods; or

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

18 (c) After his or her receipt of possession or control a non-
19 negotiable document of title or other (~~written~~) direction to deliver
20 in a record, as provided in subsection (4)(b) of RCW 62A.2-503.

21 (3) In any case not within subsection (1) or (2) of this section,
22 the risk of loss passes to the buyer on his or her receipt of the goods
23 if the seller is a merchant; otherwise the risk passes to the buyer on
24 tender of delivery.

25 (4) The provisions of this section are subject to contrary
26 agreement of the parties and to the provisions of this article on sale
27 on approval (RCW 62A.2-327) and on effect of breach on risk of loss
28 (RCW 62A.2-510).

29 **Sec. 810.** RCW 62A.2-605 and 1965 ex.s. c 157 s 2-605 are each
30 amended to read as follows:

31 WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. (1) The
32 buyer's failure to state in connection with rejection a particular
33 defect which is ascertainable by reasonable inspection precludes him or
34 her from relying on the unstated defect to justify rejection or to
35 establish breach:

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

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

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

7 **Sec. 811.** RCW 62A.2-705 and 1965 ex.s. c 157 s 2-705 are each
8 amended to read as follows:

9 SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) The
10 seller may stop delivery of goods in the possession of a carrier or
11 other bailee when he or she discovers the buyer to be insolvent (RCW
12 62A.2-702) and may stop delivery of carload, truckload, planeload or
13 larger shipments of express or freight when the buyer repudiates or
14 fails to make a payment due before delivery or if for any other reason
15 the seller has a right to withhold or reclaim the goods.

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

17 (a) Receipt of the goods by the buyer; or

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

20 (c) Such acknowledgment to the buyer by a carrier by reshipment or
21 as (~~warehouseman~~) a warehouse; or

22 (d) Negotiation to the buyer of any negotiable document of title
23 covering the goods.

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

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

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

32 (d) A carrier who has issued a non-negotiable bill of lading is not
33 obliged to obey a notification to stop received from a person other
34 than the consignor.

35 **PART IX**

1 **AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 2A**

2 **Sec. 901.** RCW 62A.2A-103 and 2000 c 250 s 9A-808 are each amended
3 to read as follows:

4 DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this article unless
5 the context otherwise requires:

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

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

18 (c) "Commercial unit" means such a unit of goods as by commercial
19 usage is a single whole for purposes of lease and division of which
20 materially impairs its character or value on the market or in use. A
21 commercial unit may be a single article, as a machine, or a set of
22 articles, as a suite of furniture or a line of machinery, or a
23 quantity, as a gross or carload, or any other unit treated in use or in
24 the relevant market as a single whole.

25 (d) "Conforming" goods or performance under a lease contract means
26 goods or performance that are in accordance with the obligations under
27 the lease contract.

28 (e) "Consumer lease" means a lease that a lessor regularly engaged
29 in the business of leasing or selling makes to a lessee who is an
30 individual who takes under the lease primarily for a personal, family,
31 or household purpose, if the total payments to be made under the lease
32 contract, excluding payments for options to renew or buy, do not exceed
33 twenty-five thousand dollars.

34 (f) "Fault" means wrongful act, omission, breach, or default.

35 (g) "Finance lease" means a lease with respect to which:

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

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

1 (iii) Only in the case of a consumer lease, either:

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

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

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

16 (h) "Goods" means all things that are movable at the time of
17 identification to the lease contract, or are fixtures (RCW 62A.2A-309),
18 but the term does not include money, documents, instruments, accounts,
19 chattel paper, general intangibles, or minerals or the like, including
20 oil and gas, before extraction. The term also includes the unborn
21 young of animals.

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

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

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

37 (l) "Lease contract" means the total legal obligation that results

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

4 (m) "Leasehold interest" means the interest of the lessor or the
5 lessee under a lease contract.

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

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

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

22 (q) "Lessor's residual interest" means the lessor's interest in the
23 goods after expiration, termination, or cancellation of the lease
24 contract.

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

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

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

33 (u) "Present value" means the amount as of a date certain of one or
34 more sums payable in the future, discounted to the date certain. The
35 discount is determined by the interest rate specified by the parties if
36 the rate was not manifestly unreasonable at the time the transaction
37 was entered into; otherwise, the discount is determined by a

1 commercially reasonable rate that takes into account the facts and
2 circumstances of each case at the time the transaction was entered
3 into.

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

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

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

12 (y) "Supply contract" means a contract under which a lessor buys or
13 leases goods to be leased.

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

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

19	"Accessions."	RCW 62A.2A-310(1).
20	"Construction	
21	mortgage."	RCW 62A.2A-309(1)(d).
22	"Encumbrance."	RCW 62A.2A-309(1)(e).
23	"Fixtures."	RCW 62A.2A-309(1)(a).
24	"Fixture filing."	RCW 62A.2A-309(1)(b).
25	"Purchase money	
26	lease."	RCW 62A.2A-309(1)(c).

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

29	"Account."	RCW 62A.9A-102(a)(2).
30	"Between merchants."	RCW 62A.2-104(3).
31	"Buyer."	RCW 62A.2-103(1)(a).
32	"Chattel paper."	RCW 62A.9A-102(a)(11).
33	"Consumer goods."	RCW 62A.9A-102(a)(23).

1	"Document."	RCW 62A.9A-102(a)(30).
2	"Entrusting."	RCW 62A.2-403(3).
3	"General intangible."	RCW 62A.9A-102(a)(42).
4	"Good faith."	RCW 62A.2-103(1)(b).
5	"Instrument."	RCW 62A.9A-102(a)(47).
6	"Merchant."	RCW 62A.2-104(1).
7	"Mortgage."	RCW 62A.9A-102(a)(55).
8	"Pursuant to	
9	commitment."	RCW 62A.9A-102(a)(68).
10	"Receipt."	RCW 62A.2-103(1)(c).
11	"Sale."	RCW 62A.2-106(1).
12	"Sale on approval."	RCW 62A.2-326.
13	"Sale or return."	RCW 62A.2-326.
14	"Seller."	RCW 62A.2-103(1)(d).

15 (4) In addition, Article 62A.1 RCW contains general definitions and
16 principles of construction and interpretation applicable throughout
17 this article.

18 **Sec. 902.** RCW 62A.2A-514 and 1993 c 230 s 2A-514 are each amended
19 to read as follows:

20 WAIVER OF LESSEE'S OBJECTIONS. (1) In rejecting goods, a lessee's
21 failure to state a particular defect that is ascertainable by
22 reasonable inspection precludes the lessee from relying on the defect
23 to justify rejection or to establish default:

24 (a) If, stated seasonably, the lessor or the supplier could have
25 cured it (RCW 62A.2A-513); or

26 (b) Between merchants if the lessor or the supplier after rejection
27 has made a request in writing for a full and final written statement of
28 all defects on which the lessee proposes to rely.

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

32 **Sec. 903.** RCW 62A.2A-526 and 1993 c 230 s 2A-526 are each amended
33 to read as follows:

34 LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (1) A
35 lessor may stop delivery of goods in the possession of a carrier or

1 other bailee if the lessor discovers the lessee to be insolvent and may
2 stop delivery of carload, truckload, planeload, or larger shipments of
3 express or freight if the lessee repudiates or fails to make a payment
4 due before delivery, whether for rent, security, or otherwise under the
5 lease contract, or for any other reason the lessor has a right to
6 withhold or take possession of the goods.

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

9 (a) Receipt of the goods by the lessee;

10 (b) Acknowledgment to the lessee by any bailee of the goods, except
11 a carrier, that the bailee holds the goods for the lessee; or

12 (c) Such an acknowledgment to the lessee by a carrier via
13 reshipment or as (~~warehouseman~~) a warehouse.

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

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

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

22 PART X

23 AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 4

24 **Sec. 1001.** RCW 62A.4-104 and 1995 c 48 s 56 are each amended to
25 read as follows:

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

27 (1) "Account" means any deposit or credit account with a bank,
28 including a demand, time, savings, passbook, share draft, or like
29 account, other than an account evidenced by a certificate of deposit;

30 (2) "Afternoon" means the period of a day between noon and
31 midnight;

32 (3) "Banking day" means the part of a day on which a bank is open
33 to the public for carrying on substantially all of its banking
34 functions, except that it shall not include a Saturday, Sunday, or
35 legal holiday;

1 (4) "Clearing house" means an association of banks or other payors
2 regularly clearing items;

3 (5) "Customer" means a person having an account with a bank or for
4 whom a bank has agreed to collect items, including a bank that
5 maintains an account at another bank;

6 (6) "Documentary draft" means a draft to be presented for
7 acceptance or payment if specified documents, certificated securities
8 (RCW 62A.8-102) or instructions for uncertificated securities (RCW
9 62A.8-102), or other certificates, statements, or the like are to be
10 received by the drawee or other payor before acceptance or payment of
11 the draft;

12 (7) "Draft" means a draft as defined in RCW 62A.3-104 or an item,
13 other than an instrument, that is an order;

14 (8) "Drawee" means a person ordered in a draft to make payment;

15 (9) "Item" means an instrument or a promise or order to pay money
16 handled by a bank for collection or payment. The term does not include
17 a payment order governed by Article 4A or a credit or debit card slip;

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

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

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

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

31	"Agreement for electronic	
32	presentment"	RCW 62A.4-110.
33	"Bank"	RCW 62A.4-105.
34	"Collecting bank"	RCW 62A.4-105.
35	"Depositary bank"	RCW 62A.4-105.

1	"Intermediary bank"	RCW 62A.4-105.
2	"Payor bank"	RCW 62A.4-105.
3	"Presenting bank"	RCW 62A.4-105.
4	"Presentment notice"	RCW 62A.4-110.

5 (c) The following definitions in other articles apply to this
6 article:

7	"Acceptance"	RCW 62A.3-409.
8	"Alteration"	RCW 62A.3-407.
9	"Cashier's check"	RCW 62A.3-104.
10	"Certificate of deposit"	RCW 62A.3-104.
11	"Certified check"	RCW 62A.3-409.
12	"Check"	RCW 62A.3-104.
13	<u>"Control"</u>	<u>RCW 62A.7-106.</u>
14	"Draft"	RCW 62A.3-104.
15	"Good faith"	RCW 62A.3-103.
16	"Holder in due course"	RCW 62A.3-302.
17	"Instrument"	RCW 62A.3-104.
18	"Notice of dishonor"	RCW 62A.3-503.
19	"Order"	RCW 62A.3-103.
20	"Ordinary care"	RCW 62A.3-103.
21	"Person entitled to enforce"	RCW 62A.3-301.
22	"Presentment"	RCW 62A.3-501.
23	"Promise"	RCW 62A.3-103.
24	"Prove"	RCW 62A.3-103.
25	"Teller's check"	RCW 62A.3-104.
26	"Unauthorized signature"	RCW 62A.3-403.

27 (d) In addition Article 1 contains general definitions and
28 principles of construction and interpretation applicable throughout
29 this article.

30 **Sec. 1002.** RCW 62A.4-210 and 2001 c 32 s 13 are each amended to
31 read as follows:

32 SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING

1 DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest
2 in an item and any accompanying documents or the proceeds of either:

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

5 (2) In case of an item for which it has given credit available for
6 withdrawal as of right, to the extent of the credit given whether or
7 not the credit is drawn upon or there is a right of charge-back; or

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

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

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

21 (1) No security agreement is necessary to make the security
22 interest enforceable RCW 62A.9A-203(b)(3)(A);

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

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

26 PART XI

27 AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 8

28 **Sec. 1101.** RCW 62A.8-103 and 2000 c 250 s 9A-815 are each amended
29 to read as follows:

30 RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE
31 SECURITIES OR FINANCIAL ASSETS. (1) A share or similar equity interest
32 issued by a corporation, business trust, joint stock company, or
33 similar entity is a security.

34 (2) An "investment company security" is a security. "Investment
35 company security" means a share or similar equity interest issued by an
36 entity that is registered as an investment company under the federal

1 investment company laws, an interest in a unit investment trust that is
2 so registered, or a face-amount certificate issued by a face-amount
3 certificate company that is so registered. Investment company security
4 does not include an insurance policy or endowment policy or annuity
5 contract issued by an insurance company.

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

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

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

20 (6) A commodity contract, as defined in RCW 62A.9A-102(a)(15), is
21 not a security or a financial asset.

22 (7) A document of title is not a financial asset unless RCW
23 62A.8-102(1)(i)(iii) applies.

24 PART XII

25 AMENDMENTS TO UNIFORM COMMERCIAL CODE ARTICLE 9

26 **Sec. 1201.** RCW 62A.9A-102 and 2001 c 32 s 16 are each amended to
27 read as follows:

28 DEFINITIONS AND INDEX OF DEFINITIONS. (a) **Article 9A definitions.**
29 In this Article:

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

33 (2)(A) "Account," except as used in "account for," means a right to
34 payment of a monetary obligation, whether or not earned by performance,
35 (i) for property that has been or is to be sold, leased, licensed,
36 assigned, or otherwise disposed of, (ii) for services rendered or to be

1 rendered, (iii) for a policy of insurance issued or to be issued, (iv)
2 for a secondary obligation incurred or to be incurred, (v) for energy
3 provided or to be provided, (vi) for the use or hire of a vessel under
4 a charter or other contract, (vii) arising out of the use of a credit
5 or charge card or information contained on or for use with the card, or
6 (viii) as winnings in a lottery or other game of chance operated or
7 sponsored by a state, governmental unit of a state, or person licensed
8 or authorized to operate the game by a state or governmental unit of a
9 state. The term includes health-care-insurance receivables.

10 (B) The term does not include (i) rights to payment evidenced by
11 chattel paper or an instrument, (ii) commercial tort claims, (iii)
12 deposit accounts, (iv) investment property, (v) letter-of-credit rights
13 or letters of credit, or (vi) rights to payment for money or funds
14 advanced or sold, other than rights arising out of the use of a credit
15 or charge card or information contained on or for use with the card.

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

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

22 (A) Authenticated by a secured party;

23 (B) Indicating the aggregate unpaid secured obligations as of a
24 date not more than thirty-five days earlier or thirty-five days later
25 than the date of the record; and

26 (C) Identifying the components of the obligations in reasonable
27 detail.

28 (5) "Agricultural lien" means an interest, other than a security
29 interest, in farm products:

30 (A) Which secures payment or performance of an obligation for:

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

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

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

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

38 or

1 (ii) Leased real property to a debtor in connection with the
2 debtor's farming operation; and

3 (C) Whose effectiveness does not depend on the person's possession
4 of the personal property.

5 (6) "As-extracted collateral" means:

6 (A) Oil, gas, or other minerals that are subject to a security
7 interest that:

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

10 (ii) Attaches to the minerals as extracted; or

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

14 (7) "Authenticate" means:

15 (A) To sign; or

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

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

23 (9) "Cash proceeds" means proceeds that are money, checks, deposit
24 accounts, or the like.

25 (10) "Certificate of title" means a certificate of title with
26 respect to which a statute provides for the security interest in
27 question to be indicated on the certificate as a condition or result of
28 the security interest's obtaining priority over the rights of a lien
29 creditor with respect to the collateral.

30 (11) "Chattel paper" means a record or records that evidence both
31 a monetary obligation and a security interest in specific goods, a
32 security interest in specific goods and software used in the goods, a
33 security interest in specific goods and license of software used in the
34 goods, a lease of specific goods, or a lease of specific goods and
35 license of software used in the goods. In this subsection, "monetary
36 obligation" means a monetary obligation secured by the goods or owed
37 under a lease of the goods and includes a monetary obligation with
38 respect to software used in the goods. The term "chattel paper" does

1 not include (A) charters or other contracts involving the use or hire
2 of a vessel or (B) records that evidence a right to payment arising out
3 of the use of a credit or charge card or information contained on or
4 for use with the card. If a transaction is evidenced by records that
5 include an instrument or series of instruments, the group of records
6 taken together constitutes chattel paper.

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

9 (A) Proceeds to which a security interest attaches;

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

12 (C) Goods that are the subject of a consignment.

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

15 (A) The claimant is an organization; or

16 (B) The claimant is an individual, and the claim:

17 (i) Arose in the course of the claimant's business or profession;
18 and

19 (ii) Does not include damages arising out of personal injury to, or
20 the death of, an individual.

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

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

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

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

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

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

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

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

4 (18) "Communicate" means:

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

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

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

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

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

16 (A) The merchant:

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

19 (ii) Is not an auctioneer; and

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

22 (B) With respect to each delivery, the aggregate value of the goods
23 is one thousand dollars or more at the time of delivery;

24 (C) The goods are not consumer goods immediately before delivery;
25 and

26 (D) The transaction does not create a security interest that
27 secures an obligation.

28 (21) "Consignor" means a person that delivers goods to a consignee
29 in a consignment.

30 (22) "Consumer debtor" means a debtor in a consumer transaction.

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

33 (24) "Consumer-goods transaction" means a consumer transaction in
34 which:

35 (A) An individual incurs a consumer obligation; and

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

37 (25) "Consumer obligation" means an obligation which:

1 (A) Is incurred as part of a transaction entered into primarily for
2 personal, family, or household purposes; and

3 (B) Arises from an extension of credit, or commitment to extend
4 credit, in an aggregate amount not exceeding forty thousand dollars, or
5 is secured by personal property used or expected to be used as a
6 principal dwelling.

7 "Consumer obligor" means an obligor who is an individual and who
8 incurred a consumer obligation.

9 (26) "Consumer transaction" means a transaction in which (A) an
10 individual incurs a consumer obligation, (B) a security interest
11 secures the obligation, and (C) the collateral is held or acquired
12 primarily for personal, family, or household purposes. The term
13 includes consumer-goods transactions.

14 (27) "Continuation statement" means an amendment of a financing
15 statement which:

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

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

21 (28) "Debtor" means:

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

24 (B) A seller of accounts, chattel paper, payment intangibles, or
25 promissory notes; or

26 (C) A consignee.

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

30 (30) "Document" means a document of title or a receipt of the type
31 described in RCW 62A.7-201(2).

32 (31) "Electronic chattel paper" means chattel paper evidenced by a
33 record or records consisting of information stored in an electronic
34 medium.

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

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

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

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

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

8 (ii) Aquatic goods produced in aquacultural operations;

9 (B) Livestock, born or unborn, including aquatic goods produced in
10 aquacultural operations;

11 (C) Supplies used or produced in a farming operation; or

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

13 (35) "Farming operation" means raising, cultivating, propagating,
14 fattening, grazing, or any other farming, livestock, or aquacultural
15 operation.

16 (36) "File number" means the number assigned to an initial
17 financing statement pursuant to RCW 62A.9A-519(a).

18 (37) "Filing office" means an office designated in RCW 62A.9A-501
19 as the place to file a financing statement.

20 (38) "Filing-office rule" means a rule adopted pursuant to RCW
21 62A.9A-526.

22 (39) "Financing statement" means a record or records composed of an
23 initial financing statement and any filed record relating to the
24 initial financing statement.

25 (40) "Fixture filing" means the filing of a financing statement
26 covering goods that are or are to become fixtures and satisfying RCW
27 62A.9A-502 (a) and (b). The term includes the filing of a financing
28 statement covering goods of a transmitting utility which are or are to
29 become fixtures.

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

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

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

3 (44) "Goods" means all things that are movable when a security
4 interest attaches. The term includes (A) fixtures, (B) standing timber
5 that is to be cut and removed under a conveyance or contract for sale,
6 (C) the unborn young of animals, (D) crops grown, growing, or to be
7 grown, even if the crops are produced on trees, vines, or bushes, and
8 (E) manufactured homes. The term also includes a computer program
9 embedded in goods and any supporting information provided in connection
10 with a transaction relating to the program if (i) the program is
11 associated with the goods in such a manner that it customarily is
12 considered part of the goods, or (ii) by becoming the owner of the
13 goods, a person acquires a right to use the program in connection with
14 the goods. The term does not include a computer program embedded in
15 goods that consist solely of the medium in which the program is
16 embedded. The term also does not include accounts, chattel paper,
17 commercial tort claims, deposit accounts, documents, general
18 intangibles, instruments, investment property, letter-of-credit rights,
19 letters of credit, money, or oil, gas, or other minerals before
20 extraction or a manufactured home converted to real property under
21 chapter 65.20 RCW.

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

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

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

1 information contained on or for use with the card, (D) writings that do
2 not contain a promise or order to pay, or (E) writings that are
3 expressly nontransferable or nonassignable.

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

5 (A) Are leased by a person as lessor;

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

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

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

11 (49) "Investment property" means a security, whether certificated
12 or uncertificated, security entitlement, securities account, commodity
13 contract, or commodity account.

14 (50) "Jurisdiction of organization," with respect to a registered
15 organization, means the jurisdiction under whose law the organization
16 is organized.

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

22 (52) "Lien creditor" means:

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

25 (B) An assignee for benefit of creditors from the time of
26 assignment;

27 (C) A trustee in bankruptcy from the date of the filing of the
28 petition; or

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

30 (53) "Manufactured home" means a manufactured home or mobile home
31 as defined in RCW 46.04.302.

32 (54) [Reserved]

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

36 (56) "New debtor" means a person that becomes bound as debtor under
37 RCW 62A.9A-203(d) by a security agreement previously entered into by
38 another person.

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

5 (58) "Noncash proceeds" means proceeds other than cash proceeds.

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

14 (60) "Original debtor", except as used in RCW 62A.9A-310(c), means
15 a person that, as debtor, entered into a security agreement to which a
16 new debtor has become bound under RCW 62A.9A-203(d).

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

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

20 (A) The spouse of the individual;

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

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

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

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

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

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

32 (C) An officer or director of, or a person performing similar
33 functions with respect to, a person described in (63)(A) of this
34 subsection;

35 (D) The spouse of an individual described in (63)(A), (B), or (C)
36 of this subsection; or

37 (E) An individual who is related by blood or marriage to an

1 individual described in (63)(A), (B), (C), or (D) of this subsection
2 and shares the same home with the individual.

3 (64) "Proceeds", except as used in RCW 62A.9A-609(b), means the
4 following property:

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

7 (B) Whatever is collected on, or distributed on account of,
8 collateral;

9 (C) Rights arising out of collateral;

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

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

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

21 (66) "Proposal" means a record authenticated by a secured party,
22 which includes the terms on which the secured party is willing to
23 accept collateral in full or partial satisfaction of the obligation it
24 secures pursuant to RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622.

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

27 (A) Debt securities are issued;

28 (B) All or a portion of the securities issued have an initial
29 stated maturity of at least twenty years; and

30 (C) The debtor, obligor, secured party, account debtor or other
31 person obligated on collateral, assignor or assignee of a secured
32 obligation, or assignor or assignee of a security interest is a state
33 or a governmental unit of a state.

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

1 (69) "Record," except as used in "for record," "of record," "record
2 or legal title," and "record owner," means information that is
3 inscribed on a tangible medium or which is stored in an electronic or
4 other medium and is retrievable in perceivable form.

5 (70) "Registered organization" means an organization organized
6 solely under the law of a single state or the United States and as to
7 which the state or the United States must maintain a public record
8 showing the organization to have been organized.

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

10 (A) The obligor's obligation is secondary; or

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

14 (72) "Secured party" means:

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

18 (B) A person that holds an agricultural lien;

19 (C) A consignor;

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

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

25 (F) A person that holds a security interest arising under RCW
26 62A.2-401, 62A.2-505, 62A.2-711(3), 62A.2A-508(5), 62A.4-210, or 62A.5-
27 118.

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

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

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

35 (B) To cause the record or notification to be received within the
36 time that it would have been received if properly sent under (A) of
37 this subsection.

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

5 (76) "State" means a state of the United States, the District of
6 Columbia, Puerto Rico, the United States Virgin Islands, or any
7 territory or insular possession subject to the jurisdiction of the
8 United States.

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

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

16 (79) "Termination statement" means an amendment of a financing
17 statement which:

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

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

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

24 (A) Operating a railroad, subway, street railway, or trolley bus;

25 (B) Transmitting communications electrically, electromagnetically,
26 or by light;

27 (C) Transmitting goods by pipeline or sewer; or

28 (D) Transmitting or producing and transmitting electricity, steam,
29 gas, or water.

30 (b) **Definitions in other articles.** The following definitions in
31 other articles apply to this article:

32	"Applicant."	RCW 62A.5-102.
33	"Beneficiary."	RCW 62A.5-102.
34	"Broker."	RCW 62A.8-102.
35	"Certificated security."	RCW 62A.8-102.
36	"Check."	RCW 62A.3-104.

1	"Clearing corporation."	RCW 62A.8-102.
2	"Contract for sale."	RCW 62A.2-106.
3	<u>"Control."</u>	<u>RCW 62A.7-106.</u>
4	"Customer."	RCW 62A.4-104.
5	"Entitlement holder."	RCW 62A.8-102.
6	"Financial asset."	RCW 62A.8-102.
7	"Holder in due course."	RCW 62A.3-302.
8	<u>"Issuer" with respect to</u>	
9	<u>documents of title.</u>	<u>RCW 62A.7-102.</u>
10	"Issuer" with respect to a	
11	letter of credit or letter-	
12	of-credit right.	RCW 62A.5-102.
13	"Issuer" with respect to a	
14	security.	RCW 62A.8-201.
15	"Lease."	RCW 62A.2A-103.
16	"Lease agreement."	RCW 62A.2A-103.
17	"Lease contract."	RCW 62A.2A-103.
18	"Leasehold interest."	RCW 62A.2A-103.
19	"Lessee."	RCW 62A.2A-103.
20	"Lessee in ordinary course	
21	of business."	RCW 62A.2A-103.
22	"Lessor."	RCW 62A.2A-103.
23	"Lessor's residual interest."	RCW 62A.2A-103.
24	"Letter of credit."	RCW 62A.5-102.
25	"Merchant."	RCW 62A.2-104.
26	"Negotiable instrument."	RCW 62A.3-104.
27	"Nominated person."	RCW 62A.5-102.
28	"Note."	RCW 62A.3-104.
29	"Proceeds of a letter of	
30	credit."	RCW 62A.5-114.
31	"Prove."	RCW 62A.3-103.
32	"Sale."	RCW 62A.2-106.
33	"Securities account."	RCW 62A.8-501.
34	"Securities intermediary."	RCW 62A.8-102.
35	"Security."	RCW 62A.8-102.
36	"Security certificate."	RCW 62A.8-102.
37	"Security entitlement."	RCW 62A.8-102.

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

Sec. 1202. RCW 62A.9A-203 and 2000 c 250 s 9A-203 are each amended to read as follows:

ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES. (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

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

(1) Value has been given;

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

(3) One of the following conditions is met:

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

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, ((~~or~~)) letter-of-credit rights or electronic documents, and the secured party has control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or

1 nominated person, RCW 62A.9A-110 on a security interest arising under
2 Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment
3 property.

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

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

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

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

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

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

21 (f) **Proceeds and supporting obligations.** The attachment of a
22 security interest in collateral gives the secured party the rights to
23 proceeds provided by RCW 62A.9A-315 and is also attachment of a
24 security interest in a supporting obligation for the collateral.

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

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

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

1 **Sec. 1203.** RCW 62A.9A-207 and 2000 c 250 s 9A-207 are each amended
2 to read as follows:

3 RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF
4 COLLATERAL. (a) **Duty of care when secured party in possession.** Except
5 as otherwise provided in subsection (d) of this section, a secured
6 party shall use reasonable care in the custody and preservation of
7 collateral in the secured party's possession. In the case of chattel
8 paper or an instrument, reasonable care includes taking necessary steps
9 to preserve rights against prior parties unless otherwise agreed.

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

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

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

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

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

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

23 (B) As permitted by an order of a court having competent
24 jurisdiction; or

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

27 (c) **Duties and rights when secured party in possession or control.**
28 Except as otherwise provided in subsection (d) of this section, a
29 secured party having possession of collateral or control of collateral
30 under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107:

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

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

35 (3) May create a security interest in the collateral.

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

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

3 (A) To charge back uncollected collateral; or

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

7 (2) Subsections (b) and (c) of this section do not apply.

8 **Sec. 1204.** RCW 62A.9A-208 and 2001 c 32 s 21 are each amended to
9 read as follows:

10 ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL.

11 (a) **Applicability of section.** This section applies to cases in which
12 there is no outstanding secured obligation and the secured party is not
13 committed to make advances, incur obligations, or otherwise give value.

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

16 (1) A secured party having control of a deposit account under RCW
17 62A.9A-104(a)(2) shall send to the bank with which the deposit account
18 is maintained an authenticated statement that releases the bank from
19 any further obligation to comply with instructions originated by the
20 secured party;

21 (2) A secured party having control of a deposit account under RCW
22 62A.9A-104(a)(3) shall:

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

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

27 (3) A secured party, other than a buyer, having control of
28 electronic chattel paper under RCW 62A.9A-105 shall:

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

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

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

5 (4) A secured party having control of investment property under RCW
6 62A.8-106(4)(b) or 62A.9A-106(b) shall send to the securities
7 intermediary or commodity intermediary with which the security
8 entitlement or commodity contract is maintained an authenticated record
9 that releases the securities intermediary or commodity intermediary
10 from any further obligation to comply with entitlement orders or
11 directions originated by the secured party; (~~and~~)

12 (5) A secured party having control of a letter-of-credit right
13 under RCW 62A.9A-107 shall send to each person having an unfulfilled
14 obligation to pay or deliver proceeds of the letter of credit to the
15 secured party an authenticated release from any further obligation to
16 pay or deliver proceeds of the letter of credit to the secured party;
17 and

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

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

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

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

32 **Sec. 1205.** RCW 62A.9A-301 and 2001 c 32 s 22 are each amended to
33 read as follows:

34 LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.
35 Except as otherwise provided in RCW 62A.9A-303 through 62A.9A-306, the
36 following rules determine the law governing perfection, the effect of

1 perfection or nonperfection, and the priority of a security interest in
2 collateral:

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

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

11 (3) Except as otherwise provided in subsection (4) of this section,
12 while tangible negotiable documents, goods, instruments, money, or
13 tangible chattel paper is located in a jurisdiction, the local law of
14 that jurisdiction governs:

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

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

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

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

24 **Sec. 1206.** RCW 62A.9A-310 and 2000 c 250 s 9A-310 are each amended
25 to read as follows:

26 WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL
27 LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING
28 PROVISIONS DO NOT APPLY. (a) **General rule: Perfection by filing.**
29 Except as otherwise provided in subsections (b) and (d) of this section
30 and RCW 62A.9A-312(b), a financing statement must be filed to perfect
31 all security interests and agricultural liens.

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

34 (1) That is perfected under RCW 62A.9A-308 (d), (e), (f), or (g);

35 (2) That is perfected under RCW 62A.9A-309 when it attaches;

36 (3) In property subject to a statute, regulation, or treaty
37 described in RCW 62A.9A-311(a);

1 (4) In goods in possession of a bailee which is perfected under RCW
2 62A.9A-312(d) (1) or (2);

3 (5) In certificated securities, documents, goods, or instruments
4 which is perfected without filing, control, or possession under RCW
5 62A.9A-312 (e), (f), or (g);

6 (6) In collateral in the secured party's possession under RCW
7 62A.9A-313;

8 (7) In a certificated security which is perfected by delivery of
9 the security certificate to the secured party under RCW 62A.9A-313;

10 (8) In deposit accounts, electronic chattel paper, electronic
11 documents, investment property, or letter-of-credit rights which is
12 perfected by control under RCW 62A.9A-314;

13 (9) In proceeds which is perfected under RCW 62A.9A-315; or

14 (10) That is perfected under RCW 62A.9A-316.

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

20 (d) **Further exception: Filing not necessary for handler's lien.**
21 The filing of a financing statement is not necessary to perfect the
22 agricultural lien of a handler on orchard crops as provided in RCW
23 60.11.020(3).

24 **Sec. 1207.** RCW 62A.9A-312 and 2000 c 250 s 9A-312 are each amended
25 to read as follows:

26 PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT
27 ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS,
28 INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY
29 PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF
30 POSSESSION. (a) **Perfection by filing permitted.** A security interest
31 in chattel paper, negotiable documents, instruments, or investment
32 property may be perfected by filing.

33 (b) **Control or possession of certain collateral.** Except as
34 otherwise provided in RCW 62A.9A-315 (c) and (d) for proceeds:

35 (1) A security interest in a deposit account may be perfected only
36 by control under RCW 62A.9A-314;

1 (2) And except as otherwise provided in RCW 62A.9A-308(d), a
2 security interest in a letter-of-credit right may be perfected only by
3 control under RCW 62A.9A-314; and

4 (3) A security interest in money may be perfected only by the
5 secured party's taking possession under RCW 62A.9A-313.

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

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

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

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

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

19 (2) The bailee's receipt of notification of the secured party's
20 interest; or

21 (3) Filing as to the goods.

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

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

33 (1) Ultimate sale or exchange; or

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

37 (g) **Temporary perfection: Delivery of security certificate or**
38 **instrument to debtor.** A perfected security interest in a certificated

1 security or instrument remains perfected for twenty days without filing
2 if the secured party delivers the security certificate or instrument to
3 the debtor for the purpose of:

- 4 (1) Ultimate sale or exchange; or
- 5 (2) Presentation, collection, enforcement, renewal, or registration
6 of transfer.

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

10 **Sec. 1208.** RCW 62A.9A-313 and 2001 c 32 s 26 are each amended to
11 read as follows:

12 WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY
13 INTEREST WITHOUT FILING. (a) **Perfection by possession or delivery.**
14 Except as otherwise provided in subsection (b) of this section, a
15 secured party may perfect a security interest in tangible negotiable
16 documents, goods, instruments, money, or tangible chattel paper by
17 taking possession of the collateral. A secured party may perfect a
18 security interest in certificated securities by taking delivery of the
19 certificated securities under RCW 62A.8-301.

20 (b) **Goods covered by certificate of title.** With respect to goods
21 covered by a certificate of title issued by this state, a secured party
22 may perfect a security interest in the goods by taking possession of
23 the goods only in the circumstances described in RCW 62A.9A-316(d).

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

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

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

36 (d) **Time of perfection by possession; continuation of perfection.**
37 If perfection of a security interest depends upon possession of the

1 collateral by a secured party, perfection occurs no earlier than the
2 time the secured party takes possession and continues only while the
3 secured party retains possession.

4 (e) **Time of perfection by delivery; continuation of perfection.** A
5 security interest in a certificated security in registered form is
6 perfected by delivery when delivery of the certificated security occurs
7 under RCW 62A.8-301 and remains perfected by delivery until the debtor
8 obtains possession of the security certificate.

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

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

15 (1) The acknowledgment is effective under subsection (c) of this
16 section or RCW 62A.8-301(1), even if the acknowledgment violates the
17 rights of a debtor; and

18 (2) Unless the person otherwise agrees or law other than this
19 article otherwise provides, the person does not owe any duty to the
20 secured party and is not required to confirm the acknowledgment to
21 another person.

22 (h) **Secured party's delivery to person other than debtor.** A
23 secured party having possession of collateral does not relinquish
24 possession by delivering the collateral to a person other than the
25 debtor or a lessee of the collateral from the debtor in the ordinary
26 course of the debtor's business if the person was instructed before the
27 delivery or is instructed contemporaneously with the delivery:

28 (1) To hold possession of the collateral for the secured party's
29 benefit; or

30 (2) To redeliver the collateral to the secured party.

31 (i) **Effect of delivery under subsection (h) of this section; no**
32 **duties or confirmation.** A secured party does not relinquish
33 possession, even if a delivery under subsection (h) of this section
34 violates the rights of a debtor. A person to which collateral is
35 delivered under subsection (h) of this section does not owe any duty to
36 the secured party and is not required to confirm the delivery to
37 another person unless the person otherwise agrees or law other than
38 this article otherwise provides.

1 **Sec. 1209.** RCW 62A.9A-314 and 2000 c 250 s 9A-314 are each amended
2 to read as follows:

3 PERFECTION BY CONTROL. (a) **Perfection by control.** A security
4 interest in investment property, deposit accounts, letter-of-credit
5 rights, ((~~or~~)) electronic chattel paper, or electronic documents may be
6 perfected by control of the collateral under RCW 62A.7-106, 62A.9A-104,
7 62A.9A-105, 62A.9A-106, or 62A.9A-107.

8 (b) **Specified collateral: Time of perfection by control;**
9 **continuation of perfection.** A security interest in deposit accounts,
10 electronic chattel paper, ((~~or~~)) letter-of-credit rights, or electronic
11 documents is perfected by control under RCW 62A.7-106, 62A.9A-104,
12 62A.9A-105, or 62A.9A-107 when the secured party obtains control and
13 remains perfected by control only while the secured party retains
14 control.

15 (c) **Investment property: Time of perfection by control;**
16 **continuation of perfection.** A security interest in investment property
17 is perfected by control under RCW 62A.9A-106 from the time the secured
18 party obtains control and remains perfected by control until:

19 (1) The secured party does not have control; and

20 (2) One of the following occurs:

21 (A) If the collateral is a certificated security, the debtor has or
22 acquires possession of the security certificate;

23 (B) If the collateral is an uncertificated security, the issuer has
24 registered or registers the debtor as the registered owner; or

25 (C) If the collateral is a security entitlement, the debtor is or
26 becomes the entitlement holder.

27 **Sec. 1210.** RCW 62A.9A-317 and 2001 c 32 s 27 are each amended to
28 read as follows:

29 INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST
30 OR AGRICULTURAL LIEN. (a) **Conflicting security interests and rights of**
31 **lien creditors.** A security interest or agricultural lien is
32 subordinate to the rights of:

33 (1) A person entitled to priority under RCW 62A.9A-322; and

34 (2) Except as otherwise provided in subsection (e) of this section,
35 a person that becomes a lien creditor before the earlier of the time:

36 (A) The security interest or agricultural lien is perfected; or

1 (B) One of the conditions specified in RCW 62A.9A-203(b)(3) is met
2 and a financing statement covering the collateral is filed.

3 (b) **Buyers that receive delivery.** Except as otherwise provided in
4 subsection (e) of this section, a buyer, other than a secured party, of
5 tangible chattel paper, tangible documents, goods, instruments, or a
6 security certificate takes free of a security interest or agricultural
7 lien if the buyer gives value and receives delivery of the collateral
8 without knowledge of the security interest or agricultural lien and
9 before it is perfected.

10 (c) **Lessees that receive delivery.** Except as otherwise provided in
11 subsection (e) of this section, a lessee of goods takes free of a
12 security interest or agricultural lien if the lessee gives value and
13 receives delivery of the collateral without knowledge of the security
14 interest or agricultural lien and before it is perfected.

15 (d) **Licensees and buyers of certain collateral.** A licensee of a
16 general intangible or a buyer, other than a secured party, of accounts,
17 electronic chattel paper, electronic documents, general intangibles, or
18 investment property other than a certificated security takes free of a
19 security interest if the licensee or buyer gives value without
20 knowledge of the security interest and before it is perfected.

21 (e) **Purchase-money security interest.** Except as otherwise provided
22 in RCW 62A.9A-320 and 62A.9A-321, if a person files a financing
23 statement with respect to a purchase-money security interest before or
24 within twenty days after the debtor receives delivery of the
25 collateral, the security interest takes priority over the rights of a
26 buyer, lessee, or lien creditor which arise between the time the
27 security interest attaches and the time of filing.

28 **Sec. 1211.** RCW 62A.9A-338 and 2000 c 250 s 9A-338 are each amended
29 to read as follows:

30 PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY
31 FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If
32 a security interest or agricultural lien is perfected by a filed
33 financing statement providing information described in RCW
34 62A.9A-516(b)(5) which is incorrect at the time the financing statement
35 is filed:

36 (1) The security interest or agricultural lien is subordinate to a

1 conflicting perfected security interest in the collateral to the extent
2 that the holder of the conflicting security interest gives value in
3 reasonable reliance upon the incorrect information; and

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

10 **Sec. 1212.** RCW 62A.9A-601 and 2000 c 250 s 9A-601 are each amended
11 to read as follows:

12 RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF
13 ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a)
14 **Rights of secured party after default.** After default, a secured party
15 has the rights provided in this part and, except as otherwise provided
16 in RCW 62A.9A-602, those provided by agreement of the parties. A
17 secured party:

18 (1) May reduce a claim to judgment, foreclose, or otherwise enforce
19 the claim, security interest, or agricultural lien by any available
20 judicial procedure; and

21 (2) If the collateral is documents, may proceed either as to the
22 documents or as to the goods they cover.

23 (b) **Rights and duties of secured party in possession or control.**
24 A secured party in possession of collateral or control of collateral
25 under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107
26 has the rights and duties provided in RCW 62A.9A-207.

27 (c) **Rights cumulative; simultaneous exercise.** The rights under
28 subsections (a) and (b) of this section are cumulative and may be
29 exercised simultaneously.

30 (d) **Rights of debtor and obligor.** Except as otherwise provided in
31 subsection (g) of this section and RCW 62A.9A-605, after default, a
32 debtor and an obligor have the rights provided in this part and by
33 agreement of the parties.

34 (e) **Lien of levy after judgment.** If a secured party has reduced
35 its claim to judgment, the lien of any levy that may be made upon the
36 collateral by virtue of an execution based upon the judgment relates
37 back to the earliest of:

1 (1) The date of perfection of the security interest or agricultural
2 lien in the collateral;

3 (2) The date of filing a financing statement covering the
4 collateral; or

5 (3) Any date specified in a statute under which the agricultural
6 lien was created.

7 (f) **Execution sale.** A sale pursuant to an execution is a
8 foreclosure of the security interest or agricultural lien by judicial
9 procedure within the meaning of this section. A secured party may
10 purchase at the sale and thereafter hold the collateral free of any
11 other requirements of this article.

12 (g) **Consignor or buyer of certain rights to payment.** Except as
13 otherwise provided in RCW 62A.9A-607(c), this part imposes no duties
14 upon a secured party that is a consignor or is a buyer of accounts,
15 chattel paper, payment intangibles, or promissory notes.

16 (h) **Enforcement restrictions.** All rights and remedies provided in
17 this part with respect to promissory notes or an agreement between an
18 account debtor and a debtor which relates to a health-care-insurance
19 receivable or a general intangible, including a contract, permit,
20 license, or franchise, are subject to RCW 62A.9A-408 to the extent
21 applicable.

22 **PART XIII**
23 **ADMINISTRATIVE DRAFTING PROVISIONS**

24 NEW SECTION. **Sec. 1301.** RCW 62A.10-104 (Laws not repealed) and
25 1995 c 48 s 71 & 1965 ex.s. c 157 s 10-104 are each repealed.

26 NEW SECTION. **Sec. 1302.** CONTINGENT EFFECTIVE DATE. Section 701
27 of this act takes effect, unless chapter ---, Laws of 2009 (Z-0003/09
28 or Z-0004/09) is enacted.

29 NEW SECTION. **Sec. 1303.** CONTINGENT EFFECTIVE DATE. Section 702
30 of this act takes effect if chapter ---, Laws of 2009 (Z-0003/09 or
31 Z-0004/09) is enacted into law. Section 8, chapter . . ., Laws of 2009
32 (Z-0003/09 or Z-0004/09) is null and void if chapter . . ., Laws of
33 2009 (Z-0003/09 or Z-0004/09) is enacted into law.

1 NEW SECTION. **Sec. 1304.** APPLICABILITY. This act applies to a
2 document of title that is issued or a bailment that arises on or after
3 the effective date of this section. This act does not apply to a
4 document of title that is issued or a bailment that arises before the
5 effective date of this section even if the document of title or
6 bailment would be subject to this act if the document of title had been
7 issued or bailment had arisen on or after the effective date of this
8 section. This act does not apply to a right of action that has accrued
9 before the effective date of this section.

10 NEW SECTION. **Sec. 1305.** SAVINGS CLAUSE. A document of title
11 issued or a bailment that arises before the effective date of this
12 section and the rights, obligations, and interests flowing from that
13 document or bailment are governed by any statute or other rule amended
14 or repealed by this act as if amendment or repeal had not occurred and
15 may be terminated, completed, consummated, or enforced under that
16 statute or other rule.

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