

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

S

2

**SENATE BILL 1555\*  
Judiciary II Committee Substitute Adopted 6/6/06**

Short Title: Revise Articles 1 and 7 of the UCC.

(Public)

---

Sponsors:

---

Referred to:

---

May 18, 2006

A BILL TO BE ENTITLED

1  
2 AN ACT TO ENACT REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL  
3 CODE CONTAINING GENERAL PROVISIONS APPLICABLE TO THE  
4 ENTIRE CODE, TO MAKE CONFORMING AMENDMENTS TO OTHER  
5 ARTICLES OF THE UNIFORM COMMERCIAL CODE AND OTHER  
6 SECTIONS OF THE GENERAL STATUTES, TO ENACT REVISED ARTICLE 7  
7 OF THE UNIFORM COMMERCIAL CODE RELATING TO WAREHOUSE  
8 RECEIPTS AND BILLS OF LADING, TO MAKE CONFORMING  
9 AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL  
10 CODE AND OTHER SECTIONS OF THE GENERAL STATUTES, AND TO  
11 REPEAL OBSOLETE CRIMINAL PROVISIONS OF THE FORMER UNIFORM  
12 WAREHOUSE RECEIPTS ACT, AS RECOMMENDED BY THE GENERAL  
13 STATUTES COMMISSION.

14 The General Assembly of North Carolina enacts:

15  
16 **PART I. REVISED ARTICLE 1 OF THE UNIFORM COMMERCIAL CODE  
17 AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.**

18 **SUBPART A. REVISED ARTICLE 1 OF THE UNIFORM  
19 COMMERCIAL CODE.**

20 **SECTION 1.** Article 1 of Chapter 25 of the General Statutes is rewritten to  
21 read:

"Article 1.

"General Provisions.

"PART 1.

"GENERAL PROVISIONS.

22  
23  
24  
25  
26 **"§ 25-1-101. Short titles.**

27 (a) This Chapter may be cited as the Uniform Commercial Code.

28 (b) This Article may be cited as Uniform Commercial Code – General  
29 Provisions.

1 **"§ 25-1-102. Scope of Article.**

2 Except as provided in G.S. 25-1-301, this Article applies to a transaction to the  
3 extent that it is governed by another Article of this Chapter.

4 **"§ 25-1-103. Construction of this Chapter to promote its purposes and policies;  
5 applicability of supplemental principles of law.**

6 (a) This Chapter shall be liberally construed and applied to promote its  
7 underlying purposes and policies, which are:

8 (1) To simplify, clarify, and modernize the law governing commercial  
9 transactions;

10 (2) To permit the continued expansion of commercial practices through  
11 custom, usage, and agreement of the parties; and

12 (3) To make uniform the law among the various jurisdictions.

13 (b) Unless displaced by the particular provisions of this Chapter, the principles of  
14 law and equity, including the law merchant and the law relative to capacity to contract,  
15 principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,  
16 bankruptcy, and other validating or invalidating cause supplement its provisions.

17 **"§ 25-1-104. Construction against implied repeal.**

18 This Chapter being a general act intended as a unified coverage of its subject matter,  
19 no part of it shall be deemed to be impliedly repealed by subsequent legislation if such  
20 construction can reasonably be avoided.

21 **"§ 25-1-105. Severability.**

22 If any provision or clause of this Chapter or its application to any person or  
23 circumstance is held invalid, the invalidity does not affect other provisions or  
24 applications of this Chapter that can be given effect without the invalid provision or  
25 application, and to this end the provisions of this Chapter are severable.

26 **"§ 25-1-106. Use of singular and plural; gender.**

27 In this Chapter, unless the statutory context otherwise requires:

28 (1) Words in the singular number include the plural, and those in the  
29 plural include the singular; and

30 (2) Words of any gender also refer to any other gender.

31 **"§ 25-1-107. Section captions.**

32 Section captions are part of this Chapter. The subsection headings in Article 9 of this  
33 Chapter are not parts of this Chapter.

34 **"§ 25-1-108. Relation to Electronic Signatures in Global and National Commerce  
35 Act.**

36 This Article modifies, limits, and supersedes the federal Electronic Signatures in  
37 Global and National Commerce Act, 15 U.S.C. § 7001, et seq., except that nothing in  
38 this Article modifies, limits, or supersedes Section 7001(c) of that Act or authorizes  
39 electronic delivery of any of the notices described in Section 7003(b) of that Act.

40 "PART 2.

41 "GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

42 **"§ 25-1-201. General definitions.**

1 (a) Unless the context otherwise requires, words or phrases defined in this  
2 section, or in the additional definitions contained in other Articles of this Chapter that  
3 apply to particular Articles or Parts thereof, have the meanings stated.

4 (b) Subject to definitions contained in other articles of this Chapter that apply to  
5 particular Articles or Parts thereof:

6 (1) "Action," in the sense of a judicial proceeding, includes recoupment,  
7 counterclaim, setoff, suit in equity, and any other proceeding in which  
8 rights are determined.

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

10 (3) "Agreement," as distinguished from "contract," means the bargain of  
11 the parties in fact, as found in their language or inferred from other  
12 circumstances, including course of performance, course of dealing, or  
13 usage of trade as provided in G.S. 25-1-303.

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

17 (5) "Bearer" means a person in possession of a negotiable instrument,  
18 document of title, or certificated security that is payable to bearer or  
19 indorsed in blank.

20 (6) "Bill of lading" means a document evidencing the receipt of goods for  
21 shipment issued by a person engaged in the business of transporting or  
22 forwarding goods.

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

24 (8) "Burden of establishing" a fact means the burden of persuading the  
25 trier of fact that the existence of the fact is more probable than its  
26 nonexistence.

27 (9) "Buyer in ordinary course of business" means a person that buys goods  
28 in good faith, without knowledge that the sale violates the rights of  
29 another person in the goods, and in the ordinary course from a person,  
30 other than a pawnbroker, in the business of selling goods of that kind.  
31 A person buys goods in the ordinary course if the sale to the person  
32 comports with the usual or customary practices in the kind of business  
33 in which the seller is engaged or with the seller's own usual or  
34 customary practices. A person that sells oil, gas, or other minerals at  
35 the wellhead or minehead is a person in the business of selling goods  
36 of that kind. A buyer in ordinary course of business may buy for cash,  
37 by exchange of other property, or on secured or unsecured credit, and  
38 may acquire goods or documents of title under a preexisting contract  
39 for sale. Only a buyer that takes possession of the goods or has a right  
40 to recover the goods from the seller under Article 2 of this Chapter  
41 may be a buyer in ordinary course of business. "Buyer in ordinary  
42 course of business" does not include a person that acquires goods in a  
43 transfer in bulk or as security for or in total or partial satisfaction of a  
44 money debt.

- 1           (10) "Conspicuous," with reference to a term, means so written, displayed,  
2           or presented that a reasonable person against which it is to operate  
3           ought to have noticed it. Whether a term is "conspicuous" or not is a  
4           decision for the court. Conspicuous terms include the following:  
5           a.     A heading in capitals equal to or greater in size than the  
6           surrounding text, or in contrasting type, font, or color to the  
7           surrounding text of the same or lesser size; and  
8           b.     Language in the body of a record or display in larger type than  
9           the surrounding text, or in contrasting type, font, or color to the  
10          surrounding text of the same size, or set off from surrounding  
11          text of the same size by symbols or other marks that call  
12          attention to the language.
- 13          (11) "Consumer" means an individual who enters into a transaction  
14          primarily for personal, family, or household purposes.
- 15          (12) "Contract," as distinguished from "agreement," means the total legal  
16          obligation that results from the parties' agreement as determined by  
17          this Chapter as supplemented by any other applicable laws.
- 18          (13) "Creditor" includes a general creditor, a secured creditor, a lien  
19          creditor, and any representative of creditors, including an assignee for  
20          the benefit of creditors, a trustee in bankruptcy, a receiver in equity,  
21          and an executor or administrator of an insolvent debtor's or assignor's  
22          estate.
- 23          (14) "Defendant" includes a person in the position of defendant in a  
24          counterclaim, cross-claim, or third-party claim.
- 25          (15) "Delivery," with respect to an instrument, document of title, or chattel  
26          paper, means voluntary transfer of possession.
- 27          (16) "Document of title" includes bill of lading, dock warrant, dock receipt,  
28          warehouse receipt or order for the delivery of goods, and also any  
29          other document which in the regular course of business or financing is  
30          treated as adequately evidencing that the person in possession of it is  
31          entitled to receive, hold, and dispose of the document and the goods it  
32          covers. To be a document of title, a document must purport to be  
33          issued by or addressed to a bailee and purport to cover goods in the  
34          bailee's possession which are either identified or are fungible portions  
35          of an identified mass.
- 36          (17) "Fault" means a default, breach, or wrongful act or omission.
- 37          (18) "Fungible goods" means:  
38          a.     Goods of which any unit, by nature or usage of trade, are the  
39          equivalent of any other like unit; or  
40          b.     Goods that by agreement are treated as equivalent.
- 41          (19) "Genuine" means free of forgery or counterfeiting.
- 42          (20) "Good faith," except as otherwise provided in Article 5 of this Chapter,  
43          means honesty in fact and the observance of reasonable commercial  
44          standards of fair dealing.

- 1           (21) "Holder" means:  
2           a.     The person in possession of a negotiable instrument that is  
3           payable either to bearer or to an identified person that is the  
4           person in possession; or  
5           b.     The person in possession of a document of title if the goods are  
6           deliverable either to bearer or to the order of the person in  
7           possession.
- 8           (22) "Insolvency proceeding" includes an assignment for the benefit of  
9           creditors or other proceeding intended to liquidate or rehabilitate the  
10          estate of the person involved.
- 11          (23) "Insolvent" means:  
12          a.     Having generally ceased to pay debts in the ordinary course of  
13          business other than as a result of bona fide dispute;  
14          b.     Being unable to pay debts as they become due; or  
15          c.     Being insolvent within the meaning of federal bankruptcy law.
- 16          (24) "Money" means a medium of exchange currently authorized or  
17          adopted by a domestic or foreign government. The term includes a  
18          monetary unit of account established by an intergovernmental  
19          organization or by agreement between two or more countries.
- 20          (25) "Organization" means a person other than an individual.
- 21          (26) "Party," as distinguished from "third party," means a person that has  
22          engaged in a transaction or made an agreement subject to this Chapter.
- 23          (27) "Person" means an individual, corporation, business trust, estate, trust,  
24          partnership, limited liability company, association, joint venture,  
25          government, governmental subdivision, agency, or instrumentality,  
26          public corporation, or any other legal or commercial entity.
- 27          (28) "Present value" means the amount as of a date certain of one or more  
28          sums payable in the future, discounted to the date certain by use of  
29          either an interest rate specified by the parties if that rate is not  
30          manifestly unreasonable at the time the transaction is entered into or, if  
31          an interest rate is not so specified, a commercially reasonable rate that  
32          takes into account the facts and circumstances at the time the  
33          transaction is entered into.
- 34          (29) "Purchase" means taking by sale, lease, discount, negotiation,  
35          mortgage, pledge, lien, security interest, issue or reissue, gift, or any  
36          other voluntary transaction creating an interest in property.
- 37          (30) "Purchaser" means a person that takes by purchase.
- 38          (31) "Record" means information that is inscribed on a tangible medium or  
39          that is stored in an electronic or other medium and is retrievable in  
40          perceivable form.
- 41          (32) "Remedy" means any remedial right to which an aggrieved party is  
42          entitled with or without resort to a tribunal.

- 1 (33) "Representative" means a person empowered to act for another,  
2 including an agent, an officer of a corporation or association, and a  
3 trustee, executor, or administrator of an estate.
- 4 (34) "Right" includes remedy.
- 5 (35) "Security interest" means an interest in personal property or fixtures  
6 which secures payment or performance of an obligation. "Security  
7 interest" includes any interest of a consignor and a buyer of accounts,  
8 chattel paper, a payment intangible, or a promissory note in a  
9 transaction that is subject to Article 9 of this Chapter. "Security  
10 interest" does not include the special property interest of a buyer of  
11 goods on identification of those goods to a contract for sale under  
12 G.S. 25-2-401, but a buyer may also acquire a "security interest" by  
13 complying with Article 9 of this Chapter. Except as otherwise  
14 provided in G.S. 25-2-505, the right of a seller or lessor of goods under  
15 Article 2 or 2A of this Chapter to retain or acquire possession of the  
16 goods is not a "security interest," but a seller or lessor may also  
17 acquire a "security interest" by complying with Article 9 of this  
18 Chapter. The retention or reservation of title by a seller of goods  
19 notwithstanding shipment or delivery to the buyer under G.S. 25-2-401  
20 is limited in effect to a reservation of a "security interest." Whether a  
21 transaction in the form of a lease creates a "security interest" is  
22 determined pursuant to G.S. 25-1-203.
- 23 (36) "Send" in connection with a writing, record, or notice means:  
24 a. To deposit in the mail or deliver for transmission by any other  
25 usual means of communication with postage or cost of  
26 transmission provided for and properly addressed and, in the  
27 case of an instrument, to an address specified thereon or  
28 otherwise agreed, or if there be none to any address reasonable  
29 under the circumstances; or  
30 b. In any other way to cause to be received any record or notice  
31 within the time it would have arrived if properly sent.
- 32 (37) "Signed" includes using any symbol executed or adopted with present  
33 intention to adopt or accept a writing.
- 34 (38) "State" means a State of the United States, the District of Columbia,  
35 Puerto Rico, the United States Virgin Islands, or any territory or  
36 insular possession subject to the jurisdiction of the United States.
- 37 (39) "Surety" includes a guarantor or other secondary obligor.
- 38 (40) "Term" means a portion of an agreement that relates to a particular  
39 matter.
- 40 (41) "Unauthorized signature" means a signature made without actual,  
41 implied, or apparent authority. The term includes a forgery.
- 42 (42) "Warehouse receipt" means a receipt issued by a person engaged in the  
43 business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

**§ 25-1-202. Notice; knowledge.**

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

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

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

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

- (1) It comes to that person's attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

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

**§ 25-1-203. Lease distinguished from security interest.**

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

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

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

- 1 (2) The lessee is bound to renew the lease for the remaining economic life  
2 of the goods or is bound to become the owner of the goods;
- 3 (3) The lessee has an option to renew the lease for the remaining  
4 economic life of the goods for no additional consideration or for  
5 nominal additional consideration upon compliance with the lease  
6 agreement; or
- 7 (4) The lessee has an option to become the owner of the goods for no  
8 additional consideration or for nominal additional consideration upon  
9 compliance with the lease agreement.
- 10 (c) A transaction in the form of a lease does not create a security interest merely  
11 because:
- 12 (1) The present value of the consideration the lessee is obligated to pay the  
13 lessor for the right to possession and use of the goods is substantially  
14 equal to or is greater than the fair market value of the goods at the time  
15 the lease is entered into;
- 16 (2) The lessee assumes risk of loss of the goods;
- 17 (3) The lessee agrees to pay, with respect to the goods, taxes, insurance,  
18 filing, recording, or registration fees, or service or maintenance costs;
- 19 (4) The lessee has an option to renew the lease or to become the owner of  
20 the goods;
- 21 (5) The lessee has an option to renew the lease for a fixed rent that is equal  
22 to or greater than the reasonably predictable fair market rent for the  
23 use of the goods for the term of the renewal at the time the option is to  
24 be performed; or
- 25 (6) The lessee has an option to become the owner of the goods for a fixed  
26 price that is equal to or greater than the reasonably predictable fair  
27 market value of the goods at the time the option is to be performed.
- 28 (d) Additional consideration is nominal if it is less than the lessee's reasonably  
29 predictable cost of performing under the lease agreement if the option is not exercised.  
30 Additional consideration is not nominal if:
- 31 (1) When the option to renew the lease is granted to the lessee, the rent is  
32 stated to be the fair market rent for the use of the goods for the term of  
33 the renewal determined at the time the option is to be performed; or
- 34 (2) When the option to become the owner of the goods is granted to the  
35 lessee, the price is stated to be the fair market value of the goods  
36 determined at the time the option is to be performed.
- 37 (e) The "remaining economic life of the goods" and "reasonably predictable" fair  
38 market rent, fair market value, or cost of performing under the lease agreement must be  
39 determined with reference to the facts and circumstances at the time the transaction is  
40 entered into.

41 **"§ 25-1-204. Value.**

42 Except as otherwise provided in Articles 3, 4, and 5 of this Chapter, a person gives  
43 value for rights if the person acquires them:



- 1 (1) In return for a binding commitment to extend credit or for the  
2 extension of immediately available credit, whether or not drawn upon  
3 and whether or not a charge-back is provided for in the event of  
4 difficulties in collection;
- 5 (2) As security for, or in total or partial satisfaction of, a preexisting claim;  
6 (3) By accepting delivery under a preexisting contract for purchase; or  
7 (4) In return for any consideration sufficient to support a simple contract.

8 **"§ 25-1-205. Reasonable time; seasonableness.**

9 (a) Whether a time for taking an action required by this Chapter is reasonable  
10 depends on the nature, purpose, and circumstances of the action.

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

13 **"§ 25-1-206. Presumptions.**

14 Whenever this Chapter creates a "presumption" with respect to a fact, or provides  
15 that a fact is "presumed," the trier of fact must find the existence of the fact unless and  
16 until evidence is introduced that supports a finding of its nonexistence.

17 "PART 3.

18 "TERRITORIAL APPLICABILITY AND GENERAL RULES.

19 **"§ 25-1-301. Territorial applicability; parties' power to choose applicable law.**

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

24 (b) In the absence of an agreement effective under subsection (a) of this section,  
25 and except as provided in subsection (c) of this section, this Chapter applies to  
26 transactions bearing an appropriate relation to this State.

27 (c) If one of the following provisions of this Chapter specifies the applicable law,  
28 that provision governs and a contrary agreement is effective only to the extent permitted  
29 by the law so specified:

- 30 (1) G.S. 25-2-402;  
31 (2) G.S. 25-2A-105 and G.S. 25-2A-106;  
32 (3) G.S. 25-4-102;  
33 (4) G.S. 25-4A-507;  
34 (5) G.S. 25-5-116;  
35 (6) G.S. 25-8-110;  
36 (7) G.S. 25-9-301 through G.S. 25-9-307.

37 **"§ 25-1-302. Variation by agreement.**

38 (a) Except as otherwise provided in subsection (b) of this section or elsewhere in  
39 this Chapter, the effect of provisions of this Chapter may be varied by agreement.

40 (b) The obligations of good faith, diligence, reasonableness, and care prescribed  
41 by this Chapter may not be disclaimed by agreement. The parties, by agreement, may  
42 determine the standards by which the performance of those obligations is to be  
43 measured if those standards are not manifestly unreasonable. Whenever this Chapter

1 requires an action to be taken within a reasonable time, a time that is not manifestly  
2 unreasonable may be fixed by agreement.

3 (c) The presence in certain provisions of this Chapter of the phrase "unless  
4 otherwise agreed," or words of similar import, does not imply that the effect of other  
5 provisions may not be varied by agreement under this section.

6 **"§ 25-1-303. Course of performance, course of dealing, and usage of trade.**

7 (a) A "course of performance" is a sequence of conduct between the parties to a  
8 particular transaction that exists if:

9 (1) The agreement of the parties with respect to the transaction involves  
10 repeated occasions for performance by a party; and

11 (2) The other party, with knowledge of the nature of the performance and  
12 opportunity for objection to it, accepts the performance or acquiesces  
13 in it without objection.

14 (b) A "course of dealing" is a sequence of conduct concerning previous  
15 transactions between the parties to a particular transaction that is fairly to be regarded as  
16 establishing a common basis of understanding for interpreting their expressions and  
17 other conduct.

18 (c) A "usage of trade" is any practice or method of dealing having such regularity  
19 of observance in a place, vocation, or trade as to justify an expectation that it will be  
20 observed with respect to the transaction in question. The existence and scope of such a  
21 usage must be proved as facts. If it is established that such a usage is embodied in a  
22 trade code or similar record, the interpretation of the record is a question of law.

23 (d) A course of performance or course of dealing between the parties or usage of  
24 trade in the vocation or trade in which they are engaged or of which they are or should  
25 be aware is relevant in ascertaining the meaning of the parties' agreement, may give  
26 particular meaning to specific terms of the agreement, and may supplement or qualify  
27 the terms of the agreement. A usage of trade applicable in the place in which part of the  
28 performance under the agreement is to occur may be so utilized as to that part of the  
29 performance.

30 (e) Except as otherwise provided in subsection (f) of this section, the express  
31 terms of an agreement and any applicable course of performance, course of dealing, or  
32 usage of trade must be construed whenever reasonable as consistent with each other. If  
33 such a construction is unreasonable:

34 (1) Express terms prevail over course of performance, course of dealing,  
35 and usage of trade;

36 (2) Course of performance prevails over course of dealing and usage of  
37 trade; and

38 (3) Course of dealing prevails over usage of trade.

39 (f) Subject to G.S. 25-2-209, a course of performance is relevant to show a  
40 waiver or modification of any term inconsistent with the course of performance.

41 (g) Evidence of a relevant usage of trade offered by one party is not admissible  
42 unless that party has given the other party notice that the court finds sufficient to  
43 prevent unfair surprise to the other party.

44 **"§ 25-1-304. Obligation of good faith.**

1 Every contract or duty within this Chapter imposes an obligation of good faith in its  
2 performance and enforcement.

3 **"§ 25-1-305. Remedies to be liberally administered.**

4 (a) The remedies provided by this Chapter shall be liberally administered to the  
5 end that the aggrieved party may be put in as good a position as if the other party had  
6 fully performed, but neither consequential or special damages nor penal damages may  
7 be had except as specifically provided in this Chapter or by other rule of law.

8 (b) Any right or obligation declared by this Chapter is enforceable by action  
9 unless the provision declaring it specifies a different and limited effect.

10 **"§ 25-1-306. Waiver or renunciation of claim or right after breach.**

11 A claim or right arising out of an alleged breach may be discharged in whole or in  
12 part without consideration by agreement of the aggrieved party in an authenticated  
13 record.

14 **"§ 25-1-307. Prima facie evidence by third-party documents.**

15 A document in due form purporting to be a bill of lading, policy or certificate of  
16 insurance, official weigher's or inspector's certificate, consular invoice, or any other  
17 document authorized or required by the contract to be issued by a third party is prima  
18 facie evidence of its own authenticity and genuineness and of the facts stated in the  
19 document by the third party.

20 **"§ 25-1-308. Performance or acceptance under reservation of rights.**

21 (a) A party that with explicit reservation of rights performs or promises  
22 performance or assents to performance in a manner demanded or offered by the other  
23 party does not thereby prejudice the rights reserved. Such words as "without prejudice,"  
24 "under protest," or the like are sufficient.

25 (b) Subsection (a) of this section does not apply to an accord and satisfaction.

26 **"§ 25-1-309. Option to accelerate at will.**

27 A term providing that one party or that party's successor in interest may accelerate  
28 payment or performance or require collateral or additional collateral "at will" or when  
29 the party "deems itself insecure," or words of similar import, means that the party has  
30 power to do so only if that party in good faith believes that the prospect of payment or  
31 performance is impaired. The burden of establishing lack of good faith is on the party  
32 against which the power has been exercised.

33 **"§ 25-1-310. Subordinated obligations.**

34 An obligation may be issued as subordinated to performance of another obligation of  
35 the person obligated, or a creditor may subordinate its right to performance of an  
36 obligation by agreement with either the person obligated or another creditor of the  
37 person obligated. Subordination does not create a security interest as against either the  
38 common debtor or a subordinated creditor."

39 **SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF**  
40 **THE UNIFORM COMMERCIAL CODE.**

41 **SECTION 2.** G.S. 25-2-103(1) reads as rewritten:

42 "(1) In this article unless the context otherwise requires

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

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

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

5 (d) "Seller" means a person who sells or contracts to sell goods. Any  
6 manufacturer of self-propelled motor vehicles, as defined in  
7 G.S. 20-4.01, is also a "seller" with respect to buyers of its product to  
8 whom it makes an express warranty, notwithstanding any lack of  
9 privity between them, for purposes of all rights and remedies available  
10 to buyers under this Article."

11 **SECTION 3.** G.S. 25-2-202 reads as rewritten:

12 **"§ 25-2-202. Final written expression; parol or extrinsic evidence.**

13 Terms with respect to which the confirmatory memoranda of the parties agree or  
14 which are otherwise set forth in a writing intended by the parties as a final expression of  
15 their agreement with respect to such terms as are included therein may not be  
16 contradicted by evidence of any prior agreement or of a contemporaneous oral  
17 agreement but may be explained or supplemented

18 (a) by course of performance, course of ~~dealing~~ ~~dealing~~, or usage of trade  
19 (~~G.S. 25-1-205~~) or by ~~course of performance~~ (~~G.S. 25-2-208~~);  
20 (G.S. 25-1-303); and

21 (b) by evidence of consistent additional terms unless the court finds the  
22 writing to have been intended also as a complete and exclusive  
23 statement of the terms of the agreement."

24 **SECTION 4.** G.S. 25-2-208 is repealed.

25 **SECTION 5.** G.S. 25-2A-103(3) reads as rewritten:

26 "(3) The following definitions in other Articles apply to this Article:

27 ~~"Account". G.S. 25-9-102(a)(2).~~

28 ~~"Between merchants". G.S. 25-2-104(3).~~

29 ~~"Buyer". G.S. 25-2-103(1)(a).~~

30 ~~"Chattel paper". G.S. 25-9-102(a)(11).~~

31 ~~"Consumer goods". G.S. 25-9-102(a)(23).~~

32 ~~"Document". G.S. 25-9-102(a)(30).~~

33 ~~"Entrusting". G.S. 25-2-403(3).~~

34 ~~"General intangible". G.S. 25-9-102(a)(42).~~

35 ~~"Good faith". G.S. 25-2-103(1)(b).~~

36 ~~"Instrument". G.S. 25-9-102(a)(47).~~

37 ~~"Merchant". G.S. 25-2-104(1).~~

38 ~~"Mortgage". G.S. 25-9-102(a)(55).~~

39 ~~"Pursuant to commitment". G.S. 25-9-102(a)(68).~~

40 ~~"Receipt". G.S. 25-2-103(1)(c).~~

41 ~~"Sale". G.S. 25-2-106(1).~~

42 ~~"Sale on approval". G.S. 25-2-326.~~

43 ~~"Sale or return". G.S. 25-2-326.~~

44 ~~"Seller". G.S. 25-2-103(1)(d).~~

1	"Account"	<u>G.S. 25-9-102(a)(2).</u>
2	"Between merchants"	<u>G.S. 25-2-104(3).</u>
3	"Buyer"	<u>G.S. 25-2-103(1)(a).</u>
4	"Chattel paper"	<u>G.S. 25-9-102(a)(11).</u>
5	"Consumer goods"	<u>G.S. 25-9-102(a)(23).</u>
6	"Document"	<u>G.S. 25-9-102(a)(30).</u>
7	"Entrusting"	<u>G.S. 25-2-403(3).</u>
8	"General intangible"	<u>G.S. 25-9-102(a)(42).</u>
9	"Instrument"	<u>G.S. 25-9-102(a)(47).</u>
10	"Merchant"	<u>G.S. 25-2-104(1).</u>
11	"Mortgage"	<u>G.S. 25-9-102(a)(55).</u>
12	"Pursuant to commitment"	<u>G.S. 25-9-102(a)(68).</u>
13	"Receipt"	<u>G.S. 25-2-103(1)(c).</u>
14	"Sale"	<u>G.S. 25-2-106(1).</u>
15	"Sale on approval"	<u>G.S. 25-2-326.</u>
16	"Sale or return"	<u>G.S. 25-2-326.</u>
17	"Seller"	<u>G.S. 25-2-103(1)(d)."</u>

18 **SECTION 6.** G.S. 25-2A-207 is repealed.

19 **SECTION 7.** G.S. 25-2A-501(4) reads as rewritten:

20 "(4) Except as otherwise provided in ~~G.S. 25-1-106(1)~~ G.S. 25-1-305(a) or this  
21 Article or the lease agreement, the rights and remedies referred to in subsections (2) and  
22 (3) of this section are cumulative."

23 **SECTION 8.** G.S. 25-2A-518(2) reads as rewritten:

24 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
25 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the  
26 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee's cover is by a  
27 lease agreement substantially similar to the original lease agreement and the new lease  
28 agreement is made in good faith and in a commercially reasonable manner, the lessee  
29 may recover from the lessor as damages (i) the present value, as of the date of the  
30 commencement of the term of the new lease agreement, of the rent under the new lease  
31 agreement applicable to that period of the new lease term which is comparable to the  
32 then remaining term of the original lease agreement minus the present value as of the  
33 same date of the total rent for the then remaining lease term of the original lease  
34 agreement, and (ii) any incidental or consequential damages, less expenses saved in  
35 consequence of the lessor's default."

36 **SECTION 9.** G.S. 25-2A-519(1) reads as rewritten:

37 "(1) Except as otherwise provided with respect to damages liquidated in the lease  
38 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the  
39 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessee elects not to  
40 cover or a lessee elects to cover and the cover is by lease agreement that for any reason  
41 does not qualify for treatment under G.S. 25-2A-518(2), or is by purchase or otherwise,  
42 the measure of damages for nondelivery or repudiation by the lessor or for rejection or  
43 revocation of acceptance by the lessee is the present value, as of the date of the default,  
44 of the then market rent minus the present value as of the same date of the original rent,

1 computed for the remaining lease term of the original lease agreement, together with  
2 incidental and consequential damages, less expenses saved in consequence of the  
3 lessor's default."

4 **SECTION 10.** G.S. 25-2A-527(2) reads as rewritten:

5 "(2) Except as otherwise provided with respect to damages liquidated in the lease  
6 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the  
7 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if the disposition is by  
8 lease agreement substantially similar to the original lease agreement and the new lease  
9 agreement is made in good faith and in a commercially reasonable manner, the lessor  
10 may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the  
11 commencement of the term of the new lease agreement, (ii) the present value, as of the  
12 same date, of the total rent for the then remaining lease term of the original lease  
13 agreement minus the present value, as of the same date, of the rent under the new lease  
14 agreement applicable to that period of the new lease term which is comparable to the  
15 then remaining term of the original lease agreement, and (iii) any incidental damages  
16 allowed under G.S. 25-2A-530, less expenses saved in consequence of the lessee's  
17 default."

18 **SECTION 11.** G.S. 25-2A-528(1) reads as rewritten:

19 "(1) Except as otherwise provided with respect to damages liquidated in the lease  
20 agreement (G.S. 25-2A-504) or otherwise determined pursuant to agreement of the  
21 parties (~~G.S. 25-1-102(3)~~ G.S. 25-1-302 and G.S. 25-2A-503), if a lessor elects to retain  
22 the goods or a lessor elects to dispose of the goods and the disposition is by lease  
23 agreement that for any reason does not qualify for treatment under G.S. 25-2A-527(2),  
24 or is by sale or otherwise, the lessor may recover from the lessee as damages for a  
25 default of the type described in G.S. 25-2A-523(1) or G.S. 25-2A-523(3)(a), or if  
26 agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of  
27 default if the lessee has never taken possession of the goods, or, if the lessee has taken  
28 possession of the goods, as of the date the lessor repossesses the goods or an earlier date  
29 on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of  
30 the date determined under clause (i) of the total rent for the then remaining lease term of  
31 the original lease agreement minus the present value as of the same date of the market  
32 rent at the place where the goods are located computed for the same lease term, and (iii)  
33 any incidental damages allowed under ~~2A-530~~, G.S. 25-2A-530, less expenses saved in  
34 consequence of the lessee's default."

35 **SECTION 12.** G.S. 25-3-103(a)(4) is repealed.

36 **SECTION 13.** G.S. 25-3-103(a)(10) reads as rewritten:

37 "(10) "Prove" with respect to a fact means to meet the burden of establishing  
38 the fact (~~G.S. 25-1-201(8)~~). (G.S. 25-1-201(b)(8))."

39 **SECTION 14.** G.S. 25-4-104(c) reads as rewritten:

40 "(c) The following definitions in other Articles apply to this Article:

41 "Acceptance" G.S. 25-3-409.

42 "Alteration" G.S. 25-3-407.

43 "Cashier's check" G.S. 25-3-104.

44 "Certificate of deposit" G.S. 25-3-104.

1	"Certified check"	G.S. 25-3-409.
2	"Check"	G.S. 25-3-104.
3	<del>"Good faith"</del>	<del>G.S. 25-3-103.</del>
4	"Draft"	G.S. 25-3-104.
5	"Holder in due course"	G.S. 25-3-302.
6	"Instrument"	G.S. 25-3-104.
7	"Notice of dishonor"	G.S. 25-3-503.
8	"Order"	G.S. 25-3-103.
9	"Ordinary care"	G.S. 25-3-103.
10	"Person entitled to enforce"	G.S. 25-3-301.
11	"Presentment"	G.S. 25-3-501.
12	"Promise"	G.S. 25-3-103.
13	"Prove"	G.S. 25-3-103.
14	"Teller's check"	G.S. 25-3-104.
15	"Unauthorized signature"	G.S. 25-3-403."
16	<b>SECTION 15.</b> G.S. 25-4A-105(a)(6) is repealed.	
17	<b>SECTION 16.</b> G.S. 25-4A-105(a)(7) reads as rewritten:	
18	"(7) "Prove" with respect to a fact means to meet the burden of establishing	
19	the fact ( <del>G.S. 25-1-201(8)</del> ; <u>G.S. 25-1-201(b)(8)</u> )."	
20	<b>SECTION 17.</b> G.S. 25-4A-106(a) reads as rewritten:	
21	"(a) The time of receipt of a payment order or communication cancelling or	
22	amending a payment order is determined by the rules applicable to receipt of a notice	
23	stated in <del>G.S. 25-1-201(27)</del> ; <u>G.S. 25-1-202</u> . A receiving bank may fix a cutoff time or	
24	times on a funds-transfer business day for the receipt and processing of payment orders	
25	and communications cancelling or amending payment orders. Different cutoff times	
26	may apply to payment orders, cancellations, or amendments, or to different categories	
27	of payment orders, cancellations, or amendments. A cutoff time may apply to senders	
28	generally or different cutoff times may apply to different senders or categories of	
29	payment orders. If a payment order or communication cancelling or amending a	
30	payment order is received after the close of a funds-transfer business day or after the	
31	appropriate cutoff time on a funds-transfer business day, the receiving bank may treat	
32	the payment order or communication as received at the opening of the next	
33	funds-transfer business day."	
34	<b>SECTION 18.</b> G.S. 25-4A-204(b) reads as rewritten:	
35	"(b) Reasonable time under subsection (a) <u>of this section</u> may be fixed by	
36	agreement as stated in <del>G.S. 25-1-204(1)</del> , <u>G.S. 25-1-302(b)</u> , but the obligation of a	
37	receiving bank to refund payment as stated in subsection (a) <u>of this section</u> may not	
38	otherwise be varied by agreement."	
39	<b>SECTION 19.</b> G.S. 25-5-103(c) reads as rewritten:	
40	"(c) With the exception of this subsection, subsections (a) and (d) of this section,	
41	G.S. 25-5-102(a)(9) and (10), 25-5-106(d), and 25-5-114(d), and except to the extent	
42	prohibited in <del>G.S. 25-1-102(3)</del> <u>G.S. 25-1-302</u> and G.S. 25-5-117(d), the effect of this	
43	Article may be varied by agreement or by a provision stated or incorporated by	
44	reference in an undertaking. A term in an agreement or undertaking generally excusing	

1 liability or generally limiting remedies for failure to perform obligations is not sufficient  
2 to vary obligations prescribed by this Article."

3 **SECTION 20.** G.S. 25-8-102(a)(10) is repealed.

4 **SECTION 21.** G.S. 25-9-102(a)(43) is repealed.

5 **SUBPART C. CONFORMING AMENDMENTS TO OTHER SECTIONS OF**  
6 **THE GENERAL STATUTES.**

7 **SECTION 22.** G.S. 66-181 reads as rewritten:

8 "**§ 66-181. Usage of trade.**

9 The terms "utility" and "industrial," when used to refer to equipment, implements,  
10 machinery, attachments, or repair parts, shall have the meaning commonly used and  
11 understood among dealers and suppliers of farm equipment as a usage of trade in  
12 accordance with ~~G.S. 25-1-205(2)~~. ~~G.S. 25-1-303(c)~~."

13 **SECTION 23.** G.S. 66-313(b) reads as rewritten:

14 "(b) This Article does not apply to a transaction to the extent it is governed by:

- 15 (1) A law governing the creation and execution of wills, codicils, or  
16 testamentary trusts.  
17 (2) Chapter 25 of the General Statutes other than ~~G.S. 25-1-107~~  
18 ~~G.S. 25-1-306~~, and ~~G.S. 25-1-206~~, Article 2, and Article 2A.  
19 (3) Article 11A of Chapter 66 of the General Statutes."

20 **SECTION 24.** G.S. 66-326(d) reads as rewritten:

21 "(d) Except as otherwise agreed, a person having control of a transferable record  
22 is the holder, as defined in ~~G.S. 25-1-201(20)~~, ~~G.S. 25-1-201(21)~~, of the transferable  
23 record and has the same rights and defenses as a holder of an equivalent record or  
24 writing under Chapter 25 of the General Statutes, including, if the applicable statutory  
25 requirements under G.S. 25-3-302(a), 25-7-501, or 25-9-330 are satisfied, the rights and  
26 defenses of a holder in due course, a holder to which a negotiable document of title has  
27 been duly negotiated, or a purchaser, respectively. Delivery, possession, and  
28 endorsement are not required to obtain or exercise any of the rights under this  
29 subsection."

30 **PART II. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE**  
31 **AND CONFORMING AMENDMENTS TO THE GENERAL STATUTES.**

32 **SUBPART A. REVISED ARTICLE 7 OF THE UNIFORM COMMERCIAL**  
33 **CODE.**

34 **SECTION 25.** Article 7 of Chapter 25 of the General Statutes is rewritten to  
35 read:

36 "Article 7.

37 "Documents of Title.

38 "PART 1.

39 "GENERAL.

40 "**§ 25-7-101. Short title.**

41 This Article may be cited as Uniform Commercial Code – Documents of Title.

42 "**§ 25-7-102. Definitions and index of definitions.**

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



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

1 (a) This Article is subject to any treaty or statute of the United States or  
2 regulatory statute of this State to the extent the treaty, statute, or regulatory statute is  
3 applicable.

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

9 (c) This Article modifies, limits, and supersedes the federal Electronic Signatures  
10 in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify,  
11 limit, or supersede section 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize  
12 electronic delivery of any of the notices described in section 103(b) of that Act (15  
13 U.S.C. § 7003(b)).

14 (d) To the extent there is a conflict between Article 40 of Chapter 66 of the  
15 General Statutes (the Uniform Electronic Transactions Act) and this Article, this Article  
16 governs.

17 **"§ 25-7-104. Negotiable and nonnegotiable document of title.**

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

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

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

27 **"§ 25-7-105. Reissuance in alternative medium.**

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

- 31 (1) The person entitled under the electronic document surrenders control  
32 of the document to the issuer; and
- 33 (2) The tangible document when issued contains a statement that it is  
34 issued in substitution for the electronic document.

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

- 37 (1) The electronic document ceases to have any effect or validity; and
- 38 (2) The person that procured issuance of the tangible document warrants  
39 to all subsequent persons entitled under the tangible document that the  
40 warrantor was a person entitled under the electronic document when  
41 the warrantor surrendered control of the electronic document to the  
42 issuer.

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

- 4 (1) The person entitled under the tangible document surrenders possession  
5 of the document to the issuer; and  
6 (2) The electronic document when issued contains a statement that it is  
7 issued in substitution for the tangible document.

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

- 10 (1) The tangible document ceases to have any effect or validity; and  
11 (2) The person that procured issuance of the electronic document warrants  
12 to all subsequent persons entitled under the electronic document that  
13 the warrantor was a person entitled under the tangible document when  
14 the warrantor surrendered possession of the tangible document to the  
15 issuer.

16 **"§ 25-7-106. Control of electronic document of title.**

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

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

- 23 (1) A single authoritative copy of the document exists which is unique,  
24 identifiable, and, except as otherwise provided in subdivisions (4), (5),  
25 and (6) of this subsection, unalterable;  
26 (2) The authoritative copy identifies the person asserting control as:  
27 a. The person to whom the document was issued; or  
28 b. If the authoritative copy indicates that the document has been  
29 transferred, the person to whom the document was most  
30 recently transferred;  
31 (3) The authoritative copy is communicated to and maintained by the  
32 person asserting control or its designated custodian;  
33 (4) Copies or amendments that add or change an identified assignee of the  
34 authoritative copy can be made only with the consent of the person  
35 asserting control;  
36 (5) Each copy of the authoritative copy and any copy of a copy is readily  
37 identifiable as a copy that is not the authoritative copy; and  
38 (6) Any amendment of the authoritative copy is readily identifiable as  
39 authorized or unauthorized.

40 "PART 2.

41 "WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

42 **"§ 25-7-201. Person that may issue a warehouse receipt; storage under bond.**

43 (a) A warehouse receipt may be issued by any warehouse.

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

6 **"§ 25-7-202. Form of warehouse receipt; effect of omission.**

7 (a) A warehouse receipt need not be in any particular form.

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

- 10 (1) A statement of the location of the warehouse facility where the goods  
11 are stored;
- 12 (2) The date of issue of the receipt;
- 13 (3) The unique identification code of the receipt;
- 14 (4) A statement whether the goods received will be delivered to the bearer,  
15 to a named person, or to a named person or its order;
- 16 (5) The rate of storage and handling charges, unless goods are stored  
17 under a field warehousing arrangement, in which case a statement of  
18 that fact is sufficient on a nonnegotiable receipt;
- 19 (6) A description of the goods or the packages containing them;
- 20 (7) The signature of the warehouse or its agent;
- 21 (8) If the receipt is issued for goods that the warehouse owns, either  
22 solely, jointly, or in common with others, a statement of the fact of that  
23 ownership; and
- 24 (9) A statement of the amount of advances made and of liabilities incurred  
25 for which the warehouse claims a lien or security interest, unless the  
26 precise amount of advances made or liabilities incurred, at the time of  
27 the issue of the receipt, is unknown to the warehouse or to its agent  
28 that issued the receipt, in which case a statement of the fact that  
29 advances have been made or liabilities incurred and the purpose of the  
30 advances or liabilities is sufficient.

31 (c) A warehouse may insert in its receipt any terms that are not contrary to this  
32 Chapter and do not impair its obligation of delivery under G.S. 25-7-403 or its duty of  
33 care under G.S. 25-7-204. Any contrary provision is ineffective.

34 **"§ 25-7-203. Liability for nonreceipt or misdescription.**

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

- 39 (1) The document conspicuously indicates that the issuer does not know  
40 whether all or part of the goods in fact were received or conform to the  
41 description, such as a case in which the description is in terms of  
42 marks or labels or kind, quantity, or condition, or the receipt or  
43 description is qualified by "contents, condition, and quality unknown,"

1 "said to contain," or words of similar import, if the indication is true;  
2 or  
3 (2) The party or purchaser otherwise has notice of the nonreceipt or  
4 misdescription.

5 **"§ 25-7-204. Duty of care; contractual limitation of warehouse's liability.**

6 (a) A warehouse is liable for damages for loss of or injury to the goods caused by  
7 its failure to exercise care with regard to the goods that a reasonably careful person  
8 would exercise under similar circumstances. Unless otherwise agreed, the warehouse is  
9 not liable for damages that could not have been avoided by the exercise of that care.

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

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

21 (d) This section does not modify or repeal any statute that imposes a higher  
22 responsibility upon the warehouse or invalidates a contractual limitation that would be  
23 permissible under this Article.

24 **"§ 25-7-205. Title under warehouse receipt defeated in certain cases.**

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

29 **"§ 25-7-206. Termination of storage at warehouse's option.**

30 (a) A warehouse, by giving notice to the person on whose account the goods are  
31 held and any other person known to claim an interest in the goods, may require payment  
32 of any charges and removal of the goods from the warehouse at the termination of the  
33 period of storage fixed by the document of title or, if a period is not fixed, within a  
34 stated period not less than 30 days after the warehouse gives notice. If the goods are not  
35 removed before the date specified in the notice, the warehouse may sell them pursuant  
36 to G.S. 25-7-210.

37 (b) If a warehouse in good faith believes that goods are about to deteriorate or  
38 decline in value to less than the amount of its lien within the time provided in subsection  
39 (a) of this section and G.S. 25-7-210, the warehouse may specify in the notice given  
40 under subsection (a) of this section any reasonable shorter time for removal of the goods  
41 and, if the goods are not removed, may sell them at public sale held not less than one  
42 week after a single advertisement or posting.

43 (c) If, as a result of a quality or condition of the goods of which the warehouse  
44 did not have notice at the time of deposit, the goods are a hazard to other property, the

1 warehouse facilities, or other persons, the warehouse may sell the goods at public or  
2 private sale without advertisement or posting on reasonable notification to all persons  
3 known to claim an interest in the goods. If the warehouse, after a reasonable effort, is  
4 unable to sell the goods, it may dispose of them in any lawful manner and does not incur  
5 liability by reason of that disposition.

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

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

12 **"§ 25-7-207. Goods must be kept separate; fungible goods.**

13 (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep  
14 separate the goods covered by each receipt so as to permit at all times identification and  
15 delivery of those goods. However, different lots of fungible goods may be commingled.

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

21 **"§ 25-7-208. Altered warehouse receipts.**

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

27 **"§ 25-7-209. Lien of warehouse.**

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

1 (b) A warehouse may also reserve a security interest against the bailor for the  
2 maximum amount specified on the receipt for charges other than those specified in  
3 subsection (a) of this section, such as for money advanced and interest. The security  
4 interest is governed by Article 9 of this Chapter.

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

- 12 (1) Deliver or entrust the goods or any document of title covering the  
13 goods to the bailor or the bailor's nominee with:
  - 14 a. Actual or apparent authority to ship, store, or sell;
  - 15 b. Power to obtain delivery under G.S. 25-7-403; or
  - 16 c. Power of disposition under G.S. 25-2-403, 25-2A-304(2),  
17 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule  
18 of law; or
- 19 (2) Acquiesce in the procurement by the bailor or its nominee of any  
20 document.

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

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

28 **"§ 25-7-210. Enforcement of warehouse's lien.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 "PART 3.

42 "BILLS OF LADING: SPECIAL PROVISIONS.

43 "**§ 25-7-301. Liability for nonreceipt or misdescription; "said to contain";**  
44 **"shipper's weight, load, and count"; improper handling.**



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

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

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

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

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

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

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

33 **"§ 25-7-302. Through bills of lading and similar documents of title.**

34 (a) The issuer of a through bill of lading, or other document of title embodying  
35 an undertaking to be performed in part by a person acting as its agent or by a  
36 performing carrier, is liable to any person entitled to recover on the bill or other  
37 document for any breach by the other person or the performing carrier of its obligation  
38 under the bill or other document. However, to the extent that the bill or other document  
39 covers an undertaking to be performed overseas or in territory not contiguous to the  
40 continental United States or an undertaking including matters other than transportation,  
41 this liability for breach by the other person or the performing carrier may be varied by  
42 agreement of the parties.

43 (b) If goods covered by a through bill of lading or other document of title  
44 embodying an undertaking to be performed in part by a person other than the issuer are

1 received by that person, the person is subject, with respect to its own performance while  
2 the goods are in its possession, to the obligation of the issuer. The person's obligation is  
3 discharged by delivery of the goods to another person pursuant to the bill or other  
4 document and does not include liability for breach by any other person or by the issuer.

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

- 9 (1) The amount it may be required to pay to any person entitled to recover  
10 on the bill or other document for the breach, as may be evidenced by  
11 any receipt, judgment, or transcript of judgment; and  
12 (2) The amount of any expense reasonably incurred by the issuer in  
13 defending any action commenced by any person entitled to recover on  
14 the bill or other document for the breach.

15 **"§ 25-7-303. Diversion; reconsignment; change of instructions.**

16 (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods  
17 to a person or destination other than that stated in the bill or may otherwise dispose of  
18 the goods, without liability for misdelivery, on instructions from:

- 19 (1) The holder of a negotiable bill;  
20 (2) The consignor on a nonnegotiable bill, even if the consignee has given  
21 contrary instructions;  
22 (3) The consignee on a nonnegotiable bill in the absence of contrary  
23 instructions from the consignor, if the goods have arrived at the billed  
24 destination or if the consignee is in possession of the tangible bill or in  
25 control of the electronic bill; or  
26 (4) The consignee on a nonnegotiable bill, if the consignee is entitled as  
27 against the consignor to dispose of the goods.

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

31 **"§ 25-7-304. Tangible bills of lading in a set.**

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

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

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

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

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

4 **"§ 25-7-305. Destination bills.**

5 (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a  
6 carrier, at the request of the consignor, may procure the bill to be issued at destination or  
7 at any other place designated in the request.

8 (b) Upon request of any person entitled as against a carrier to control the goods  
9 while in transit and on surrender of possession or control of any outstanding bill of  
10 lading or other receipt covering the goods, the issuer, subject to G.S. 25-7-105, may  
11 procure a substitute bill to be issued at any place designated in the request.

12 **"§ 25-7-306. Altered bills of lading.**

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

15 **"§ 25-7-307. Lien of carrier.**

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

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

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

32 **"§ 25-7-308. Enforcement of carrier's lien.**

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

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

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

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

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

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

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

16 (g) A carrier's lien may be enforced pursuant to either subsection (a) of this  
17 section or the procedure set forth in G.S. 25-7-210(b).

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

21 **"§ 25-7-309. Duty of care; contractual limitation of carrier's liability.**

22 (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable,  
23 shall exercise the degree of care in relation to the goods which a reasonably careful  
24 person would exercise under similar circumstances. This subsection does not affect any  
25 statute, regulation, or rule of law that imposes liability upon a common carrier for  
26 damages not caused by its negligence.

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

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

36 "PART 4.

37 "WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

38 **"§ 25-7-401. Irregularities in issue of receipt or bill or conduct of issuer.**

39 The obligations imposed by this Article on an issuer apply to a document of title  
40 even if:

- 41 (1) The document does not comply with the requirements of this Article or  
42 of any other statute, rule, or regulation regarding its issuance, form, or  
43 content;
- 44 (2) The issuer violated laws regulating the conduct of its business;

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

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

5 **"§ 25-7-402. Duplicate document of title; overissue.**

6 A duplicate or any other document of title purporting to cover goods already  
7 represented by an outstanding document of the same issuer does not confer any right in  
8 the goods, except as provided in the case of tangible bills of lading in a set of parts,  
9 overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed  
10 documents, or substitute documents issued pursuant to G.S. 25-7-105. The issuer is  
11 liable for damages caused by its overissue or failure to identify a duplicate document by  
12 a conspicuous notation.

13 **"§ 25-7-403. Obligation of bailee to deliver; excuse.**

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

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

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

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

23 (4) The exercise by a seller of its right to stop delivery pursuant to  
24 G.S. 25-2-705 or by a lessor of its right to stop delivery pursuant to  
25 G.S. 25-2A-526;

26 (5) A diversion, reconsignment, or other disposition pursuant to  
27 G.S. 25-7-303;

28 (6) Release, satisfaction, or any other personal defense against the  
29 claimant; or

30 (7) Any other lawful excuse.

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

34 (c) Unless a person claiming the goods is a person against whom the document  
35 of title does not confer a right under G.S. 25-7-503(a):

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

39 (2) The bailee shall cancel the document or conspicuously indicate in the  
40 document the partial delivery or the bailee is liable to any person to  
41 whom the document is duly negotiated.

42 **"§ 25-7-404. No liability for good-faith delivery pursuant to document of title.**

1 A bailee that in good faith has received goods and delivered or otherwise disposed of  
2 the goods according to the terms of a document of title or pursuant to this Article is not  
3 liable for the goods even if:

- 4 (1) The person from whom the bailee received the goods did not have  
5 authority to procure the document or to dispose of the goods; or
- 6 (2) The person to whom the bailee delivered the goods did not have  
7 authority to receive the goods.

8 "PART 5.

9 "WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND  
10 TRANSFER.

11 **"§ 25-7-501. Form of negotiation and requirements of due negotiation.**

12 (a) The following rules apply to a negotiable tangible document of title:

- 13 (1) If the document's original terms run to the order of a named person, the  
14 document is negotiated by the named person's indorsement and  
15 delivery. After the named person's indorsement in blank or to bearer,  
16 any person may negotiate the document by delivery alone.
- 17 (2) If the document's original terms run to bearer, it is negotiated by  
18 delivery alone.
- 19 (3) If the document's original terms run to the order of a named person and  
20 it is delivered to the named person, the effect is the same as if the  
21 document had been negotiated.
- 22 (4) Negotiation of the document after it has been indorsed to a named  
23 person requires indorsement by the named person and delivery.
- 24 (5) A document is duly negotiated if it is negotiated in the manner stated  
25 in this subsection to a holder that purchases it in good faith, without  
26 notice of any defense against or claim to it on the part of any person,  
27 and for value, unless it is established that the negotiation is not in the  
28 regular course of business or financing or involves receiving the  
29 document in settlement or payment of a monetary obligation.

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

- 31 (1) If the document's original terms run to the order of a named person or  
32 to bearer, the document is negotiated by delivery of the document to  
33 another person. Indorsement by the named person is not required to  
34 negotiate the document.
- 35 (2) If the document's original terms run to the order of a named person and  
36 the named person has control of the document, the effect is the same as  
37 if the document had been negotiated.
- 38 (3) A document is duly negotiated if it is negotiated in the manner stated  
39 in this subsection to a holder that purchases it in good faith, without  
40 notice of any defense against or claim to it on the part of any person,  
41 and for value, unless it is established that the negotiation is not in the  
42 regular course of business or financing or involves taking delivery of  
43 the document in settlement or payment of a monetary obligation.

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

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

6 **"§ 25-7-502. Rights acquired by due negotiation.**

7 (a) Subject to G.S. 25-7-205 and G.S. 25-7-503, a holder to which a negotiable  
8 document of title has been duly negotiated acquires thereby:

9 (1) Title to the document;

10 (2) Title to the goods;

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

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

21 (b) Subject to G.S. 25-7-503, title and rights acquired by due negotiation are not  
22 defeated by any stoppage of the goods represented by the document of title or by  
23 surrender of the goods by the bailee and are not impaired even if:

24 (1) The due negotiation or any prior due negotiation constituted a breach  
25 of duty;

26 (2) Any person has been deprived of possession of a negotiable tangible  
27 document or control of a negotiable electronic document by  
28 misrepresentation, fraud, accident, mistake, duress, loss, theft, or  
29 conversion; or

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

32 **"§ 25-7-503. Document of title to goods defeated in certain cases.**

33 (a) A document of title confers no right in goods against a person that before  
34 issuance of the document had a legal interest or a perfected security interest in the goods  
35 and that did not:

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

38 a. Actual or apparent authority to ship, store, or sell;

39 b. Power to obtain delivery under G.S. 25-7-403; or

40 c. Power of disposition under G.S. 25-2-403, 25-2A-304(2),  
41 25-2A-305(2), 25-9-320, or 25-9-321(c) or other statute or rule  
42 of law; or

43 (2) Acquiesce in the procurement by the bailor or its nominee of any  
44 document.

1 (b) Title to goods based upon an unaccepted delivery order is subject to the rights  
2 of any person to whom a negotiable warehouse receipt or bill of lading covering the  
3 goods has been duly negotiated. That title may be defeated under G.S. 25-7-504 to the  
4 same extent as the rights of the issuer or a transferee from the issuer.

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

9 **"§ 25-7-504. Rights acquired in absence of due negotiation; effect of diversion;  
10 stoppage of delivery.**

11 (a) A transferee of a document of title, whether negotiable or nonnegotiable, to  
12 which the document has been delivered but not duly negotiated, acquires the title and  
13 rights that its transferor had or had actual authority to convey.

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

- 17 (1) By those creditors of the transferor which could treat the transfer as  
18 void under G.S. 25-2-402 or G.S. 25-2A-308;
- 19 (2) By a buyer from the transferor in ordinary course of business if the  
20 bailee has delivered the goods to the buyer or received notification of  
21 the buyer's rights;
- 22 (3) By a lessee from the transferor in ordinary course of business if the  
23 bailee has delivered the goods to the lessee or received notification of  
24 the lessee's rights; or
- 25 (4) As against the bailee, by good-faith dealings of the bailee with the  
26 transferor.

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

32 (d) Delivery of the goods pursuant to a nonnegotiable document of title may be  
33 stopped by a seller under G.S. 25-2-705 or a lessor under G.S. 25-2A-526, subject to the  
34 requirements of due notification in those sections. A bailee that honors the seller's or  
35 lessor's instructions is entitled to be indemnified by the seller or lessor against any  
36 resulting loss or expense.

37 **"§ 25-7-505. Indorser not guarantor for other parties.**

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

40 **"§ 25-7-506. Delivery without indorsement; right to compel indorsement.**

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

44 **"§ 25-7-507. Warranties on negotiation or delivery of document of title.**



1 If a person negotiates or delivers a document of title for value, otherwise than as a  
2 mere intermediary under G.S. 25-7-508, unless otherwise agreed, the transferor, in  
3 addition to any warranty made in selling or leasing the goods, warrants to its immediate  
4 purchaser only that:

- 5 (1) The document is genuine;
- 6 (2) The transferor does not have knowledge of any fact that would impair  
7 the document's validity or worth; and
- 8 (3) The negotiation or delivery is rightful and fully effective with respect  
9 to the title to the document and the goods it represents.

10 **"§ 25-7-508. Warranties of collecting bank as to documents of title.**

11 A collecting bank or other intermediary known to be entrusted with documents of  
12 title on behalf of another or with collection of a draft or other claim against delivery of  
13 documents warrants by the delivery of the documents only its own good faith and  
14 authority even if the collecting bank or other intermediary has purchased or made  
15 advances against the claim or draft to be collected.

16 **"§ 25-7-509. Adequate compliance with commercial contract.**

17 Whether a document of title is adequate to fulfill the obligations of a contract for  
18 sale, a contract for lease, or the conditions of a letter of credit is determined by Article  
19 2, 2A, or 5 of this Chapter.

20 "PART 6.

21 "WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS  
22 PROVISIONS.

23 **"§ 25-7-601. Lost, stolen, or destroyed documents of title.**

24 (a) If a document of title is lost, stolen, or destroyed, a court may order delivery  
25 of the goods or issuance of a substitute document, and the bailee may without liability to  
26 any person comply with the order. If the document was negotiable, a court may not  
27 order delivery of the goods or issuance of a substitute document without the claimant's  
28 posting security unless it finds that any person that may suffer loss as a result of  
29 nonsurrender of possession or control of the document is adequately protected against  
30 the loss. If the document was nonnegotiable, the court may require security. The court  
31 may also order payment of the bailee's reasonable costs and attorneys' fees in any action  
32 under this subsection.

33 (b) A bailee that, without a court order, delivers goods to a person claiming under  
34 a missing negotiable document of title is liable to any person injured thereby. If the  
35 delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is  
36 not conversion if the claimant posts security with the bailee in an amount at least double  
37 the value of the goods at the time of posting to indemnify any person injured by the  
38 delivery that files a notice of claim within one year after the delivery.

39 **"§ 25-7-602. Judicial process against goods covered by negotiable document of  
40 title.**

41 Unless a document of title was originally issued upon delivery of the goods by a  
42 person that did not have power to dispose of them, a lien does not attach by virtue of  
43 any judicial process to goods in the possession of a bailee for which a negotiable  
44 document of title is outstanding unless possession or control of the document is first

1 surrendered to the bailee or the document's negotiation is enjoined. The bailee may not  
2 be compelled to deliver the goods pursuant to process until possession or control of the  
3 document is surrendered to the bailee or to the court. A purchaser of the document for  
4 value without notice of the process or injunction takes free of the lien imposed by  
5 judicial process.

6 **"§ 25-7-603. Conflicting claims; interpleader.**

7 If more than one person claims title to or possession of the goods, the bailee is  
8 excused from delivery until the bailee has a reasonable time to ascertain the validity of  
9 the adverse claims or to commence an action for interpleader. The bailee may assert an  
10 interpleader either in defending an action for nondelivery of the goods or by original  
11 action."

12 **SUBPART B. CONFORMING AMENDMENTS TO OTHER ARTICLES OF**  
13 **THE UNIFORM COMMERCIAL CODE.**

14 **SECTION 26.** G.S. 25-1-201(b), as enacted by Part I of this act, reads as  
15 rewritten:

16 "(b) Subject to definitions contained in other articles of this Chapter that apply to  
17 particular articles or parts thereof:

18 ...

19 (5) "Bearer" means a person in control of a negotiable electronic  
20 document of title or a person in possession of a negotiable instrument,  
21 negotiable tangible document of title, or certificated security that is  
22 payable to bearer or indorsed in blank.

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

27 ...

28 (15) "Delivery", with respect to an electronic document of title means  
29 voluntary transfer of control and with respect to an instrument, a  
30 tangible document of title, or chattel paper, means voluntary transfer  
31 of possession.

32 (16) "Document of title" ~~includes bill of lading, dock warrant, dock receipt,~~  
33 ~~warehouse receipt or order for the delivery of goods, and also any~~  
34 ~~other document which~~ means a record (i) that in the regular course of  
35 business or financing is treated as adequately evidencing that the  
36 person in possession or control of it ~~the record~~ is entitled to receive,  
37 control, hold, and dispose of the record ~~document~~ and the goods it  
38 ~~covers.~~ the record covers and (ii) that purports to be issued by or  
39 addressed to a bailee and to cover goods in the bailee's possession  
40 which are either identified or are fungible portions of an identified  
41 mass. The term includes a bill of lading, transport document, dock  
42 warrant, dock receipt, warehouse receipt, and order for delivery of  
43 goods. To be a document of title, a document must purport to be issued  
44 by or addressed to a bailee and purport to cover goods in the bailee's

possession which are either identified or are fungible portions of an identified mass. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

...

(21) "Holder" means:

- a. The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; ~~or~~
- b. The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in ~~possession~~ possession; ~~or~~
- c. The person in control of a negotiable electronic document of title.

...

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

**SECTION 27.** G.S. 25-2-103(3) reads as rewritten:

"(3) "Control" as provided in G.S. 25-7-106 and the following definitions in other Articles apply to this article:~~Article:~~

~~"Check." G.S. 25-3-104.~~

~~"Consignee." G.S. 25-7-102.~~

~~"Consignor." G.S. 25-7-102.~~

~~"Consumer Goods." G.S. 25-9-102.~~

~~"Dishonor." G.S. 25-3-502.~~

~~"Draft." G.S. 25-3-104.~~

"Check" G.S. 25-3-104.

"Consignee" G.S. 25-7-102.

"Consignor" G.S. 25-7-102.

"Consumer Goods" G.S. 25-9-102.

"Dishonor" G.S. 25-3-502.

"Draft" G.S. 25-3-104."

**SECTION 28.** G.S. 25-2-104(2) reads as rewritten:

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

"Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (G.S. 25-2-707)."

1           **SECTION 29.** G.S. 25-2-310 reads as rewritten:

2   "**§ 25-2-310. Open time for payment or running of credit; authority to ship under**  
3   **reservation.**

4       Unless otherwise agreed

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

7       (b) if the seller is authorized to send the goods he may ship them under  
8 reservation, and may tender the documents of title, but the buyer may inspect the goods  
9 after their arrival before payment is due unless such inspection is inconsistent with the  
10 terms of the contract (G.S. 25-2-513); and

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

17       (d) where the seller is required or authorized to ship the goods on credit the credit  
18 period runs from the time of shipment but postdating the invoice or delaying its dispatch  
19 will correspondingly delay the starting of the credit period."

20           **SECTION 30.** G.S. 25-2-323(2) reads as rewritten:

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

25       (a) due tender of a single part is acceptable within the provisions of this  
26 ~~article~~ Article on cure of improper delivery (subsection (1) of  
27 G.S.25-2-508); and

28       (b) even though the full set is demanded, if the documents are sent from  
29 abroad the person tendering an incomplete set may nevertheless  
30 require payment upon furnishing an indemnity which the buyer in  
31 good faith deems adequate."

32           **SECTION 31.** G.S. 25-2-401(3) reads as rewritten:

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

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

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

42           **SECTION 32.** G.S. 25-2-503(4) and (5) read as rewritten:

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

- 1 (a) tender requires that the seller either tender a negotiable document of  
2 title covering such goods or procure acknowledgment by the bailee of  
3 the buyer's right to possession of the goods; but  
4 (b) tender to the buyer of a non-negotiable document of title or of a  
5 ~~written direction to record directing~~ the bailee to deliver is sufficient  
6 tender unless the buyer seasonably objects, ~~and—~~and, except as  
7 otherwise provided in Article 9 of this Chapter, receipt by the bailee of  
8 notification of the buyer's rights fixes those rights as against the bailee  
9 and all third persons; but risk of loss of the goods and of any failure by  
10 the bailee to honor the nonnegotiable document of title or to obey the  
11 direction remains on the seller until the buyer has had a reasonable  
12 time to present the document or direction, and a refusal by the bailee to  
13 honor the document or to obey the direction defeats the tender.
- 14 (5) Where the contract requires the seller to deliver documents  
15 (a) he must tender all such documents in correct form, except as provided  
16 in this article with respect to bills of lading in a set (subsection (2) of  
17 G.S. 25-2-323); and  
18 (b) tender through customary banking channels is sufficient and dishonor  
19 of a draft accompanying or associated with the documents constitutes  
20 non-acceptance or rejection."

21 **SECTION 33.** G.S. 25-2-505 reads as rewritten:

22 **"§ 25-2-505. Seller's shipment under reservation.**

- 23 (1) Where the seller has identified goods to the contract by or before shipment:  
24 (a) his procurement of a negotiable bill of lading to his own order or  
25 otherwise reserves in him a security interest in the goods. His  
26 procurement of the bill to the order of a financing agency or of the  
27 buyer indicates in addition only the seller's expectation of transferring  
28 that interest to the person named.  
29 (b) a nonnegotiable bill of lading to himself or his nominee reserves  
30 possession of the goods as security but except in a case of conditional  
31 delivery (subsection (2) of G.S. 25-2-507) a nonnegotiable bill of  
32 lading naming the buyer as consignee reserves no security interest  
33 even though the seller retains possession or control of the bill of  
34 lading.
- 35 (2) When shipment by the seller with reservation of a security interest is in  
36 violation of the contract for sale it constitutes an improper contract for transportation  
37 within ~~the preceding section~~ G.S. 25-2-504 but impairs neither the rights given to the  
38 buyer by shipment and identification of the goods to the contract nor the seller's powers  
39 as a holder of a negotiable ~~document~~ document of title."

40 **SECTION 34.** G.S. 25-2-506(2) reads as rewritten:

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

1           **SECTION 35.** G.S. 25-2-509(2) reads as rewritten:

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

4           (a) on his receipt of possession or control of a negotiable document of title  
5 covering the goods; or

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

8           (c) after his receipt of possession or control of a nonnegotiable document  
9 of title or other ~~written~~ direction to ~~deliver~~, deliver in a record, as  
10 provided in subsection (4)(b) of G.S. 25-2-503."

11           **SECTION 36.** G.S. 25-2-605(2) reads as rewritten:

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

14           **SECTION 37.** G.S. 25-2-705(2) and (3) read as rewritten:

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

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

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

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

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

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

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

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

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

34           **SECTION 38.** G.S. 25-2A-103 reads as rewritten:

35           "**§ 25-2A-103. Definitions and index of definitions.**

36           (1) In this Article unless the context otherwise requires:

37           (a) "Buyer in ordinary course of ~~business~~, business" means a person  
38 ~~who~~ who, in good faith and without knowledge that the sale to him is  
39 in violation of the ownership rights or security interest or leasehold  
40 interest of a third party in the ~~goods~~, goods, buys in ordinary course  
41 from a person in the business of selling goods of that kind but does not  
42 include a pawnbroker. "Buying" may be for cash or by exchange of  
43 other property or on secured or unsecured credit and includes ~~receiving~~  
44 acquiring goods or documents of title under a preexisting contract for

1 sale but does not include a transfer in bulk or as security for or in total  
 2 or partial satisfaction of a money debt.

3 ...

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

14 ..."

15 **SECTION 39.** G.S. 25-2A-514(2) reads as rewritten:

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

19 **SECTION 40.** G.S. 25-2A-526(2) reads as rewritten:

20 "(2) In pursuing its remedies under subsection (1) of this section, the lessor may  
 21 stop delivery until

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

27 **SECTION 41.** G.S. 25-4-104(c), as amended by Section 14 of this act, reads  
 28 as rewritten:

29 "(c) "Control" as provided in G.S. 25-7-106 and the ~~The~~ following definitions in  
 30 other Articles apply to this Article:

31 "Acceptance"	G.S. 25-3-409.
32 "Alteration"	G.S. 25-3-407.
33 "Cashier's check"	G.S. 25-3-104.
34 "Certificate of deposit"	G.S. 25-3-104.
35 "Certified check"	G.S. 25-3-409.
36 "Check"	G.S. 25-3-104.
37 "Draft"	G.S. 25-3-104.
38 "Holder in due course"	G.S. 25-3-302.
39 "Instrument"	G.S. 25-3-104.
40 "Notice of dishonor"	G.S. 25-3-503.
41 "Order"	G.S. 25-3-103.
42 "Ordinary care"	G.S. 25-3-103
43 "Person entitled to enforce"	G.S. 25-3-301.
44 "Presentment"	G.S. 25-3-501.

- 1 "Promise" G.S. 25-3-103.
- 2 "Prove" G.S. 25-3-103.
- 3 "Teller's check" G.S. 25-3-104.
- 4 "Unauthorized signature" G.S. 25-3-403."

5 **SECTION 42.** G.S. 25-4-208(c) reads as rewritten:

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

- 11 (1) No security agreement is necessary to make the security interest  
12 enforceable (G.S. 25-9-203(b)(3)a.);
- 13 (2) No filing is required to perfect the security interest; and
- 14 (3) The security interest has priority over conflicting perfected security  
15 interests in the item, accompanying ~~documents~~ documents, or  
16 proceeds."

17 **SECTION 43.** G.S. 25-8-103 reads as rewritten:

18 **"§ 25-8-103. Rules for determining whether certain obligations and interests are  
19 securities or financial assets.**

20 (a) A share or similar equity interest issued by a corporation, business trust, joint  
21 stock company, or similar entity is a security.

22 ...

23 (f) A commodity contract, as defined in G.S. 25-9-102(a)(15), is not a security or  
24 financial asset.

25 (g) A document of title is not a financial asset unless G.S. 25-8-102(a)(9)(iii)  
26 applies."

27 **SECTION 44.** G.S. 25-9-102 reads as rewritten:

28 **"§ 25-9-102. Definitions and index of definitions.**

29 (a) Article 9 definitions. – In this Article:

30 ...

31 (30) "Document" means a document of title or a receipt of the type  
32 described in ~~G.S. 25-7-201(2)~~ G.S. 25-7-201(b).

33 ...

34 (b) Definitions in other articles. – "Control" as provided in G.S. 25-7-106 and the  
35 ~~The~~ following definitions in other Articles of this Chapter apply to this Article:

- 36 "Applicant" G.S. 25-5-102.
- 37 "Beneficiary" G.S. 25-5-102.
- 38 "Broker" G.S. 25-8-102.
- 39 "Certificated security" G.S. 25-8-102.
- 40 "Check" G.S. 25-3-104.
- 41 "Clearing corporation" G.S. 25-8-102.
- 42 "Contract for sale" G.S. 25-2-106.
- 43 "Customer" G.S. 25-4-104.
- 44 "Entitlement holder" G.S. 25-8-102.



1	"Financial asset"	G.S. 25-8-102.
2	"Holder in due course"	G.S. 25-3-302.
3	"Issuer" (with respect to a letter of credit	
4	or letter-of-credit right)	G.S. 25-5-102.
5	"Issuer" (with respect to a security)	G.S. 25-8-201.
6	<u>"Issuer" (with respect to documents of title)</u>	<u>G.S. 25-7-102.</u>
7	"Lease"	G.S. 25-2A-103.
8	"Lease agreement"	G.S. 25-2A-103.
9	"Lease contract"	G.S. 25-2A-103.
10	"Leasehold interest"	G.S. 25-2A-103.
11	"Lessee"	G.S. 25-2A-103.
12	"Lessee in ordinary course of business"	G.S. 25-2A-103.
13	"Lessor"	G.S. 25-2A-103.
14	"Lessor's residual interest"	G.S. 25-2A-103.
15	"Letter of credit"	G.S. 25-5-102.
16	"Merchant"	G.S. 25-2-104.
17	"Negotiable instrument"	G.S. 25-3-104.
18	"Nominated person"	G.S. 25-5-102.
19	"Note"	G.S. 25-3-104.
20	"Proceeds of a letter of credit"	G.S. 25-5-114.
21	"Prove"	G.S. 25-3-103.
22	"Sale"	G.S. 25-2-106.
23	"Securities account"	G.S. 25-8-501.
24	"Securities intermediary"	G.S. 25-8-102.
25	"Security"	G.S. 25-8-102.
26	"Security certificate"	G.S. 25-8-102.
27	"Security entitlement"	G.S. 25-8-102.
28	"Uncertificated security"	G.S. 25-8-102."

29           **SECTION 45.** G.S. 25-9-203 (b) reads as rewritten:

30           "(b) Enforceability. – Except as otherwise provided in subsections (c) through (i)  
31 of this section, a security interest is enforceable against the debtor and third parties with  
32 respect to the collateral only if:

- 33           (1) Value has been given;
- 34           (2) The debtor has rights in the collateral or the power to transfer rights in  
35 the collateral to a secured party; and
- 36           (3) One of the following conditions is met:
- 37           a. The debtor has authenticated a security agreement that provides  
38 a description of the collateral and, if the security interest covers  
39 timber to be cut, a description of the land concerned;
- 40           b. The collateral is not a certificated security and is in the  
41 possession of the secured party under G.S. 25-9-313 pursuant to  
42 the debtor's security agreement;
- 43           c. The collateral is a certificated security in registered form and  
44 the security certificate has been delivered to the secured party

1 under G.S. 25-8-301 pursuant to the debtor's security  
2 agreement; or

- 3 d. The collateral is deposit accounts, electronic chattel paper,  
4 investment property, ~~or~~ letter-of-credit rights, or electronic  
5 documents, and the secured party has control under  
6 G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106, or 25-9-107  
7 pursuant to the debtor's security agreement."

8 **SECTION 46.** G.S. 25-9-207(c) reads as rewritten:

9 "(c) Rights and duties when secured party in possession or control. – Except as  
10 otherwise provided in subsection (d) of this section, a secured party having possession  
11 of collateral or control of collateral under G.S. 25-7-106, 25-9-104, 25-9-105, 25-9-106,  
12 or 25-9-107:

- 13 (1) May hold as additional security any proceeds, except money or funds,  
14 received from the collateral;  
15 (2) Shall apply money or funds received from the collateral to reduce the  
16 secured obligation, unless remitted to the debtor; and  
17 (3) May create a security interest in the collateral."

18 **SECTION 47.** G.S. 25-9-208(b) reads as rewritten:

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

- 21 (1) A secured party having control of a deposit account under  
22 25-9-104(a)(2) shall send to the bank with which the deposit account is  
23 maintained an authenticated statement that releases the bank from any  
24 further obligation to comply with instructions originated by the  
25 secured party;  
26 (2) A secured party having control of a deposit account under  
27 G.S. 25-9-104(a)(3) shall:  
28 a. Pay the debtor the balance on deposit in the deposit account; or  
29 b. Transfer the balance on deposit into a deposit account in the  
30 debtor's name;  
31 (3) A secured party, other than a buyer, having control of electronic  
32 chattel paper under G.S. 25-9-105 shall:  
33 a. Communicate the authoritative copy of the electronic chattel  
34 paper to the debtor or its designated custodian;  
35 b. If the debtor designates a custodian that is the designated  
36 custodian with which the authoritative copy of the electronic  
37 chattel paper is maintained for the secured party, communicate  
38 to the custodian an authenticated record releasing the  
39 designated custodian from any further obligation to comply  
40 with instructions originated by the secured party and instructing  
41 the custodian to comply with instructions originated by the  
42 debtor; and  
43 c. Take appropriate action to enable the debtor or its designated  
44 custodian to make copies of or revisions to the authoritative

- 1 copy which add or change an identified assignee of the  
2 authoritative copy without the consent of the secured party;
- 3 (4) A secured party having control of investment property under  
4 G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities  
5 intermediary or commodity intermediary with which the security  
6 entitlement or commodity contract is maintained an authenticated  
7 record that releases the securities intermediary or commodity  
8 intermediary from any further obligation to comply with entitlement  
9 orders or directions originated by the secured party; ~~and~~
- 10 (5) A secured party having control of a letter-of-credit right under  
11 G.S. 25-9-107 shall send to each person having an unfulfilled  
12 obligation to pay or deliver proceeds of the letter of credit to the  
13 secured party an authenticated release from any further obligation to  
14 pay or deliver proceeds of the letter of credit to the secured ~~party-~~  
15 party; and
- 16 (6) A secured party having control of an electronic document shall:
- 17 a. Give control of the electronic document to the debtor or its  
18 designated custodian;
- 19 b. If the debtor designates a custodian that is the designated  
20 custodian with which the authoritative copy of the electronic  
21 document is maintained for the secured party, communicate to  
22 the custodian an authenticated record releasing the designated  
23 custodian from any further obligation to comply with  
24 instructions originated by the secured party and instructing the  
25 custodian to comply with instructions originated by the debtor;  
26 and
- 27 c. Take appropriate action to enable the debtor or its designated  
28 custodian to make copies of or revisions to the authoritative  
29 copy which add or change an identified assignee of the  
30 authoritative copy without the consent of the secured party."

31 **SECTION 48.** G.S. 25-9-301(3) reads as rewritten:

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

- 36 a. Perfection of a security interest in the goods by filing a fixture  
37 filing;
- 38 b. Perfection of a security interest in timber to be cut; and
- 39 c. The effect of perfection or nonperfection and the priority of a  
40 nonpossessory security interest in the collateral."

41 **SECTION 49.** G.S. 25-9-310(b) reads as rewritten:

42 "(b) Exceptions: filing not necessary. – The filing of a financing statement is not  
43 necessary to perfect a security interest:

- 44 (1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);

- 1 (2) That is perfected under G.S. 25-9-309 when it attaches;
- 2 (3) In property subject to a statute, regulation, or treaty described in
- 3 G.S. 25-9-311(a);
- 4 (4) In goods in possession of a bailee which is perfected under
- 5 G.S. 25-9-312(d)(1) or (2);
- 6 (5) In certificated securities, documents, goods, or instruments which is
- 7 perfected without ~~filing~~ filing, control, or possession under
- 8 G.S. 25-9-312(e), (f), or (g);
- 9 (6) In collateral in the secured party's possession under G.S. 25-9-313;
- 10 (7) In a certificated security which is perfected by delivery of the security
- 11 certificate to the secured party under G.S. 25-9-313;
- 12 (8) In deposit accounts, electronic chattel paper, electronic documents,
- 13 investment property, or letter-of-credit rights which is perfected by
- 14 control under G.S. 25-9-314;
- 15 (9) In proceeds which is perfected under G.S. 25-9-315; or
- 16 (10) That is perfected under G.S. 25-9-316."

17 **SECTION 50.** G.S. 25-9-312(e) reads as rewritten:

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

22 **SECTION 51.** G.S. 25-9-313(a) reads as rewritten:

23 "(a) Perfection by possession or delivery. – Except as otherwise provided in  
24 subsection (b) of this section, a secured party may perfect a security interest in tangible  
25 negotiable documents, goods, instruments, money, or tangible chattel paper by taking  
26 possession of the collateral. A secured party may perfect a security interest in  
27 certificated securities by taking delivery of the certificated securities under  
28 G.S. 25-8-301."

29 **SECTION 52.** G.S. 25-9-314(a) and (b) read as rewritten:

30 "(a) Perfection by control. – A security interest in investment property, deposit  
31 accounts, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may  
32 be perfected by control of the collateral under G.S. 25-7-106, 25-9-104, 25-9-105,  
33 25-9-106, or 25-9-107.

34 (b) Specified collateral: time of perfection by control; continuation of perfection.  
35 – A security interest in deposit accounts, electronic chattel paper, ~~or~~ letter-of-credit  
36 ~~rights~~ rights, or electronic documents is perfected by control under G.S. 25-7-106,  
37 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains  
38 perfected by control only while the secured party retains control."

39 **SECTION 53.** G.S. 25-9-317(b) and (d) read as rewritten:

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

1 ...

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

7 **SECTION 54.** G.S. 25-9-338 reads as rewritten:

8 "**§ 25-9-338. Priority of security interest or agricultural lien perfected by filed**  
9 **financing statement providing certain incorrect information.**

10 If a security interest or agricultural lien is perfected by a filed financing statement  
11 providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time  
12 the financing statement is filed:

13 (1) The security interest or agricultural lien is subordinate to a conflicting  
14 perfected security interest in the collateral to the extent that the holder  
15 of the conflicting security interest gives value in reasonable reliance  
16 upon the incorrect information; and

17 (2) A purchaser, other than a secured party, of the collateral takes free of  
18 the security interest or agricultural lien to the extent that, in reasonable  
19 reliance upon the incorrect information, the purchaser gives value and,  
20 in the case of tangible chattel paper, tangible documents, goods,  
21 instruments, or a security certificate, receives delivery of the  
22 collateral."

23 **SECTION 55.** G.S. 25-9-601(b) reads as rewritten:

24 "(b) Rights and duties of secured party in possession or control. – A secured party  
25 in possession of collateral or control of collateral under G.S. 25-7-106, 25-9-104,  
26 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207."

27 **SECTION 56.** G.S. 25-10-104 is repealed.

28 **SUBPART C. OTHER CONFORMING AMENDMENTS AND REPEALS.**

29 **SECTION 57.** G.S. 106-451.19 reads as rewritten:

30 "**§ 106-451.19. Contents of receipts.**

31 Every receipt issued for cotton stored in a warehouse licensed under this Article  
32 shall contain the information required under the United States Warehouse Act, 7 U.S.C.  
33 § 214, et seq., and the regulations promulgated thereunder. ~~embody within its written or~~  
34 ~~printed terms:~~

35 (1) ~~The location of the warehouse in which the cotton is stored;~~

36 (2) ~~The date of issue of the receipt;~~

37 (3) ~~The consecutive number of the receipt;~~

38 (4) ~~A statement whether the cotton received will be delivered to the~~  
39 ~~bearer, to a specified person, or to a specified person or his order;~~

40 (5) ~~The rate of storage charges;~~

41 (6) ~~A description of the cotton received, showing the quantity thereof and~~  
42 ~~a description of each bale by mark, number, or other means of~~  
43 ~~identification and the weight of each bale;~~

- 1           ~~(7) The grade or other classification of the cotton received and the~~  
2           ~~standard or description in accordance with which such classification~~  
3           ~~has been made;~~  
4           ~~(8) A statement that the receipt is issued subject to this Article and the~~  
5           ~~rules and regulations prescribed hereunder;~~  
6           ~~(9) If the receipt be issued for cotton of which the warehouseman is~~  
7           ~~owner, either solely or jointly or in common with others, the fact of~~  
8           ~~such ownership;~~  
9           ~~(10) A statement of the amount of advances made and of liabilities incurred~~  
10           ~~for which the warehouseman claims a lien; and~~  
11           ~~(11) Signature of the warehouseman, which may be made by his authorized~~  
12           ~~agent."~~

13           **SECTION 58.(a)** Article 5 of Chapter 27 of the General Statutes is repealed.

14           **SECTION 58.(b)** Prosecutions for offenses committed before the effective  
15 date of this act are not abated or affected by this act, and the statutes that would be  
16 applicable but for this act remain applicable to those prosecutions.

17 **PART III. MISCELLANEOUS PROVISIONS, DIRECTIONS, AND EFFECTIVE**  
18 **DATE.**

19           **SECTION 59.** Subparts A and B of Part II of this act apply to a document of  
20 title that is issued or a bailment that arises on or after the effective date of this act.  
21 Subparts A and B of Part II of this act do not apply to a document of title that is issued  
22 or a bailment that arises before the effective date of this act even if the document of title  
23 or bailment would be subject to this act if the document of title had been issued or  
24 bailment had arisen on or after the effective date of this act. Subparts A and B of Part II  
25 of this act do not apply to a right of action that has accrued before the effective date of  
26 this act.

27           **SECTION 60.** A document of title issued or a bailment that arises before the  
28 effective date of this act and the rights, obligations, and interests flowing from that  
29 document or bailment are governed by any statute amended or repealed by this act as if  
30 amendment or repeal had not occurred and may be terminated, completed,  
31 consummated, or enforced under that statute.

32           **SECTION 61.** The Revisor of Statutes shall cause to be printed along with  
33 this act all relevant portions of the official comments to Uniform Commercial Code  
34 Revised Article 1 and Uniform Commercial Code Revised Article 7 and all explanatory  
35 comments of the drafters of this act as the Revisor deems appropriate.

36           **SECTION 62.** This act becomes effective October 1, 2006.