

**SUBSTITUTE FOR  
HOUSE BILL NO. 5327**

A bill to amend 1962 PA 174, entitled "Uniform commercial code," by amending sections 1105, 2512, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5108, 5109, 5110, 5111, 5112, 5113, 5114, 5115, 5116, 5117, 9103, 9104, 9105, 9106, 9304, and 9305 (MCL 440.1105, 440.2512, 440.5101, 440.5102, 440.5103, 440.5104, 440.5105, 440.5106, 440.5107, 440.5108, 440.5109, 440.5110, 440.5111, 440.5112, 440.5113, 440.5114, 440.5115, 440.5116, 440.5117, 440.9103, 440.9104, 440.9105, 440.9106, 440.9304, and 440.9305), section 1105 as amended by 1992 PA 101, sections 5114, 9103, 9304, and 9305 as amended by 1987 PA 16, and section 9105 as amended by 1988 PA 130.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**       Sec. 1105. (1) Except as provided ~~hereafter~~ in this  
**2** section, when a transaction bears a reasonable relation to this

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

2

1 state and also to another state or nation the parties may agree  
2 that the law either of this state or of ~~such~~ THE other state or  
3 nation shall govern their rights and duties. Failing such agree-  
4 ment this act applies to transactions bearing an appropriate  
5 relation to this state.

6 (2) ~~where~~ IF 1 of the following provisions of this act  
7 specifies the applicable law, that provision governs and a con-  
8 trary agreement is effective only to the extent permitted by the  
9 law (including the conflict of laws rules) so specified:

10

11 Rights of creditors against sold goods. Section 2402.

12 Applicability of the article on bank deposits and  
13 collections. Section 4102.

14 Governing law in the article on funds transfers. Section 4A502.

15 LETTERS OF CREDIT. SECTION 5116.

16 Bulk transfers subject to the article on bulk  
17 transfers. Section 6102.

18 Applicability of the article on investment  
19 securities. Section 8106.

20 Applicability of the article on leases. Sections 2A105 and 2A106.

21 Perfection provisions of the article on secured  
22 transactions. Section 9103.

23 Sec. 2512. (1) ~~where~~ IF the contract requires payment  
24 before inspection nonconformity of the goods does not excuse the  
25 buyer from so making payment unless

26 (a) the nonconformity appears without inspection; or

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

3

1 (b) despite tender of the required documents the  
2 circumstances would justify injunction against honor under ~~the~~  
3 ~~provisions of~~ this act (section ~~5114~~ 5109(B)).

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

7 Sec. 5101. This article ~~shall be known and~~ may be cited  
8 as uniform commercial code--letters of credit.

9 Sec. 5102. ~~(1) This article applies~~

10 ~~(a) to a credit issued by a bank if the credit requires a~~  
11 ~~documentary draft or a documentary demand for payment; and~~

12 ~~(b) to a credit issued by a person other than a bank if the~~  
13 ~~credit requires that the draft or demand for payment be accom-~~  
14 ~~panied by a document of title; and~~

15 ~~(c) to a credit issued by a bank or other person if the~~  
16 ~~credit is not within subparagraphs (a) or (b) but conspicuously~~  
17 ~~states that it is a letter of credit or is conspicuously so~~  
18 ~~entitled.~~

19 ~~(2) Unless the engagement meets the requirements of subsec-~~  
20 ~~tion (1), this article does not apply to engagements to make~~  
21 ~~advances or to honor drafts or demands for payment, to authori-~~  
22 ~~ties to pay or purchase, to guarantees or to general agreements.~~

23 ~~(3) This article deals with some but not all of the rules~~  
24 ~~and concepts of letters of credit as such rules or concepts have~~  
25 ~~developed prior to this act or may hereafter develop. The fact~~  
26 ~~that this article states a rule does not by itself require, imply~~  
27 ~~or negate application of the same or a converse rule to a~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

4

1 ~~situation not provided for or to a person not specified by this~~  
2 ~~article.~~

3 (1) AS USED IN THIS ARTICLE:

4 (A) "ADVISER" MEANS A PERSON WHO, AT THE REQUEST OF THE  
5 ISSUER, A CONFIRMER, OR ANOTHER ADVISER, NOTIFIES OR REQUESTS  
6 ANOTHER ADVISER TO NOTIFY THE BENEFICIARY THAT A LETTER OF CREDIT  
7 HAS BEEN ISSUED, CONFIRMED, OR AMENDED.

8 (B) "APPLICANT" MEANS A PERSON AT WHOSE REQUEST OR FOR WHOSE  
9 ACCOUNT A LETTER OF CREDIT IS ISSUED. THE TERM INCLUDES A PERSON  
10 WHO REQUESTS AN ISSUER TO ISSUE A LETTER OF CREDIT ON BEHALF OF  
11 ANOTHER IF THE PERSON MAKING THE REQUEST UNDERTAKES AN OBLIGATION  
12 TO REIMBURSE THE ISSUER.

13 (C) "BENEFICIARY" MEANS A PERSON WHO UNDER THE TERMS OF A  
14 LETTER OF CREDIT IS ENTITLED TO HAVE ITS COMPLYING PRESENTATION  
15 HONORED. THE TERM INCLUDES A PERSON TO WHOM DRAWING RIGHTS HAVE  
16 BEEN TRANSFERRED UNDER A TRANSFERABLE LETTER OF CREDIT.

17 (D) "CONFIRMER" MEANS A NOMINATED PERSON WHO UNDERTAKES, AT  
18 THE REQUEST OR WITH THE CONSENT OF THE ISSUER, TO HONOR A PRESEN-  
19 TATION UNDER A LETTER OF CREDIT ISSUED BY ANOTHER.

20 (E) "DISHONOR" OF A LETTER OF CREDIT MEANS FAILURE TIMELY TO  
21 HONOR OR TO TAKE AN INTERIM ACTION, SUCH AS ACCEPTANCE OF A  
22 DRAFT, THAT MAY BE REQUIRED BY THE LETTER OF CREDIT.

23 (F) "DOCUMENT" MEANS A DRAFT OR OTHER DEMAND, DOCUMENT OF  
24 TITLE, INVESTMENT SECURITY, CERTIFICATE, INVOICE, OR OTHER  
25 RECORD, STATEMENT, OR REPRESENTATION OF FACT, LAW, RIGHT, OR  
26 OPINION THAT IS NOT ORAL WHICH IS BOTH OF THE FOLLOWING:

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

5

1           (i) PRESENTED IN A WRITTEN OR OTHER MEDIUM PERMITTED BY THE  
2 LETTER OF CREDIT OR, UNLESS PROHIBITED BY THE LETTER OF CREDIT,  
3 BY THE STANDARD PRACTICE REFERRED TO IN SECTION 5108(5).

4           (ii) CAPABLE OF BEING EXAMINED FOR COMPLIANCE WITH THE TERMS  
5 AND CONDITIONS OF THE LETTER OF CREDIT.

6           (G) "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR  
7 TRANSACTION CONCERNED.

8           (H) "HONOR" OF A LETTER OF CREDIT MEANS PERFORMANCE OF THE  
9 ISSUER'S UNDERTAKING IN THE LETTER OF CREDIT TO PAY OR DELIVER AN  
10 ITEM OF VALUE. UNLESS THE LETTER OF CREDIT OTHERWISE PROVIDES,  
11 "HONOR" OCCURS:

12           (i) UPON PAYMENT.

13           (ii) IF THE LETTER OF CREDIT PROVIDES FOR ACCEPTANCE, UPON  
14 ACCEPTANCE OF A DRAFT AND, AT MATURITY, ITS PAYMENT.

15           (iii) IF THE LETTER OF CREDIT PROVIDES FOR INCURRING A  
16 DEFERRED OBLIGATION, UPON INCURRING THE OBLIGATION AND, AT MATU-  
17 RITY, ITS PERFORMANCE.

18           (I) "ISSUER" MEANS A BANK OR OTHER PERSON THAT ISSUES A  
19 LETTER OF CREDIT, BUT DOES NOT INCLUDE AN INDIVIDUAL WHO MAKES AN  
20 ENGAGEMENT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

21           (J) "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT  
22 SATISFIES THE REQUIREMENTS OF SECTION 5104 BY AN ISSUER TO A BEN-  
23 EFICIARY AT THE REQUEST OR FOR THE ACCOUNT OF AN APPLICANT OR, IN  
24 THE CASE OF A FINANCIAL INSTITUTION, TO ITSELF OR FOR ITS OWN  
25 ACCOUNT, TO HONOR A DOCUMENTARY PRESENTATION BY PAYMENT OR DELIV-  
26 ERY OF AN ITEM OF VALUE.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

6

1 (K) "NOMINATED PERSON" MEANS BOTH OF THE FOLLOWING:

2 (i) A PERSON WHOM THE ISSUER DESIGNATES OR AUTHORIZES TO  
3 PAY, ACCEPT, NEGOTIATE, OR OTHERWISE GIVE VALUE UNDER A LETTER OF  
4 CREDIT.

5 (ii) A PERSON WHOM THE ISSUER UNDERTAKES BY AGREEMENT OR  
6 CUSTOM AND PRACTICE TO REIMBURSE.

7 (l) "PRESENTATION" MEANS DELIVERY OF A DOCUMENT TO AN ISSUER  
8 OR NOMINATED PERSON FOR HONOR OR GIVING OF VALUE UNDER A LETTER  
9 OF CREDIT.

10 (M) "PRESENTER" MEANS A PERSON MAKING A PRESENTATION AS OR  
11 ON BEHALF OF A BENEFICIARY OR NOMINATED PERSON.

12 (N) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGI-  
13 BLE MEDIUM, OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM  
14 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

15 (O) "SUCCESSOR OF A BENEFICIARY" MEANS A PERSON WHO SUCCEEDS  
16 TO SUBSTANTIALLY ALL OF THE RIGHTS OF A BENEFICIARY BY OPERATION  
17 OF LAW, INCLUDING A CORPORATION WITH OR INTO WHICH THE BENEFI-  
18 CIARY HAS BEEN MERGED OR CONSOLIDATED, AN ADMINISTRATOR, EXECU-  
19 TOR, PERSONAL REPRESENTATIVE, TRUSTEE IN BANKRUPTCY, DEBTOR IN  
20 POSSESSION, LIQUIDATOR, AND RECEIVER.

21 (2) DEFINITIONS IN OTHER ARTICLES APPLYING TO THIS ARTICLE  
22 AND THE SECTIONS IN WHICH THEY APPEAR ARE:

23 "ACCEPT" OR "ACCEPTANCE" SECTION 3409.

24 "VALUE" SECTIONS 3303 AND 4211.

25 (3) ARTICLE 1 CONTAINS CERTAIN ADDITIONAL GENERAL DEFINI-  
26 TIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION  
27 APPLICABLE THROUGHOUT THIS ARTICLE.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

7

1       Sec. 5103. ~~(1) In this article unless the context~~  
2 ~~otherwise requires~~

3       ~~(a) "Credit" or "letter of credit" means an engagement by a~~  
4 ~~bank or other person made at the request of a customer and of a~~  
5 ~~kind within the scope of this article (section 5102) that the~~  
6 ~~issuer will honor drafts or other demands for payment upon com-~~  
7 ~~pliance with the conditions specified in the credit. A credit~~  
8 ~~may be either revocable or irrevocable. The engagement may be~~  
9 ~~either an agreement to honor or a statement that the bank or~~  
10 ~~other person is authorized to honor.~~

11       ~~(b) A "documentary draft" or a "documentary demand for~~  
12 ~~payment" is one honor of which is conditioned upon the presenta-~~  
13 ~~tion of a document or documents. "Document" means any paper~~  
14 ~~including document of title, security, invoice, certificate,~~  
15 ~~notice of default and the like.~~

16       ~~(c) An "issuer" is a bank or other person issuing a credit.~~

17       ~~(d) A "beneficiary" of a credit is a person who is entitled~~  
18 ~~under its terms to draw or demand payment.~~

19       ~~(e) An "advising bank" is a bank which gives notification of~~  
20 ~~the issuance of a credit by another bank.~~

21       ~~(f) A "confirming bank" is a bank which engages either that~~  
22 ~~it will itself honor a credit already issued by another bank or~~  
23 ~~that such a credit will be honored by the issuer or a third~~  
24 ~~bank.~~

25       ~~(g) A "customer" is a buyer or other person who causes an~~  
26 ~~issuer to issue a credit. The term also includes a bank which~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

8

1 ~~procures issuance or confirmation on behalf of that bank's~~  
2 ~~customer.~~

3 ~~(2) Other definitions applying to this article and the sec-~~  
4 ~~tions in which they appear are:~~

5

6 ~~"Notation of credit". Section 5108.~~

7 ~~"Presenter". Section 5112(3).~~

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

10

11 ~~"Accept" or "Acceptance". Section 3410.~~

12 ~~"Contract for sale". Section 2106.~~

13 ~~"Draft". Section 3104.~~

14 ~~"Holder in due course". Section 3302.~~

15 ~~"Midnight deadline". Section 4104.~~

16 ~~"Security". Section 8102.~~

17 ~~(4) In addition, article 1 contains general definitions and~~  
18 ~~principles of construction and interpretation applicable through-~~  
19 ~~out this article.~~

20 (1) THIS ARTICLE APPLIES TO LETTERS OF CREDIT AND TO CERTAIN  
21 RIGHTS AND OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LET-  
22 TERS OF CREDIT.

23 (2) THE STATEMENT OF A RULE IN THIS ARTICLE DOES NOT BY  
24 ITSELF REQUIRE, IMPLY, OR NEGATE APPLICATION OF THE SAME OR A  
25 DIFFERENT RULE TO A SITUATION NOT PROVIDED FOR, OR TO A PERSON  
26 NOT SPECIFIED, IN THIS ARTICLE.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

9

1 (3) WITH THE EXCEPTION OF THIS SUBSECTION, SUBSECTIONS (1)  
2 AND (4), SECTIONS 5102(1)(I) AND (J), 5106(4), AND 5114(4), AND  
3 EXCEPT TO THE EXTENT PROHIBITED IN SECTIONS 1102(3) AND 5117(4),  
4 THE EFFECT OF THIS ARTICLE MAY BE VARIED BY AGREEMENT OR BY A  
5 PROVISION STATED OR INCORPORATED BY REFERENCE IN AN UNDERTAKING.  
6 A TERM IN AN AGREEMENT OR UNDERTAKING GENERALLY EXCUSING LIABIL-  
7 ITY OR GENERALLY LIMITING REMEDIES FOR FAILURE TO PERFORM OBLIGA-  
8 TIONS IS NOT SUFFICIENT TO VARY OBLIGATIONS PRESCRIBED BY THIS  
9 ARTICLE.

10 (4) RIGHTS AND OBLIGATIONS OF AN ISSUER TO A BENEFICIARY OR  
11 A NOMINATED PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT OF  
12 THE EXISTENCE, PERFORMANCE, OR NONPERFORMANCE OF A CONTRACT OR  
13 ARRANGEMENT OUT OF WHICH THE LETTER OF CREDIT ARISES OR WHICH  
14 UNDERLIES IT, INCLUDING CONTRACTS OR ARRANGEMENTS BETWEEN THE  
15 ISSUER AND THE APPLICANT AND BETWEEN THE APPLICANT AND THE  
16 BENEFICIARY.

17 Sec. 5104. ~~(1) Except as otherwise required in subsection~~  
18 ~~(1) (c) of section 5102 on scope, no particular form of phrasing~~  
19 ~~is required for a credit. A credit must be in writing and signed~~  
20 ~~by the issuer and a confirmation must be in writing and signed by~~  
21 ~~the confirming bank. A modification of the terms of a credit or~~  
22 ~~confirmation must be signed by the issuer or confirming bank.~~

23 ~~(2) A telegram may be a sufficient signed writing if it~~  
24 ~~identifies its sender by an authorized authentication. The~~  
25 ~~authentication may be in code and the authorized naming of the~~  
26 ~~issuer in an advice of credit is a sufficient signing. A LETTER~~  
27 OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT, OR

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

10

1 CANCELLATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS  
2 AUTHENTICATED BY 1 OR MORE OF THE FOLLOWING:

3 (A) A SIGNATURE.

4 (B) IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES OR THE  
5 STANDARD PRACTICE REFERRED TO IN SECTION 5108(5).

6 Sec. 5105. ~~No consideration is necessary to establish a  
7 credit or to enlarge or otherwise modify its terms.~~

8 CONSIDERATION IS NOT REQUIRED TO ISSUE, AMEND, TRANSFER, OR  
9 CANCEL A LETTER OF CREDIT, ADVICE, OR CONFIRMATION.

10 Sec. 5106. ~~(1) Unless otherwise agreed a credit is estab-  
11 lished~~

12 ~~(a) as regards the customer as soon as a letter of credit is  
13 sent to him or the letter of credit or an authorized written  
14 advice of its issuance is sent to the beneficiary; and~~

15 ~~(b) as regards the beneficiary when he receives a letter of  
16 credit or an authorized written advice of its issuance.~~

17 ~~(2) Unless otherwise agreed once an irrevocable credit is  
18 established as regards the customer it can be modified or revoked  
19 only with the consent of the customer and once it is established  
20 as regards the beneficiary it can be modified or revoked only  
21 with his consent.~~

22 ~~(3) Unless otherwise agreed after a revocable credit is  
23 established it may be modified or revoked by the issuer without  
24 notice to or consent from the customer or beneficiary.~~

25 ~~(4) Notwithstanding any modification or revocation of a  
26 revocable credit any person authorized to honor or negotiate  
27 under the terms of the original credit is entitled to~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

11

~~1 reimbursement for or honor of any draft or demand for payment  
2 duly honored or negotiated before receipt of notice of the modi-  
3 fication or revocation and the issuer in turn is entitled to  
4 reimbursement from its customer.~~

5 (1) A LETTER OF CREDIT IS ISSUED AND BECOMES ENFORCEABLE  
6 ACCORDING TO ITS TERMS AGAINST THE ISSUER WHEN THE ISSUER SENDS  
7 OR OTHERWISE TRANSMITS IT TO THE PERSON REQUESTED TO ADVISE OR TO  
8 THE BENEFICIARY. A LETTER OF CREDIT IS REVOCABLE ONLY IF IT SO  
9 PROVIDES.

10 (2) AFTER A LETTER OF CREDIT IS ISSUED, RIGHTS AND OBLIGA-  
11 TIONS OF A BENEFICIARY, APPLICANT, CONFIRMER, AND ISSUER ARE NOT  
12 AFFECTED BY AN AMENDMENT OR CANCELLATION TO WHICH THAT PERSON HAS  
13 NOT CONSENTED EXCEPT TO THE EXTENT THE LETTER OF CREDIT PROVIDES  
14 THAT IT IS REVOCABLE OR THAT THE ISSUER MAY AMEND OR CANCEL THE  
15 LETTER OF CREDIT WITHOUT THAT CONSENT.

16 (3) IF THERE IS NO STATED EXPIRATION DATE OR OTHER PROVISION  
17 THAT DETERMINES ITS DURATION, A LETTER OF CREDIT EXPIRES 1 YEAR  
18 AFTER ITS STATED DATE OF ISSUANCE OR, IF NONE IS STATED, AFTER  
19 THE DATE ON WHICH IT IS ISSUED.

20 (4) A LETTER OF CREDIT THAT STATES THAT IT IS PERPETUAL  
21 EXPIRES 5 YEARS AFTER ITS STATED DATE OF ISSUANCE, OR IF NONE IS  
22 STATED, AFTER THE DATE ON WHICH IT IS ISSUED.

23 Sec. 5107. ~~(1) Unless otherwise specified an advising bank  
24 by advising a credit issued by another bank does not assume any  
25 obligation to honor drafts drawn or demands for payment made  
26 under the credit but it does assume obligation for the accuracy  
27 of its own statement.~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

12

1       ~~(2) A confirming bank by confirming a credit becomes~~  
2 ~~directly obligated on the credit to the extent of its confirma-~~  
3 ~~tion as though it were its issuer and acquires the rights of an~~  
4 ~~issuer.~~

5       ~~(3) Even though an advising bank incorrectly advises the~~  
6 ~~terms of a credit it has been authorized to advise the credit is~~  
7 ~~established as against the issuer to the extent of its original~~  
8 ~~terms.~~

9       ~~(4) Unless otherwise specified the customer bears as against~~  
10 ~~the issuer all risks of transmission and reasonable translation~~  
11 ~~or interpretation of any message relating to a credit.~~

12       (1) A CONFIRMER IS DIRECTLY OBLIGATED ON A LETTER OF CREDIT  
13 AND HAS THE RIGHTS AND OBLIGATIONS OF AN ISSUER TO THE EXTENT OF  
14 ITS CONFIRMATION. THE CONFIRMER ALSO HAS RIGHTS AGAINST AND  
15 OBLIGATIONS TO THE ISSUER AS IF THE ISSUER WERE AN APPLICANT AND  
16 THE CONFIRMER HAD ISSUED THE LETTER OF CREDIT AT THE REQUEST AND  
17 FOR THE ACCOUNT OF THE ISSUER.

18       (2) A NOMINATED PERSON WHO IS NOT A CONFIRMER IS NOT OBLI-  
19 GATED TO HONOR OR OTHERWISE GIVE VALUE FOR A PRESENTATION.

20       (3) A PERSON REQUESTED TO ADVISE MAY DECLINE TO ACT AS AN  
21 ADVISER. AN ADVISER THAT IS NOT A CONFIRMER IS NOT OBLIGATED TO  
22 HONOR OR GIVE VALUE FOR A PRESENTATION. AN ADVISER UNDERTAKES TO  
23 THE ISSUER AND TO THE BENEFICIARY ACCURATELY TO ADVISE THE TERMS  
24 OF THE LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE  
25 RECEIVED BY THAT PERSON AND UNDERTAKES TO THE BENEFICIARY TO  
26 CHECK THE APPARENT AUTHENTICITY OF THE REQUEST TO ADVISE. EVEN

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

13

1 IF THE ADVICE IS INACCURATE, THE LETTER OF CREDIT, CONFIRMATION,  
2 OR AMENDMENT IS ENFORCEABLE AS ISSUED.

3 (4) A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE  
4 TERMS OF A LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE  
5 HAS THE RIGHTS AND OBLIGATIONS OF AN ADVISER UNDER SUBSECTION  
6 (3). THE TERMS IN THE NOTICE TO THE TRANSFEREE BENEFICIARY MAY  
7 DIFFER FROM THE TERMS IN ANY NOTICE TO THE TRANSFEROR BENEFICIARY  
8 TO THE EXTENT PERMITTED BY THE LETTER OF CREDIT, CONFIRMATION,  
9 AMENDMENT, OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

10 Sec. 5108. ~~(1) A credit which specifies that any person~~  
11 ~~purchasing or paying drafts drawn or demands for payment made~~  
12 ~~under it must note the amount of the draft or demand on the~~  
13 ~~letter or advice of credit is a "notation of credit".~~

14 ~~(2) Under a notation credit~~

15 ~~(a) a person paying the beneficiary or purchasing a draft or~~  
16 ~~demand for payment from him acquires a right to honor only if the~~  
17 ~~appropriate notation is made and by transferring or forwarding~~  
18 ~~for honor the documents under the credit such a person warrants~~  
19 ~~to the issuer that the notation has been made; and~~

20 ~~(b) unless the credit or a signed statement that an appro-~~  
21 ~~priate notation has been made accompanies the draft or demand for~~  
22 ~~payment the issuer may delay honor until evidence of notation has~~  
23 ~~been procured which is satisfactory to it but its obligation and~~  
24 ~~that of its customer continue for a reasonable time not exceeding~~  
25 ~~30 days to obtain such evidence.~~

26 ~~(3) If the credit is not a notation credit~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

14

1 ~~(a) the issuer may honor complying drafts or demands for~~  
2 ~~payment presented to it in the order in which they are presented~~  
3 ~~and is discharged pro tanto by honor of any such draft or demand;~~

4 ~~(b) as between competing good faith purchasers of complying~~  
5 ~~drafts or demands the person first purchasing has priority over a~~  
6 ~~subsequent purchaser even though the later purchased draft or~~  
7 ~~demand has been first honored.~~

8 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5109, AN ISSUER  
9 SHALL HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD  
10 PRACTICE REFERRED TO IN SUBSECTION (5), APPEARS ON ITS FACE  
11 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF  
12 CREDIT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 5113 AND UNLESS  
13 OTHERWISE AGREED WITH THE APPLICANT, AN ISSUER SHALL DISHONOR A  
14 PRESENTATION THAT DOES NOT APPEAR TO COMPLY.

15 (2) AN ISSUER HAS A REASONABLE TIME AFTER PRESENTATION, BUT  
16 NOT BEYOND THE END OF THE SEVENTH BUSINESS DAY OF THE ISSUER  
17 AFTER THE DAY OF ITS RECEIPT OF DOCUMENTS TO DO 1 OR MORE OF THE  
18 FOLLOWING:

19 (A) TO HONOR.

20 (B) IF THE LETTER OF CREDIT PROVIDES FOR HONOR TO BE COM-  
21 PLETED MORE THAN 7 BUSINESS DAYS AFTER PRESENTATION, TO ACCEPT A  
22 DRAFT OR INCUR A DEFERRED OBLIGATION.

23 (C) TO GIVE NOTICE TO THE PRESENTER OF DISCREPANCIES IN THE  
24 PRESENTATION.

25 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4), AN  
26 ISSUER IS PRECLUDED FROM ASSERTING AS A BASIS FOR DISHONOR ANY

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

15

1 DISCREPANCY IF TIMELY NOTICE IS NOT GIVEN, OR ANY DISCREPANCY NOT  
2 STATED IN THE NOTICE IF TIMELY NOTICE IS GIVEN.

3 (4) FAILURE TO GIVE THE NOTICE SPECIFIED IN SUBSECTION (2)  
4 OR TO MENTION FRAUD, FORGERY, OR EXPIRATION IN THE NOTICE DOES  
5 NOT PRECLUDE THE ISSUER FROM ASSERTING AS A BASIS FOR DISHONOR  
6 FRAUD OR FORGERY AS DESCRIBED IN SECTION 5109(1) OR EXPIRATION OF  
7 THE LETTER OF CREDIT BEFORE PRESENTATION.

8 (5) AN ISSUER SHALL OBSERVE STANDARD PRACTICE OF FINANCIAL  
9 INSTITUTIONS THAT REGULARLY ISSUE LETTERS OF CREDIT.  
10 DETERMINATION OF THE ISSUER'S OBSERVANCE OF THE STANDARD PRACTICE  
11 IS A MATTER OF INTERPRETATION FOR THE COURT. THE COURT SHALL  
12 OFFER THE PARTIES A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE OF  
13 THE STANDARD PRACTICE.

14 (6) AN ISSUER IS NOT RESPONSIBLE FOR:

15 (A) THE PERFORMANCE OR NONPERFORMANCE OF THE UNDERLYING CON-  
16 TRACT, ARRANGEMENT, OR TRANSACTION.

17 (B) AN ACT OR OMISSION OF OTHERS.

18 (C) OBSERVANCE OR KNOWLEDGE OF THE USAGE OF A PARTICULAR  
19 TRADE OTHER THAN THE STANDARD PRACTICE REFERRED TO IN SUBSECTION  
20 (5).

21 (7) IF AN UNDERTAKING CONSTITUTING A LETTER OF CREDIT UNDER  
22 SECTION 5102(1)(J) CONTAINS NONDOCUMENTARY CONDITIONS, AN ISSUER  
23 SHALL DISREGARD THE NONDOCUMENTARY CONDITIONS AND TREAT THEM AS  
24 IF THEY WERE NOT STATED.

25 (8) AN ISSUER THAT HAS DISHONORED A PRESENTATION SHALL  
26 RETURN THE DOCUMENTS OR HOLD THEM AT THE DISPOSAL OF, AND SEND  
27 ADVICE TO THAT EFFECT TO, THE PRESENTER.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

16

1 (9) AN ISSUER THAT HAS HONORED A PRESENTATION AS PERMITTED  
2 OR REQUIRED BY THIS ARTICLE:

3 (A) IS ENTITLED TO BE REIMBURSED BY THE APPLICANT IN IMMEDI-  
4 ATELY AVAILABLE FUNDS NOT LATER THAN THE DATE OF ITS PAYMENT OF  
5 FUNDS.

6 (B) TAKES THE DOCUMENTS FREE OF CLAIMS OF THE BENEFICIARY OR  
7 PRESENTER.

8 (C) IS PRECLUDED FROM ASSERTING A RIGHT OF RECOURSE ON A  
9 DRAFT UNDER SECTIONS 3414 AND 3415.

10 (D) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 5110 AND 5117,  
11 IS PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE GIVEN  
12 BY MISTAKE TO THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN  
13 THE DOCUMENTS OR TENDER WHICH ARE APPARENT ON THE FACE OF THE  
14 PRESENTATION.

15 (E) IS DISCHARGED TO THE EXTENT OF ITS PERFORMANCE UNDER THE  
16 LETTER OF CREDIT UNLESS THE ISSUER HONORED A PRESENTATION IN  
17 WHICH A REQUIRED SIGNATURE OF A BENEFICIARY WAS FORGED.

18 Sec. 5109. ~~(1) An issuer's obligation to its customer~~  
19 ~~includes good faith and observance of any general banking usage~~  
20 ~~but unless otherwise agreed does not include liability or respon-~~  
21 ~~sibility~~

22 ~~(a) for performance of the underlying contract for sale or~~  
23 ~~other transaction between the customer and the beneficiary; or~~

24 ~~(b) for any act or omission of any person other than itself~~  
25 ~~or its own branch or for loss or destruction of a draft, demand~~  
26 ~~or document in transit or in the possession of others; or~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

17

1 ~~(c) based on knowledge or lack of knowledge of any usage of~~  
2 ~~any particular trade.~~

3 ~~(2) An issuer must examine documents with care so as to~~  
4 ~~ascertain that on their face they appear to comply with the terms~~  
5 ~~of the credit but unless otherwise agreed assumes no liability or~~  
6 ~~responsibility for the genuineness, falsification or effect of~~  
7 ~~any document which appears on such examination to be regular on~~  
8 ~~its face.~~

9 ~~(3) A non-bank issuer is not bound by any banking usage of~~  
10 ~~which it has no knowledge.~~

11 (1) IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE  
12 STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF  
13 CREDIT, BUT A REQUIRED DOCUMENT IS FORGED OR MATERIALLY FRAUDU-  
14 LENT, OR HONOR OF THE PRESENTATION WOULD FACILITATE A MATERIAL  
15 FRAUD BY THE BENEFICIARY ON THE ISSUER OR APPLICANT:

16 (A) THE ISSUER SHALL HONOR THE PRESENTATION, IF HONOR IS  
17 DEMANDED BY 1 OR MORE OF THE FOLLOWING:

18 (i) A NOMINATED PERSON WHO HAS GIVEN VALUE IN GOOD FAITH AND  
19 WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD.

20 (ii) A CONFIRMER WHO HAS HONORED ITS CONFIRMATION IN GOOD  
21 FAITH.

22 (iii) A HOLDER IN DUE COURSE OF A DRAFT DRAWN UNDER THE  
23 LETTER OF CREDIT WHICH WAS TAKEN AFTER ACCEPTANCE BY THE ISSUER  
24 OR NOMINATED PERSON.

25 (iv) AN ASSIGNEE OF THE ISSUER'S OR NOMINATED PERSON'S  
26 DEFERRED OBLIGATION THAT WAS TAKEN FOR VALUE AND WITHOUT NOTICE

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

18

1 OF FORGERY OR MATERIAL FRAUD AFTER THE OBLIGATION WAS INCURRED BY  
2 THE ISSUER OR NOMINATED PERSON.

3 (B) THE ISSUER, ACTING IN GOOD FAITH, MAY HONOR OR DISHONOR  
4 THE PRESENTATION IN ANY OTHER CAUSE.

5 (2) IF AN APPLICANT CLAIMS THAT A REQUIRED DOCUMENT IS  
6 FORGED OR MATERIALLY FRAUDULENT OR THAT HONOR OF THE PRESENTATION  
7 WOULD FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY ON THE  
8 ISSUER OR APPLICANT, A COURT OF COMPETENT JURISDICTION MAY TEMPO-  
9 RARILY OR PERMANENTLY ENJOIN THE ISSUER FROM HONORING A PRESENTA-  
10 TION OR GRANT SIMILAR RELIEF AGAINST THE ISSUER OR OTHER PERSONS  
11 ONLY IF THE COURT FINDS ALL OF THE FOLLOWING:

12 (A) THE RELIEF IS NOT PROHIBITED UNDER THE LAW APPLICABLE TO  
13 AN ACCEPTED DRAFT OR DEFERRED OBLIGATION INCURRED BY THE ISSUER.

14 (B) A BENEFICIARY, ISSUER, OR NOMINATED PERSON WHO MAY BE  
15 ADVERSELY AFFECTED IS ADEQUATELY PROTECTED AGAINST LOSS THAT IT  
16 MAY SUFFER BECAUSE THE RELIEF IS GRANTED.

17 (C) ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE RELIEF  
18 UNDER THE LAW OF THIS STATE HAVE BEEN MET.

19 (D) ON THE BASIS OF THE INFORMATION SUBMITTED TO THE COURT,  
20 THE APPLICANT IS MORE LIKELY THAN NOT TO SUCCEED UNDER ITS CLAIM  
21 OF FORGERY OR MATERIAL FRAUD AND THE PERSON DEMANDING HONOR DOES  
22 NOT QUALIFY FOR PROTECTION UNDER SUBSECTION (1)(A).

23 Sec. 5110. ~~(1) Unless otherwise specified a credit may be~~  
24 ~~used in portions in the discretion of the beneficiary.~~

25 ~~(2) Unless otherwise specified a person by presenting a doc-~~  
26 ~~umentary draft or demand for payment under a credit relinquishes~~  
27 ~~upon its honor all claims to the documents and a person by~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

19

1 ~~transferring such draft or demand or causing such presentment~~  
2 ~~authorizes such relinquishment. An explicit reservation of claim~~  
3 ~~makes the draft or demand noncomplying.~~

4 (1) IF PRESENTATION IS HONORED, THE BENEFICIARY WARRANTS:

5 (A) TO THE ISSUER, ANY OTHER PERSON TO WHOM PRESENTATION IS  
6 MADE, AND THE APPLICANT THAT THERE IS NO FRAUD OR FORGERY OF THE  
7 KIND DESCRIBED IN SECTION 5109(1).

8 (B) TO THE APPLICANT THAT THE DRAWING DOES NOT VIOLATE ANY  
9 AGREEMENT BETWEEN THE APPLICANT AND BENEFICIARY OR ANY OTHER  
10 AGREEMENT INTENDED BY THEM TO BE AUGMENTED BY THE LETTER OF  
11 CREDIT.

12 (2) THE WARRANTIES IN SUBSECTION (1) ARE IN ADDITION TO WAR-  
13 RANTIES ARISING UNDER ARTICLES 3, 4, 7, AND 8 BECAUSE OF THE PRE-  
14 SENTATION OR TRANSFER OF DOCUMENTS COVERED BY ANY OF THOSE  
15 ARTICLES.

16 Sec. 5111. ~~(1) Unless otherwise agreed the beneficiary by~~  
17 ~~transferring or presenting a documentary draft or demand for pay-~~  
18 ~~ment warrants to all interested parties that the necessary condi-~~  
19 ~~tions of the credit have been complied with. This is in addition~~  
20 ~~to any warrants arising under articles 3, 4, 7 and 8.~~

21 ~~(2) Unless otherwise agreed a negotiating, advising, con-~~  
22 ~~firming, collecting or issuing bank presenting or transferring a~~  
23 ~~draft or demand for payment under a credit warrants only the mat-~~  
24 ~~ters warranted by a collecting bank under article 4 and any such~~  
25 ~~bank transferring a document warrants only the matters warranted~~  
26 ~~by an intermediary under articles 7 and 8.~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

20

1 (1) IF AN ISSUER WRONGFULLY DISHONORS OR REPUDIATES ITS  
2 OBLIGATION TO PAY MONEY UNDER A LETTER OF CREDIT BEFORE  
3 PRESENTATION, THE BENEFICIARY, SUCCESSOR, OR NOMINATED PERSON  
4 PRESENTING ON ITS OWN BEHALF MAY RECOVER FROM THE ISSUER THE  
5 AMOUNT THAT IS THE SUBJECT OF THE DISHONOR OR REPUDIATION. IF  
6 THE ISSUER'S OBLIGATION UNDER THE LETTER OF CREDIT IS NOT FOR THE  
7 PAYMENT OF MONEY, THE CLAIMANT MAY OBTAIN SPECIFIC PERFORMANCE  
8 OR, AT THE CLAIMANT'S ELECTION, RECOVER AN AMOUNT EQUAL TO THE  
9 VALUE OF PERFORMANCE FROM THE ISSUER. IN EITHER CASE, THE CLAIM-  
10 ANT MAY ALSO RECOVER INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES.  
11 THE CLAIMANT IS NOT OBLIGATED TO TAKE ACTION TO AVOID DAMAGES  
12 THAT MIGHT BE DUE FROM THE ISSUER UNDER THIS SUBSECTION. IF,  
13 ALTHOUGH NOT OBLIGATED TO DO SO, THE CLAIMANT AVOIDS DAMAGES, THE  
14 CLAIMANT'S RECOVERY FROM THE ISSUER MUST BE REDUCED BY THE AMOUNT  
15 OF DAMAGES AVOIDED. THE ISSUER HAS THE BURDEN OF PROVING THE  
16 AMOUNT OF DAMAGES AVOIDED. IN THE CASE OF REPUDIATION THE CLAIM-  
17 ANT NEED NOT PRESENT ANY DOCUMENT.

18 (2) IF AN ISSUER WRONGFULLY DISHONORS A DRAFT OR DEMAND  
19 PRESENTED UNDER A LETTER OF CREDIT OR HONORS A DRAFT OR DEMAND IN  
20 BREACH OF ITS OBLIGATION TO THE APPLICANT, THE APPLICANT MAY  
21 RECOVER DAMAGES RESULTING FROM THE BREACH, INCLUDING INCIDENTAL  
22 BUT NOT CONSEQUENTIAL DAMAGES, LESS ANY AMOUNT SAVED AS A RESULT  
23 OF THE BREACH.

24 (3) IF AN ADVISER OR NOMINATED PERSON OTHER THAN A CONFIRMER  
25 BREACHES AN OBLIGATION UNDER THIS ARTICLE OR AN ISSUER BREACHES  
26 AN OBLIGATION NOT COVERED IN SUBSECTION (1) OR (2), A PERSON TO  
27 WHOM THE OBLIGATION IS OWED MAY RECOVER DAMAGES RESULTING FROM

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

21

1 THE BREACH, INCLUDING INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES,  
2 LESS ANY AMOUNT SAVED AS A RESULT OF THE BREACH. TO THE EXTENT  
3 OF THE CONFIRMATION, A CONFIRMER HAS THE LIABILITY OF AN ISSUER  
4 SPECIFIED IN THIS SUBSECTION AND SUBSECTIONS (1) AND (2).

5 (4) AN ISSUER, NOMINATED PERSON, OR ADVISER WHO IS FOUND  
6 LIABLE UNDER SUBSECTION (1), (2), OR (3) SHALL PAY INTEREST ON  
7 THE AMOUNT OWED FROM THE DATE OF WRONGFUL DISHONOR OR OTHER  
8 APPROPRIATE DATE.

9 (5) REASONABLE ATTORNEY'S FEES AND OTHER EXPENSES OF LITIGA-  
10 TION SHALL BE AWARDED TO THE PREVAILING PARTY IN AN ACTION IN  
11 WHICH A REMEDY IS SOUGHT UNDER THIS ARTICLE.

12 (6) DAMAGES THAT WOULD OTHERWISE BE PAYABLE BY A PARTY FOR  
13 BREACH OF AN OBLIGATION UNDER THIS ARTICLE MAY BE LIQUIDATED BY  
14 AGREEMENT OR UNDERTAKING, BUT ONLY IN AN AMOUNT OR BY A FORMULA  
15 THAT IS REASONABLE IN LIGHT OF THE HARM ANTICIPATED.

16 Sec. 5112. ~~(1) A bank to which a documentary draft or~~  
17 ~~demand for payment is presented under a credit may without dis-~~  
18 ~~honor of the draft, demand or credit~~

19 ~~(a) defer honor until the close of the third banking day~~  
20 ~~following receipt of the documents; and~~

21 ~~(b) further defer honor if the presenter has expressly or~~  
22 ~~impliedly consented thereto. Failure to honor within the time~~  
23 ~~here specified constitutes dishonor of the draft or demand and of~~  
24 ~~the credit except as otherwise provided in subsection (4) of sec-~~  
25 ~~tion 5114 on conditional payment.~~

26 ~~(2) Upon dishonor the bank may unless otherwise instructed~~  
27 ~~fulfill its duty to return the draft or demand and the documents~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

22

1 ~~by holding them at the disposal of the presenter and sending him~~  
2 ~~an advice to that effect.~~

3 ~~(3) "Presenter" means any person presenting a draft or~~  
4 ~~demand for payment for honor under a credit even though that~~  
5 ~~person is a confirming bank or other correspondent which is~~  
6 ~~acting under an issuer's authorization.~~

7 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 5113, UNLESS A  
8 LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE RIGHT OF A  
9 BENEFICIARY TO DRAW OR OTHERWISE DEMAND PERFORMANCE UNDER A  
10 LETTER OF CREDIT MAY NOT BE TRANSFERRED.

11 (2) EVEN IF A LETTER OF CREDIT PROVIDES THAT IT IS TRANSFER-  
12 ABLE, THE ISSUER MAY REFUSE TO RECOGNIZE OR CARRY OUT A TRANSFER  
13 IF EITHER OF THE FOLLOWING APPLIES:

14 (A) THE TRANSFER WOULD VIOLATE APPLICABLE LAW.

15 (B) THE TRANSFEROR OR TRANSFEREE HAS FAILED TO COMPLY WITH  
16 ANY REQUIREMENT STATED IN THE LETTER OF CREDIT OR ANY OTHER  
17 REQUIREMENT RELATING TO TRANSFER IMPOSED BY THE ISSUER WHICH IS  
18 WITHIN THE STANDARD PRACTICE REFERRED TO IN SECTION 5108(5) OR IS  
19 OTHERWISE REASONABLE UNDER THE CIRCUMSTANCES.

20 Sec. 5113. ~~(1) A bank seeking to obtain (whether for~~  
21 ~~itself or another) honor, negotiation or reimbursement under a~~  
22 ~~credit may give an indemnity to induce such honor, negotiation or~~  
23 ~~reimbursement.~~

24 ~~(2) An indemnity agreement inducing honor, negotiation or~~  
25 ~~reimbursement~~

26 ~~(a) unless otherwise explicitly agreed applies to defects in~~  
27 ~~the documents but not in the goods; and~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

23

1       ~~(b) unless a longer time is explicitly agreed expires at the~~  
2 ~~end of 10 business days following receipt of the documents by the~~  
3 ~~ultimate customer unless notice of objection is sent before such~~  
4 ~~expiration date. The ultimate customer may send notice of objec-~~  
5 ~~tion to the person from whom he received the documents and any~~  
6 ~~bank receiving such notice is under a duty to send notice to its~~  
7 ~~transferor before its midnight deadline.~~

8       (1) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,  
9 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF  
10 VALUE IN THE NAME OF THE BENEFICIARY WITHOUT DISCLOSING ITS  
11 STATUS AS A SUCCESSOR.

12       (2) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS,  
13 SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF  
14 VALUE IN ITS OWN NAME AS THE DISCLOSED SUCCESSOR OF THE  
15 BENEFICIARY. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5), AN  
16 ISSUER SHALL RECOGNIZE A DISCLOSED SUCCESSOR OF A BENEFICIARY AS  
17 BENEFICIARY IN FULL SUBSTITUTION FOR ITS PREDECESSOR UPON COMPLI-  
18 ANCE WITH THE REQUIREMENTS FOR RECOGNITION BY THE ISSUER OF A  
19 TRANSFER OF DRAWING RIGHTS BY OPERATION OF LAW UNDER THE STANDARD  
20 PRACTICE REFERRED TO IN SECTION 5108(5) OR, IN THE ABSENCE OF  
21 SUCH A PRACTICE, COMPLIANCE WITH OTHER REASONABLE PROCEDURES SUFFI-  
22 CIENT TO PROTECT THE ISSUER.

23       (3) AN ISSUER IS NOT OBLIGED TO DETERMINE WHETHER A PUR-  
24 PORTED SUCCESSOR IS A SUCCESSOR OF A BENEFICIARY OR WHETHER THE  
25 SIGNATURE OF A PURPORTED SUCCESSOR IS GENUINE OR AUTHORIZED.

26       (4) HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING  
27 PRESENTATION UNDER SUBSECTION (1) OR (2) HAS THE CONSEQUENCES

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

24

1 SPECIFIED IN SECTION 5108(9) EVEN IF THE PURPORTED SUCCESSOR IS  
2 NOT THE SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN THE NAME  
3 OF THE BENEFICIARY OR OF A DISCLOSED SUCCESSOR BY A PERSON WHO IS  
4 NEITHER THE BENEFICIARY NOR THE SUCCESSOR OF THE BENEFICIARY ARE  
5 FORGED DOCUMENTS FOR THE PURPOSES OF SECTION 5109.

6 (5) AN ISSUER WHOSE RIGHTS OF REIMBURSEMENT ARE NOT COVERED  
7 BY SUBSECTION (4) OR SUBSTANTIALLY SIMILAR LAW AND ANY CONFIRMER  
8 OR NOMINATED PERSON MAY DECLINE TO RECOGNIZE A PRESENTATION UNDER  
9 SUBSECTION (2).

10 (6) A BENEFICIARY WHOSE NAME IS CHANGED AFTER THE ISSUANCE  
11 OF A LETTER OF CREDIT HAS THE SAME RIGHTS AND OBLIGATIONS AS A  
12 SUCCESSOR OF A BENEFICIARY UNDER THIS SECTION.

13 Sec. 5114. ~~(1) An issuer must honor a draft or demand for~~  
14 ~~payment which complies with the terms of the relevant credit~~  
15 ~~regardless of whether the goods or documents conform to the~~  
16 ~~underlying contract for sale or other contract between the cus-~~  
17 ~~tomer and the beneficiary. The issuer is not excused from honor~~  
18 ~~of such a draft or demand by reason of an additional general term~~  
19 ~~that all documents must be satisfactory to the issuer, but an~~  
20 ~~issuer may require that specified documents must be satisfactory~~  
21 ~~to it.~~

22 ~~(2) Unless otherwise agreed when documents appear on their~~  
23 ~~face to comply with the terms of a credit, but a required docu-~~  
24 ~~ment does not in fact conform to the warranties made on negotia-~~  
25 ~~tion or transfer of a document of title (section 7507) or of a~~  
26 ~~certificated security (section 8306) or is forged or fraudulent~~  
27 ~~or there is fraud in the transaction.~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

25

1 ~~(a) the issuer must honor the draft on demand for payment if~~  
2 ~~honor is demanded by a negotiating bank or other holder of the~~  
3 ~~draft or demand which has taken the draft or demand under the~~  
4 ~~credit and under circumstances which would make it a holder in~~  
5 ~~due course (section 3302) and in an appropriate case would make~~  
6 ~~it a person to whom a document of title has been duly negotiated~~  
7 ~~(section 7502) or a bona fide purchaser of a certificated secur-~~  
8 ~~ity (section 8302); and~~

9 ~~(b) in all other cases as against its customer, an issuer~~  
10 ~~acting in good faith may honor the draft or demand for payment~~  
11 ~~despite notification from the customer of fraud, forgery or other~~  
12 ~~defect not apparent on the face of the documents but a court of~~  
13 ~~appropriate jurisdiction may enjoin such honor.~~

14 ~~(3) Unless otherwise agreed an issuer which has duly honored~~  
15 ~~a draft or demand for payment is entitled to immediate reimburse-~~  
16 ~~ment of any payment made under the credit and to be put in effec-~~  
17 ~~tively available funds not later than the day before maturity of~~  
18 ~~any acceptance made under the credit.~~

19 ~~(4) When a credit provides for payment by the issuer on~~  
20 ~~receipt of notice that the required documents are in the posses-~~  
21 ~~sion of a correspondent or other agent of the issuer~~

22 ~~(a) any payment made on receipt of the notice is condition-~~  
23 ~~al; and~~

24 ~~(b) the issuer may reject documents which do not comply with~~  
25 ~~the credit if it does so within 3 banking days following its~~  
26 ~~receipt of the documents; and~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

26

1       ~~(c) in the event of such rejection, the issuer is entitled~~  
2 ~~by charge back or otherwise to return of the payment made.~~

3       ~~(5) In the case covered by subsection (4) failure to reject~~  
4 ~~documents within the time specified in subdivision (b) consti-~~  
5 ~~tutes acceptance of the documents and makes the payment final in~~  
6 ~~favor of the beneficiary.~~

7       (1) IN THIS SECTION, "PROCEEDS OF A LETTER OF CREDIT" MEANS  
8 THE CASH, CHECK, ACCEPTED DRAFT, OR OTHER ITEM OF VALUE PAID OR  
9 DELIVERED UPON HONOR OR GIVING OF VALUE BY THE ISSUER OR ANY NOM-  
10 INATED PERSON UNDER THE LETTER OF CREDIT. THE TERM DOES NOT  
11 INCLUDE A BENEFICIARY'S DRAWING RIGHTS OR DOCUMENTS PRESENTED BY  
12 THE BENEFICIARY.

13       (2) A BENEFICIARY MAY ASSIGN ITS RIGHT TO PART OR ALL OF THE  
14 PROCEEDS OF A LETTER OF CREDIT. THE BENEFICIARY MAY DO SO BEFORE  
15 PRESENTATION AS A PRESENT ASSIGNMENT OF ITS RIGHT TO RECEIVE PRO-  
16 CEEDS CONTINGENT UPON ITS COMPLIANCE WITH THE TERMS AND CONDI-  
17 TIONS OF THE LETTER OF CREDIT.

18       (3) AN ISSUER OR NOMINATED PERSON NEED NOT RECOGNIZE AN  
19 ASSIGNMENT OF PROCEEDS OF A LETTER OF CREDIT UNTIL IT CONSENTS TO  
20 THE ASSIGNMENT.

21       (4) AN ISSUER OR NOMINATED PERSON HAS NO OBLIGATION TO GIVE  
22 OR WITHHOLD ITS CONSENT TO AN ASSIGNMENT OF PROCEEDS OF A LETTER  
23 OF CREDIT, BUT CONSENT MAY NOT BE UNREASONABLY WITHHELD IF THE  
24 ASSIGNEE POSSESSES AND EXHIBITS THE LETTER OF CREDIT AND PRESEN-  
25 TATION OF THE LETTER OF CREDIT IS A CONDITION TO HONOR.

26       (5) RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED PERSON  
27 ARE INDEPENDENT OF THE BENEFICIARY'S ASSIGNMENT OF THE PROCEEDS

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

27

1 OF A LETTER OF CREDIT AND ARE SUPERIOR TO THE ASSIGNEE'S RIGHT TO  
2 THE PROCEEDS.

3       (6) THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN  
4 ASSIGNEE AND AN ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED  
5 PERSON OR THE ISSUER'S OR NOMINATED PERSON'S PAYMENT OF PROCEEDS  
6 TO AN ASSIGNEE OR A THIRD PERSON DO NOT AFFECT THE RIGHTS BETWEEN  
7 THE ASSIGNEE AND ANY PERSON OTHER THAN THE ISSUER, TRANSFEREE  
8 BENEFICIARY, OR NOMINATED PERSON. THE MODE OF CREATING AND PER-  
9 FECTING A SECURITY INTEREST IN OR GRANTING AN ASSIGNMENT OF A  
10 BENEFICIARY'S RIGHTS TO PROCEEDS IS GOVERNED BY ARTICLE 9 OR  
11 OTHER LAW. AGAINST PERSONS OTHER THAN THE ISSUER, TRANSFEREE  
12 BENEFICIARY, OR NOMINATED PERSON, THE RIGHTS AND OBLIGATIONS  
13 ARISING UPON THE CREATION OF A SECURITY INTEREST OR OTHER ASSIGN-  
14 MENT OF A BENEFICIARY'S RIGHT TO PROCEEDS AND ITS PERFECTION ARE  
15 GOVERNED BY ARTICLE 9 OR OTHER LAW.

16       Sec. 5115. ~~-(1) When an issuer wrongfully dishonors a draft~~  
17 ~~or demand for payment presented under a credit the person enti-~~  
18 ~~ttled to honor has with respect to any documents the rights of a~~  
19 ~~person in the position of a seller (section 2707) and may recover~~  
20 ~~from the issuer the face amount of the draft or demand together~~  
21 ~~with incidental damages under section 2710 on seller's incidental~~  
22 ~~damages and interest but less any amount realized by resale or~~  
23 ~~other use or disposition of the subject matter of the~~  
24 ~~transaction. In the event no resale or other utilization is made~~  
25 ~~the documents, goods or other subject matter involved in the~~  
26 ~~transaction must be turned over to the issuer on payment of~~  
27 ~~judgment.~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

28

1       ~~(2) When an issuer wrongfully cancels or otherwise~~  
2 ~~repudiates a credit before presentment of a draft or demand for~~  
3 ~~payment drawn under it the beneficiary has the rights of a seller~~  
4 ~~after anticipatory repudiation by the buyer under section 2610 if~~  
5 ~~he learns of the repudiation in time reasonably to avoid procure-~~  
6 ~~ment of the required documents. Otherwise the beneficiary has an~~  
7 ~~immediate right of action for wrongful dishonor. AN ACTION TO~~  
8 ~~ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS ARTICLE MUST BE~~  
9 ~~COMMENCED WITHIN 1 YEAR AFTER THE EXPIRATION DATE OF THE RELEVANT~~  
10 ~~LETTER OF CREDIT OR 1 YEAR AFTER THE CAUSE OF ACTION ACCRUES,~~  
11 ~~WHICHEVER OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE~~  
12 ~~BREACH OCCURS, REGARDLESS OF THE AGGRIEVED PARTY'S LACK OF KNOWL-~~  
13 ~~EDGE OF THE BREACH.~~

14       Sec. 5116. ~~(1) The right to draw under a credit can be~~  
15 ~~transferred or assigned only when the credit is expressly desig-~~  
16 ~~nated as transferable or assignable.~~

17       ~~(2) Even though the credit specifically states that it is~~  
18 ~~nontransferable or nonassignable the beneficiary may before per-~~  
19 ~~formance of the conditions of the credit assign his right to~~  
20 ~~proceeds. Such an assignment is an assignment of an account~~  
21 ~~under article 9 on secured transactions and is governed by that~~  
22 ~~article except that:~~

23       ~~(a) The assignment is ineffective until the letter of credit~~  
24 ~~or advice of credit is delivered to the assignee which delivery~~  
25 ~~constitutes perfection of the security interest under article 9;~~  
26 ~~and~~

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

29

1       ~~(b) The issuer may honor drafts or demands for payment drawn~~  
2 ~~under the credit until it receives a notification of the~~  
3 ~~assignment signed by the beneficiary which reasonably identifies~~  
4 ~~the credit involved in the assignment and contains a request to~~  
5 ~~pay the assignee; and~~

6       ~~(c) After what reasonably appears to be such a notification~~  
7 ~~has been received the issuer may without dishonor refuse to~~  
8 ~~accept or pay even to a person otherwise entitled to honor until~~  
9 ~~the letter of credit or advice of credit is exhibited to the~~  
10 ~~issuer.~~

11       ~~(3) Except where the beneficiary has effectively assigned~~  
12 ~~his right to draw or his right to proceeds, nothing in this sec-~~  
13 ~~tion limits his right to transfer or negotiate drafts or demands~~  
14 ~~drawn under the credit.~~

15       (1) THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER  
16 FOR ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION  
17 CHOSEN BY AN AGREEMENT IN THE FORM OF A RECORD SIGNED OR OTHER-  
18 WISE AUTHENTICATED BY THE AFFECTED PARTIES IN THE MANNER PROVIDED  
19 IN SECTION 5104 OR BY A PROVISION IN THE PERSON'S LETTER OF  
20 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING. THE JURISDICTION  
21 WHOSE LAW IS CHOSEN NEED NOT BEAR ANY RELATION TO THE  
22 TRANSACTION.

23       (2) UNLESS SUBSECTION (1) APPLIES, THE LIABILITY OF AN  
24 ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS  
25 GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE PERSON IS  
26 LOCATED. THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS  
27 INDICATED IN THE PERSON'S UNDERTAKING. IF MORE THAN 1 ADDRESS IS

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

30

1 INDICATED, THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS  
2 FROM WHICH THE PERSON'S UNDERTAKING WAS ISSUED. FOR THE PURPOSE  
3 OF JURISDICTION, CHOICE OF LAW, AND RECOGNITION OF INTERBRANCH  
4 LETTERS OF CREDIT, BUT NOT ENFORCEMENT OF A JUDGMENT, ALL  
5 BRANCHES OF A BANK ARE CONSIDERED SEPARATE JURIDICAL ENTITIES AND  
6 A BANK IS CONSIDERED TO BE LOCATED AT THE PLACE WHERE ITS RELE-  
7 VANT BRANCH IS CONSIDERED TO BE LOCATED UNDER THIS SUBSECTION.

8 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE  
9 LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER IS GOVERNED  
10 BY ANY RULES OF CUSTOM OR PRACTICE, SUCH AS THE UNIFORM CUSTOMS  
11 AND PRACTICE FOR DOCUMENTARY CREDITS, TO WHICH THE LETTER OF  
12 CREDIT, CONFIRMATION, OR OTHER UNDERTAKING IS EXPRESSLY MADE  
13 SUBJECT. IF THIS ARTICLE WOULD GOVERN THE LIABILITY OF AN  
14 ISSUER, NOMINATED PERSON, OR ADVISER UNDER SUBSECTION (1) OR (2),  
15 OR THE RELEVANT UNDERTAKING INCORPORATES RULES OF CUSTOM OR PRAC-  
16 TICE, OR THERE IS CONFLICT BETWEEN THIS ARTICLE AND THOSE RULES  
17 AS APPLIED TO THAT UNDERTAKING, THOSE RULES GOVERN EXCEPT TO THE  
18 EXTENT OF ANY CONFLICT WITH THE NONVARIABLE PROVISIONS SPECIFIED  
19 IN SECTION 5103(3).

20 (4) IF THERE IS CONFLICT BETWEEN THIS ARTICLE AND ARTICLE 3,  
21 4, 4A, OR 9, THIS ARTICLE GOVERNS.

22 (5) THE FORUM FOR SETTling DISPUTES ARISING OUT OF AN UNDER-  
23 TAKING WITHIN THIS ARTICLE MAY BE CHOSEN IN THE MANNER AND WITH  
24 THE BINDING EFFECT THAT GOVERNING LAW MAY BE CHOSEN IN ACCORDANCE  
25 WITH SUBSECTION (1).

26 Sec. 5117. ~~(1) Where an issuer or an advising or~~  
27 ~~confirming bank or a bank which has for a customer procured~~

HB5327, As Passed House, May 20, 1998

House Bill No. 5327

31

1 ~~issuance of a credit by another bank becomes insolvent before~~  
2 ~~final payment under the credit and the credit is one to which~~  
3 ~~this article is made applicable by paragraphs (a) or (b) of sec-~~  
4 ~~tion 5102(1) on scope, the receipt or allocation of funds or col-~~  
5 ~~lateral to secure or meet obligations under the credit shall have~~  
6 ~~the following results:~~

7       ~~(a) to the extent of any funds or collateral turned over~~  
8 ~~after or before the insolvency as indemnity against or specifi-~~  
9 ~~cally for the purpose of payment of drafts or demands for payment~~  
10 ~~drawn under the designated credit, the drafts or demands are~~  
11 ~~entitled to payment in preference over depositors or other gen-~~  
12 ~~eral creditors of the issuer or bank; and~~

13       ~~(b) on expiration of the credit or surrender of the~~  
14 ~~beneficiary's rights under it unused any person who has given~~  
15 ~~such funds or collateral is similarly entitled to return thereof;~~  
16 ~~and~~

17       ~~(c) a charge to a general or current account with a bank if~~  
18 ~~specifically consented to for the purpose of indemnity against or~~  
19 ~~payment of drafts or demands for payment drawn under the desig-~~  
20 ~~nated credit falls under the same rules as if the funds had been~~  
21 ~~drawn out in cash and then turned over with specific~~  
22 ~~instructions.~~

23       ~~(2) After honor or reimbursement under this section the cus-~~  
24 ~~tomers or other person for whose account the insolvent bank has~~  
25 ~~acted is entitled to receive the documents involved.~~

26       (1) AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS  
27 SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

32

1 IF THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING  
2 OBLIGATION OWED TO THE BENEFICIARY AND OF THE APPLICANT TO THE  
3 SAME EXTENT AS IF THE ISSUER WERE THE SECONDARY OBLIGOR OF THE  
4 UNDERLYING OBLIGATION OWED TO THE APPLICANT.

5 (2) AN APPLICANT THAT REIMBURSES AN ISSUER IS SUBROGATED TO  
6 THE RIGHTS OF THE ISSUER AGAINST ANY BENEFICIARY, PRESENTER, OR  
7 NOMINATED PERSON TO THE SAME EXTENT AS IF THE APPLICANT WERE THE  
8 SECONDARY OBLIGOR OF THE OBLIGATIONS OWED TO THE ISSUER AND HAS  
9 THE RIGHTS OF SUBROGATION OF THE ISSUER TO THE RIGHTS OF THE BEN-  
10 EFICIARY STATED IN SUBSECTION (1).

11 (3) A NOMINATED PERSON WHO PAYS OR GIVES VALUE AGAINST A  
12 DRAFT OR DEMAND PRESENTED UNDER A LETTER OF CREDIT IS SUBROGATED  
13 TO THE RIGHTS OF ALL OF THE FOLLOWING:

14 (A) THE ISSUER AGAINST THE APPLICANT TO THE SAME EXTENT AS  
15 IF THE NOMINATED PERSON WERE A SECONDARY OBLIGOR OF THE OBLIGA-  
16 TION OWED TO THE ISSUER BY THE APPLICANT.

17 (B) THE BENEFICIARY TO THE SAME EXTENT AS IF THE NOMINATED  
18 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED  
19 TO THE BENEFICIARY.

20 (C) THE APPLICANT TO THE SAME EXTENT AS IF THE NOMINATED  
21 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED  
22 TO THE APPLICANT.

23 (4) NOTWITHSTANDING ANY AGREEMENT OR TERM TO THE CONTRARY,  
24 THE RIGHTS OF SUBROGATION STATED IN SUBSECTIONS (1) AND (2) DO  
25 NOT ARISE UNTIL THE ISSUER HONORS THE LETTER OF CREDIT OR OTHER-  
26 WISE PAYS AND THE RIGHTS IN SUBSECTION (3) DO NOT ARISE UNTIL THE  
27 NOMINATED PERSON PAYS OR OTHERWISE GIVES VALUE. UNTIL THEN, THE

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

33

1 ISSUER, NOMINATED PERSON, AND THE APPLICANT DO NOT DERIVE UNDER  
2 THIS SECTION PRESENT OR PROSPECTIVE RIGHTS FORMING THE BASIS OF A  
3 CLAIM, DEFENSE, OR EXCUSE.

4       Sec. 9103. (1) Documents, instruments, LETTERS OF CREDIT,  
5 and ordinary goods.

6       (a) This subsection applies to documents, ~~and~~ instruments,  
7 RIGHTS TO PROCEEDS OF WRITTEN LETTERS OF CREDIT, and ~~to~~ goods  
8 other than those covered by a certificate of title described in  
9 subsection (2), mobile goods described in subsection (3), and  
10 minerals described in subsection (5).

11       (b) Except as otherwise provided in this subsection, perfec-  
12 tion and the effect of perfection or nonperfection of a security  
13 interest in collateral are governed by the law of the jurisdic-  
14 tion where the collateral is when the last event occurs on which  
15 is based the assertion that the security interest is perfected or  
16 unperfected.

17       (c) If the parties to a transaction creating a purchase  
18 money security interest in goods in 1 jurisdiction understand at  
19 the time that the security interest attaches that the goods will  
20 be kept in another jurisdiction, then the law of the other juris-  
21 diction governs the perfection and the effect of perfection or  
22 nonperfection of the security interest from the time it attaches  
23 until 30 days after the debtor receives possession of the goods  
24 and thereafter if the goods are taken to the other jurisdiction  
25 before the end of the 30-day period.

26       (d) ~~When~~ IF collateral is brought into and kept in this  
27 state while subject to a security interest perfected under the

1 law of the jurisdiction from which the collateral was removed,  
2 the security interest remains perfected, but if action is  
3 required by part 3 of this article to perfect the security  
4 interest:

5       (i) If the action is not taken before the expiration of the  
6 period of perfection in the other jurisdiction or the end of 4  
7 months after the collateral is brought into this state, whichever  
8 period first expires, the security interest becomes unperfected  
9 at the end of that period and is thereafter deemed to have been  
10 unperfected as against a person who became a purchaser after  
11 removal.

12       (ii) If the action is taken before the expiration of the  
13 period specified in subparagraph (i), the security interest con-  
14 tinues perfected thereafter.

15       (iii) For the purpose of priority over a buyer of consumer  
16 goods, (section 9307(14)), the period of the effectiveness of a  
17 filing in the jurisdiction from which the collateral is removed  
18 is governed by the rules relating to perfection in subparagraphs  
19 (i) and (ii).

20       (2) Certificate of title.

21       (a) This subsection applies to goods covered by a certifi-  
22 cate of title issued under a statute of this state or of another  
23 jurisdiction under the law of which indication of a security  
24 interest on the certificate is required as a condition of  
25 perfection.

26       (b) Except as otherwise provided in this subsection,  
27 perfection and the effect of perfection or nonperfection of the

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

35

1 security interest are governed by the law (including the conflict  
2 of laws rules) of the jurisdiction issuing the certificate until  
3 4 months after the goods are removed from that jurisdiction and  
4 thereafter until the goods are registered in another jurisdic-  
5 tion, but in any event not beyond surrender of the certificate.  
6 After the expiration of that period, the goods are not covered by  
7 the certificate of title within the meaning of this section.

8 (c) Except with respect to the rights of a buyer described  
9 in the next paragraph, a security interest, perfected in another  
10 jurisdiction otherwise than by notation on a certificate of  
11 title, in goods brought into this state and thereafter covered by  
12 a certificate of title issued by this state, is subject to the  
13 rules stated in paragraph (d) of subsection (1).

14 (d) If goods are brought into this state while a security  
15 interest therein is perfected in any manner under the law of the  
16 jurisdiction from which the goods are removed and a certificate  
17 of title is issued by the state and the certificate does not show  
18 that the goods are subject to the security interest or that they  
19 may be subject to security interests not shown on the certifi-  
20 cate, the security interest is subordinate to the rights of a  
21 buyer of the goods who is not in the business of selling goods of  
22 that kind to the extent that he or she gives value and receives  
23 delivery of the goods after issuance of the certificate and with-  
24 out knowledge of the security interest.

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

26 (a) This subsection applies to accounts (other than an  
27 account described in subsection (5) on minerals) and general

1 intangibles (other than uncertificated securities), and to goods  
2 which are mobile and which are of a type normally used in more  
3 than 1 jurisdiction, such as motor vehicles, trailers, rolling  
4 stock, airplanes, shipping containers, road building and con-  
5 struction machinery, and commercial harvesting machinery and the  
6 like, if the goods are equipment or are inventory leased or held  
7 for lease by the debtor to others, and are not covered by a cer-  
8 tificate of title described in subsection (2).

9       (b) The law (including the conflict of laws rules) of the  
10 jurisdiction in which the debtor is located governs the perfec-  
11 tion and the effect of perfection or nonperfection of the secur-  
12 ity interest.

13       (c) If, however, the debtor is located in a jurisdiction  
14 which is not a part of the United States, and which does not pro-  
15 vide for perfection of the security interest by filing or record-  
16 ing in that jurisdiction, the law of the jurisdiction in the  
17 United States in which the debtor has its major executive office  
18 in the United States governs the perfection and the effect of  
19 perfection or nonperfection of the security interest through  
20 filing. In the alternative, if the debtor is located in a juris-  
21 diction which is not a part of the United States or Canada and  
22 the collateral is accounts or general intangibles for money due  
23 or to become due, the security interest may be perfected by noti-  
24 fication to the account debtor. As used in this paragraph,  
25 "United States" includes its territories and possessions and the  
26 commonwealth of Puerto Rico.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

37

1 (d) A debtor shall be deemed located at his or her place of  
2 business if he or she has one, at his or her chief executive  
3 office if he or she has more than 1 place of business, otherwise  
4 at his or her residence. If, however, the debtor is a foreign  
5 air carrier under the federal aviation act of 1958, 49  
6 U.S.C. 1301, it shall be deemed located at the designated office  
7 of the agent upon whom service of process may be made on behalf  
8 of the foreign air carrier.

9 (e) A security interest perfected under the law of the  
10 jurisdiction of the location of the debtor is perfected until the  
11 expiration of 4 months after a change of the debtor's location to  
12 another jurisdiction, or until perfection would have ceased by  
13 the law of the first jurisdiction, whichever period first  
14 expires. Unless perfected in the new jurisdiction before the end  
15 of that period, it becomes unperfected thereafter and is deemed  
16 to have been unperfected as against a person who became a pur-  
17 chaser after the change.

18 (4) Chattel paper.

19 The rules stated for goods in subsection (1) apply to a pos-  
20 sessory security interest in chattel paper. The rules stated for  
21 accounts in subsection (3) apply to a nonpossessory security  
22 interest in chattel paper, but the security interest may not be  
23 perfected by notification to the account debtor.

24 (5) Minerals.

25 Perfection and the effect of perfection or nonperfection of  
26 a security interest which is created by a debtor who has an  
27 interest in minerals or the like (including oil and gas) before

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

38

1 extraction and which attaches thereto as extracted, or which  
2 attaches to an account resulting from the sale thereof at the  
3 wellhead or minehead are governed by the law (including the con-  
4 flict of laws rules) of the jurisdiction where the wellhead or  
5 minehead is located.

6 (6) Uncertificated securities.

7 The law, including the conflict of laws rules, of the jurisdic-  
8 tion of organization of the issuer governs the perfection and  
9 the effect of perfection or nonperfection of a security interest  
10 in uncertificated securities.

11 Sec. 9104. This article does not apply:

12 (a) To a security interest subject to any statute of the  
13 United States to the extent that such statute governs the rights  
14 of parties to and third parties affected by transactions in par-  
15 ticular types of property; or

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

17 (c) To a lien given by a statute or other rule of law for  
18 services or materials except as provided in section 9310 on pri-  
19 ority of such liens; or

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

22 (e) To a transfer by a government or governmental subdivi-  
23 sion or agency; or

24 (f) To a sale of accounts or chattel paper as part of a sale  
25 of the business out of which they arose, or an assignment of  
26 accounts or chattel paper which is for the purpose of collection  
27 only, or a transfer of a right to payment under a contract to an

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

39

1 assignee who is also to do the performance under the contract or  
2 a transfer of a single account to an assignee in whole or partial  
3 satisfaction of a preexisting indebtedness; or

4 (g) To a transfer of an interest or claim in or under any  
5 policy of insurance except as provided with respect to proceeds  
6 (section 9306) and priorities in proceeds (section 9312); or

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

9 (i) To any right of setoff; or

10 (j) Except to the extent that provision is made for fixtures  
11 in section 9313, to the creation or transfer of an interest in or  
12 lien on real estate, including a lease or rents thereunder; or

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

15 (l) To a transfer of an interest in any deposit account  
16 (section 9105(1)), except as provided with respect to proceeds  
17 (section 9306) and priorities in proceeds (section 9312).

18 (M) TO A TRANSFER OF AN INTEREST IN A LETTER OF CREDIT OTHER  
19 THAN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT.

20 Sec. 9105. (1) As used in this article unless the context  
21 otherwise requires:

22 (a) "Account debtor" means the person who is obligated on an  
23 account, chattel paper, or general intangible.

24 (b) "Chattel paper" means a writing or writings which evi-  
25 dence both a monetary obligation and a security interest in or a  
26 lease of specific goods, but a charter or other contract  
27 involving the use or hire of a vessel is not chattel paper. When

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

40

1 a transaction is evidenced both by such a security agreement or a  
2 lease and by an instrument or a series of instruments, the group  
3 of writings taken together constitutes chattel paper.

4 (c) "Collateral" means the property subject to a security  
5 interest, and includes accounts and chattel paper which have been  
6 sold.

7 (d) "Debtor" means the person who owes payment or other per-  
8 formance of the obligation secured, whether or not he or she owns  
9 or has rights in the collateral, and includes the seller of  
10 accounts or chattel paper. Where the debtor and the owner of the  
11 collateral are not the same person, the term "debtor" means the  
12 owner of the collateral in any provision of the article dealing  
13 with the collateral, the obligor in any provision dealing with  
14 the obligation, and may include both where the context so  
15 requires.

16 (e) "Deposit account" means a demand, time, savings, pass-  
17 book, or like account maintained with a bank, savings and loan  
18 association, credit union, or like organization, other than an  
19 account evidenced by a certificate of deposit.

20 (f) "Document" means document of title as defined in the  
21 general definitions of article 1, section 1201 and a receipt of  
22 the kind described in section 7201(2).

23 (g) "Encumbrance" includes real estate mortgages and other  
24 liens on real estate and all other rights in real estate that are  
25 not ownership interests.

26 (h) "Goods" includes all things which are movable at the  
27 time the security interest attaches or which are fixtures as

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

41

1 described in section 9313, but does not include money, documents,  
2 instruments, accounts, chattel paper, general intangibles, or  
3 minerals or the like including, but not limited to, oil and gas  
4 before extraction. Goods also include standing timber which is  
5 to be cut and removed under a conveyance or contract for sale,  
6 the unborn young of animals, and growing crops.

7 (i) "Instrument" means a negotiable instrument as defined in  
8 section 3104, a certificated security as defined in section 8102,  
9 or any other writing which evidences a right to the payment of  
10 money and is not itself a security agreement or lease and is of a  
11 type which is in ordinary course of business transferred by  
12 delivery with any necessary indorsement or assignment.

13 (j) "Mortgage" means a consensual interest created by a real  
14 estate mortgage, a trust deed on real estate, or the like.

15 (k) An advance is made "pursuant to commitment" if the  
16 secured party has bound himself or herself to make it, whether or  
17 not a subsequent event of default or other event not within his  
18 or her control has relieved or may relieve him or her from his or  
19 her obligation.

20 (l) "Security agreement" means an agreement which creates or  
21 provides for a security interest.

22 (m) "Secured party" means a lender, seller, or other person  
23 in whose favor there is a security interest, including a person  
24 to whom accounts or chattel paper have been sold. When the hold-  
25 ers of obligations issued under an indenture of trust, equipment  
26 trust agreement, or the like are represented by a trustee or  
27 other person, the representative is the secured party.

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

42

1 (n) "Tax identification number" means a social security  
2 number or federal employer tax identification number.

3 (o) "Transmitting utility" means any person primarily  
4 engaged in the railroad, street railway, or trolley bus business,  
5 the electric or electronics communications transmission business,  
6 the transmission of goods by pipeline, or the transmission or the  
7 production and transmission of electricity, steam, gas or water,  
8 or the provision of sewer service.

9 (2) Other definitions applying to this article and the sec-  
10 tions in which they appear are:

11

12	"Account".	Section 9106.
13	"Attach".	Section 9203.
14	"Construction mortgage".	Section 9313(1).
15	"Consumer goods".	Section 9109(1).
16	"Equipment".	Section 9109(2).
17	"Farm products".	Section 9109(3).
18	"Fixture".	Section 9313.
19	"Fixture filing".	Section 9313.
20	"General intangibles".	Section 9106.
21	"Inventory".	Section 9109(4).
22	"Lien creditor".	Section 9301(3).
23	"Proceeds".	Section 9306(1).
24	"Purchase money security interest".	Section 9107.
25	"United States".	Section 9103.

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

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

43

1

2 "Check". Section 3104.

3 "Holder in due course". Section 3302.

4 "LETTER OF CREDIT". SECTION 5102.

5 "Note". Section 3104.

6 "PROCEEDS OF A LETTER OF CREDIT". SECTION 5114.

7 "Sale". Section 2106.

8 (4) In addition article 1 contains general definitions and  
9 principles of construction and interpretation applicable through-  
10 out this article.

11 Sec. 9106. "Account" means any right to payment for goods  
12 sold or leased or for services rendered which is not evidenced by  
13 an instrument or chattel paper whether or not it has been earned  
14 by performance. "General intangibles" means any personal prop-  
15 erty (including things in action) other than goods, accounts,  
16 chattel paper, documents, instruments, RIGHTS TO PROCEEDS OF  
17 WRITTEN LETTERS OF CREDIT, and money. All rights to payment  
18 earned or unearned under a charter or other contract involving  
19 the use or hire of a vessel and all rights incident to the  
20 charter or contract are accounts.

21 Sec. 9304. (1) A security interest in chattel paper or  
22 negotiable documents may be perfected by filing. A SECURITY  
23 INTEREST IN THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT  
24 CAN BE PERFECTED ONLY BY THE SECURED PARTY'S TAKING POSSESSION OF  
25 THE LETTER OF CREDIT. A security interest in money or instru-  
26 ments, other than certificated securities or instruments which  
27 constitute part of chattel paper, can be perfected only by the

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

44

1 secured party's taking possession, except as provided in  
2 subsections (4) and (5) and section 9306(2) and (3) on proceeds.

3       (2) During the period that goods are in the possession of  
4 the issuer of a negotiable document therefor, a security interest  
5 in the goods is perfected by perfecting a security interest in  
6 the document, and a security interest in the goods otherwise per-  
7 fected during such period is subject thereto.

8       (3) A security interest in goods in the possession of a  
9 bailee other than one who has issued a negotiable document there-  
10 for is perfected by issuance of a document in the name of the  
11 security party or by the bailee's receipt of notification of the  
12 secured party's interest or by filing as to the goods.

13       (4) A security interest in instruments, other than certifi-  
14 cated securities, or negotiable documents is perfected without  
15 filing or the taking of possession for a period of 21 days from  
16 the time it attaches to the extent that it arises for a new value  
17 given under a written security agreement.

18       (5) A security interest remains perfected for a period of 21  
19 days without filing where a secured party having a perfected  
20 security interest in an instrument; other than a certificated  
21 security; a negotiable document; or goods in possession of a  
22 bailee other than one who has issued a negotiable document  
23 therefor:

24       (a) Makes available to the debtor the goods or documents  
25 representing the goods for the purpose of ultimate sale or  
26 exchange or for the purpose of loading, unloading, storing,  
27 shipping, transshipping, manufacturing, processing, or otherwise

**HB5327, As Passed House, May 20, 1998**

House Bill No. 5327

45

1 dealing with them in a manner preliminary to their sale or  
2 exchange; but priority between conflicting security interests in  
3 the goods is subject to section 9312(3); or

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

7 (6) After the 21-day period in subsections (4) and (5), per-  
8 fection depends upon compliance with applicable provisions of  
9 this article.

10 Sec. 9305. A security interest in ~~letters of credit and~~  
11 ~~advices of credit (section 5116(2)(a));~~ goods; instruments,  
12 other than certificated securities; money; negotiable documents;  
13 or chattel paper may be perfected by the secured party's taking  
14 possession of the collateral. A SECURITY INTEREST IN THE RIGHTS  
15 TO PROCEEDS OF A WRITTEN LETTER OF CREDIT CAN BE PERFECTED ONLY  
16 BY THE SECURED PARTY'S TAKING POSSESSION OF THE LETTER OF CREDIT.  
17 If such collateral other than goods covered by a negotiable docu-  
18 ment is held by a bailee, the secured party is deemed to have  
19 possession from the time the bailee receives notification of the  
20 secured party's interest. A security interest is perfected by  
21 possession from the time possession is taken without relation  
22 back and continues only so long as possession is retained, unless  
23 otherwise specified in this article. The security interest may  
24 be otherwise perfected as provided in this article before or  
25 after the period of possession by the secured party.

26 Enacting section 1. This amendatory act takes effect  
27 January 1, 1999.