

UNIFORM COMMERCIAL CODE

CHAPTER 354

HOUSE BILL NO. 1151

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UCC ARTICLE 7 - DOCUMENTS OF TITLE

AN ACT to create and enact a new chapter 41-07 and subsection 7 of section 41-08-03 of the North Dakota Century Code, relating to Uniform Commercial Code Article 7 - Documents of Title; to amend and reenact subsections 5, 6, 10, 14, 15, 20, 25, 26, 27, 38, and 45 of section 41-01-11, subsection 3 of section 41-02-03, subsection 2 of section 41-02-04, subsection 3 of section 41-02-27, subsection 2 of section 41-02-40, subsection 3 of section 41-02-46, subsections 4 and 5 of section 41-02-51, section 41-02-53, subsection 2 of section 41-02-54, subsection 2 of section 41-02-57, subsection 2 of section 41-02-68, section 41-02-84, subdivisions a and o of subsection 1 of section 41-02.1-03, subsection 2 of section 41-02.1-62, subdivision c of subsection 2 of section 41-02.1-74, subsection 3 of section 41-04-04, subsection 3 of section 41-04-22, subsection 2 of section 41-09-02, paragraph 4 of subdivision c of subsection 2 of section 41-09-13, subsection 3 of section 41-09-17, subsection 2 of section 41-09-18, subsection 3 of section 41-09-21, subdivisions e and h of subsection 2 of section 41-09-30, subsection 5 of section 41-09-32, subsection 1 of section 41-09-33, subsections 1 and 2 of section 41-09-34, subsections 2 and 4 of section 41-09-37, subsection 2 of section 41-09-58, and subsection 2 of section 41-09-98 of the North Dakota Century Code, relating to the Uniform Commercial Code; to repeal chapter 41-07 of the North Dakota Century Code, relating to Uniform Commercial Code Article 7 - Documents of Title; and to provide for an application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, 10, 14, 15, 20, 25, 26, 27, 38, and 45 of section 41-01-11 of the North Dakota Century Code are amended and reenacted as follows:

5. "Bearer" means ~~the a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or endorsed in blank.~~
6. "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods; ~~and includes an airbill.~~ "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill. ~~The term does not include a warehouse receipt.~~

10. "Conspicuous". A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term or clause is "conspicuous" or not is for a decision by for the court. Conspicuous terms include the following:
- a. A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and
 - b. Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
14. "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.
15. "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document which means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of it the record is entitled to receive, control, hold, and dispose of the document record and the goods it the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. 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. To be a document of title, a document must purport to be issued 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.
20. "Holder" with respect to an instrument, certificated security, or document of title means the person in possession if, in the case of an instrument, it is payable to bearer or to the order of the person in possession; in the case of a security, the person in possession is the registered owner, the security has been endorsed to the person in possession by the registered owner, or the security is in bearer form; or, in the case of a document of title, the goods are deliverable to bearer or to the order of the person in possession 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;
 - 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; or
 - c. The person in control of a negotiable electronic document of title.
25. A Subject to subsection 27, a person has "notice" of a fact ~~when~~ if:
- a. The person has actual knowledge of it;
 - b. The person has received a notice or notification of it; or
 - c. From all the facts and circumstances known to the person at the time in question the person has reason to know that it exists.
- A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.
26. 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 ~~such~~ the other person actually comes to know of it. A Subject to subsection 27, a person "receives" a notice or notification when:
- a. It comes to ~~the~~ that person's attention; or
 - b. It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at ~~any other place~~ another location held out by ~~the~~ that person as the place for receipt of such communications.
27. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to the ~~person's~~ 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 such communication is part of the individual's regular duties or ~~unless~~ the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
38. "Send" in connection with ~~any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address~~

~~specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending~~ a writing, record, or notice means:

- a. To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or
 - b. In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
45. "Warehouse receipt" means a ~~receipt~~ document of title issued by a person engaged in the business of storing goods for hire.

SECTION 2. AMENDMENT. Subsection 3 of section 41-02-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
 - a. "Check". Section 41-03-04.
 - b. "Consignee". Section 41-07-02.
 - c. "Consignor". Section 41-07-02.
 - d. "Consumer goods". Section 41-09-02.
 - e. "Dishonor". Section 41-03-59.
 - f. "Draft". Section 41-03-04.

SECTION 3. AMENDMENT. Subsection 2 of section 41-02-04 of the North Dakota Century Code is amended and reenacted as follows:

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 (section 41-02-86).

SECTION 4. AMENDMENT. Subsection 3 of section 41-02-27 of the North Dakota Century Code is amended and reenacted as follows:

3. If delivery is authorized and made by way of documents of title otherwise than by subsection 2, then payment is due regardless of where the goods are to be received (a) at the time and place at which

the buyer is to receive delivery of the tangible documents regardless of where the goods are to be received or (b) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence.

SECTION 5. AMENDMENT. Subsection 2 of section 41-02-40 of the North Dakota Century Code is amended and reenacted as follows:

2. If in a case within subsection 1 a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:
 - a. Due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection 1 of section 41-02-56); and
 - b. Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

SECTION 6. AMENDMENT. Subsection 3 of section 41-02-46 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless otherwise explicitly agreed, if delivery is to be made without moving the goods:
 - a. If the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents- and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or
 - b. If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

SECTION 7. AMENDMENT. Subsections 4 and 5 of section 41-02-51 of the North Dakota Century Code are amended and reenacted as follows:

4. If goods are in the possession of a bailee and are to be delivered without being moved:
 - a. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
 - b. Tender to the buyer of a nonnegotiable document of title or of a ~~written direction to record directing~~ the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided under chapter 41-09 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had

a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents:
 - a. The seller must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection 2 of section 41-02-40); and
 - b. Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

SECTION 8. AMENDMENT. Section 41-02-53 of the North Dakota Century Code is amended and reenacted as follows:

41-02-53. (2-505) Seller's shipment under reservation.

1. If the seller has identified goods to the contract by or before shipment:
 - a. The seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
 - b. A nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection 2 of section 41-02-55) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.
2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within section 41-02-52 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

SECTION 9. AMENDMENT. Subsection 2 of section 41-02-54 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Subsection 2 of section 41-02-57 of the North Dakota Century Code is amended and reenacted as follows:

2. If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

- a. On the buyer's receipt of possession or control of a negotiable document of title covering the goods;
- b. On acknowledgment by the bailee of the buyer's right to possession of the goods; or
- c. After the buyer's receipt of possession or control of a nonnegotiable document of title or other ~~written~~ direction to deliver in a record, as provided in subdivision b of subsection 4 of section 41-02-51.

SECTION 11. AMENDMENT. Subsection 2 of section 41-02-68 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 41-02-84 of the North Dakota Century Code is amended and reenacted as follows:

41-02-84. (2-705) Seller's stoppage of delivery in transit or otherwise.

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (section 41-02-81) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
2. As against such buyer the seller may stop delivery until:
 - a. Receipt of the goods by the buyer;
 - b. Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer;
 - c. Such acknowledgment to the buyer by a carrier by reshipment or as ~~warehouseman~~ a warehouse; or
 - d. Negotiation to the buyer of any negotiable document of title covering the goods.
3.
 - a. To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
 - b. After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - c. If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

- d. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

SECTION 13. AMENDMENT. Subdivisions a and o of subsection 1 of section 41-02.1-03 of the North Dakota Century Code are amended and reenacted as follows:

- a. "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- o. "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes ~~receiving~~ acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

SECTION 14. AMENDMENT. Subsection 2 of section 41-02.1-62 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 15. AMENDMENT. Subdivision c of subsection 2 of section 41-02.1-74 of the North Dakota Century Code is amended and reenacted as follows:

- c. Such an acknowledgment to the lessee by a carrier via reshipment or as ~~warehouseman~~ a warehouse.

SECTION 16. AMENDMENT. Subsection 3 of section 41-04-04 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:
 - a. "Acceptance". Section 41-03-46.
 - b. "Alteration". Section 41-03-44.
 - c. "Cashier's check". Section 41-03-04.
 - d. "Certificate of deposit". Section 41-03-04.

- e. "Certified check". Section 41-03-45.
- f. "Check". Section 41-03-04.
- g. "Good faith". Section 41-03-03.
- h. "Holder in due course". Section 41-03-28.
- i. "Instrument". Section 41-03-04.
- j. "Notice of dishonor". Section 41-03-60.
- k. "Order". Section 41-03-03.
- l. "Ordinary care". Section 41-03-03.
- m. "Person entitled to enforce". Section 41-03-27.
- n. "Presentment". Section 41-03-58.
- o. "Promise". Section 41-03-03.
- p. "Prove". Section 41-03-03.
- q. "Teller's check". Section 41-03-04.
- r. "Unauthorized signature". Section 41-03-40.

SECTION 17. AMENDMENT. Subsection 3 of section 41-04-22 of the North Dakota Century Code is amended and reenacted as follows:

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 41-09, except that:
 - a. No security agreement is necessary to make the security interest enforceable (paragraph 1 of subdivision c of subsection 2 of section 41-09-13).
 - b. No filing is required to perfect the security interest.
 - c. The security interest has priority over conflicting perfected security interest in the item, accompanying documents, or proceeds.

SECTION 18. Chapter 41-07 of the North Dakota Century Code is created and enacted as follows:

41-07-01. (7-101) Short title. This article may be cited as Uniform Commercial Code - Documents of Title.

41-07-02. (7-102) Definitions and index of definitions.

1. In this chapter, unless the context otherwise requires:

- a. "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- b. "Carrier" means a person that issues a bill of lading.
- c. "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.
- d. "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.
- e. "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
- f. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- g. "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
- h. "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.
- i. "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
- j. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- k. "Sign" means, with present intent to authenticate or adopt a record:
 - (1) To execute or adopt a tangible symbol; or
 - (2) To attach to or logically associate with the record an electronic sound, symbol, or process.
- l. "Shipper" means a person that enters into a contract of transportation with a carrier.
- m. "Warehouse" means a person engaged in the business of storing goods for hire.

2. Definitions in other sections applying to this chapter and the sections in which they appear are:
 - a. "Contract for sale", section 41-02-06.
 - b. "Lessee in ordinary course", section 41-02.1-03.
 - c. "Receipt" of goods, section 41-02-03.
3. In addition, chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-07-03. (7-103) Relation of article to treaty or statute.

1. This chapter is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.
2. This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.
3. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 114 Stat. 464; 15 U.S.C. section 7001, et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. section 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. section 7003(b)].
4. To the extent there is a conflict between chapter 9-16 and this chapter, this chapter governs.

41-07-04. (7-104) Negotiable and nonnegotiable document of title.

1. Except as otherwise provided in subsection 3, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.
2. A document of title other than one described in subsection 1 is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.
3. A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

41-07-05. (7-105) Reissuance in alternative medium.

1. Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

- a. The person entitled under the electronic document surrenders control of the document to the issuer; and
 - b. The tangible document when issued contains a statement that it is issued in substitution for the electronic document.
2. Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection 1:
 - a. The electronic document ceases to have any effect or validity; and
 - b. The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.
3. Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:
 - a. The person entitled under the tangible document surrenders possession of the document to the issuer; and
 - b. The electronic document when issued contains a statement that it is issued in substitution for the tangible document.
4. Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection 3:
 - a. The tangible document ceases to have any effect or validity; and
 - b. The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

41-07-06. (7-106) Control of electronic document of title.

1. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.
2. A system satisfies subsection 1, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:
 - a. A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in subdivisions d, e, and f, unalterable;
 - b. The authoritative copy identifies the person asserting control as:
 - (1) The person to which the document was issued; or

- h. If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
 - i. A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.
 3. A warehouse may insert in its receipt any terms that are not contrary to this title and do not impair its obligation of delivery under section 41-07-28 or its duty of care under section 41-07-10. Any contrary provision is ineffective.

41-07-09. (7-203) Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

1. The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown", "said to contain", or words of similar import, if the indication is true; or
2. The party or purchaser otherwise has notice of the nonreceipt or misdescription.

41-07-10. (7-204) Duty of care - Contractual limitation of warehouse's liability.

1. A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.
2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.
3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

4. This section does not modify or repeal chapter 60-02.

41-07-11. (7-205) Title under warehouse receipt defeated in certain cases. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

41-07-12. (7-206) Termination of storage at warehouse's option.

1. A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 41-07-16.
2. If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection 1 and section 41-07-16, the warehouse may specify in the notice given under subsection 1 any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.
3. If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.
4. A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.
5. A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

41-07-13. (7-207) Goods must be kept separate - Fungible goods.

1. Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
2. If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of

overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

41-07-14. (7-208) Altered warehouse receipts. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

41-07-15. (7-209) Lien of warehouse.

1. A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.
2. A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. The security interest is governed by chapter 41-09.
3. A warehouse's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

 - a. Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

 - (1) Actual or apparent authority to ship, store, or sell;
 - (2) Power to obtain delivery under section 41-07-28; or
 - (3) Power of disposition under section 41-02-48, subsection 2 of section 41-02.1-34, subsection 2 of section 41-02.1-35,

section 41-09-40, subsection 3 of section 41-09-41, or other statute or rule of law; or

- b. Acquiesce in the procurement by the bailor or its nominee of any document.
4. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.
5. A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

41-07-16. (7-210) Enforcement of warehouse's lien.

1. Except as otherwise provided in subsection 2, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.
2. A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:
 - a. All persons known to claim an interest in the goods must be notified.
 - b. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
 - c. The sale must conform to the terms of the notification.
 - d. The sale must be held at the nearest suitable place to where the goods are held or stored.
 - e. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two

weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

3. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.
4. A warehouse may buy at any public sale held pursuant to this section.
5. A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
6. A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.
7. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
8. If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection 1 or 2.
9. A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

41-07-17. (7-301) Liability for nonreceipt or misdescription - Said to contain - Shipper's weight, load, and count - Improper handling.

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

- a. The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and
 - b. Words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.
3. If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.
4. The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.
5. A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

41-07-18. (7-302) Through bills of lading and similar documents of title.

1. The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.
2. If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.
3. The issuer of a through bill of lading or other document of title described in subsection 1 is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

- a. The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
- b. The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

41-07-19. (7-303) Diversion - Reconsignment - Change of instructions.

1. Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:
 - a. The holder of a negotiable bill;
 - b. The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
 - c. The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
 - d. The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.
2. Unless instructions described in subsection 1 are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

41-07-20. (7-304) Tangible bills of lading in a set.

1. Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
2. If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.
3. If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.
4. A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.
5. The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set.

Delivery in this manner discharges the bailee's obligation on the whole bill.

41-07-21. (7-305) Destination bills.

1. Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.
2. Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 41-07-05, may procure a substitute bill to be issued at any place designated in the request.

41-07-22. (7-306) Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

41-07-23. (7-307) Lien of carrier.

1. A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.
2. A lien for charges and expenses under subsection 1 on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.
3. A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

41-07-24. (7-308) Enforcement of carrier's lien.

1. A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the

goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.
3. A carrier may buy at any public sale pursuant to this section.
4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.
5. A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.
6. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.
7. A carrier's lien may be enforced pursuant to either subsection 1 or the procedure set forth under subsection 2 of section 41-07-16.
8. A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

41-07-25. (7-309) Duty of care - Contractual limitation of carrier's liability.

1. A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.
2. Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.
3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

41-07-26. (7-401) Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title even if:

1. The document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issuance, form, or content;
2. The issuer violated laws regulating the conduct of its business;
3. The goods covered by the document were owned by the bailee when the document was issued; or
4. The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

41-07-27. (7-402) Duplicate document of title - Overissue. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 41-07-05. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

41-07-28. (7-403) Obligation of bailee to deliver - Excuse.

1. A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections 2 and 3 unless and to the extent that the bailee establishes any of the following:
 - a. Delivery of the goods to a person whose receipt was rightful as against the claimant;
 - b. Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;
 - c. Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;
 - d. The exercise by a seller of its right to stop delivery pursuant to section 41-02-84 or by a lessor of its right to stop delivery pursuant to section 41-02.1-74;
 - e. A diversion, reconignment, or other disposition pursuant to section 41-07-19;
 - f. Release, satisfaction, or any other personal defense against the claimant; or
 - g. Any other lawful excuse.
2. A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless a person claiming the goods is a person against which the document of title does not confer a right under subsection 1 of section 41-07-32:
 - a. The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and
 - b. The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

41-07-29. (7-404) No liability for good-faith delivery pursuant to document of title. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

1. The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or
2. The person to which the bailee delivered the goods did not have authority to receive the goods.

41-07-30. (7-501) Form of negotiation and requirements of due negotiation.

1. The following rules apply to a negotiable tangible document of title:
 - a. If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.
 - b. If the document's original terms run to bearer, it is negotiated by delivery alone.
 - c. If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
 - d. Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.
 - e. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.
2. The following rules apply to a negotiable electronic document of title:
 - a. If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the

- document to another person. Indorsement by the named person is not required to negotiate the document.
- b. If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.
 - c. A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.
3. Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.
4. The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

41-07-31. (7-502) Rights acquired by due negotiation.

1. Subject to sections 41-07-11 and 41-07-32, a holder to which a negotiable document of title has been duly negotiated acquires thereby:
- a. Title to the document;
 - b. Title to the goods;
 - c. All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
 - d. The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.
2. Subject to section 41-07-32, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:
- a. The due negotiation or any prior due negotiation constituted a breach of duty;
 - b. Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document

by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

- c. A previous sale or other transfer of the goods or document has been made to a third person.

41-07-32. (7-503) Document of title to goods defeated in certain cases.

1. A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:
 - a. Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (1) Actual or apparent authority to ship, store, or sell;
 - (2) Power to obtain delivery under section 41-07-28; or
 - (3) Power of disposition under section 41-02-48, subsection 2 of section 41-02.1-34, subsection 2 of section 41-02.1-35, section 41-09-40, subsection 3 of section 41-09-41, or other statute or rule of law; or
 - b. Acquiesce in the procurement by the bailor or its nominee of any document.
2. Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 41-07-34 to the same extent as the rights of the issuer or a transferee from the issuer.
3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

41-07-33. (7-504) Rights acquired in absence of due negotiation - Effect of diversion - Stoppage of delivery.

1. A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.
2. In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:
 - a. By those creditors of the transferor which could treat the transfer as void under section 41-02-47 or 41-02.1-38;

- b. By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
 - c. By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
 - d. As against the bailee, by good-faith dealings of the bailee with the transferor.
3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.
 4. Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 41-02-84 or a lessor under section 41-02.1-74, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

41-07-34. (7-505) Indorser not guarantor for other parties. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

41-07-35. (7-506) Delivery without indorsement - Right to compel indorsement. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

41-07-36. (7-507) Warranties on negotiation or delivery of document of title. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 41-07-37, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

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

41-07-37. (7-508) Warranties of collecting bank as to documents of title. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

41-07-38. (7-509) Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by chapter 41-02, 41-02.1, or 41-05.

41-07-39. (7-601) Lost, stolen, or destroyed documents of title.

1. If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.
2. A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

41-07-40. (7-602) Judicial process against goods covered by negotiable document of title. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

41-07-41. (7-603) Conflicting claims - Interpleader. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

SECTION 19. Subsection 7 of section 41-08-03 of the North Dakota Century Code is created and enacted as follows:

7. A document of title is not a financial asset unless paragraph 3 of subdivision j of subsection 1 of section 41-08-02 applies.

SECTION 20. AMENDMENT. Subsection 2 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The~~ "Control" as provided under section 41-07-06 and the following definitions in other chapters apply to this chapter:

- a. "Applicant". Section 41-05-02.
- b. "Beneficiary". Section 41-05-02.
- c. "Broker". Section 41-08-02.
- d. "Certificated security". Section 41-08-02.
- e. "Check". Section 41-03-04.
- f. "Clearing corporation". Section 41-08-02.
- g. "Contract for sale". Section 41-02-06.
- h. "Customer". Section 41-04-04.
- i. "Entitlement holder". Section 41-08-02.
- j. "Financial asset". Section 41-08-02.
- k. "Holder in due course". Section 41-03-28.
- l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
- m. "Issuer" (with respect to a security). Section 41-08-17.
- n. "Issuer" (with respect to documents of title). Section 41-07-02.
- ~~o.~~ "Lease". Section 41-02.1-03.
- ~~o.~~ p. "Lease agreement". Section 41-02.1-03.
- ~~p.~~ q. "Lease contract". Section 41-02.1-03.
- ~~q.~~ r. "Leasehold interest". Section 41-02.1-03.
- ~~r.~~ s. "Lessee". Section 41-02.1-03.
- ~~s.~~ t. "Lessee in ordinary course of business". Section 41-02.1-03.
- ~~t.~~ u. "Lessor". Section 41-02.1-03.
- ~~u.~~ v. "Lessor's residual interest". Section 41-02.1-03.
- ~~v.~~ w. "Letter of credit". Section 41-05-02.
- ~~w.~~ x. "Merchant". Section 41-02-04.
- ~~x.~~ y. "Negotiable instrument". Section 41-03-04.
- ~~y.~~ z. "Nominated person". Section 41-05-02.
- ~~z.~~ aa. "Note". Section 41-03-04.
- ~~aa.~~ bb. "Proceeds of a letter of credit". Section 41-05-14.

- ~~bb.~~ cc. "Prove". Section 41-03-03.
- ~~ee.~~ dd. "Sale". Section 41-02-06.
- ~~dd.~~ ee. "Securities account". Section 41-08-41.
- ~~ee.~~ ff. "Securities intermediary". Section 41-08-02.
- ~~ff.~~ gg. "Security". Section 41-08-02.
- ~~gg.~~ hh. "Security certificate". Section 41-08-02.
- ~~hh.~~ ii. "Security entitlement". Section 41-08-02.
- ~~ii.~~ jj. "Uncertificated security". Section 41-08-02.

SECTION 21. AMENDMENT. Paragraph 4 of subdivision c of subsection 2 of section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

- (4) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, electronic documents, or uncertificated certificates of deposit, and the secured party has control under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07 pursuant to the debtor's security agreement.

SECTION 22. AMENDMENT. Subsection 3 of section 41-09-17 of the North Dakota Century Code is amended and reenacted as follows:

- 3. Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07:
 - a. May hold as additional security any proceeds, except money or funds, received from the collateral;
 - b. Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - c. May create a security interest in the collateral.

SECTION 23. AMENDMENT. Subsection 2 of section 41-09-18 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Within ten days after receiving an authenticated demand by the debtor:
 - a. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision b of subsection 1 of section 41-09-04 shall send to the bank with which the deposit account or uncertificated certificate of deposit is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

- b. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision c of subsection 1 of section 41-09-04 shall:
 - (1) Pay the debtor the balance on deposit in the deposit account or uncertificated certificate of deposit; or
 - (2) Transfer the balance on deposit into a deposit account or an uncertificated certificate of deposit in the debtor's name;
- c. A secured party, other than a buyer, having control of electronic chattel paper under section 41-09-05 shall:
 - (1) Communicate the authoritative copy of the electronic chattel paper to the debtor or the electronic chattel paper's designated custodian;
 - (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (3) Take appropriate action to enable the debtor or the debtor's designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- d. A secured party having control of investment property under subdivision b of subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; ~~and~~
- e. A secured party having control of a letter-of-credit right under section 41-09-07 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and
- f. A secured party having control of an electronic document shall:
 - (1) Give control of the electronic document to the debtor or its designated custodian;
 - (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate

to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

- (3) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

SECTION 24. AMENDMENT. Subsection 3 of section 41-09-21 of the North Dakota Century Code is amended and reenacted as follows:

3. Except as otherwise provided in subsection 4, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - a. Perfection of a security interest in the goods by filing a fixture filing;
 - b. Perfection of a security interest in timber to be cut; and
 - c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

SECTION 25. AMENDMENT. Subdivisions e and h of subsection 2 of section 41-09-30 of the North Dakota Century Code are amended and reenacted as follows:

- e. In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under subsection 5, 6, or 7 of section 41-09-32;
- h. In deposit accounts, electronic chattel paper, electronic documents, investment property, letter-of-credit rights, or uncertificated certificates of deposit, which is perfected by control under section 41-09-34;

SECTION 26. AMENDMENT. Subsection 5 of section 41-09-32 of the North Dakota Century Code is amended and reenacted as follows:

5. A security interest in certificated certificates of deposit, certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

SECTION 27. AMENDMENT. Subsection 1 of section 41-09-33 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2, a secured party may perfect a security interest in tangible certificated certificates of deposit, negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may

perfect a security interest in certificated securities by taking delivery of the certificated securities under section 41-08-27.

SECTION 28. AMENDMENT. Subsections 1 and 2 of section 41-09-34 of the North Dakota Century Code are amended and reenacted as follows:

1. A security interest in investment property, deposit accounts, uncertificated certificates of deposit, letter-of-credit rights, ~~or~~ electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07.
2. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, electronic documents, or uncertificated certificates of deposit is perfected by control under section 41-07-06, 41-09-04, 41-09-05, or 41-09-07 when the secured party obtains control and remains perfected by control only while the secured party retains control.

SECTION 29. AMENDMENT. Subsections 2 and 4 of section 41-09-37 of the North Dakota Century Code are amended and reenacted as follows:

2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
4. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

SECTION 30. AMENDMENT. Subsection 2 of section 41-09-58 of the North Dakota Century Code is amended and reenacted as follows:

2. A purchaser, other than a secured party, of the collateral takes free of the security interest to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

SECTION 31. AMENDMENT. Subsection 2 of section 41-09-98 of the North Dakota Century Code is amended and reenacted as follows:

2. A secured party in possession of collateral or control of collateral under section 41-07-06, 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in section 41-09-17.

SECTION 32. REPEAL. Chapter 41-07 of the North Dakota Century Code is repealed.

SECTION 33. APPLICATION. This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act.

Approved April 5, 2005

Filed April 6, 2005

CHAPTER 355

HOUSE BILL NO. 1427

(Representatives Weisz, DeKrey, Pollert)
(Senator Espegard)

AGRICULTURAL LIEN WAIVER LIMITATIONS

AN ACT to amend and reenact section 41-09-99 of the North Dakota Century Code, relating to limitations on waiver of state law protections for agricultural liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-99 of the North Dakota Century Code is amended and reenacted as follows:

41-09-99. (9-602) Waiver and variance of rights and duties. Except as otherwise provided in section 41-09-119, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with use and operation of the collateral by the secured party;
2. Section 41-09-20, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
3. Section 41-09-22, which deals with perfection and priority of agricultural liens;
4. Subsection 3 of section 41-09-104, which deals with collection and enforcement of collateral;
4. 5. Subsection 1 of section 41-09-105 and subsection 3 of section 41-09-111 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
5. 6. Subsection 1 of section 41-09-105 and subsection 4 of section 41-09-111 to the extent that they require accounting for or payment of surplus proceeds of collateral;
6. 7. Section 41-09-106 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
7. 8. Subsection 2 of section 41-09-107, section 41-09-108, and section 41-09-110, which deal with disposition of collateral;
8. 9. Subsection 6 of section 41-09-111, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
9. 10. Sections 41-09-115 through 41-09-117, which deal with acceptance of collateral in satisfaction of obligation;

- ~~40.~~ 11. Section 41-09-118, which deals with redemption of collateral;
- ~~44.~~ 12. Section 41-09-119, which deals with permissible waivers; and
- ~~42.~~ 13. Sections 41-09-120 and 41-09-121, which deal with the secured party's liability for failure to comply with this chapter.

Approved March 22, 2005

Filed March 22, 2005