

Texas Historical Statutes Project

TEXAS BUSINESS AND COMMERCE CODE 1984



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Texas Business and Commerce Code

WITH TABLES
AND INDEX

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OCT 4 1984

*As Amended through the
1983 Regular and First
Called Sessions of the
68th Legislature*

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PREFACE

This Pamphlet contains the text of the Business and Commerce Code as amended through the 1983 Regular and First Called Sessions of the 68th Legislature.

The Business and Commerce Code constitutes a unit of the Texas Legislative Council's statutory revision program. The Code was originally enacted by Acts 1967, 60th Leg., ch. 785. Title 1 of the Business and Commerce Code is the Uniform Commercial Code.

Disposition Tables are included preceding the Code, thus providing a means of tracing repealed subject matter into the Code.

A detailed descriptive word Index at the end of the Code is furnished to facilitate the search for specific textual provisions.

Comprehensive coverage of the judicial constructions and interpretations of the Code, together with cross references, references to law review commentaries discussing particular provisions, and other editorial features is provided in the volumes of Vernon's Texas Statutes and Codes Annotated.

THE PUBLISHER

July, 1984

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EFFECTIVE DATES

The following table shows the date of adjournment and the effective date of ninety day bills enacted at sessions of the legislature beginning with the year 1945:

Year	Leg.	Session	Adjournment Date	Effective Date
1945	49	Regular	June 5, 1945	September 4, 1945
1947	50	Regular	June 6, 1947	September 5, 1947
1949	51	Regular	June 6, 1949	September 5, 1949
1951	52	Regular	June 8, 1951	September 7, 1951
1953	53	Regular	May 27, 1953	August 26, 1953
1954	53	1st C.S.	May 13, 1954	August 12, 1954
1955	54	Regular	June 7, 1955	September 6, 1955
1957	55	Regular	May 23, 1957	August 22, 1957
1957	55	1st C.S.	November 12, 1957	February 11, 1958
1957	55	2nd C.S.	December 3, 1957	March 4, 1958
1959	56	Regular	May 12, 1959	August 11, 1959
1959	56	1st C.S.	June 16, 1959	September 15, 1959
1959	56	2nd C.S.	July 16, 1959	October 15, 1959
1959	56	3rd C.S.	August 6, 1959	November 5, 1959
1961	57	Regular	May 29, 1961	August 28, 1961
1961	57	1st C.S.	August 8, 1961	November 7, 1961
1961	57	2nd C.S.	August 14, 1961	November 13, 1961
1962	57	3rd C.S.	February 1, 1962	May 3, 1962
1963	58	Regular	May 24, 1963	August 23, 1963
1965	59	Regular	May 31, 1965	August 30, 1965
1966	59	1st C.S.	February 23, 1966	*
1967	60	Regular	May 29, 1967	August 28, 1967
1968	60	1st C.S.	July 3, 1968	*
1969	61	Regular	June 2, 1969	September 1, 1969
1969	61	1st C.S.	August 26, 1969	*
1969	61	2nd C.S.	September 9, 1969	December 9, 1969
1971	62	Regular	May 31, 1971	August 30, 1971
1971	62	1st C.S.	June 4, 1971	September 3, 1971
1972	62	2nd C.S.	March 30, 1972	June 29, 1972
1972	62	3rd C.S.	July 7, 1972	*
1972	62	4th C.S.	October 17, 1972	January 16, 1973
1973	63	Regular	May 28, 1973	August 27, 1973
1973	63	1st C.S.	December 20, 1973	*
1975	64	Regular	June 2, 1975	September 1, 1975
1977	65	Regular	May 30, 1977	August 29, 1977
1977	65	1st C.S.	July 21, 1977	*
1978	65	2nd C.S.	August 8, 1978	November 7, 1978
1979	66	Regular	May 28, 1979	August 27, 1979
1981	67	Regular	June 1, 1981	August 31, 1981
1981	67	1st C.S.	August 11, 1981	November 10, 1981
1982	67	2nd C.S.	May 28, 1982	*
1982	67	3rd C.S.	September 9, 1982	*
1983	68	Regular	May 30, 1983	August 29, 1983
1983	68	1st C.S.	June 25, 1983	September 23, 1983

* No legislation for which the ninety day effective date is applicable.

DISPOSITION TABLE 1

Former Texas Statutes and Uniform Laws to Business and Commerce Code (Title 1)

Where there are no relevant sections in the Texas Business and Commerce Code, that fact is noted by the use of the abbreviation "N" for "None."

The letter "S" before a section of the Business and Commerce Code means "Sec.". The abbreviation "Cf." before a section means "Compare."

ACCOUNTS RECEIVABLE

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
260-1, § 1	N.	1.201(11) 9.105(1)(d) 9.106 9.306(5)	260-1, § 5	N.	9.403 9.404
§ 2	N.	9.204 9.302 S. 9.405	§ 6	N.	9.201 9.302 9.306 9.318
§ 3	N.	9.203 9.302 9.402	§ 7	N.	9.306 9.318
§ 4	N.	9.303 9.401 9.403 9.407	§ 8	N.	9.205 9.306

COLLECTIONS

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
342-701	N.	1.201(4) 4.104 4.105	342-704	N.	4.301
342-702	N.	4.201	342-705	N.	4.213
342-703	N.	4.103 4.201 4.202	342-706	N.	4.214
			342-711	N.	4.406
			342-712	N.	4.303 4.403

DISPOSITION TABLE 1

BILLS AND NOTES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
567	N.	3.413	571	N.	S. 3.122
568	N.	3.122			S. 3.202
		3.201			S. 3.306
		3.302	575	N.	3.501
		3.305			3.502
		3.409			3.509
569	N.	1.103	576	N.	3.509
		3.409			3.510
570	N.	3.122			
		3.304			
		3.409			

BILLS OF LADING

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
890	N.	S. 7.102	893	N.	S. 7.104
		S. 7.301	894	N.	N.
891	N.	7.104	895	N.	7.304
		7.309			7.403
892	N.	1.201(6)	896	N.	7.403
		7.104	897	N.	7.601
		7.304	898	N.	7.308
		7.402			7.403

STOCK TRANSFERS

Civ.Stats. Article	U.S.T.A. ¹ Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.S.T.A. ¹ Sec.	Texas Bus. & C. Sec.
1302-6.02	1	8.309	1302-6.17	16	8.206
1302-6.03	2	N.	1302-6.18	17	8.405
1302-6.04	3	8.207	1302-6.19	18	1.103
1302-6.05	4	N.	1302-6.20	19	1.102(1)
1302-6.06	5	N.	1302-6.21	20	8.308
1302-6.07	6	N.	1302-6.22	21	N.
1302-6.08	7	8.301	1302-6.23	N.	N.
		8.315	1302-6.24	22	1.201(19)
1302-6.09	8	S. 8.308(5)			1.201(28)
1302-6.10	9	8.307			1.201(30)
1302-6.11	10	8.309			1.201(32)
1302-6.12	11	8.306			1.201(33)
1302-6.13	12	8.306			1.201(44)
1302-6.14	13	8.317			8.313
1302-6.15	14	8.317	1302-6.01	26	S. 8.101
1302-6.16	15	8.103			
		8.204			

1. Uniform Stock Transfer Act.

DISPOSITION TABLE 1

FRAUDULENT CONVEYANCES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
4000	N.	9.201	4001	N.	6.105
		9.202			6.106
4001	N.	6.102	4002	N.	6.104
		6.103			6.106
		6.104	4003	N.	6.103

CHATTEL MORTGAGES

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
5489	N.	9.204	5495	N.	9.404
5490	N.	9.201	5496	N.	N.
		9.301	5497	N.	9.401
		9.302	5497a	N.	S. 9.301
		9.401			S. 9.312
		9.403	5498	N.	S. 9.401
5492	N.	9.403(4)			S. 9.403
5493	N.	N.	5499	N.	N.
5494	N.	9.403(4)	5499a	N.	N.

TRUST RECEIPTS

Civ.Stats. Article	U.T.R.A. ¹ Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.S.T.A. ¹ Sec.	Texas Bus. & C. Sec.
5499a-51, § 1	1	1.201(9)	5499a-51, § 8	8	9.301(1)
		1.201(15)			9.302
		1.201(28)			9.311
		1.201(30)	§ 8(1)	8(1)	9.304
		1.201(32)	§ 8(2)	8(2)	9.301
		1.201(33)	§ 9	9	2.403
		1.201(37)	§ 9(1)		
		1.201(44)	(a)	9(1)(a)	9.308
		S. 2.403			9.309
		9.105	§ 9(2)	9(2)	2.403
		9.301(3)			9.307
§ 2	2	9.110	§ 9(2)		
		9.203	(b)	9(2)(b)	9.301
§ 3	3	9.201	§ 9(3)	9(3)	9.318
		9.304	§ 10	10	9.306
§ 4	4	9.401			9.308
§ 5	5	9.201	§ 11	11	9.310
§ 6	6	9.207(2)(a)	§ 12	12	9.317
		9.501	§ 13	13	9.401
		9.503			9.402
		9.504	§ 13(3)	13(3)	9.402
		9.505			9.403
§ 7	7	9.302(1)	§ 13(4)	13(4)	9.402
		9.304			9.403
		9.501	§§ 14 to 22		
			(incl.)-- 14 to 22 (incl.)	N.	

1. Uniform Trust Receipts Act.

DISPOSITION TABLE 1

LIENS

Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	Prior Uniform Act Sec.	Texas Bus. & C. Sec.
5506c, § 1	N.	9.109	5506c, § 4	N.	9.310
§ 2	N.	9.110			9.317
		9.201	§ 5	N.	9.403
		9.203			9.404
		9.207(2)(a)	§ 6	N.	9.205
		9.301			9.306
		9.302	§ 7	N.	9.302
		9.303	§ 8	N.	S. 9.302
		9.401			9.401
§ 3	N.	9.401	§ 9	N.	N.
		9.403	§ 10	N.	9.307
§ 4	N.	9.303			9.310
		9.307(1)			

WAREHOUSE RECEIPTS

Civ.Stats. Article	U.W.R.A. ¹ Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.W.R.A. ¹ Sec.	Texas Bus. & C. Sec.
5575	N.	S. 7.202	5627	16	7.403
		S. 7.204			7.603
5576	N.	7.104	5628	17	7.603
		S. 7.205	5629	18	7.603
		7.501	5630	19	7.403
		7.502	5631	20	7.203
5604	N.	7.209			7.401
5605	N.	7.210	5632	21	7.204
5606	N.	S. 7.209	5633	22	7.207
5607	N.	7.206	5634	23	7.207
		7.403	5635	24	7.207(2)
5609	N.	7.104	5636	25	7.602
		7.501	5637	26	N.
		7.502	5638	27	7.209
5612	1	1.201(45)			7.307
		7.201	5639	28	7.209
		7.401			7.307
5613	2	7.104	5640	29	7.209
		7.202			7.307
		7.209(2)	5641	30	7.209
5614	3	7.104			7.307
		7.204	5642	31	7.209
5615	4	7.104			7.307
5616	5	7.104	5643	32	7.209
5617	6	7.402			7.210(7)
5618	7	7.104			7.307
5619	8	7.403	5644	33	7.206
5620	9	S. 2.705			7.210
		7.403			7.308
5621	10	7.403	5645	34	7.206
		7.404	5646	35	7.210(7)
5622	11	2.705	5647	36	7.403(1)(c)
		7.403	5648	37	7.501
5623	12	7.403	5649	38	7.501
5624	13	7.208	5650	39	7.501
5625	14	7.601	5651	40	7.501
5626	15	N.			

1. Uniform Warehouse Receipts Act.

DISPOSITION TABLE 1

Civ.Stats.	U.W.R.A. ¹	Texas Bus. & C.	Civ.Stats.	U.W.R.A. ¹	Texas Bus. & C.
Article	Sec.	Sec.	Article	Sec.	Sec.
5652	41	7.502	5662	N.	N.
		7.503	5663	56	1.103
		7.504		57	1.102(1)
5653	42	7.504	5664	58	S. 1.201(1)
5654	43	7.506			1.201(14)
5655	44	7.507			S. 1.201(17)
5656	45	7.505			S. 1.201(19)
5657	46	2.506(2)			S. 1.201(20)
		7.508			1.201(28)
5658	47	7.501			1.201(30)
		7.502			1.201(32)
5659	48	7.502			1.201(33)
5660	49	S. 2.705			1.201(44)
		7.502			7.102
5661	N.	N.	5665	62	S. 7.101

1. Uniform Warehouse Receipts Act.

NEGOTIABLE INSTRUMENTS

Civ.Stats.	U.N.I.L. ¹	Texas Bus. & C.	Civ.Stats.	U.N.I.L. ¹	Texas Bus. & C.
Article	Sec.	Sec.	Article	Sec.	Sec.
5932, § 1	1	3.104	5932, § 19	19	3.403
	1(5)	3.102	5932, § 20	20	3.403
5932, § 2	2	3.106	5932, § 21	21	3.403
5932, § 3	3	3.105	5932, § 22	22	3.207
5932, § 4	4	3.109	5932, § 23	23	3.404
5932, § 5	5	3.104			8.202
		3.112			8.205
5932, § 6	6	3.112			8.311
	6(1)	3.114	5933, § 24	24	3.408
	6(4)	3.113	5933, § 25	25	1.201(44)
	6(5)	1.201(24)			3.303
		3.106			3.408
		3.107	5933, § 26	26	1.201(44)
5932, § 7	7	3.108			3.303
		3.502	5933, § 27	27	1.201(44)
5932, § 8	8	3.110			3.201
5932, § 9	9	3.111			3.303
	9(3)	3.405			4.209
	9(5)	3.204	5933, § 28	28	3.306
5932, § 10	10	3.104			3.408
5932, § 11	11	3.114			3.415
5932, § 12	12	3.114			8.202
5932, § 13	13	3.115	5933, § 29	29	3.415
5932, § 14	14	3.115			8.201
		3.407	5934, § 30	30	3.102
		8.206			3.202
5932, § 15	15	3.115			8.309
		3.305	5934, § 31	31	3.202
		3.407			8.308
		8.206	5934, § 32	32	3.202
5932, § 16	16	3.305			8.308
		3.306	5934, § 33	33	3.204
		8.202			8.308
5932, § 17	17	3.118	5934, § 34	34	3.204
	17(3)	3.109			8.308
		3.114	5934, § 35	35	3.204
	17(6)	3.402			8.308
5932, § 18	18	3.401			8.308

1. Uniform Negotiable Instruments Law.

DISPOSITION TABLE 1

Civ.Stats. Article	U.N.I.L.L. ¹ Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.N.I.L.L. ¹ Sec.	Texas Bus. & C. Sec.
5934, § 36	36	3.204	5936, § 62	62	3.413
		3.205			3.418
		3.206			8.201
		8.308			8.202
5934, § 37	37	3.205	5936, § 63	63	3.402
		3.206	5936, § 64	64	3.415
		8.304			8.308
		8.308	5936, § 65	65	3.417
5934, § 38	38	3.414			4.207(2)
5934, § 39	39	3.205			8.306
		3.206			8.308
5934, § 40	40	3.204	5936, § 66	66	3.414
		8.310			4.207(2)
5934, § 41	41	3.116			8.306
5934, § 42	42	3.117			8.308
5934, § 43	43	3.203	5936, § 67	67	3.414
5934, § 44	44	3.414			8.306
5934, § 45	45	3.304			8.308
5934, § 46	46	N.	5936, § 68	68	3.118
5934, § 47	47	3.206			3.414
5934, § 48	48	3.208			8.308
		3.605	5936, § 69	69	3.417
5934, § 49	49	3.201			8.306
		8.307			8.308
5934, § 50	50	3.208	5937, § 70	70	3.501
5935, § 51	51	3.301			3.502
		3.603			3.604
5935, § 52	52	3.302	5937, § 71	71	3.503
		3.304	5937, § 72	72	3.503
		8.301			3.504
		8.302	5937, § 73	73	3.504
5935, § 52(2)	52(2)	3.302(1)(c)	5937, § 74	74	3.505
		8.203	5937, § 75	75	3.503
		8.305	5937, § 76	76	S. 3.504
5935, § 53	53	3.304	5937, § 77	77	3.504
		8.203	5937, § 78	78	3.504
		8.305	5937, § 79	79	3.511
5935, § 54	54	3.303	5937, § 80	80	3.511
5935, § 55	55	3.304	5937, § 81	81	3.511
5935, § 56	56	1.201(25)	5937, § 82	82	3.511
		3.304	5937, § 83	83	3.507
		8.202	5937, § 84	84	3.507(2)
		8.304	5937, § 85	85	3.503
5935, § 57	57	3.305	5937, § 86	86	3.503
		8.202	5937, § 87	87	3.121
		8.301	5937, § 88	88	3.603
5935, § 58	58	3.201	5938, § 89	89	3.501
		3.207			3.502
		3.306	5938, § 90	90	3.508
		8.301	5938, § 91	91	3.508
5935, § 59	59	3.207	5938, § 92	92	3.508
		3.306	5938, § 93	93	3.508
		3.307	5938, § 94	94	3.508
		8.105	5938, § 95	95	3.508
		8.301	5938, § 96	96	3.508
5936, § 60	60	3.413	5938, § 97	97	3.508
		8.201	5938, § 98	98	3.508
		8.202	5938, § 99	99	3.508
5936, § 61	61	3.413	5938, § 100	100	3.508
		8.201	5938, § 101	101	3.508
		8.202	5938, § 102	102	3.508

1. Uniform Negotiable Instruments Law.

DISPOSITION TABLE 1

Civ.Stats. Article	U.N.I.L. ¹ Sec.	Texas Bus. & C. Sec.	Civ.Stats. Article	U.N.I.L. ¹ Sec.	Texas Bus. & C. Sec.
5938, § 103	103	3.508	5942, § 144	144	3.502
5938, § 104	104	3.508			3.503
5938, § 105	105	3.508	5942, § 145	145	3.503
5938, § 106	106	3.508			3.504
5938, § 107	107	3.508	5942, § 146	146	3.503
5938, § 108	108	3.508	5942, § 147	147	3.511
5938, § 109	109	3.511	5942, § 148	148	3.511
5938, § 110	110	3.511(6)	5942, § 149	149	3.507
5938, § 111	111	3.511	5942, § 150	150	3.501
5938, § 112	112	3.511			3.502
5938, § 113	113	3.511			3.511
5938, § 114	114	3.511	5942, § 151	151	3.501
5938, § 115	115	3.511			3.507(2)
5938, § 116	116	3.511			3.511
5938, § 117	117	N.	5943, § 152	152	3.501
5938, § 118	118	3.501			3.502
5939, § 119	119	3.601	5943, § 153	153	3.509
		3.603	5943, § 154	154	3.509
5939, § 119(3)	119(3)	Cf. 1.107	5943, § 155	155	3.509
		3.605	5943, § 156	156	3.509
5939, § 120	120	3.208	5943, § 157	157	3.501
		3.601	5943, § 158	158	3.501
		3.604			3.509
		3.606	5943, § 159	159	3.511
5939, § 120(2)	120(2)	Cf. 1.107	5943, § 160	160	3.509
		3.605	5944, § 161	161	3.410
5939, § 121	121	3.208	5944, § 162	162	3.410
		3.601	5944, § 163	163	3.410
		3.603	5944, § 164	164	3.410
5939, § 122	122	Cf. 1.107	5944, § 165	165	3.410
		3.605	5944, § 166	166	3.410
5939, § 123	123	3.605	5944, § 167	167	3.410
5939, § 124	124	3.407	5944, § 168	168	3.410
		8.206	5944, § 169	169	3.410
5939, § 125	125	3.407	5944, § 170	170	3.410
5940, § 126	126	3.104	5945, § 171	171	3.603
5940, § 127	127	3.409	5945, § 172	172	3.603
5940, § 128	128	3.102	5945, § 173	173	3.603
5940, § 129	129	3.501	5945, § 174	174	3.603
5940, § 130	130	3.118	5945, § 175	175	3.603
		3.511	5945, § 176	176	3.603
		4.503	5945, § 177	177	3.603
5940, § 131	131	3.410	5946, § 178	178	3.801
5941, § 132	132	3.410	5946, § 179	179	3.801
5941, § 133	133	3.410	5946, § 180	180	3.801
5941, § 134	134	3.410	5946, § 181	181	3.801
5941, § 135	135	3.410	5946, § 182	182	3.801
5941, § 136	136	3.410	5946, § 183	183	3.801
		3.506	5947, § 184	184	3.104
		5.112	5947, § 185	185	3.104
5941, § 137	137	3.410	5947, § 186	186	3.501
		3.419			3.502
		3.410			3.503
5941, § 138	138	3.410	5947, § 187	187	3.411
5941, § 139	139	3.412	5947, § 188	188	3.411
5941, § 140	140	3.412	5947, § 189	189	3.409
5941, § 141	141	3.412	5948, § 190	190	N.
5941, § 142	142	3.412	5948, § 191	191	S. 1.201(1)
5942, § 143	143	3.501			S. 1.201(4)
5942, § 144	144	3.501			S. 1.201(5)
		3.502			1.201(14)
		3.503			S. 1.201(20)
					1.201(28)

1. Uniform Negotiable Instruments Law.

DISPOSITION TABLE 1

Civ. Stats. Article	U.N.I.L. ¹ Sec.	Texas Bus. & C. Sec.	Civ. Stats. Article	U.N.I.L. ¹ Sec.	Texas Bus. & C. Sec.
5948, § 191	-----191	-----1.201(30)	5948, § 192	-----192	-----N.
		1.201(44)	5948, § 193	-----193	-----3.503
		1.201(46)	5948, § 194	-----194	-----N.
		3.102	5948, § 195	-----195	-----N.
		3.410	5948, § 196	-----196	-----I.103
		8.313			

* * * *

1. Uniform Negotiable Instruments Law.

DISPOSITION TABLE 2

Former Articles
to
Business and Commerce Code
(Titles 2, 3 and 4)

Disposition Table No. 1 shows where the subject matter of articles and sections repealed by the Uniform Commercial Code in 1965 is covered in Title 1, Uniform Commercial Code, of the Business and Commerce Code. Table No. 2 shows where the subject matter of other repealed articles and sections is covered in the remaining Titles of the Business and Commerce Code.

CIVIL STATUTES

Civil Statutes Article	Business and Commerce Code Section	Civil Statutes Article	Business and Commerce Code Section
261	23.02(b)(c)	582-1 § 3a	33.04
262	23.08	§ 4	33.05
263	23.10	§ 5	33.06
264	23.17	§ 6	33.07
265 sent. 1	23.30 subsec. (a)	§ 7	33.08
sent. 2	23.30 subsec. (d)	§ 8	33.09
sent. 3, 4	23.30 subsec. (b), (c)	§ 9	33.10
266 sent. 1, 2, 3	23.16	843 sent. 1	17.29 subsec. (d)
sent. 4, 5	23.18	sent. 2	17.29 subsec. (b)
267	23.09 subsec. (a)	851-C § 1 (part)	16.01 subsec. (a) (part)
268	23.09 subsec. (b), (c)	§ 1(a)	16.01 subsec. (a)(2)
269 sent. 1, 2	23.31		(4), (5)
sent. 3	23.32 subsec. (b)	§ 1(b)	-----
sent. 4	23.32 subsec. (a)	§ 1(c)	16.01 subsec. (a)(1)
270	23.19	§ 1(d)	16.01 subsec. (a)(3)
	23.21	§ 1(e)	16.02
271	23.33	§ 1(f)	16.01 subsec. (a)(6)
272	23.22	851-C § 2(a)-(d),	
273	23.20	(e) sent. 1 (part)	16.08 subsec. (a) (1)-(5)
274 sent. 1, 2	23.23	§ 2(e) sent.	
sent. 3	23.23	1 (part), 2	16.08 subsec. (b)
	23.24	§ 2(f)	16.08 subsec. (a), (c)
577	35.39	§ 3 sent. 1	16.10 subsec. (a), (b)
578	35.40 subsec. (a), (b)	§ 3 sent. 2	16.10 subsec. (d)
582-1 § 1	33.01	§ 3 sent. 3, 4	16.10 subsec. (c)(2)
§ 2	33.02	§ 4 sent. 1	16.10 subsec. (c)(1)
§ 3	33.03		

DISPOSITION TABLE 2

Civil Statutes Article	Business and Commerce Code Section	Civil Statutes Article	Business and Commerce Code Section
851—C § 4	16.11	3999	24.05
	16.15 subsec. (c)	4004 sent. 1, 3, 4	27.01
§ 5	16.15 subsec. (b)	6244	34.02 subsec. (a)
§ 6	16.24	6245	34.02 subsec. (b)
§ 7 sent. 1		6247	34.03
(part)	16.12 subsec. (a)	6248	34.04 subsec. (a)
§ 7 sent. 1			34.04 subsec. (b)(1)
(part), 2, 3, 4	16.14 subsec. (a), (b)		34.04 subsec. (c)
§ 7 sent. 5	16.12 subsec. (b)	6249	34.04 subsec. (b)(2)
	16.14 subsec. (c)	6250	34.05
§ 7 sent. 6, 7	16.13	6252	34.01
§ 8 sent. 1, 2		7426	15.02
(part)	16.17	7427	15.01
§ 8 sent. 2		7428 subd. 1, 2	15.03 subsec. (a) (1), (2)
(part), 4, 5	16.18 subsec. (a), (b)	subd. 3 (part)	15.03 subsec. (b)(1)
§ 8 sent. 3	16.18 subsec. (c)	subd. 3 (part)	15.03 subsec. (a)(3)
§ 9	16.15 subsec. (a)	7428a	15.05
§ 10	16.16 subsec. (a)	7428—1	15.03 subsec. (a)(4)
§ 11 sent. 1, 2		7428—2	15.03 subsec. (b)(2)
(part)	16.25 subsec. (a)	7429	15.04 subsec. (a)
§ 11 sent. 2		7430	15.29 subsec. (c)
(part)	16.25 subsec. (c)	7431	15.29 subsec. (a)
§ 11 sent. 3	16.25 subsec. (b)	7432	15.29 subsec. (d)
§ 11 sent. 4	16.25 subsec. (d)	7433	15.30 subsec. (a), (b)
§ 11 sent. 5	16.16 subsec. (b)	7434	15.29 subsec. (b)
§ 12 (part)	16.09 subsec. (b), (c)	7435 sent. 1	15.31 subsec. (a)
§ 12 sent. 1	16.09 subsec. (d)		15.31 subsec. (c)(1)
§ 12 sent. 2, 3	16.09 subsec. (a)	sent. 2	15.31 subsec. (c)(2), (3)
§ 12 sent. 4	16.09 subsec. (d)	sent. 3	15.31 subsec. (a)
§ 13	16.28	sent. 4	15.31 subsec. (g)
§ 14 sent. 1, 2		sent. 5	15.31 subsec. (b)
(part)	16.27 subsec. (a)		15.31 subsec. (c)(1)
§ 14 sent. 2			15.31 subsec. (e)
(part)	16.01 subsec. (b)	sent. 6	15.31 subsec. (b)
§ 15 sent. 1	16.26 subsec. (a)	sent. 7	15.31 subsec. (a)
§ 15 sent. 2	16.27 subsec. (b)	sent. 8	15.31 subsec. (b)
§ 16	16.26 subsec. (b), (c), (d)	sent. 9	15.31 subsec. (f)
899	35.15	sent. 10, 11	15.31 subsec. (d)
1438a § 1	35.01 subsec. (a)	7436 sent. 1	15.32 subsec. (a)
§ 2 sent. 1	35.02	sent. 2	15.32 subsec. (b)
§ 2 sent. 2	35.07	sent. 3	15.32 subsec. (a)
§ 3	35.03	sent. 4	15.32 subsec. (c)
§ 4	35.06		15.32 subsec. (d)
§ 5 sent. 1	35.04	sent. 6, 7	15.32 subsec. (e)
§ 5 sent. 2, 3, 4	35.05 subsec. (a), (b)	sent. 8	15.32 subsec. (c)
§ 5 sent. 5, 6	35.08	7436a	15.12
§ 6	35.08	7437	15.04 subsec. (b)
3995	26.01 subsec. (a), (b) (1)–(6)	7438	15.21 subsec. (a)
3995a	26.01 subsec. (b)(7)	7439	15.14
3996 (part)	24.01	7439a sent. 1, 2	15.15 subsec. (a)
3996 (part)	24.02	sent. 3	15.15 subsec. (b)
3997	24.03		15.22 subsec. (a)
3998	24.04	sent. 4	15.22 subsec. (a)
		7440	15.16 subsec. (b)
		7441 sent. 1	15.16 subsec. (c)
		sent. 2	15.16 subsec. (d)
		sent. 3	15.16 subsec. (f)

DISPOSITION TABLE 2

Civil Statutes Article	Business and Commerce Code Section	Penal Code Article	Business and Commerce Code Section
7442	15.16 subsec. (e)(2)	1114	17.09 subsec. (a)(1), (2), (b)
7443 sent. 1	15.16 subsec. (e)(1)	1115	17.09 subsec. (a)(3), (c)
sent. 2	15.17 subsec. (a)	1130	35.40 subsec. (c), (d)
sent. 3	15.17 subsec. (a), (b), (c)	1137l	17.19
sent. 4	15.19 subsec. (e)	1137l-1	17.20
sent. 5, 6	15.22 subsec. (b)	1137l-2	17.21
7444 sent. 1	15.19 subsec. (a)	1137l-3 par. (a)	17.18 subsec. (a)(1) 17.18 subsec. (b)(1)
sent. 2	15.19 subsec. (b)	par. (b)	17.18 subsec. (a)(2)
sent. 3	15.19 subsec. (a), (c)	par. (c) sent. 1	17.18 subsec. (a)(3)
sent. 4, 5	15.19 subsec. (c)	1137l-3 par. (c) sent. 2	17.18 subsec. (b)(2)
sent. 6	15.19 subsec. (d)	1137l-4	17.22
sent. 7	15.19 subsec. (f)	1137l-5	17.18 subsec. (c)
7445 sent. 1	15.18 subsec. (a)	1554 sent. 1	17.12 subsec. (a), (c)
sent. 2	15.16 subsec. (f)	sent. 2	17.12 subsec. (b)
sent. 3-5	15.18 subsec. (b)	1554a § 1 sent. 1	17.11 subsec. (b)
7446	15.20	§ 1 sent. 2	17.11 subsec. (a)
7447	15.21 subsec. (b)	§ 1a	17.11 subsec. (c)
		§ 2	17.11 subsec. (d)
		1557	25.01
			25.03 subsec. (a)
		1558 sent. 1	25.02 subsec. (a)
			25.03 subsec. (b)
		sent. 2	25.01 subsec. (b)
		1632	15.02
		1633	15.01
		1634 subd. 1, 2	15.03 subsec. (a)(1), (2)
		subd. 3	15.03 subsec. (a)(3), (b)(1)
		1635	15.33 subsec. (d)
		1636	15.14
		1637	15.33 subsec. (a)
		1638	15.33 subsec. (b)
		1639	15.33 subsec. (c), (d)
		1640	15.33 subsec. (d)
		1641	15.33 subsec. (e)
		1642	15.34
		1643	
		1644	
		1674	See 7.301 et seq. to
		1677	
		1678	35.16
		1679	35.17
		1680	35.19
		1681	35.18
		1682	35.21
		1683	35.20

PENAL CODE (1925)	
Penal Code Article	Business and Commerce Code Section
150 sent. 1	17.07 subsec. (a)
sent. 2	17.07 subsec. (d)
sent. 3	17.07 subsec. (c)
151 sent. 1	17.07 subsec. (b)
sent. 2	17.07 subsec. (e)
sent. 3	17.07 subsec. (f)
157a sent. 1	17.08 subsec. (a)
sent. 2	17.08 subsec. (c), (d)
sent. 3	17.08 subsec. (b)
527a	15.06
1018	35.30
1019	35.28
1020	35.31 subsec. (a), (b) (1), (c)
1021	35.31 subsec. (b)(2)
1022	35.29
1023	35.32 subsec. (a), (c)
1024	35.32 subsec. (b)
1025	35.33
1058 sent. 1	17.29 subsec. (d)
sent. 2	17.29 subsec. (b)
1059	17.29 subsec. (c)
1060	17.29 subsec. (e)
1063	17.30 subsec. (a), (b)
1064	17.30 subsec. (c), (e)
1065	17.30 subsec. (d)
1066a	17.10
1113	17.28

*

BUSINESS AND COMMERCE CODE

Title	Chapter
1. Uniform Commercial Code	1
2. Competition and Trade Practices	15
3. Insolvency, Fraudulent Transfers, and Fraud	23
4. Miscellaneous Commercial Provisions	33
TITLE 1. UNIFORM COMMERCIAL CODE	
Chapter	Section
1. General Provisions	1.101
2. Sales	2.101
3. Commercial Paper	3.101
4. Bank Deposits and Collections	4.101
5. Letters of Credit	5.101
6. Bulk Transfers	6.101
7. Warehouse Receipts, Bills of Lading and Other Documents of Title	7.101
8. Investment Securities	8.101
9. Secured Transactions; Sales of Ac- counts, Contract Rights and Chattel Paper	9.101
10. [Reserved for expansion]	
11. Effective Date and Transition Provi- sions—1973 Amendments	11.101

Enactment

The Uniform Commercial Code was first enacted in Texas in 1965 (Acts 1965, chapter 721) to become effective at midnight June 30, 1966. Section 10-102 of the Code as then enacted repealed numerous existing provisions of the Texas Statutes relating to commercial transactions, but provided that transactions validly entered into before the effective date and the rights, duties and interests flowing from them should remain valid thereafter and could be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by the Act as though such repeal or amendment had not occurred.

Acts 1967, chapter 785, reenacted the Uniform Commercial Code as a part of the Business and Commerce Code and repealed Acts 1965, chapter 721. However, section 5 of the 1967 Act provided in part that the repeal of a statute by the Act did not affect the prior operation of the statute or any prior action taken under it.

Section Numbers

The text of the Texas Uniform Commercial Code as set out herein is identified by section rather than article numbers. The

section numbers correspond to the section numbers of the Uniform Commercial Code, except that as enacted in 1967 a period has been substituted for a dash so that section 1-101 in the official text is section 1.101 in the Texas Code, and so on. Additionally, most lettered subsections and numbered subdivisions of the Texas Code have been substituted for the numbered subsections and lettered subdivisions of the official text so that subdivision (a) of subsection (2) of section 1-102 in the official text is subdivision (1) of subsection (b) of section 1.102 in the Texas Code, and so on.

Effective Date

Section 3 of Acts 1967, ch. 785 provided that "This Act takes effect on September 1, 1967."

Table—Prior Statutory Provisions

Disposition tables are provided preceding this Code to enable the user to trace the disposition in the Texas Business and Commerce Code of the subject matter of articles repealed by Acts 1965, 59th Leg., vol. 2, p. 1, ch. 721, and Acts 1967, 60th Leg., p. 2343, ch. 785.

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

Sec.

- 1.101. Short Title.
- 1.102. Purposes; Rules of Construction; Variation by Agreement.
- 1.103. Supplementary General Principles of Law Applicable.
- 1.104. Construction Against Implicit Repeal.
- 1.105. Territorial Application of the Title; Parties' Power to Choose Applicable Law.
- 1.106. Remedies to be Liberally Administered.
- 1.107. Waiver or Renunciation of Claim or Right After Breach.
- 1.108. Severability.
- 1.109. Section Captions.

SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 1.201. General Definitions.
- 1.202. Prima Facie Evidence by Third Party Documents.
- 1.203. Obligation of Good Faith.
- 1.204. Time; Reasonable Time; "Seasonably".
- 1.205. Course of Dealing and Usage of Trade.
- 1.206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered.

Sec.

- 1.207. Performance or Acceptance Under Reservation of Rights.
- 1.208. Option to Accelerate at Will.

SUBCHAPTER A. SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

§ 1.101. Short Title

This title may be cited as Uniform Commercial Code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.102. Purposes; Rules of Construction; Variation by Agreement

(a) This title shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this title are

(1) to simplify, clarify and modernize the law governing commercial transactions;

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

(3) to make uniform the law among the various jurisdictions.

(c) The effect of provisions of this title may be varied by agreement, except as otherwise provided in this title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this title may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(d) The presence in certain provisions of this title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under Subsection (c).

(e) In this title unless the context otherwise requires

(1) words in the singular number include the plural, and in the plural include the singular;

(2) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.103. Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, mis-

representation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.104. Construction Against Implicit Repeal

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.105. Territorial Application of the Title; Parties' Power to Choose Applicable Law

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

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

Rights of creditors against sold goods. Section 2.402.

Applicability of the chapter on Bank Deposits and Collections. Section 4.102.

Bulk transfers subject to the chapter on Bulk Transfers. Section 6.102.

Applicability of the chapter on Investment Securities. Section 8.106.

Perfection provisions of the chapter on Secured Transactions. Section 9.103.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 997, ch. 400, § 1, eff. Jan. 1, 1974.]

§ 1.106. Remedies to be Liberally Administered

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.107. Waiver or Renunciation of Claim or Right After Breach

Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.108. Severability

If any provision or clause of this title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are declared to be severable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.109. Section Captions

Section captions are parts of this title.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 1.201. General Definitions

Subject to additional definitions contained in the subsequent chapters of this title which are applicable to specific chapters or subchapters thereof, and unless the context otherwise requires, in this title:

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

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

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (Sections 1.205 and 2.208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (Section 1.103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking and solely for the purposes of Sections 3 and 4 of this Act includes any depository institution as defined by federal law.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transpor-

tation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

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

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

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security 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. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing 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.

(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: Non-Negotiable 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". Whether a term or clause is "conspicuous" or not is for decision by the court.

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

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

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

(14) "Delivery" with respect to instruments, 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 in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. 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.

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

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

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

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

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.

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

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

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

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

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

(A) he has actual knowledge of it; or

(B) he has received a notice or notification of it; or

(C) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he 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 by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actual-

ly comes to know of it. A person "receives" a notice or notification when

(A) it comes to his attention; or

(B) it is duly delivered at the place of business through which the contract was made or at any other place held out by him 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 his 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 his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

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

(30) "Person" includes an individual or an organization (See Section 1.102).

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

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

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

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

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

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods

notwithstanding shipment or delivery to the buyer (Section 2.401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper which is subject to Chapter 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under Section 2.401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Chapter 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (Section 2.326). Whether a lease is intended as security is to be determined by the facts of each case; however, (A) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (B) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(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.

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

(40) "Surety" includes guarantor.

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

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

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

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (Sections 3.303, 4.208 and 4.209) a person gives "value" for rights if he acquires them

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

(B) as security for or in total or partial satisfaction of a pre-existing claim; or

(C) by accepting delivery pursuant to a pre-existing contract for purchase; or

(D) generally, in return for any consideration sufficient to support a simple contract.

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 997, ch. 400, § 2, Jan. 1, 1974; Acts 1983, 68th Leg., p. 1535, ch. 290, § 12, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2575, ch. 442, § 12, eff. Sept. 1, 1983.]

§ 1.202. Prima Facie Evidence by Third Party Documents

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.203. Obligation of Good Faith

Every contract or duty within this title imposes an obligation of good faith in its performance or enforcement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.204. Time; Reasonable Time; "Seasonably"

(a) Whenever this title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(b) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(c) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.205. Course of Dealing and Usage of Trade

(a) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(b) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade

code or similar writing the interpretation of the writing is for the court.

(c) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(d) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(e) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(f) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.206. Statute of Frauds for Kinds of Personal Property Not Otherwise Covered

(a) Except in the cases described in Subsection (b) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(b) Subsection (a) of this section does not apply to contracts for the sale of goods (Section 2.201) nor of securities (Section 8.319) nor to security agreements (Section 9.203).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.207. Performance or Acceptance Under Reservation of Rights

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 1.208. Option to Accelerate at Will

A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will"

or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

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SUBCHAPTER A. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 2.101. Short Title

This chapter may be cited as Uniform Commercial Code—Sales.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.102. Scope; Certain Security and Other Transactions Excluded From This Chapter

Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is

intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.103. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

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

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

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

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

(b) Other definitions applying to this chapter or to specified subchapters thereof, and the sections in which they appear are:

"Acceptance". Section 2.606.

"Banker's credit". Section 2.325.

"Between merchants". Section 2.104.

"Cancellation". Section 2.106(d).

"Commercial unit". Section 2.105.

"Confirmed credit". Section 2.325.

"Conforming to contract". Section 2.106.

"Contract for sale". Section 2.106.

"Cover". Section 2.712.

"Entrusting". Section 2.403.

"Financing agency". Section 2.104.

"Future goods". Section 2.105.

"Goods". Section 2.105.

"Identification". Section 2.501.

"Installment contract". Section 2.612.

"Letter of credit". Section 2.325.

"Lot". Section 2.105.

"Merchant". Section 2.104.

"Overseas". Section 2.323.

"Person in position of seller". Section 2.707.

"Present sale". Section 2.106.

"Sale". Section 2.106.

"Sale on approval". Section 2.326.

"Sale or return". Section 2.326.

"Termination". Section 2.106.

(c) The following definitions in other chapters apply to this chapter:

"Check". Section 3.104.

"Consignee". Section 7.102.

"Consignor". Section 7.102.

"Consumer goods". Section 9.109.

"Dishonor". Section 3.507.

"Draft". Section 3.104.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.104. Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

(a) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(b) "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 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 2.707).

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.105. Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

(a) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2.107).

(b) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(c) There may be a sale of a part interest in existing identified goods.

(d) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other

measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(e) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(f) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.106. Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"

(a) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2.401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.107. Goods to be Severed From Realty: Recording

(a) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a

transfer of an interest in land is effective only as a contract to sell.

(b) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in Subsection (a) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 998, ch. 400, § 3, eff. Jan. 1, 1974.]

SUBCHAPTER B. FORM, FORMATION AND READJUSTMENT OF CONTRACT

§ 2.201. Formal Requirements; Statute of Frauds

(a) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(b) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) A contract which does not satisfy the requirements of Subsection (a) but which is valid in other respects is enforceable

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2.606).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.202. Final Written Expression: Parol or Extrinsic Evidence

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

(1) by course of dealing or usage of trade (Section 1.205) or by course of performance (Section 2.208); and

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.203. Seals Inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.204. Formation in General

(a) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(b) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(c) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.205. Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of

consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.206. Offer and Acceptance in Formation of Contract

(a) Unless otherwise unambiguously indicated by the language or circumstances

(1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(2) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(b) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.207. Additional Terms in Acceptance or Confirmation

(a) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(b) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(1) the offer expressly limits acceptance to the terms of the offer;

(2) they materially alter it; or

(3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(c) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties

agree, together with any supplementary terms incorporated under any other provisions of this title. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.208. Course of Performance or Practical Construction

(a) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in within objection shall be relevant to determine the meaning of the agreement.

(b) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (Section 1.205).

(c) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.209. Modification, Rescission and Waiver

(a) An agreement modifying a contract within this chapter needs no consideration to be binding.

(b) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(c) The requirements of the statute of frauds section of this chapter (Section 2.201) must be satisfied if the contract as modified is within its provisions.

(d) Although an attempt at modification or rescission does not satisfy the requirements of Subsection (b) or (c) it can operate as a waiver.

(e) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.210. Delegation of Performance; Assignment of Rights

(a) A party may perform his duty through a delegate unless otherwise agreed or unless the oth-

er party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(b) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(c) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(d) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(e) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2.609).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2.301. General Obligations of Parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.302. Unconscionable Contract or Clause

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable

opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.303. Allocation or Division of Risks

Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.304. Price Payable in Money, Goods, Realty, or Otherwise

(a) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(b) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.305. Open Price Term

(a) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (1) nothing is said as to price; or
- (2) the price is left to be agreed by the parties and they fail to agree; or
- (3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(b) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(c) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(d) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.306. Output, Requirements and Exclusive Dealings

(a) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(b) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.307. Delivery in Single Lot or Several Lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.308. Absence of Specified Place for Delivery

Unless otherwise agreed

(1) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.309. Absence of Specific Time Provisions; Notice of Termination

(a) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(b) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(c) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation

Unless otherwise agreed

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

(2) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2.513); and

(3) if delivery is authorized and made by way of documents of title otherwise than by Subdivision (2) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.311. Options and Cooperation Respecting Performance

(a) An agreement for sale which is otherwise sufficiently definite (Subsection (c) of Section 2.204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(b) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in Subsections (a)(3) and (c) of Section 2.319 specifications or arrangements relating to shipment are at the seller's option.

(c) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(1) is excused for any resulting delay in his own performance; and

(2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement

(a) Subject to Subsection (b) there is in a contract for sale a warranty by the seller that

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(b) A warranty under Subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(c) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.313. Express Warranties by Affirmation, Promise, Description, Sample

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.314. Implied Warranty: Merchantability; Usage of Trade

(a) Unless excluded or modified (Section 2.316), a warranty that the goods shall be merchantable is

implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Goods to be merchantable must be at least such as

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Unless excluded or modified (Section 2.316) other implied warranties may arise from course of dealing or usage of trade.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.315. Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.316. Exclusion or Modification of Warranties

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 2.202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(c) Notwithstanding Subsection (b)

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2.718 and 2.719).

(e) The implied warranties of merchantability and fitness shall not be applicable to the furnishing of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purpose of this Title be considered commodities subject to sale or barter, but shall be considered as medical services.

(f) The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1979, 66th Leg., p. 190, ch. 99, § 1, eff. May 2, 1979.]

§ 2.317. Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.318. Chapter Neutral on Question of Third Party Beneficiaries of Warranties of Quality and on Need for Privity of Contract

This chapter does not provide whether anyone other than a buyer may take advantage of an ex-

press or implied warranty of quality made to the buyer or whether the buyer or anyone entitled to take advantage of a warranty made to the buyer may sue a third party other than the immediate seller for deficiencies in the quality of the goods. These matters are left to the courts for their determination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.319. F.O.B. and F.A.S. Terms

(a) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(1) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (Section 2.504) and bear the expense and risk of putting them into the possession of the carrier; or

(2) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (Section 2.503);

(3) when under either Subdivision (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (Section 2.323).

(b) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(c) Unless otherwise agreed in any case falling within Subsection (a)(1) or (3) or Subsection (b) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (Section 2.311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(d) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the

seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.320. C.I.F. and C. & F. Terms

(a) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(b) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(1) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(2) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(3) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(4) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(5) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(c) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(d) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.321. C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival

Under a contract containing a term C.I.F. or C. & F.

(a) Where the price is based on or is to be adjusted according to "net landed weights", "delivered

weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(b) An agreement described in Subsection (a) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(c) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.322. Delivery "Ex-Ship"

(a) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(b) Under such a term unless otherwise agreed

(1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(2) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.323. Form of Bill of Lading Required in Overseas Shipment; "Overseas"

(a) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(b) Where in a case within Subsection (a) a 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

(1) due tender of a single part is acceptable within the provisions of this chapter on cure of

improper delivery (Subsection (a) of Section 2.508); and

(2) 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.

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.324. "No Arrival, No Sale" Term

Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(1) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(2) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2.613).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.325. "Letter of Credit" Term; "Confirmed Credit"

(a) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(b) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(c) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

(a) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(1) a "sale on approval" if the goods are delivered primarily for use, and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Except as provided in Subsection (c), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(c) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(1) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(3) complies with the filing provisions of the chapter on Secured Transactions (Chapter 9), or

(4) is delivering a work of art subject to the Artists' Consignment Act.¹

(d) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (Section 2.201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (Section 2.202).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1977, 65th Leg., p. 1530, ch. 623, § 4, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 9018.

§ 2.327. Special Incidents of Sale on Approval and Sale or Return

(a) Under a sale on approval unless otherwise agreed

(1) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(2) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(3) after due notification of election to return, the return is at the seller's risk and expense but a

merchant buyer must follow any reasonable instructions.

(b) Under a sale or return unless otherwise agreed

(1) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(2) the return is at the buyer's risk and expense.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.328. Sale by Auction

(a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(d) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER D. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 2.401. Passing of Title; Reservation for Security; Limited Application of This Section

Each provision of this chapter with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(a) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2.501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

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

(1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(2) if the contract requires delivery at destination, title passes on tender there.

(c) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(1) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(2) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(d) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.402. Rights of Seller's Creditors Against Sold Goods

(a) Except as provided in Subsections (b) and (c), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (Sections 2.502 and 2.716).

(b) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current

course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(c) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller

(1) under the provisions of the chapter on Secured Transactions (Chapter 9); or

(2) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.403. Power to Transfer; Good Faith Purchase of Goods; "Entrusting"

(a) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(1) the transferor was deceived as to the identity of the purchaser, or

(2) the delivery was in exchange for a check which is later dishonored, or

(3) it was agreed that the transaction was to be a "cash sale", or

(4) the delivery was procured through fraud punishable as larcenous under the criminal law.

(b) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(c) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(d) The rights of other purchasers of goods and of lien creditors are governed by the chapters on Secured Transactions (Chapter 9), Bulk Transfers (Chapter 6) and Documents of Title (Chapter 7).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER E. PERFORMANCE

§ 2.501. Insurable Interest in Goods; Manner of Identification of Goods

(a) The buyer obtains a special property and an insurable interest in goods by identification of exist-

ing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(1) when the contract is made if it is for the sale of goods already existing and identified;

(2) if the contract is for the sale of future goods other than those described in Subdivision (3), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(3) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(b) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(c) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.502. Buyer's Right to Goods on Seller's Insolvency

(a) Subject to Subsection (b) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(b) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.503. Manner of Seller's Tender of Delivery

(a) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular

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

(2) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

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

(c) Where the seller is required to deliver at a particular destination tender requires that he comply with Subsection (a) and also in any appropriate case tender documents as described in Subsections (d) and (e) of this section.

(d) Where goods are in the possession of a bailee and are to be delivered without being moved

(1) 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

(2) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and 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 non-negotiable 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.

(e) Where the contract requires the seller to deliver documents

(1) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (Subsection (b) of Section 2.323); and

(2) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1530, ch. 290, § 1, eff. Aug. 29, 1983.]

§ 2.504. Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to

the nature of the goods and other circumstances of the case; and

(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) promptly notify the buyer of the shipment.

Failure to notify the buyer under Subdivision (3) or to make a proper contract under Subdivision (1) is a ground for rejection only if material delay or loss ensues.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.505. Seller's Shipment Under Reservation

(a) Where the seller has identified goods to the contract by or before shipment:

(1) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His 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.

(2) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection (b) of Section 2.507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(b) 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 the preceding section 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.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.506. Rights of Financing Agency

(a) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(b) 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.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.507. Effect of Seller's Tender; Delivery on Condition

(a) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(b) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.508. Cure by Seller of Improper Tender or Delivery; Replacement

(a) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(b) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.509. Risk of Loss in the Absence of Breach

(a) Where the contract requires or authorizes the seller to ship the goods by carrier

(1) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2.505); but

(2) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

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

(1) on his receipt of a negotiable document of title covering the goods; or

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

(3) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in Subsection (d)(2) of Section 2.503.

(c) In any case not within Subsection (a) or (b), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(d) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (Section 2.327) and on effect of breach on risk of loss (Section 2.510).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1531, ch. 290, § 2, eff. Aug. 29, 1983.]

§ 2.510. Effect of Breach on Risk of Loss

(a) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(b) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(c) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.511. Tender of Payment by Buyer; Payment by Check

(a) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(b) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(c) Subject to the provisions of this title on the effect of an instrument on an obligation (Section 3.802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.512. Payment by Buyer Before Inspection

(a) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(1) the non-conformity appears without inspection; or

(2) despite tender of the required documents circumstances would justify injunction against honor under the provisions of this title (Section 5.114).

(b) Payment pursuant to Subsection (a) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.513. Buyer's Right to Inspection of Goods

(a) Unless otherwise agreed and subject to Subsection (c), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(b) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(c) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (Subsection (c) of Section 2.321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(1) for delivery "C.O.D." or on other like terms; or

(2) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(d) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.514. When Documents Deliverable on Acceptance; When on Payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.515. Preserving Evidence of Goods in Dispute

In furtherance of the adjustment of any claim or dispute

(1) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(2) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER F. BREACH, REPUDIATION AND EXCUSE

§ 2.601. Buyer's Rights on Improper Delivery

Subject to the provisions of this chapter on breach in installment contracts (Section 2.612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2.718 and 2.719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

- (1) reject the whole; or
- (2) accept the whole; or
- (3) accept any commercial unit or units and reject the rest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.602. Manner and Effect of Rightful Rejection

(a) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(b) Subject to the provisions of the two following sections on rejected goods (Sections 2.603 and 2.604),

- (1) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
- (2) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (Subsection (c) of Section 2.711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but
- (3) the buyer has no further obligations with regard to goods rightfully rejected.

(c) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on Seller's remedies in general (Section 2.703).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.603. Merchant Buyer's Duties as to Rightfully Rejected Goods

(a) Subject to any security interest in the buyer (Subsection (c) of Section 2.711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the

absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) When the buyer sells goods under Subsection (a), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(c) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.604. Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.605. Waiver of Buyer's Objections by Failure to Particularize

(a) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

- (1) where the seller could have cured it if stated seasonably; or
- (2) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(b) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.606. What Constitutes Acceptance of Goods

(a) Acceptance of goods occurs when the buyer

- (1) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(2) fails to make an effective rejection (Subsection (a) of Section 2.602), but such acceptance

does not occur until the buyer has had a reasonable opportunity to inspect them; or

(3) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over

(a) The buyer must pay at the contract rate for any goods accepted.

(b) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for non-conformity.

(c) Where a tender has been accepted

(1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(d) The burden is on the buyer to establish any breach with respect to the goods accepted.

(e) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(1) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after reasonable receipt of the notice does come in and defend he is so bound.

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after reasonable receipt of the demand does turn over control the buyer is so barred.

(f) The provisions of Subsections (c), (d) and (e) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (Subsection (c) of Section 2.312).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.608. Revocation of Acceptance in Whole or in Part

(a) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(1) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(2) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(b) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(c) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.609. Right to Adequate Assurance of Performance

(a) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(b) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(c) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(d) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.610. Anticipatory Repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(1) for a commercially reasonable time await performance by the repudiating party; or

(2) resort to any remedy for breach (Section 2.703 or Section 2.711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(3) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2.704).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.611. Retraction of Anticipatory Repudiation

(a) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(b) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (Section 2.609).

(c) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.612. "Installment Contract"; Breach

(a) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(b) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within Subsection (c) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(c) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to

past installments or demands performance as to future installments.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.613. Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2.324) then

(1) if the loss is total the contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.614. Substituted Performance

(a) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.615. Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or non-delivery in whole or in part by a seller who complies with Subdivisions (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in Subdivision (1) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under Subdivision (2), of the estimated quota thus made available for the buyer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.616. Procedure on Notice Claiming Excuse

(a) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (Section 2.612), then also as to the whole,

(1) terminate and thereby discharge any unexecuted portion of the contract; or

(2) modify the contract by agreeing to take his available quota in substitution.

(b) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(c) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER G. REMEDIES

§ 2.701. Remedies for Breach of Collateral Contracts Not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.702. Seller's Remedies on Discovery of Buyer's Insolvency

(a) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (Section 2.705).

(b) Where the seller discovers that the buyer has received goods on credit while insolvent he may

reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(c) The seller's right to reclaim under Subsection (b) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this chapter (Section 2.403). Successful reclamation of goods excludes all other remedies with respect to them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.703. Seller's Remedies in General

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2.612), then also with respect to the whole undelivered balance, the aggrieved seller may

(1) withhold delivery of such goods;

(2) stop delivery by any bailee as hereafter provided (Section 2.705);

(3) proceed under the next section respecting goods still unidentified to the contract;

(4) resell and recover damages as hereafter provided (Section 2.706);

(5) recover damages for non-acceptance (Section 2.708) or in a proper case the price (Section 2.709);

(6) cancel.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.704. Seller's Right to Identify Goods to the Contract Notwithstanding Breach or to Salvage Unfinished Goods

(a) An aggrieved seller under the preceding section may

(1) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(2) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(b) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.705. Seller's Stoppage of Delivery in Transit or Otherwise

(a) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2.702) and may stop delivery of carload, truckload, plane-load 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.

(b) As against such buyer the seller may stop delivery until

- (1) receipt of the goods by the buyer; or
- (2) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (3) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
- (4) negotiation to the buyer of any negotiable document of title covering the goods.

(c)

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

(2) 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.

(3) 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 the document.

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.706. Seller's Resale Including Contract for Resale

(a) Under the conditions stated in Section 2.703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) Except as otherwise provided in Subsection (c) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercial-

ly reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(c) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(d) Where the resale is at public sale

(1) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(2) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(3) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(4) the seller may buy.

(e) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(f) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2.707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection (c) of Section 2.711).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.707. "Person in the Position of a Seller"

(a) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(b) A person in the position of a seller may as provided in this chapter withhold or stop delivery (Section 2.705) and resell (Section 2.706) and recover incidental damages (Section 2.710).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.708. Seller's Damages for Non-Acceptance or Repudiation

(a) Subject to Subsection (b) and to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-acceptance or repudiation by the buyer is the differ-

ence between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) If the measure of damages provided in Subsection (a) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (Section 2.710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.709. Action for the Price

(a) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(1) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(2) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(b) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(c) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 2.610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.710. Seller's Incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods

(a) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2.612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(1) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(2) recover damages for non-delivery as provided in this chapter (Section 2.713).

(b) Where the seller fails to deliver or repudiates the buyer may also

(1) if the goods have been identified recover them as provided in this chapter (Section 2.502); or

(2) in a proper case obtain specific performance or replevy the goods as provided in this chapter (Section 2.716).

(c) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 2.706).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.712. "Cover"; Buyer's Procurement of Substitute Goods

(a) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(b) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2.715), but less expenses saved in consequence of the seller's breach.

(c) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.713. Buyer's Damages for Non-Delivery or Repudiation

(a) Subject to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any

incidental and consequential damages provided in this chapter (Section 2.715), but less expenses saved in consequence of the seller's breach.

(b) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.714. Buyer's Damages for Breach in Regard to Accepted Goods

(a) Where the buyer has accepted goods and given notification (Subsection (c) of Section 2.607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(b) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(c) In a proper case any incidental and consequential damages under the next section may also be recovered.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.715. Buyer's Incidental and Consequential Damages

(a) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(b) Consequential damages resulting from the seller's breach include

(1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) injury to person or property proximately resulting from any breach of warranty.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.716. Buyer's Right to Specific Performance or Replevin

(a) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(b) The decree for specific performance may include such terms and conditions as to payment of

the price, damages, or other relief as the court may deem just.

(c) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.717. Deduction of Damages from the Price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.718. Liquidation or Limitation of Damages; Deposits

(a) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(b) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (a), or

(2) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(c) The buyer's right to restitution under Subsection (b) is subject to offset to the extent that the seller establishes

(1) a right to recover damages under the provisions of this chapter other than Subsection (a), and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(d) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (b); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (Section 2.706).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.719. Contractual Modification or Limitation of Remedy

(a) Subject to the provisions of Subsections (b) and (c) of this section and of the preceding section on liquidation and limitation of damages,

(1) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(2) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(c) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.720. Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.721. Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this chapter for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.722. Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(1) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk

of loss under the contract for sale or has since the injury assumed that risk as against the other;

(2) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(3) either party may with the consent of the other sue for the benefit of whom it may concern.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.723. Proof of Market Price: Time and Place

(a) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2.708 or Section 2.713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(b) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(c) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.724. Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 2.725. Statute of Limitations in Contracts for Sale

(a) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(b) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(c) Where an action commenced within the time limited by Subsection (a) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this title becomes effective.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

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SUBCHAPTER A. SHORT TITLE, FORM AND INTERPRETATION

§ 3.101. Short Title

This chapter may be cited as Uniform Commercial Code—Commercial Paper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.102. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

(1) "Issue" means the first delivery of an instrument to a holder or a remitter.

(2) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(3) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(4) "Secondary party" means a drawer or indorser.

(5) "Instrument" means a negotiable instrument.

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

"Acceptance".	Section 3.410.
"Accommodation party".	Section 3.415.
"Alteration".	Section 3.407.
"Certificate of deposit".	Section 3.104.
"Certification".	Section 3.411.
"Check".	Section 3.104.
"Definite time".	Section 3.109.
"Dishonor".	Section 3.507.
"Draft".	Section 3.104.
"Holder in due course".	Section 3.302.
"Negotiation".	Section 3.202.
"Note".	Section 3.104.
"Notice of dishonor".	Section 3.508.
"On demand".	Section 3.108.
"Presentment".	Section 3.504.
"Protest".	Section 3.509.
"Restrictive Indorsement".	Section 3.205.
"Signature".	Section 3.401.

(c) The following definitions in other chapters apply to this chapter:

"Account".	Section 4.104.
"Banking Day".	Section 4.104.
"Clearing house".	Section 4.104.
"Collecting bank".	Section 4.105.
"Customer".	Section 4.104.
"Depository Bank".	Section 4.105.
"Documentary Draft".	Section 4.104.
"Intermediary Bank".	Section 4.105.
"Item".	Section 4.104.
"Midnight deadline".	Section 4.104.
"Payor bank".	Section 4.105.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1531, ch. 290, § 3, eff. Aug. 29, 1983.]

§ 3.103. Limitations on Scope of Chapter

(a) This chapter does not apply to money, documents of title or investment securities.

(b) The provisions of this chapter are subject to the provisions of the chapter on Bank Deposits and Collections (Chapter 4) and Secured Transactions (Chapter 9).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.104. Form of Negotiable Instruments; "Draft"; "Check"; "Certificate of Deposit"; "Note"

(a) Any writing to be a negotiable instrument within this chapter must

(1) be signed by the maker or drawer; and

(2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and

(3) be payable on demand or at a definite time; and

(4) be payable to order or to bearer.

(b) A writing which complies with the requirements of this section is

(1) a "draft" ("bill of exchange") if it is an order;

(2) a "check" if it is a draft drawn on a bank and payable on demand;

(3) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(4) a "note" if it is a promise other than a certificate of deposit.

(c) As used in other chapters of this title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within

this chapter as well as to instruments which are so negotiable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.105. When Promise or Order Unconditional

(a) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(1) is subject to implied or constructive conditions; or

(2) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(3) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(4) states that it is drawn under a letter of credit; or

(5) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(6) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(7) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(8) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(b) A promise or order is not unconditional if the instrument

(1) states that it is subject to or governed by any other agreement; or

(2) states that it is to be paid only out of a particular fund or source except as provided in this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.106. Sum Certain

(a) The sum payable is a sum certain even though it is to be paid

(1) with stated interest or by stated installments; or

(2) with stated different rates of interest before and after default or a specified date; or

(3) with a stated discount or addition if paid before or after the date fixed for payment; or

(4) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(5) with costs of collection or an attorney's fee or both upon default.

(b) Nothing in this section shall validate any term which is otherwise illegal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.107. Money

(a) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(b) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.108. Payable on Demand

Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.109. Definite Time

(a) An instrument is payable at a definite time if by its terms it is payable

(1) on or before a stated date or at a fixed period after a stated date; or

(2) at a fixed period after sight; or

(3) at a definite time subject to any acceleration; or

(4) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(b) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.110. Payable to Order

(a) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(1) the maker or drawer; or

(2) the drawee; or

(3) a payee who is not maker, drawer or drawee; or

(4) two or more payees together or in the alternative; or

(5) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(6) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(7) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(b) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(c) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.111. Payable to Bearer

An instrument is payable to bearer when by its terms it is payable to

(1) bearer or the order of bearer; or

(2) a specified person or bearer; or

(3) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.112. Terms and Omissions Not Affecting Negotiability

(a) The negotiability of an instrument is not affected by

(1) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(2) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

(3) a promise or power to maintain or protect collateral or to give additional collateral; or

(4) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(5) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(6) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(7) a statement in a draft drawn in a set of parts (Section 3.801) to the effect that the order is effective only if no other part has been honored.

(b) Nothing in this section shall validate any term which is otherwise illegal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.113. Seal

An instrument otherwise negotiable is within this chapter even though it is under a seal.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.114. Date, Antedating, Postdating

(a) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(b) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(c) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.115. Incomplete Instruments

(a) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(b) If the completion is unauthorized the rules as to material alteration apply (Section 3.407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.116. Instruments Payable to Two or More Persons

An instrument payable to the order of two or more persons

(1) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(2) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.117. Instruments Payable With Words of Description

An instrument made payable to a named person with the addition of words describing him

(1) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(2) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(3) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.118. Ambiguous Terms and Rules of Construction

The following rules apply to every instrument:

(1) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(2) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(3) Words control figures except that if the words are ambiguous figures control.

(4) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(5) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(6) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with Section 3.604 tenders full payment when the instrument is due.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.119. Other Writings Affecting Instrument

(a) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(b) A separate agreement does not affect the negotiability of an instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.120. Instruments "Payable Through" Bank

An instrument which states that it is "payable through" a bank or the like designates that bank as

a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.121. Instruments Payable at Bank

A note or acceptance which states that it is payable at a bank is the equivalent of a draft drawn on the bank payable when it falls due out of any funds of the maker or acceptor in current account or otherwise available for such payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.122. Accrual of Cause of Action

(a) A cause of action against a maker or an acceptor accrues

(1) in the case of a time instrument on the day after maturity;

(2) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(b) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(c) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(d) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(1) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(2) in all other cases from the date of accrual of the cause of action.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER B. TRANSFER AND NEGOTIATION

§ 3.201. Transfer: Right to Indorsement

(a) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(b) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(c) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the

indorsement is made and until that time there is no presumption that the transferee is the owner.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.202. Negotiation

(a) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(b) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(c) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(d) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.203. Wrong or Misspelled Name

Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.204. Special Indorsement; Blank Indorsement

(a) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(b) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(c) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.205. Restrictive Indorsements

An indorsement is restrictive which either

- (1) is conditional; or
- (2) purports to prohibit further transfer of the instrument; or

(3) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(4) otherwise states that it is for the benefit or use of the indorser or of another person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.206. Effect of Restrictive Indorsement

(a) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(b) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(c) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (Subdivisions (1) and (3) of Section 3.205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course.

(d) The first taker under an indorsement for the benefit of the indorser or another person (Subdivision (4) of Section 3.205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (Subsection (b) of Section 3.304).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.207. Negotiation Effective Although It May Be Rescinded

(a) Negotiation is effective to transfer the instrument although the negotiation is

- (1) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (2) obtained by fraud, duress or mistake of any kind; or
- (3) part of an illegal transaction; or
- (4) made in breach of duty.

(b) Except as against a subsequent holder in due course such negotiation is in an appropriate case

subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.208. **Reacquisition**

Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER C. RIGHTS OF A HOLDER

§ 3.301. **Rights of a Holder**

The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in Section 3.603 on payment or satisfaction, discharge it or enforce payment in his own name. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.302. **Holder in Due Course**

(a) A holder in due course is a holder who takes the instrument

- (1) for value; and
- (2) in good faith; and
- (3) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(b) A payee may be a holder in due course.

(c) A holder does not become a holder in due course of an instrument:

- (1) by purchase of it at judicial sale or by taking it under legal process; or
- (2) by acquiring it in taking over an estate; or
- (3) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(d) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.303. **Taking for Value**

A holder takes the instrument for value

- (1) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or
- (2) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

- (3) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.304. **Notice to Purchaser**

(a) The purchaser has notice of a claim or defense if

- (1) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or
- (2) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(b) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(c) The purchaser has notice that an instrument is overdue if he has reason to know

- (1) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or
- (2) that acceleration of the instrument has been made; or
- (3) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(d) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

- (1) that the instrument is antedated or postdated;
- (2) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
- (3) that any party has signed for accommodation;
- (4) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
- (5) that any person negotiating the instrument is or was a fiduciary;
- (6) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(e) The filing or recording of a document does not of itself constitute notice within the provisions of this chapter to a person who would otherwise be a holder in due course.

(f) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.305. Rights of a Holder in Due Course

To the extent that a holder is a holder in due course he takes the instrument free from

(a) all claims to it on the part of any person; and

(b) all defenses of any party to the instrument with whom the holder has not dealt except

(1) infancy, to the extent that it is a defense to a simple contract; and

(2) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(3) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(4) discharge in insolvency proceedings; and

(5) any other discharge of which the holder has notice when he takes the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.306. Rights of One Not Holder in Due Course

Unless he has the rights of a holder in due course any person takes the instrument subject to

(1) all valid claims to it on the part of any person; and

(2) all defenses of any party which would be available in an action on a simple contract; and

(3) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (Section 3.408); and

(4) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.307. Burden of Establishing Signatures, Defenses and Due Course

(a) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(1) the burden of establishing it is on the party claiming under the signature; but

(2) the signature is presumed to be genuine or authorized except where the action is to enforce

the obligation of a purported signer who has died or become incompetent before proof is required.

(b) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(c) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER D. LIABILITY OF PARTIES

§ 3.401. Signature

(a) No person is liable on an instrument unless his signature appears thereon.

(b) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.402. Signature in Ambiguous Capacity

Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.403. Signature by Authorized Representative

(a) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(b) An authorized representative who signs his own name to an instrument

(1) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(2) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(c) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.404. Unauthorized Signatures

(a) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(b) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.405. Imposters; Signature in Name of Payee

(a) An indorsement by any person in the name of a named payee is effective if

(1) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(2) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(3) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(b) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.406. Negligence Contributing to Alteration or Unauthorized Signature

Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.407. Alteration

(a) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(1) the number or relations of the parties; or

(2) an incomplete instrument, by completing it otherwise than as authorized; or

(3) the writing as signed, by adding to it or by removing any part of it.

(b) As against any person other than a subsequent holder in due course

(1) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party

assents or is precluded from asserting the defense;

(2) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(c) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.408. Consideration

Want or failure of consideration is a defense against any person not having the rights of a holder in due course (Section 3.305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.409. Draft Not an Assignment

(a) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(b) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.410. Definition and Operation of Acceptance

(a) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(b) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(c) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.411. Certification of a Check

(a) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(b) Unless otherwise agreed a bank has no obligation to certify a check.

(c) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.412. Acceptance Varying Draft

(a) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(b) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(c) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.413. Contract of Maker, Drawer and Acceptor

(a) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to Section 3.115 on incomplete instruments.

(b) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(c) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.414. Contract of Indorser; Order of Liability

(a) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(b) Unless they otherwise agree indorsers are liable to one another in the order in which they in-

dorse, which is presumed to be the order in which their signatures appear on the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.415. Contract of Accommodation Party

(a) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(b) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(c) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(d) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(e) An accommodation party is not liable to the party accommodated; and if he pays the instrument has a right of recourse on the instrument against such party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.416. Contract of Guarantor

(a) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(b) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(c) Words of guaranty which do not otherwise specify guarantee payment.

(d) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(e) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(f) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.417. Warranties on Presentment and Transfer

(a) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(A) to a maker with respect to the maker's own signature; or

(B) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(3) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(A) to the maker of a note; or

(B) to the drawer of a draft whether or not the drawer is also the drawee; or

(C) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) to the acceptor of a draft with respect to an alteration made after the acceptance.

(b) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(1) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(2) all signatures are genuine or authorized; and

(3) the instrument has not been materially altered; and

(4) no defense of any party is good against him; and

(5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(c) By transferring "without recourse" the transferor limits the obligation stated in Subsection (b)(4)

to a warranty that he has no knowledge of such a defense.

(d) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.418. Finality of Payment or Acceptance

Except for recovery of bank payments as provided in the chapter on Bank Deposits and Collections (Chapter 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.419. Conversion of Instrument; Innocent Representative

(a) An instrument is converted when

(1) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(2) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(3) it is paid on a forged indorsement.

(b) In an action against a drawee under Subsection (a) the measure of the drawee's liability is the face amount of the instrument. In any other action under Subsection (a) the measure of liability is presumed to be the face amount of the instrument.

(c) Subject to the provisions of this title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(d) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (Sections 3.205 and 3.206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER E. PRESENTMENT, NOTICE
OF DISHONOR AND PROTEST

§ 3.501. **When Presentment, Notice of Dishonor,
and Protest Necessary or Permissible**

(a) Unless excused (Section 3.511) presentment is necessary to charge secondary parties as follows:

(1) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(2) presentment for payment is necessary to charge any indorser;

(3) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in Section 3.502(a)(2).

(b) Unless excused (Section 3.511)

(1) notice of any dishonor is necessary to charge any indorser;

(2) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in Section 3.502(a)(2).

(c) Unless excused (Section 3.511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states, territories, dependencies and possessions of the United States, the District of Columbia and the Commonwealth of Puerto Rico. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(d) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 1, eff. Sept. 1, 1969.]

§ 3.502. **Unexcused Delay; Discharge**

(a) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(1) any indorser is discharged; and

(2) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank

becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(b) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.503. **Time of Presentment**

(a) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(1) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(2) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(3) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(4) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(5) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(b) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(1) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(2) with respect to the liability of an indorser, seven days after his indorsement.

(c) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(d) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.504. How Presentment Made

(a) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(b) Presentment may be made

(1) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(2) through a clearing house; or

(3) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(c) It may be made

(1) to any one of two or more makers, acceptors, drawees or other payors; or

(2) to any person who has authority to make or refuse the acceptance or payment.

(d) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(e) In the cases described in Section 4.210 presentment may be made in the manner and with the result stated in that section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.505. Rights of Party to Whom Presentment Is Made

(a) The party to whom presentment is made may without dishonor require

(1) exhibition of the instrument; and

(2) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(3) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(4) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(b) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.506. Time Allowed for Acceptance or Payment

(a) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dis-

honor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(b) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment

(a) An instrument is dishonored when

(1) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4.301); or

(2) presentment is excused and the instrument is not duly accepted or paid.

(b) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(c) Return of an instrument for lack of proper indorsement is not dishonor.

(d) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.508. Notice of Dishonor

(a) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(b) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(c) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(d) Written notice is given when sent although it is not received.

(e) Notice to one partner is notice to each although the firm has been dissolved.

(f) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(g) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(h) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.509. Protest; Noting for Protest

(a) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(b) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(c) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(d) Subject to Subsection (e) any necessary protest is due by the time that notice of dishonor is due.

(e) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.510. Evidence of Dishonor and Notice of Dishonor

The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

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(1) a document regular in form as provided in the preceding section which purports to be a protest;

(2) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(3) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.511. Waived or Excused Presentment, Protest or Notice of Dishonor or Delay Therein

(a) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(b) Presentment or notice or protest as the case may be is entirely excused when

(1) the party to be charged has waived it expressly or by implication either before or after it is due; or

(2) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(3) by reasonable diligence the presentment or protest cannot be made or the notice given.

(c) Presentment is also entirely excused when

(1) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(2) acceptance or payment is refused but not for want of proper presentment.

(d) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(e) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(f) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER F. DISCHARGE

§ 3.601. Discharge of Parties

(a) The extent of the discharge of any party from liability on an instrument is governed by the sections on

- (1) payment or satisfaction (Section 3.603); or
- (2) tender of payment (Section 3.604); or
- (3) cancellation or renunciation (Section 3.605);

or

(4) impairment of right of recourse or of collateral (Section 3.606); or

(5) reacquisition of the instrument by a prior party (Section 3.208); or

(6) fraudulent and material alteration (Section 3.407); or

(7) certification of a check (Section 3.411); or

(8) acceptance varying a draft (Section 3.412);

or

(9) unexcused delay in presentment or notice of dishonor or protest (Section 3.502).

(b) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(c) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(1) reacquires the instrument in his own right; or

(2) is discharged under any provision of this Chapter, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (Section 3.606).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 2, eff. Sept. 1, 1969.]

§ 3.602. Effect of Discharge Against Holder in Due Course

No discharge of any party provided by this chapter is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.603. Payment or Satisfaction

(a) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection

does not, however, result in the discharge of the liability

(1) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(2) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(b) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (Section 3.201).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.604. Tender of Payment

(a) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(b) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(c) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.605. Cancellation and Renunciation

(a) The holder of an instrument may even without consideration discharge any party

(1) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(2) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(b) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.606. Impairment of Recourse or of Collateral

(a) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(1) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right

to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(2) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(b) By express reservation of rights against a party with a right of recourse the holder preserves

(1) all his rights against such party as of the time when the instrument was originally due; and

(2) the right of the party to pay the instrument as of that time; and

(3) all rights of such party to recourse against others.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER G. ADVICE OF INTERNATIONAL SIGHT DRAFT

§ 3.701. Letter of Advice of International Sight Draft

(a) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(b) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(c) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER H. MISCELLANEOUS

§ 3.801. Drafts in a Set

(a) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(b) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(c) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under Subsection (b). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (Section 4.407).

(d) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.802. Effect of Instrument on Obligation for Which It Is Given

(a) Unless otherwise agreed where an instrument is taken for an underlying obligation

(1) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(2) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(b) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.803. Notice to Third Party

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this chapter he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this chapter. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice

the person notified does come in and defend he is so bound.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.804. Lost, Destroyed or Stolen Instruments

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 3.805. Instruments Not Payable to Order or to Bearer

This chapter applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this chapter but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 4. BANK DEPOSITS AND COLLECTIONS

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SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

§ 4.101. Short Title

This chapter may be cited as Uniform Commercial Code—Bank Deposits and Collections.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.102. Applicability

(a) To the extent that items within this chapter are also within the scope of Chapters 3 and 8, they are subject to the provisions of those chapters. In the event of conflict the provisions of this chapter

govern those of Chapter 3 but the provisions of Chapter 8 govern those of this chapter.

(b) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.103. Variation by Agreement; Measure of Damages; Certain Action Constituting Ordinary Care

(a) The effect of the provisions of this chapter may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under Subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this chapter or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this chapter, prima facie constitutes the exercise of ordinary care.

(d) The specification or approval of certain procedures by this chapter does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.104. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires

(1) "Account" means any account with a bank and includes a checking, time, interest or savings account;

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

(3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

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

(5) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(6) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(7) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

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

(9) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(10) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

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

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

"Collecting bank".	Section 4.105.
"Depository bank".	Section 4.105.
"Intermediary bank".	Section 4.105.
"Payor bank".	Section 4.105.
"Presenting bank".	Section 4.105.
"Remitting bank".	Section 4.105.

(c) The following definitions in other chapters apply to this chapter:

"Acceptance".	Section 3.410.
"Certificate of deposit".	Section 3.104.
"Certification".	Section 3.411.
"Check".	Section 3.104.
"Draft".	Section 3.104.
"Holder in due course".	Section 3.302.
"Notice of dishonor".	Section 3.508.
"Presentment".	Section 3.504.
"Protest".	Section 3.509.
"Secondary party".	Section 3.102.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.105. “Depository Bank”; “Intermediary Bank”; “Collecting Bank”; “Payor Bank”; “Presenting Bank”; “Remitting Bank”

In this chapter unless the context otherwise requires:

- (1) “Depository bank” means the first bank to which an item is transferred for collection even though it is also the payor bank;
- (2) “Payor bank” means a bank by which an item is payable as drawn or accepted;
- (3) “Intermediary bank” means any bank to which an item is transferred in course of collection except the depository or payor bank;
- (4) “Collecting bank” means any bank handling the item for collection except the payor bank;
- (5) “Presenting bank” means any bank presenting an item except a payor bank;
- (6) “Remitting bank” means any payor or intermediary bank remitting for an item.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.106. Separate Office of a Bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this chapter and under Chapter 3.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.107. Time of Receipt of Items

(a) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(b) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.108. Delays

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.109. Process of Posting

The “process of posting” means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (1) verification of any signature;
- (2) ascertaining that sufficient funds are available;
- (3) affixing a “paid” or other stamp;
- (4) entering a charge or entry to a customer’s account;
- (5) correcting or reversing an entry or erroneous action with respect to the item.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER B. COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

§ 4.201. Presumption and Duration of Agency Status of Collecting Banks and Provisional Status of Credits; Applicability of Chapter; Item Indorsed “Pay Any Bank”

(a) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (Subsection (c) of Section 4.211 and Sections 4.212 and 4.213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this chapter apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder

(1) until the item has been returned to the customer initiating collection; or

(2) until the item has been specially indorsed by a bank to a person who is not a bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.202. Responsibility for Collection; When Action Seasonable

(a) A collecting bank must use ordinary care in
(1) presenting an item or sending it for presentment; and

(2) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under Subsection (b) of Section 4.212 after learning that the item has not been paid or accepted, as the case may be; and

(3) settling for an item when the bank receives final settlement; and

(4) making or providing for any necessary protest; and

(5) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(c) Subject to Subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.203. Effect of Instructions

Subject to the provisions of Chapter 3 concerning conversion of instruments (Section 3.419) and the provisions of both Chapter 3 and this chapter concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.204. Methods of Sending and Presenting; Sending Direct to Payor Bank

(a) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(b) A collecting bank may send

(1) any item direct to the payor bank;

(2) any item to any non-bank payor if authorized by its transferor; and

(3) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.205. Supplying Missing Indorsement; No Notice from Prior Indorsement

(a) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(b) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.206. Transfer Between Banks

Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.207. Warranties of Customer and Collecting Bank on Transfer or Presentment of Items; Time for Claims

(a) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(2) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(A) to a maker with respect to the maker's own signature; or

(B) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(C) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(3) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(A) to the maker of a note; or

(B) to the drawer of a draft whether or not the drawer is also the drawee; or

(C) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(D) to the acceptor of an item with respect to an alteration made after the acceptance.

(b) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(1) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(2) all signatures are genuine or authorized; and

(3) the item has not been materially altered; and

(4) no defense of any party is good against him; and

(5) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(c) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(d) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person

liable is discharged to the extent of any loss caused by the delay in making claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.208. Security Interest of Collecting Bank in Items, Accompanying Documents and Proceeds

(a) A bank has a security interest in an item and any accompanying documents or the proceeds of either

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

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

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

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

(c) 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 accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Chapter 9 except that

(1) no security agreement is necessary to make the security interest enforceable (Subsection (a)(2) of Section 9.203); and

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.209. When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.210. Presentment by Notice of Item Not Payable by, Through or at a Bank; Liability of Secondary Parties

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 3.505 by the close of the bank's next banking day after it knows of the requirement.

(b) Where presentment is made by notice and neither honor nor request for compliance with a requirement under Section 3.505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.211. Media of Remittance; Provisional and Final Settlement in Remittance Cases

(a) A collecting bank may take in settlement of an item

(1) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(2) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(3) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(4) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(b) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by Subsection (a) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(c) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(1) if the remittance instrument or authorization to charge is of a kind approved by Subsection (a) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably

before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(2) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by Subsection (a)(2);—at the time of the receipt of such remittance check or obligation; or

(3) if in a case not covered by Subdivision (1) or (2) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1531, ch. 290, § 4, eff. Aug. 29, 1983.]

§ 4.212. Right of Charge-Back or Refund

(a) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (Subsection (c) of Section 4.211 and Subsections (b) and (c) of Section 4.213).

(b) Within the time and manner prescribed by this section and Section 4.301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(c) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 4.301).

(d) The right to charge-back is not affected by

(1) prior use of the credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.213. Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for Withdrawal

(a) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

- (1) paid the item in cash; or
- (2) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
- (3) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (4) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under Subdivisions (2), (3) or (4) the payor bank shall be accountable for the amount of the item.

(b) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(c) If a collecting bank receives a settlement for an item which is or becomes final (Subsection (c) of Section 4.211, Subsection (b) of Section 4.213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(d) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

- (1) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a

reasonable time to learn that the settlement is final;

(2) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(e) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.214. Insolvency and Preference

(a) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (Subsection (c) of Section 4.211, Subsections (a)(4), (b) and (c) of Section 4.213).

(d) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER C. COLLECTION OF ITEMS: PAYOR BANKS

§ 4.301. Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor

(a) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (Subsection (a) of Section 4.213) and before its midnight deadline it

- (1) returns the item; or

(2) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(c) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.302. Payor Bank's Responsibility for Late Return of Item

In the absence of a valid defense such as breach of a presentment warranty (Subsection (a) of Section 4.207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(1) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.303. When Items Subject to Notice, Stop-Order, Legal Process or Setoff; Order in Which Items May be Charged or Certified

(a) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process

is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(1) accepted or certified the item;

(2) paid the item in cash;

(3) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;

(4) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(5) become accountable for the amount of the item under Subsection (a)(4) of Section 4.213 and Section 4.302 dealing with the payor bank's responsibility for late return of items.

(b) Subject to the provisions of Subsection (a) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER D. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 4.401. When Bank May Charge Customer's Account

(a) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(b) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

(1) the original tenor of his altered item; or

(2) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.402. Bank's Liability to Customer for Wrongful Dishonor

A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.403. Customer's Right to Stop Payment; Burden of Proof of Loss

(a) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in Section 4.303.

(b) An order is binding upon the bank only if it is in writing, dated, signed, and describes the item with certainty. An order is effective for only six months unless renewed in writing.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.404. Bank Not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.405. Death or Incompetence of Customer

(a) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.406. Customer's Duty to Discover and Report Unauthorized Signature or Alteration

(a) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement

and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(b) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by Subsection (a) the customer is precluded from asserting against the bank

(1) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(2) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding fourteen calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(c) The preclusion under Subsection (b) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(d) Without regard to care or lack of care of either the customer or the bank a customer who does not within one year from the time the statement and items are made available to the customer (Subsection (a)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(e) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.407. Payor Bank's Right to Subrogation on Improper Payment

If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(1) of any holder in due course on the item against the drawer or maker; and

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER E. COLLECTION OF DOCUMENTARY DRAFTS

§ 4.501. Handling of Documentary Drafts; Duty to Send for Presentment and to Notify Customer of Dishonor

A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.502. Presentment of "On Arrival" Drafts

When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.503. Responsibility of Presenting Bank for Documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need

Unless otherwise instructed and except as provided in Chapter 5 a bank presenting a documentary draft

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions season-

ably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 4.504. Privilege of Presenting Bank to Deal With Goods; Security Interest for Expenses

(a) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under Subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 5. LETTERS OF CREDIT

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§ 5.101. Short Title

This chapter may be cited as Uniform Commercial Code—Letters of Credit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.102. Scope

(a) This chapter applies

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

(2) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(3) to a credit issued by a bank or other person if the credit is not within Subdivision (1) or (2) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(b) Unless the engagement meets the requirements of Subsection (a), this chapter does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(c) This chapter deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this title or may hereafter develop. The fact that this chapter states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.103. Definitions

(a) In this chapter unless the context otherwise requires

(1) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this chapter (Section 5.102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(2) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(3) An "issuer" is a bank or other person issuing a credit.

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

(5) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

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

(7) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

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

"Notation Credit". Section 5.108.

"Presenter". Section 5.112(c).

(c) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance".	Section 3.410.
"Contract for sale".	Section 2.106.
"Draft".	Section 3.104.
"Holder in due course".	Section 3.302.
"Midnight deadline".	Section 4.104.
"Security".	Section 8.102.

(d) In addition, Chapter contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.104. Formal Requirements; Signing

(a) Except as otherwise required in Subsection (a)(3) of Section 5.102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(b) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.105. Consideration

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.106. Time and Effect of Establishment of Credit

(a) Unless otherwise agreed a credit is established

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

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

(b) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(c) Unless otherwise agreed after a revocable credit is established it may be modified or revoked

by the issuer without notice to or consent from the customer or beneficiary.

(d) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.107. Advice of Credit; Confirmation; Error in Statement of Terms

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

(b) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.108. "Notation Credit"; Exhaustion of Credit

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

(b) Under a notation credit

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

(2) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(c) If the credit is not a notation credit

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.109. Issuer's Obligation to Its Customer

(a) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(1) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

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

(3) based on knowledge or lack of knowledge of any usage of any particular trade.

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

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.110. Availability of Credit in Portions; Presenter's Reservation of Lien or Claim

(a) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(b) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.111. Warranties on Transfer and Presentment

(a) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Chapters 3, 4, 7 and 8.

(b) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Chapter 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Chapters 7 and 8.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.112. Time Allowed for Honor or Rejection; Withholding Honor or Rejection by Consent; "Presenter"

(a) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

- (1) defer honor until the close of the third banking day following receipt of the documents; and
- (2) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in Subsection (d) of Section 5.114 on conditional payment.

(b) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.113. Indemnities

(a) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(b) An indemnity agreement inducing honor, negotiation or reimbursement

- (1) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and
- (2) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.114. Issuer's Duty and Privilege to Honor; Right to Reimbursement

(a) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(b) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7.507) or of a certificated security (Section 8.306) or is forged or fraudulent or there is fraud in the transaction:

- (1) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3.302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7.502) or a bona fide purchaser of a certificated security (Section 8.302); and

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

(c) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(d) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

- (1) any payment made on receipt of such notice is conditional; and
- (2) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

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

(e) In the case covered by Subsection (d) failure to reject documents within the time specified in Subdivision (2), constitutes acceptance of the docu-

ments and makes the payment final in favor of the beneficiary.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2576, ch. 442, § 13, eff. Sept. 1, 1983.]

§ 5.115. Remedy for Improper Dishonor or Anticipatory Repudiation

(a) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (Section 2.707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under Section 2.710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(b) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under Section 2.610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 5.116. Transfer and Assignment

(a) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(b) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Chapter 9 on Secured Transactions and is governed by that chapter except that

(1) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Chapter 9; and

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

(3) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter

of credit or advice of credit is exhibited to the issuer.

(c) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 998, ch. 400, § 4, eff. Jan. 1, 1974.]

§ 5.117. Insolvency of Bank Holding Funds for Documentary Credit

(a) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this chapter is made applicable by Subdivision (1) or (2) of Section 5.102(a) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(1) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

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

(3) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(b) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 6. BULK TRANSFERS

Sec.

- 6.101. Short Title.
- 6.102. "Bulk Transfers"; Transfers of Equipment; Enterprises Subject to This Chapter; Bulk Transfers Subject to This Chapter.
- 6.103. Transfers Excepted From This Chapter.
- 6.104. Schedule of Property, List of Creditors.
- 6.105. Notice to Creditors.
- 6.106. Application of the Proceeds.
- 6.107. The Notice.
- 6.108. Auction Sales; "Auctioneer".
- 6.109. What Creditors Protected; Credit for Payment to Particular Creditors.

Sec.

6.110. Subsequent Transfers.

6.111. Limitation of Actions and Levies.

§ 6.101. Short Title

This chapter may be cited as Uniform Commercial Code—Bulk Transfers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.102. "Bulk Transfers"; Transfers of Equipment; Enterprises Subject to This Chapter; Bulk Transfers Subject to This Chapter

(a) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (Section 9.109) of an enterprise subject to this chapter.

(b) A transfer of a substantial part of the equipment (Section 9.109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(c) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(d) Except as limited by the following section all bulk transfers of goods located within this state are subject to this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.103. Transfers Excepted From This Chapter

The following transfers are not subject to this chapter:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interest;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the

new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which are exempt from execution.

Public notice under Subdivision (6) or (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.104. Schedule of Property, List of Creditors

(a) Except as provided with respect to auction sales (Section 6.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(1) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(2) The parties prepare a schedule of the property transferred sufficient to identify it; and

(3) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the County Clerk of the county in which the transferor had its principal place of business in this state.

(b) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(c) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.105. Notice to Creditors

In addition to the requirements of the preceding section, any bulk transfer subject to this chapter except one made by auction sale (Section 6.108) is ineffective against any creditor of the transferor

unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (Section 6.107).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.106. Application of the Proceeds

In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this chapter for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (Section 6.104) or filed in writing in the place stated in the notice (Section 6.107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.107. The Notice

(a) The notice to creditors (Section 6.105) shall state:

(1) that a bulk transfer is about to be made; and

(2) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(3) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(b) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(1) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(2) the address where the schedule of property and list of creditors (Section 6.104) may be inspected;

(3) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(4) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(5) if for new consideration the time and place where creditors of the transferor are to file their claims.

(c) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (Section 6.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.108. Auction Sales; "Auctioneer"

(a) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(b) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (Section 6.104).

(c) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(1) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this chapter (Section 6.104);

(2) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(3) assure that the net proceeds of the auction are applied as provided in this chapter (Section 6.106).

(d) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.109. What Creditors Protected; Credit for Payment to Particular Creditors

(a) The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (Sections 6.105 and 6.107) are not entitled to notice.

(b) Against the aggregate obligation imposed by the provisions of this chapter concerning the application of the proceeds (Section 6.106 and Subsection (c)(3) of 6.108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.110. Subsequent Transfers

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 6.111. Limitation of Actions and Levies

No action under this chapter shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

SUBCHAPTER A. GENERAL

- Sec. 7.101. Short Title.
- 7.102. Definitions and Index of Definitions.
- 7.103. Relation of Chapter to Treaty, Statute, Tariff, Classification or Regulation.
- 7.104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title.
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- 7.201. Who May Issue a Warehouse Receipt; Storage Under Government Bond.
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- 7.206. Termination of Storage at Warehouseman's Option.
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- SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS**
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- 7.601. Lost and Missing Documents.
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SUBCHAPTER A. GENERAL

§ 7.101. Short Title

This chapter may be cited as Uniform Commercial Code—Documents of Title.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.102. Definitions and Index of Definitions

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

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

(2) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(3) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(4) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(5) "Document" means document of title as defined in the general definitions in Chapter 1 (Section 1.201).

(6) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(7) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(8) "Warehouseman" is a person engaged in the business of storing goods for hire.

(b) Other definitions applying to this chapter or to specified subchapters thereof, and the sections in which they appear are:

"Duly negotiate". Section 7.501.

"Person entitled under the document". Section 7.403(d).

(c) Definitions in other chapters applying to this chapter and the sections in which they appear are:

"Contract for sale". Section 2.106.

"Overseas". Section 2.323.

"Receipt" of goods. Section 2.103.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.103. Relation of Chapter to Treaty, Statute, Tariff, Classification or Regulation

To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued

pursuant thereto is applicable, the provisions of this chapter are subject thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.104. Negotiable and Non-Negotiable Warehouse Receipt, Bill of Lading or Other Document of Title

(a) A warehouse receipt, bill of lading or other document of title is negotiable

(1) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(2) where recognized in overseas trade, if it runs to a named person or assigns.

(b) Any other document is non-negotiable. A bill of lading in which it is stated 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 a written order signed by the same or another named person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.105. Construction Against Negative Implication

The omission from either Subchapter B or Subchapter C of this chapter¹ of a provision corresponding to a provision made in the other subchapter does not imply that a corresponding rule of law is not applicable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

¹ Section 7.201 et seq. or 7.301 et seq.

SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS**§ 7.201. Who May Issue a Warehouse Receipt; Storage Under Government Bond**

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

(b) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.202. Form of Warehouse Receipt; Essential Terms; Optional Terms

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

(b) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(1) the location of the warehouse where the goods are stored;

(2) the date of issue of the receipt;

(3) the consecutive number of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(5) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(6) a description of the goods or of the packages containing them;

(7) the signature of the warehouseman, which may be made by his authorized agent;

(8) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (Section 7.209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(c) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this title and do not impair his obligation of delivery (Section 7.403) or his duty of care (Section 7.204). Any contrary provisions shall be ineffective. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.203. Liability for Non-Receipt or Misdescription

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where 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 the like, if such indication be true, or the party or purchaser otherwise has notice.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.204. Duty of Care; Contractual Limitation of Warehouseman's Liability

(a) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure

to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(b) 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, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(c) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(d) This section does not impair or repeal Texas Revised Civil Statutes of 1925, Articles 5545 and 5546.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.205. Title Under Warehouse Receipt Defeated in Certain Cases

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.206. Termination of Storage at Warehouseman's Option

(a) A warehouseman may on notifying the person or whose account the goods are held and any other person known to claim an interest in the goods 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, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (Section 7.210).

(b) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the

time prescribed in Subsection (a) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(d) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(e) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.207. Goods Must be Kept Separate; Fungible Goods

(a) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(b) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.208. Altered Warehouse Receipts

Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.209. Lien of Warehouseman

(a)(1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or 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.

(2) If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(b) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in Subsection (a), such as for money advanced and interest. Such a security interest is governed by the chapter on Secured Transactions (Chapter 9).

(c) A warehouseman's lien for a security interest under Subsection (b) is effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under Section 7.503. However, the warehouseman's specific lien for charges and expenses under Subsection (a)(1) is effective against any security interest. If the warehouseman learns of a perfected security interest owned by a person as to whom the document confers no right in the goods covered by it under Section 7.503 against the goods and fails thereafter to give such secured party (Section 9.105) written notice of the accrued and unpaid charges and expenses at the time when they have accrued for between two and six months, then the warehouseman's specific lien under Subsection (a)(1) is effective as against such secured party only with respect to unpaid charges and expenses which have accrued by the end of six months.

(d) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1971, 62nd Leg., p. 3048, ch. 1010, § 1, eff. June 15, 1971.]

§ 7.210. Enforcement of Warehouseman's Lien

(a) Except as provided in Subsection (b), a warehouseman's lien may be enforced by public or private sale of the goods in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such 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 different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

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

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

(3) 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.

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

(5) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(6) 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 they 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 less than six conspicuous places in the neighborhood of the proposed sale.

(c) 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 under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(d) The warehouseman may buy at any public sale pursuant to this section.

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

(f) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(g) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(h) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either Subsection (a) or (b).

(i) The warehouseman 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.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS

§ 7.301. Liability for Non-Receipt or Misdescription; "Said to Contain"; "Shipper's Load and Count"; Improper Handling

(a) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where 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 the like, if such indication be true.

(b) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity of bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(c) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(d) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(e) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.302. Through Bills of Lading and Similar Documents

(a) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill 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 may be varied by agreement of the parties.

(b) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(c) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.303. Diversion; Reconsignment; Change of Instructions

(a) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(1) the holder of a negotiable bill; or

(2) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(3) the consignee on a non-negotiable 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 bill; or

(4) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(b) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.304. Bills of Lading in a Set

(a) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(c) Where a 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 whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(d) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(e) The bailee is obliged to deliver in accordance with Subchapter D of this chapter against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.305. Destination Bills

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

(b) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 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.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.307. Lien of Carrier

(a) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its 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. But 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 then to a reasonable charge.

(b) A lien for charges and expenses under Subsection (a) on goods which 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 such charges and expenses. Any other lien under Subsection (a) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(c) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.308. Enforcement of Carrier's Lien

(a) A carrier's lien may be enforced by public or private sale of the goods, in block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such 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 different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. 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.

(b) 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 under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

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

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

(e) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(f) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(g) A carrier's lien may be enforced in accordance with either Subsection (a) or the procedure set forth in Subsection (b) of Section 7.210.

(h) The 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.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1532, ch. 290, § 5, eff. Aug. 29, 1983.]

§ 7.309. Duty of Care; Contractual Limitation of Carrier's Liability

(a) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER D. WAREHOUSE RECEIPTS
AND BILLS OF LADING: GENERAL
OBLIGATIONS**

§ 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 regardless of the fact that

(1) the document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(2) the issuer may have violated laws regulating the conduct of his business; or

(3) the goods covered by the document were owned by the bailee at the time the document was issued; or

(4) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.402. Duplicate Receipt or Bill; Overissue

Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify

a duplicate document as such by conspicuous notation on its face.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.403. Obligation of Warehouseman or Carrier to Deliver; Excuse

(a) The bailee must deliver the goods to a person entitled under the document who complies with Subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

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

(2) damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in case of damage or destruction by fire is on the person entitled under the document;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(4) the exercise by a seller of his right to stop delivery pursuant to the provisions of the chapter on Sales (Section 2.705);

(5) a diversion, reconsignment or other disposition pursuant to the provisions of this chapter (Section 7.303) or tariff regulating such right;

(6) release, satisfaction or any other fact affording a personal defense against the claimant;

(7) any other lawful excuse.

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

(c) Unless the person claiming is one against whom the document confers no right under Section 7.503(a), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.404. No Liability for Good Faith Delivery Pursuant to Receipt or Bill

A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the

document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

**SUBCHAPTER E. WAREHOUSE RECEIPTS
AND BILLS OF LADING: NEGOTIATION
AND TRANSFER**

§ 7.501. Form of Negotiation and Requirements of "Due Negotiation"

(a) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(b)(1) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(2) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(c) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(d) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who 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 money obligation.

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

(f) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.502. Rights Acquired by Due Negotiation

(a) Subject to the following section and to the provisions of Section 7.205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

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

(4) 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 him except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.503. Document of Title to Goods Defeated in Certain Cases

(a) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(1) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (Section 7.403) or with power of disposition under this title (Sections 2.403 and 9.307) or other statute or rule of law; nor

(2) acquiesced in the procurement by the bailor or his nominee of any document of title.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Subchapter D of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 1533, ch. 290, § 6, eff. Aug. 29, 1983.]

§ 7.504. Rights Acquired in the Absence of Due Negotiation; Effect of Diversion; Seller's Stoppage of Delivery

(a) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the

title and rights which his transferor had or had actual authority to convey.

(b) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(1) by those creditors of the transferor who could treat the sale as void under Section 2.402; or

(2) 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 his rights; or

(3) as against the bailee by good faith dealings of the bailee with the transferor.

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

(d) Delivery pursuant to a non-negotiable document may be stopped by a seller under Section 2.705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.505. Indorser Not a Guarantor for Other Parties

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.506. Delivery Without Indorsement: Right to Compel Indorsement

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

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.507. Warranties on Negotiation or Transfer of Receipt or Bill

Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

- (1) that the document is genuine; and
- (2) that he has no knowledge of any fact which would impair its validity or worth; and

(3) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.508. Warranties of Collecting Bank as to Documents

A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.509. Receipt or Bill: When Adequate Compliance With Commercial Contract

The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the chapters on Sales (Chapter 2) and on Letters of Credit (Chapter 5).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

§ 7.601. Lost and Missing Documents

(a) If a document has been 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 such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of a non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(b) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, 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 who files a notice of claim within one year after the delivery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.602. Attachment of Goods Covered by a Negotiable Document

Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 7.603. Conflicting Claims; Interpleader

If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

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SUBCHAPTER A. SHORT TITLE AND GENERAL MATTERS

§ 8.101. Short Title

This chapter may be cited as Uniform Commercial Code—Investment Securities.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.102. Definitions and Index of Definitions

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

- (1) A "certificated security" is a share, participation, or other interest in property of or an

enterprise of the issuer or an obligation of the issuer which is:

(A) represented by an instrument issued in bearer or registered form;

(B) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(C) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(2) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is:

(A) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(B) of a type commonly dealt in on securities exchanges or markets; and

(C) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(3) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this chapter and not by Chapter 3, even though it also meets the requirements of that chapter. This chapter does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this chapter.

(4) A certificated security is in "registered form" if:

(A) it specifies a person entitled to the security or to the rights it represents; and

(B) its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(5) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any indorsement.

(b) A "subsequent purchaser" is a person who takes other than by original issue.

(c) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(1) at least 90 percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20 percent of the

capital stock of the corporation, and each of which is:

(A) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws;

(B) a broker or dealer or investment company registered under the federal securities laws; or

(C) a national securities exchange or association registered under the federal securities laws; and

(2) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors.

(d) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(e) Other definitions applying to this chapter or to specified subchapters thereof and the sections in which they appear are:

"Adverse claim".	Section 8.302.
"Bona fide purchaser".	Section 8.302.
"Broker".	Section 8.303.
"Debtor".	Section 9.105.
"Financial intermediary".	Section 8.313.
"Guarantee of the signature".	Section 8.402.
"Initial transaction statement".	Section 8.408.
"Instruction".	Section 8.308.
"Intermediary bank".	Section 4.105.
"Issuer".	Section 8.201.
"Overissue".	Section 8.104.
"Secured party".	Section 9.105.
"Security agreement".	Section 9.105.

(f) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1730, ch. 628, § 1, eff. June 16, 1973; Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.103. Issuer's Lien

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(1) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the right of the issuer to the lien is contained in

the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.104. Effect of Overissue; "Overissue"

(a) The provisions of this chapter which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(1) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and to either deliver a certificated security or register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or

(2) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(b) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.105. Certificated Securities Negotiable; Statements and Instructions Not Negotiable; Presumptions

(a) Certificated securities governed by this chapter are negotiable instruments.

(b) Statements (Section 8.408), notices, or the like, sent by the issuer of uncertificated securities and instructions (Section 8.308) are neither negotiable instruments nor certificated securities.

(c) In any action on a security:

(1) unless specifically denied in the pleadings, each signature on a certificated security, in a necessary indorsement, on an initial transaction statement, or on an instruction is admitted;

(2) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(3) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(4) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(5) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (Section 8.202).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.106. Applicability

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(1) registration of transfer of a certificated security;

(2) registration of transfer, pledge, or release of an uncertificated security; and

(3) sending of statements of uncertificated securities.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.107. Securities Transferable; Action for Price

(a) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(b) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(1) certificated securities accepted by the buyer;

(2) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(3) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.108. Registration of Pledge and Release of Uncertificated Securities

A security interest in an uncertificated security may be evidenced by the registration of pledge to

the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this chapter are terminated by the registration of release.

[Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

SUBCHAPTER B. ISSUE—ISSUER

§ 8.201. "Issuer"

(a) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(1) places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise, or to evidence his duty to perform an obligation represented by the certificated security;

(2) creates shares, participations, or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(3) directly or indirectly creates fractional interests in his rights or property, which fractional interests are represented by certificated securities; or

(4) becomes responsible for or in place of any other person described as an issuer in this section.

(b) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to Section 8.408.

(c) With respect to registration of transfer, pledge, or release (Subchapter D of this chapter¹), "issuer" means a person on whose behalf transfer books are maintained.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

¹Section 8.401 et seq.

§ 8.202. Issuer's Responsibility and Defenses: Notice of Defect or Defense

(a) Even against a purchaser for value and without notice, the terms of a security include:

(1) if the security is certificated, those stated on the security;

(2) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser or, if his interest is transferred to him other than by registration of transfer, pledge,

or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(3) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(b) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as provided in the case of certain unauthorized signatures (Section 8.205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(e) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.203. Staleness as Notice of Defects or Defenses

(a) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(1) the act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and he takes the security more than one year after that date; and

(2) the act or event is not covered by Subdivision (1) and he takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

(b) A call that has been revoked is not within Subsection (a).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.204. Effect of Issuer's Restrictions on Transfer

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(1) the security is certificated and the restriction is noted conspicuously thereon; or

(2) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.205. Effect of Unauthorized Signature on Certificated Security or Initial Transaction Statement

An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for the signing of any of them; or

(2) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.206. Completion or Alteration of Certificated Security or Initial Transaction Statement

(a) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and

(2) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(c) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and

(2) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(d) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.207. Rights and Duties of Issuer With Respect to Registered Owners and Registered Pledgees

(a) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(b) Subject to the provisions of Subsections (c), (d), and (f), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(c) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(d) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(1) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(2) register the transfer of the security to the new owner subject to the interest of the existing pledgee if the instruction specifies a new owner and the existing pledgee; or

(3) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee if the instruction specifies the existing owner and another pledgee.

(e) Continuity of perfection of a security interest is not broken by registration of transfer under Subsection (d)(2) or by registration of release and pledge under Subsection (d)(3) if the security interest is assigned.

(f) If an uncertificated security is subject to a registered pledge:

(1) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(2) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(3) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(g) Nothing in this chapter shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.208. Effect of Signature of Authenticating Trustee, Registrar, or Transfer Agent

(a) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or

the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect that:

(1) the certificated security or initial transaction statement is genuine;

(2) his own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authority received by him from the issuer; and

(3) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

SUBCHAPTER C. TRANSFER

§ 8.301. Rights Acquired by Purchaser

(a) Upon transfer of a security to a purchaser (Section 8.313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by Section 8.302(d).

(b) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.302. "Bona Fide Purchaser"; "Adverse Claim"; Title Acquired by Bona Fide Purchaser

(a) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(1) who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to him or in blank;

(2) to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(3) to whom a security is transferred under the provisions of Subdivision (3), (4)(A), or (7) of Section 8.313(a).

(b) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(c) A bona fide purchaser in addition to acquiring the rights of a purchaser (Section 8.301) also acquires his interest in the security free of any adverse claim.

(d) Notwithstanding Section 8.301(a), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.303. "Broker"

"Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this chapter determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.304. Notice to Purchaser of Adverse Claims

(a) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(1) the security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(b) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security is registered is charged with notice of adverse claims as to which the issuer has a duty under Section 8.403(d) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(c) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer

or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.305. Staleness as Notice of Adverse Claims

An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a transfer:

(1) after one year from any date set for presentation or surrender for redemption or exchange; or

(2) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.306. Warranties on Presentment and Transfer of Certificated Securities; Warranties of Originators of Instructions

(a) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value without notice of adverse claims who receives a new, reissued, or re-registered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (Section 8.311) in a necessary indorsement.

(b) A person by transferring a certificated security to a purchaser for value warrants only that:

(1) his transfer is effective and rightful;

(2) the security is genuine and has not been materially altered; and

(3) he knows of no fact which might impair the validity of the security.

(c) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased

or made advances against the claim to be collected against the delivery.

(d) A pledgee or other holder for security who redelivers the certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under Subsection (c).

(e) A person who originates an instruction warrants to the issuer that:

(1) he is an appropriate person to originate the instruction; and

(2) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.

(f) A person who originates an instruction warrants to any person specially guaranteeing his signature (Subsection 8.312(c)) that:

(1) he is an appropriate person to originate the instruction; and

(2) at the time the instruction is presented to the issuer:

(A) he will be entitled to the registration of transfer, pledge, or release; and

(B) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(g) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (Section 8.312(f)) that:

(1) he is an appropriate person to originate the instruction;

(2) the uncertificated security referred to therein is valid; and

(3) at the time the instruction is presented to the issuer:

(A) the transferor will be entitled to the registration of transfer, pledge, or release;

(B) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(C) the requested transfer, pledge, or release will be rightful.

(h) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and, at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser for value is originated on order of the

debtor, the debtor makes to the purchaser the warranties of Subdivisions (2), 3(B), and 3(C) of Subsection (g).

(i) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

(1) his transfer is effective and rightful; and

(2) the uncertificated security is valid.

(j) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker, acting as an agent are in addition to applicable warranties given by and in favor of his customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.307. Effect of Delivery Without Indorsement; Right to Compel Indorsement

If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.308. Indorsement; Instruction

(a) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security.

(b) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(c) An indorsement purporting to be only a part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(d) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(e) An instruction originated by an appropriate person is:

(1) a writing signed by an appropriate person; or

(2) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(f) "An appropriate person" in Subsection (a) means the person specified by the certificated security or by special indorsement to be entitled to the security.

(g) "An appropriate person" in Subsection (e) means:

(1) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(2) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(h) In addition to the persons designated in Subsections (f) and (g), "an appropriate person" in Subsections (a) and (e) includes:

(1) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(2) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or has qualified;

(3) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;

(4) if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(5) a person having power to sign under applicable law or controlling instrument; and

(6) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

(i) Unless otherwise agreed, the indorser of a certificated security by his indorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in Section 8.306.

(j) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by him does not become unauthorized for the purposes of

this chapter by virtue of any subsequent change of circumstances.

(k) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his indorsement or an instruction originated by him unauthorized for the purposes of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.309. Effect of Indorsement Without Delivery

An indorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificated security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.310. Indorsement of Certificated Security in Bearer Form

An indorsement of a certificated security in bearer form may give notice of adverse claims (Section 8.304) but does not otherwise affect any right to registration the holder possesses.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.311. Effect of Unauthorized Indorsement or Instruction

Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(1) he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or re-registered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(2) an issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (Section 8.404).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.312. Effect of Guaranteeing Signature, Indorsement or Instruction

(a) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:

- (1) the signature was genuine;
- (2) the signer was an appropriate person to indorse (Section 8.308); and
- (3) the signer had legal capacity to sign.

(b) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

- (1) the signature was genuine;
- (2) the signer was an appropriate person to originate the instruction (Section 8.308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty;
- (3) the signer had legal capacity to sign; and
- (4) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(c) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (Subsection (b)) but also warrants that at the time the instruction is presented to the issuer:

- (1) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and
- (2) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) The guarantor under Subsections (a) and (b) or the special guarantor under Subsection (c) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(e) Any person guaranteeing an indorsement of a certificated security makes not only the warranties of a signature guarantor under Subsection (a) but also warrants the rightfulness of the particular transfer in all respects.

(f) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under Subsection (c) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(g) No issuer may require a special guarantee of signature (Subsection (c)), a guarantee of indorse-

ment (Subsection (e)), or a guarantee of instruction (Subsection (f)) as a condition to registration of transfer, pledge, or release.

(h) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.313. When Transfer to Purchaser Occurs; Financial Intermediary as Bona Fide Purchaser; "Financial Intermediary"

(a) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

- (1) at the time he or a person designated by him acquires possession of a certificated security;
- (2) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;
- (3) at the time his financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser;
- (4) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser:

(A) a specific certificated security in the financial intermediary's possession;

(B) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(C) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(5) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(6) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(7) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under Section 8.320;

(8) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the securi-

ty, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this subdivision, is signed by the secured party, is received by:

(A) a financial intermediary on whose books the interest of the transferor in the security appears;

(B) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(C) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(D) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(9) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(10) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under Subdivisions (1), (2), (3), (4), or (7), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(b) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in Subdivisions (3), (4)(A), and (7) of Subsection (a). If a security so held is part of a fungible bulk, as in the circumstances specified in Subdivisions 4(B) and 4(C) of Subsection (a), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(c) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser, the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(d) A "financial intermediary" is a bank, broker, clearing corporation, or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its cus-

tomers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.314. Duty to Transfer, When Completed

(a) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(1) the selling customer fulfills his duty to transfer at the time he:

(A) places a certificated security in the possession of the selling broker or a person designated by the broker;

(B) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(C) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(D) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(2) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to transfer at the time he:

(A) places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(B) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(C) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(D) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(b) Except as provided in this section or unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he:

(1) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(2) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(3) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(c) Unless made on an exchange, a sale to a broker purchasing for his own account is within Subsection (b) and not within Subsection (a).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.315. Action Against Transferee Based Upon Wrongful Transfer

(a) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser, may:

(1) reclaim possession of the certificated security wrongfully transferred;

(2) obtain possession of any new certificated security representing all or part of the same rights;

(3) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(4) have damages.

(b) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this chapter on unauthorized indorsements (Section 8.311).

(c) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.316. Purchaser's Right to Requisites for Registration of Transfer, Pledge, or Release on Books

Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a

transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.317. Creditors' Rights

(a) Subject to the exceptions in Subsections (c) and (d), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(b) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(c) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(d) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(e) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to Subsection (c) or (d) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(f) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.318. No Conversion by Good Faith Conduct

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.319. Statute of Frauds

A contract for the sale of securities is not enforceable by way of action or defense unless:

(1) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(2) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

(3) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under Subdivision (1) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(4) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.320. Transfer or Pledge Within Central Depository System

(a) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the account of the trans-

feree, pledgee, or pledgor by the amount of the obligation or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation; is subject to the control of the clearing corporation; and

(1) if certificated:

(A) is in the custody of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them; and

(B) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or

(2) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(b) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like, and, in appropriate cases, may be on a net basis taking into account other transfers, pledges, or releases of the same security.

(c) A transfer under this section is effective (Section 8.313) and the purchaser acquires the rights of the transferor (Section 8.301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (Section 8.321). A transferee or pledgee under this section may be a bona fide purchaser (Section 8.302).

(d) A transfer or pledge under this section is not a registration of transfer under Subchapter D.

(e) That entries made on the books of the clearing corporation as provided in Subsection (a) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.321. Enforceability, Attachment, Perfection, and Termination of Security Interests

(a) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of Section 8.313(a).

(b) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a

perfected security interest, but a security interest that has been transferred solely under Subdivision (9) of Section 8.313(a) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of Section 8.313(a) are satisfied.

(c) A security interest in a security is subject to the provisions of Chapter 9, but:

(1) no filing is required to perfect the security interest; and

(2) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as provided in Subdivision (8), (9), or (10) of Section 8.313(a). The secured party has the rights and duties provided under Section 9.207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(d) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of Section 8.313(a). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of Section 8.313(a). [Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

SUBCHAPTER D. REGISTRATION

§ 8.401. Duty of Issuer to Register, Transfer, Pledge, or Release

(a) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge, or release as requested if:

(1) the security is indorsed or the instruction was originated by the appropriate person or persons (Section 8.308);

(2) reasonable assurance is given that those indorsements or instructions are genuine and effective (Section 8.402);

(3) the issuer has no duty as to adverse claims or has discharged the duty (Section 8.403);

(4) any applicable law relating to the collection of taxes has been complied with; and

(5) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(b) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer

is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.402. Assurance That Indorsements and Instructions are Effective

(a) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (Section 8.308) is genuine and effective:

(1) in all cases, a guarantee of the signature (Section 8.312(a) or (b)) of the person indorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(2) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(3) if the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(b) A "guarantee of the signature" in Subsection (a) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(c) "Appropriate evidence of appointment or incumbency" in Subsection (a) means:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer, pledge, or release; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of

the contents of any document obtained pursuant to this subdivision except to the extent that the contents relate directly to the appointment or incumbency.

(d) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in Subsection (c)(2), both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, by-laws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.403. Issuer's Duty as to Adverse Claims

(a) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(1) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, re-issued, or re-registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

(2) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under Section 8.402(d).

(b) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his residence or regular place of business, that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(1) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(2) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(c) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under Section 8.402(d) or receives notification of an adverse claim under Subsection (a) if a certificated security presented for registration is indorsed by the appropriate person or

persons, the issuer is under no duty to inquire into adverse claims. In particular:

(1) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(2) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

(d) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(1) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of Subsection (e);

(2) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of Subsection (e);

(3) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so noted in the initial transaction statement sent to him; and

(4) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under Section 8.402(d).

(e) If the issuer of an uncertificated security is under a duty as to an adverse claim, the issuer discharges that duty by:

(1) including a notation of the claim in any statements sent with respect to the security under Sections 8.408(c), (f), and (g); and

(2) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(f) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under Section 8.408.

(g) Notwithstanding Subsections (d) and (e), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

- (1) the claim was embodied in legal process which expressly provides otherwise;
- (2) the claim was asserted in a written notification from the registered pledgee;
- (3) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under Section 8.402(d) in connection with the pledgee's request for transfer; or
- (4) the transfer requested is to the registered owner.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.404. Liability and Non-Liability for Registration

(a) Except as provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

- (1) there were on or with a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person (Section 8.308); and
- (2) the issuer had no duty as to adverse claims or has discharged the duty (Section 8.403).

(b) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

- (1) the registration was pursuant to Subsection (a);
- (2) the owner is precluded from asserting any claim for registering the transfer under Section 8.405(a); or
- (3) the delivery would result in overissue, in which case the issuer's liability is governed by Section 8.104.

(c) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

- (1) the registration was pursuant to Subsection (a); or
- (2) the registration would result in overissue, in which case the issuer's liability is governed by Section 8.104.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.405. Lost, Destroyed, and Stolen Certificated Securities

(a) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under Section 8.404 or any claim to a new security under this section.

(b) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

- (1) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (2) files with the issuer a sufficient indemnity bond; and
- (3) satisfies any other reasonable requirements imposed by the issuer.

(c) If, after the issue of the new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by Section 8.104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.406. Duty of Authenticating Trustee, Transfer Agent, or Registrar

(a) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities,

in the issue of new securities, or in the cancellation of surrendered securities:

(1) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(2) with regard to the particular functions he performs, he has the same obligation to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(b) Notice to an authenticating trustee, transfer agent, registrar, or other agent is notice to the issuer with respect to the functions performed by the agent.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.407. Exchangeability of Securities

(a) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(b) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (Section 8.403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(c) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(1) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(2) the registered pledgee, if the uncertificated security was subject to a registered pledge.

[Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

§ 8.408. Statements of Uncertificated Securities

(a) Within two business days after the transfer of an uncertificated security has been registered, the

issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units transferred;

(3) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) the date the transfer was registered.

(b) Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units pledged;

(3) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) the date the pledge was registered.

(c) Within two business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units released from pledge;

(3) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(4) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(5) the date the release was registered.

(d) An "initial transaction statement" is the statement sent to:

(1) the new registered owner and, if applicable, to the registered pledgee pursuant to Subsection (a);

(2) the registered pledgee pursuant to Subsection (b); or

(3) the registered owner pursuant to Subsection (c). Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement."

(e) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the number of shares or units transferred;

(3) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(4) the date the transfer was registered.

(f) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the name and address and any taxpayer identification number of the registered owner;

(3) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(4) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(5) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(g) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(1) a description of the issue of which the uncertificated security is a part;

(2) the name and address and any taxpayer identification number of the registered owner;

(3) the name and address and any taxpayer identification number of the registered pledgee;

(4) the number of shares or units subject to the pledge; and

(5) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under Section 8.403(d)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(h) If the issuer sends the statements described in Subsections (f) and (g) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(i) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security."

[Acts 1983, 68th Leg., p. 2511, ch. 442, § 1, eff. Sept. 1, 1983.]

CHAPTER 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHattel PAPER

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SUBCHAPTER A. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9.101. Short Title

This chapter may be cited as Uniform Commercial Code—Secured Transactions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.102. Policy and Subject Matter of Chapter

(a) Except as otherwise provided in Section 9.104 on excluded transactions, this chapter applies

(1) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(2) to any sale of accounts or chattel paper.

(b) This chapter applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This chapter does not apply to statutory liens except as provided in Section 9.310.

(c) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.103. Perfection of Security Interests in Multiple State Transactions

(a) Documents, instruments and ordinary goods.

(1) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in Subsection (b), mobile goods described in Subsection (c), and minerals described in Subsection (e).

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of a security interest in collateral

are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

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

(4) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Subchapter C of this chapter¹ to perfect the security interest,

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

(B) if the action is taken before the expiration of the period specified in paragraph (A), the security interest continues perfected thereafter;

(C) for the purpose of priority over a buyer of consumer goods (Subsection (b) of Section 9.307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in paragraphs (A) and (B).

(b) Certificate of title.

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

(2) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(3) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (4) of Subsection (a).

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

(c) Accounts, general intangibles and mobile goods.

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

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

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

(4) A debtor shall be deemed located at his place of business if he has one, at his chief

executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended,² it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

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

(d) Chattel paper.

The rules stated for goods in Subsection (a) apply to a possessory security interest in chattel paper. The rules stated for accounts in Subsection (c) apply to a non-possessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(e) Minerals.

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

(f) Uncertificated securities. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 1533, ch. 290, § 7, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2576, ch. 442, §§ 14, 15, eff. Sept. 1, 1983.]

¹ Section 9.301 et seq.

² Generally, see 49 U.S.C.A. § 1301 et seq.

§ 9.104. Transactions Excluded From Chapter

This chapter does not apply

(1) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920,¹ to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(2) to a landlord's lien; or

(3) to a lien given by statute or other rule of law for services or materials except as provided in Section 9.310 on priority of such liens; or

(4) to a transfer of a claim for wages, salary or other compensation of an employee; or

(5) to a transfer by a government or governmental subdivision or agency; or

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

(7) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (Section 9.306) and priorities in proceeds (Section 9.312); or

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

(9) to any right of set-off; or

(10) except to the extent that provision is made for fixtures in Section 9.313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(11) to a transfer in whole or in part of any claim arising out of tort; or

(12) to a transfer of an interest in any deposit account (Subsection (a)(5) of Section 9.105), except as provided with respect to proceeds (Section 9.306) and priorities in proceeds (Section 9.312).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]
146 U.S.C.A. § 911 et seq.

§ 9.105. Definitions and Index of Definitions

(a) In this chapter unless the context otherwise requires:

(1) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(2) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(3) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(4) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the

collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(5) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(6) "Document" means document of title as defined in the general definitions of Chapter 1 (Section 1.201), and a receipt of the kind described in Subsection (b) of Section 7.201;

(7) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(8) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (Section 9.313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(9) "Instrument" means a negotiable instrument (defined in Section 3.104), or a certificated security (defined in Section 8.102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(10) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

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

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

(13) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are repre-

sented by a trustee or other person, the representative is the secured party.

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

"Account".	Section 9.106.
"Attach".	Section 9.203.
"Construction mortgage".	Section 9.313(a).
"Consumer goods".	Section 9.109(1).
"Equipment".	Section 9.109(2).
"Farm products".	Section 9.109(3).
"Fixture".	Section 9.313.
"Fixture filing".	Section 9.313.
"General intangibles".	Section 9.106.
"Inventory".	Section 9.109(4).
"Lien creditor".	Section 9.301(c).
"Proceeds".	Section 9.306(a).
"Purchase money security interest".	Section 9.107.
"United States".	Section 9.103.

(c) The following definitions in other chapters apply to this chapter:

"Check".	Section 3.104.
"Contract for sale".	Section 2.106.
"Holder in due course".	Section 3.302.
"Note".	Section 3.104.
"Sale".	Section 2.106.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 3, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 2577, ch. 442, § 16, eff. Sept. 1, 1983.]

§ 9.106. Definitions: "Account"; "General Intangibles"

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 4, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.107. Definitions: "Purchase Money Security Interest"

A security interest is a "purchase money security interest" to the extent that it is

(1) taken or retained by the seller of the collateral to secure all or part of its price; or

(2) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.108. When After-Acquired Collateral Not Security For Antecedent Debt

Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.109. Classification of Goods; "Consumer Goods"; "Equipment"; "Farm Products"; "Inventory"

Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in

a business. Inventory of a person is not to be classified as his equipment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.110. Sufficiency of Description

Except as provided in Subsections (e) and (f) of Section 9.402, any description of personal property or real estate is sufficient for the purposes of this chapter whether or not it is specific if it reasonably identifies what is described.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 940, ch. 353, § 1, eff. June 19, 1975.]

§ 9.111. Applicability of Bulk Transfer Laws

The creation of a security interest is not a bulk transfer under Chapter 6 (see Section 6.103).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.112. Where Collateral is Not Owned by Debtor

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under Section 9.502(b) or under Section 9.504(a), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(1) to receive statements under Section 9.208;

(2) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under Section 9.505;

(3) to redeem the collateral under Section 9.506;

(4) to obtain injunctive or other relief under Section 9.507(a); and

(5) to recover losses caused to him under Section 9.208(b).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.113. Security Interests Arising Under Chapter on Sales

A security interest arising solely under the chapter on Sales (Chapter 2) is subject to the provisions of this chapter except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(1) no security agreement is necessary to make the security interest enforceable; and

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

(3) the rights of the secured party on default by the debtor are governed by the chapter on Sales (Chapter 2).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.114. Consignment

(a) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this chapter by Subsection (c)(3) of Section 2.326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(1) the consignor complies with the filing provision of the chapter on Sales with respect to consignments (Subsection (c)(3) of Section 2.326) before the consignee receives possession of the goods; and

(2) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(3) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(4) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(b) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor.

[Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

SUBCHAPTER B. VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

§ 9.201. General Validity of Security Agreement

Except as otherwise provided by this title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this chapter validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or

regulation to any transaction not otherwise subject thereto.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.202. Title to Collateral Immaterial

Each provision of this chapter with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites

(a) Subject to the provisions of Section 4.208 on the security interest of a collecting bank, Section 8.321 on security interests in securities, and Section 9.113 on a security interest arising under the chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(1) the collateral is in the possession of the secured party pursuant to agreement or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(2) value has been given; and

(3) the debtor has rights in the collateral.

(b) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in Subsection (a) have taken place unless explicit agreement postpones the time of attaching.

(c) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by Section 9.306.

(d) A transaction, although subject to this chapter, is also subject to Title 79, Revised Civil Statutes of Texas, 1925, as amended,¹ and in the case of conflict between the provisions of this Chapter and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 5, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 2579, ch. 442, § 17, eff. Sept. 1, 1983.]

§ 9.204. After-Acquired Property; Future Advances

(a) Except as provided in Subsection (b), a security agreement may provide that any or all obliga-

tions covered by the security agreement are to be secured by after-acquired collateral.

(b) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (Section 9.314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(c) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (Subsection (a) of Section 9.105).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.205. Use or Disposition of Collateral Without Accounting Permissible

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.206. Agreement Not to Assert Defenses Against Assignee; Modification of Sales Warranties Where Security Agreement Exists

(a) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the chapter on Commercial Paper (Chapter 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(b) When a seller retains a purchase money security interest in goods the chapter on Sales (Chapter 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.207. Rights and Duties When Collateral is in Secured Party's Possession

(a) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Unless otherwise agreed, when collateral is in the secured party's possession

(1) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(3) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(4) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(5) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(c) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(d) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.208. Request for Statement of Account or List of Collateral

(a) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type

of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(c) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding \$10 for each additional statement furnished.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

SUBCHAPTER C. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 9.301. Persons Who Take Priority Over Unperfected Security Interests; Right of "Lien Creditor"

(a) Except as otherwise provided in Subsection (b), an unperfected security interest is subordinate to the rights of

(1) persons entitled to priority under Section 9.312;

(2) a person who becomes a lien creditor before the security interest is perfected;

(3) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(4) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(b) If the secured party files with respect to a purchase money security interest before or within 20 days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise

between the time the security interest attaches and the time of filing.

(c) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(d) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1979, 66th Leg., p. 723, ch. 318, § 1, eff. June 6, 1979.]

§ 9.302. When Filing is Required to Perfect Security Interest; Security Interests to Which Filing Provisions of This Article Do Not Apply

(a) A financing statement must be filed to perfect all security interests except the following:

(1) a security interest in collateral in possession of the secured party under Section 9.305;

(2) a security interest temporarily perfected in instruments or documents without delivery under Section 9.304 or in proceeds for a 10 day period under Section 9.306;

(3) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(4) a purchase money security interest in consumer goods; but notation on a certificate of title is required for goods covered by a statute referred to in Subsection (c)(2); and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in Section 9.313;

(5) an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

(6) a security interest of a collecting bank (Section 4.208), a security interest in securities (Section 8.321), a security interest arising under the Chapter on Sales (see Section 9.113), or a security interest covered in Subsection (c) of this Section; or

(7) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder; and

(8) a security interest in oil or gas production or their proceeds under Section 9.319 of this code.

(b) If a secured party assigns a perfected security interest, no filing under this Chapter is required in order to continue the perfected status of the securi-

ty interest against creditors of and transferees from the original debtor.

(c) The filing of a financing statement otherwise required by this Chapter is not necessary or effective to perfect a security interest in property subject to

(1) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Chapter for filing of the security interest; or

(2) the following statutes of this state; the Certificate of Title Act, as amended (Article 6687-1, Vernon's Texas Civil Statutes); Subchapter B-1, Chapter 31, Parks and Wildlife Code, as amended,¹ relating to the certificates of title for motorboat and outboard motors; the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes); but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Chapter (Subchapter D)² apply to a security interest in that collateral created by him as debtor; or Subchapter A, Chapter 35, Title 4, Business & Commerce Code,³ relating to utility security instruments; or

(3) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (Subsection (b) of Section 9.103).

(d) Compliance with a statute or treaty described in Subsection (c) is equivalent to the filing of a financing statement under this Chapter, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in Section 9.103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Chapter.

[Acts 1967, 60th Leg., p. 1984, ch. 785, §§ 1 to 3. Amended by Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 1533, ch. 290, § 8, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2579, ch. 442, § 18, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4663, ch. 807, § 2, eff. Aug. 29, 1983.]

¹ Parks & Wildlife Code, § 31.045 et seq.

² Section 9.401 et seq.

³ Section 35.01 et seq.

§ 9.303. When Security Interest is Perfected; Continuity of Perfection

(a) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps

are specified in Sections 9.302, 9.304, 9.305 and 9.306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(b) If a security interest is originally perfected in any way permitted under this chapter and is subsequently perfected in some other way under this chapter, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.304. Perfection of Security Interest in Instruments, Documents and Goods Covered by Documents; Perfection by Permissive Filing; Temporary Perfection Without Filing or Transfer of Possession

(a) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in Subsections (d) and (e) of this section and Subsections (b) and (c) of Section 9.306 on proceeds.

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

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

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

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

(1) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping,

transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to Subsection (c) of Section 9.312; or

(2) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(f) After the 21 day period in Subsections (d) and (e) perfection depends upon compliance with applicable provisions of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 2580, ch. 442, § 19, eff. Sept. 1, 1983.]

§ 9.305. When Possession by Secured Party Perfects Security Interest Without Filing

A security interest in letters of credit and advices of credit (Subsection (b)(1) of Section 5.116), goods, instruments (other than certificated securities), money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this chapter. The security interest may be otherwise perfected as provided in this chapter before or after the period of possession by the secured party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 2581, ch. 442, § 20, eff. Sept. 1, 1983.]

§ 9.306. "Proceeds"; Secured Party's Rights on Disposition of Collateral

(a) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(b) Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(c) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(1) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(2) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected before the expiration of the ten day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this chapter for original collateral of the same type.

(d) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(1) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(2) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(3) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(4) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this Subdivision (4) is

(A) subject to any right of set-off; and

(B) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under Subdivisions (1) through (3) of this Subsection (d).

(e) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(1) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(2) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under Subdivision (1) to the extent that the transferee of the chattel paper was entitled to priority under Section 9.308.

(3) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under Subdivision (1).

(4) A security interest of an unpaid transferee asserted under Subdivision (2) or (3) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.307. Protection of Buyers of Goods

(a) A buyer in ordinary course of business (Subdivision (9) of Section 1.201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(b) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(c) A buyer other than a buyer in ordinary course of business (Subsection (a) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, or more than 45 days after the purchase, whichever first occurs, unless made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45 day period.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.308. Purchase of Chattel Paper and Instruments

A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(1) which is perfected under Section 9.304 (permissive filing and temporary perfection) or under Section 9.306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(2) which is claimed merely as proceeds of inventory subject to a security interest (Section 9.306) even though he knows that the specific paper or instrument is subject to the security interest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.309. Protection of Purchasers of Instruments, Documents, and Securities

Nothing in this chapter limits the rights of a holder in due course of a negotiable instrument (Section 3.302) or a holder to whom a negotiable document of title has been duly negotiated (Section 7.501) or a bona fide purchaser of a security (Section 8.302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this chapter does not constitute notice of the security interest to such holders or purchasers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 2582, ch. 442, § 21, eff. Sept. 1, 1983.]

§ 9.310. Priority of Certain Liens Arising by Operation of Law

When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.311. Alienability of Debtor's Rights: Judicial Process

The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibit-

ing any transfer or making the transfer constitute a default.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.312. Priorities Among Conflicting Security Interests in the Same Collateral

(a) The rules of priority stated in other sections of this subchapter and in the following sections shall govern when applicable: Section 4.208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; Section 9.103 on security interests related to other jurisdictions; Section 9.114 on consignments.

(b) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(c) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(1) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(2) except where excused by Section 9.319 (oil and gas production), the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the 21 day period where the purchase money security interest is temporarily perfected without filing or possession (Subsection (e) of Section 9.304); and

(3) the holder of the conflicting security interest receives any required notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(d) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 20 days thereafter.

(e) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in Subsections (c) and (d) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(1) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(2) So long as conflicting security interests are unperfected, the first to attach has priority.

(f) For the purposes of Subsection (e) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(g) If future advances are made while a security interest is perfected by filing, the taking of possession, or under Section 8.321 on securities, the security interest has the same priority for the purposes of Subsection (e) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1979, 66th Leg., p. 723, ch. 318, § 2, eff. June 6, 1979; Acts 1983, 68th Leg., p. 2582, ch. 442, § 22, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4664, ch. 807, § 3, eff. Aug. 29, 1983.]

§ 9.313. Priority of Security Interests in Fixtures

(a) In this section and in the provisions of Subchapter D of this chapter¹ referring to fixture filing, unless the context otherwise requires

(1) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under the real estate law of the state in which the real estate is situated;

(2) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of Subsection (e) of Section 9.402;

(3) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(b) A security interest under this chapter may be created in goods which are fixtures or may continue

in goods which become fixtures, but no security interest exists under this chapter in ordinary building materials incorporated into an improvement on land.

(c) This chapter does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(d) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(1) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(2) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(3) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this chapter; or

(4) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter.

(e) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(1) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(f) Notwithstanding Subdivision (1) of Subsection (d) but otherwise subject to Subsections (d) and (e), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(g) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the

conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(h) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Subchapter E,² remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

¹ Section 9.401 et seq.

² Section 9.501 et seq.

§ 9.314. Accessions

(a) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in Subsection (c) and subject to Section 9.315(a).

(b) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in Subsection (c) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(c) The security interests described in Subsections (a) and (b) do not take priority over

(1) a subsequent purchaser for value of any interest in the whole; or

(2) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(3) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(d) When under Subsections (a) or (b) and (c) a secured party has an interest in accessions which has priority over the claims of all persons who have

interests in the whole, he may on default subject to the provisions of Subchapter E remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 1534, ch. 290, § 9, eff. Aug. 29, 1983.]

§ 9.315. Priority When Goods are Commingled or Processed

(a) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(1) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(2) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which Subdivision (2) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under Section 9.314.

(b) When under Subsection (a) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.316. Priority Subject to Subordination

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.317. Secured Party not Obligated on Contract of Debtor

The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.318. Defenses Against Assignee; Modification of Contract After Notification of Assignment; Term Prohibiting Assignment Ineffective; Identification and Proof of Assignment

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in Section 9.206 the rights of an assignee are subject to

(1) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(b) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(c) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(d) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.319. Oil and Gas Interests: Security Interest Perfected Without Filing; Statutory Lien

(a) This section provides a security interest in favor of interest owners (as secured parties) to secure the obligations of the first purchaser of oil and gas production (as debtor) to pay the purchase price. A signed writing giving the interest owner a right under real estate law operates as a security agreement created under this chapter. The act of the first purchaser in signing an agreement to purchase oil or gas production, in issuing a division

order, or in making any other voluntary communication to the interest owner or any governmental agency recognizing the interest owner's right operates as an authentication and adoption of the security agreement in accordance with Section 1.201(39) of this code for purposes of this chapter.

(b) The security interest provided by this section is perfected automatically without the filing of a financing statement. If the interest of the secured party is evidenced by a deed, mineral deed, reservation in either, oil or gas lease, assignment, or any other such writing recorded in the real estate records of a county clerk, that writing is effective as a filed financing statement for purposes of Sections 9.302, 9.304, 9.306, 9.312, 9.401, 9.402, and 9.403 of this code, but no fee is required except that otherwise required by the county clerk, and there is no requirement of refiling every five years to maintain effectiveness of the filing.

(c) The security interest exists in oil and gas production, and also in the following proceeds of such production owned by, received by, or due to the first purchaser:

(1) for an unlimited time if:

(A) the proceeds are oil or gas production, inventory of raw, refined, or manufactured oil or gas production, or rights to or products of any of these, although the sale of such proceeds by a first purchaser to a buyer in the ordinary course of business as provided in Subsection (e) will cut off the security interest in those proceeds;

(B) the proceeds are accounts, chattel paper, instruments, and documents; or

(C) the proceeds are "cash proceeds" as defined in Section 9.306 of this code; and

(2) for the length of time provided by Section 9.306 of this code as to all other proceeds.

(d) This section creates a lien that secures the payment of all taxes that are or should be withheld or paid by the first purchaser, and a lien that secures the rights of any person who would be entitled to a security interest under Subsection (a) of this section except for lack of any adoption of a security agreement by the first purchaser or a lack of possession or writing required by Section 9.203 of this code for the security interest to be enforceable.

(e) The security interests and liens created by this section have priority over the bona fide purchasers described in Section 9.301 of this code (transferees in bulk and other buyers not in the ordinary course), but are cut off by the sale to a buyer from the first purchaser who is in the ordinary course of the first purchaser's business under Section 9.307(a) of this code. But in either case, whether or not the buyer from the first purchaser is in ordinary course a security interest will continue in the proceeds of the sale by the first purchaser as provided in Subsection (c).

(f) The security interests and all liens created by this section will have the following priorities over other Chapter 9 security interests:

(1) security interests created by this section shall be treated as purchase money security interests for purposes of determining their relative priority under Section 9.312 of this code over other security interests not provided for by this section; holders of these security interests are not required to give the written notice every five years as provided by Section 9.312(c) to enjoy purchase money priority over security interests with a prior financing statement covering inventory; and

(2) statutory liens are subordinate to all other perfected Chapter 9 security interests, and have priority over unperfected Chapter 9 security interests and the lien creditors, buyers, and transferees mentioned in Section 9.301 of this code.

(g) The security interests and liens created by this section have the following priorities among themselves:

(1) if a writing effective as a financing statement under Subsection (b) of this section exists, the security interests perfected by that writing have priority over a security interest automatically perfected without filing under Subsection (b) of this section. If several security interests perfected by writings exist, they have the same priority among themselves as established by real estate law for interests in oil and gas in place. If real estate law establishes no priority among them, they share priority pro rata;

(2) a security interest perfected automatically without filing under Subsection (b) of this section has priority over a lien created under Subsection (d) of this section; and

(3) a nontax lien under Subsection (d) of this section has priority over a lien created under that subsection that secures the payment of taxes.

(h) The priorities for statutory liens mentioned in Section 9.310 of this code do not apply to any security interest or statutory lien created by this section. But if any pipeline common carrier has a statutory or tariff lien which is effective and enforceable against a trustee in bankruptcy and not invalidated by the Federal Tax Lien Act, it will have priority over the security interests and statutory liens created by this section.

(i) If oil or gas production in which there are security interests or statutory liens created by this section is commingled with inventory or other production, the rules of Section 9.315 of this code apply.

(j) A security interest or statutory lien created by this section remains effective against the debtor and perfected against his creditors even if assigned, regardless of whether the assignment is perfected against the assignor's creditors. If a deed, mineral

deed, assignment of oil and gas lease, or other such writing evidencing the assignment is filed in the real estate records of the county, it will have the same effect as filing an amended financing statement under Section 9.405 of this code.

(k) This section does not impair an operator's right to setoff or withhold funds from other interest owners as security for or in satisfaction of any debt or security interest. In case of a dispute between an operator and another interest owner, a good faith tender by anyone of funds to the person they shall agree on or who may otherwise show himself to be the one entitled to the funds or to a court of competent jurisdiction in the event of litigation or bankruptcy, shall operate as a tender of the funds to both.

(l) A first purchaser who acts in good faith may terminate an interest owner's security interest or statutory lien under this section by paying, or by making and keeping open a tender of the amount the first purchaser believes to be due to the interest owner:

(1) if the interest owner's rights are to gas production or its proceeds, either to the operator alone or to some combination of the interest owner and his operator, as the first purchaser chooses; or

(2) if the interest owner's rights are to oil production or its proceeds, and the interest owner did not agree nor acquiesce (in the present or a prior transaction) to the first purchaser's actions in dealing only with his operator, only to the interest owner himself; or

(3) whatever the nature of the production to which the interest owner has rights, to the person that the interest owner agreed to or acquiesced in; or

(4) to a court of competent jurisdiction in the event of litigation or bankruptcy.

(m) A person who buys from a first purchaser can assure that he buys free and clear of an interest owner's security interest or statutory lien under this section:

(1) by buying in the ordinary course of the first purchaser's business from the first purchaser under Section 9.307(a) of this code; or

(2) by obtaining the interest owner's consent to the sale under Section 9.306(b) of this code; or

(3) by insuring that the first purchaser has paid the interest owner, or else, provided that gas production is involved, or the interest owner has so agreed or acquiesced, by insuring that the first purchaser has paid the interest owner's operator; or

(4) by insuring that he or the first purchaser or some other person has withheld funds sufficient to pay amounts in dispute and has maintained a tender of such funds to whoever may show himself to be the person entitled. If a tender which

is valid thereafter fails, the security interest and liens governed by this section remain effective.

(n) In addition to the usual remedy of sequestration available to secured parties, and the remedies given in Subchapter E of this chapter,¹ the holders of security interests and liens created by this section have available to them, to the extent constitutionally permitted, the remedies of replevin, attachment, and garnishment to assist them in realizing upon their rights.

(o) The rights of any person claiming under a security interest or lien created by this section are governed by the other provisions of this chapter except to the extent that this section necessarily displaces those provisions. This section does not invalidate or otherwise affect the interests of any person in any real property prior to severance of any oil or gas production.

(p) The security interest created under Sections 9.319(a) and (b) shall not apply to proceeds of gas production which have been withheld, in cash or account form, by a purchaser under the provisions of Section 201.204(c), Tax Code.

(q) In this section:

(1) "Oil and gas production" means any oil, natural gas, condensate of either, natural gas liquids, other gaseous, liquid, or dissolved hydrocarbons, sulfur, or helium, or other substance produced as a by-product or adjunct to their production, or any combination of these, which is severed, extracted, or produced from the ground, the seabed, or other submerged lands within the jurisdiction of the State of Texas. Any such substance, including recoverable or recovered natural gas liquids, which is transported to or in a natural gas pipeline or natural gas gathering system, or otherwise transported or sold for use as natural gas, or is transported or sold for the extraction of helium or natural gas liquids is "gas production". Any such substance which is transported or sold to persons and for purposes not included in the foregoing natural gas definition is oil production.

(2) "Interest owner" means a person owning an entire or fractional interest of any kind or nature in oil or gas production at the time of severance, or a person who has an express, implied, or constructive right to receive a monetary payment determined by the value of oil or gas production or by the amount of production.

(3) "First purchaser" means the first person that purchases oil or gas production from an operator or interest owner after the production is severed.

(4) An "operator" is a person engaged in the business of severing oil or gas production from

the ground, whether for himself alone, for other persons alone, or for himself and others.

[Acts 1983, 68th Leg., p. 4657, ch. 807, § 1, eff. Aug. 29, 1983.]

¹ Section 9.501 et seq.

SUBCHAPTER D. FILING

§ 9.401. Place of Filing; Erroneous Filing; Removal of Collateral

(a) The proper place to file in order to perfect a security interest is as follows:

(1) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the County Clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the County Clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in the office of the County Clerk in the county where the land is located;

(2) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, then in the office of the County Clerk in the county where a mortgage on the real estate would be filed or recorded;

(3) in all other cases, in the office of the Secretary of State.

(b) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(c) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the new county. A change in the use of the collateral does not impair the effectiveness of the original filing.

(d) The rules stated in Section 9.103 determine whether filing is necessary in this state.

(e) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business.

[Acts 1967, 60th Leg., p. 1985, ch. 735, § 4. Amended by Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.402. Formal Requisites of Financing Statement; Amendments; Mortgage as Financing Statement

(a) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown, the statement must also contain a description of the real estate concerned. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or when the financing statement is filed as a fixture filing (Section 9.313) and the collateral is goods which are or are to become fixtures, the statement must also comply with Subsection (e). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(b) A financing statement which otherwise complies with Subsection (a) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(1) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(2) proceeds under Section 9.306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(3) collateral as to which the filing has lapsed; or

(4) collateral acquired after a change of name, identity or corporate structure of the debtor (Subsection (g)).

(c) A form substantially as follows is sufficient to comply with Subsection (a):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

1. This financing statement covers the following types (or items) of property:

(Describe) _____

2. (If collateral is crops) The above described crops are growing or are to be grown on:

(Describe Real Estate) _____

3. (If applicable) The above goods are or are to become fixtures on (or where appropriate substitute either "The above timber is standing on _____" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on _____")

(Describe Real Estate) _____ and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner of the real estate concerned is _____

4. (If products of collateral are claimed) Products of the Collateral are also covered.

(use _____ whichever _____

Signature of Debtor (or Assignor)

is _____

Signature of Secured Party (or Assignee) applicable)

(d) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, provided, however, that an amendment to a financing statement which changes only the name of the secured party or the required address of either the secured party or the debtor is sufficient when it is signed by the secured party instead of the debtor. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(e) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or a financing statement filed as a fixture filing (Section 9.313), must show that it covers this type of collateral, must recite that it is

to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(f) A mortgage is effective as a financing statement filed as a fixture filing or as a financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, from the date of its filing for record if (1) the goods or other collateral are described in the mortgage by item or type, (2) in the case of a fixture filing, the goods are or are to become fixtures related to the real estate described in the mortgage, (3) in the case of timber to be cut, the timber is standing on the real estate described in the mortgage, (4) in the case of minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, the minerals or the like (including oil and gas) or the accounts are to be financed at the wellhead or minehead of the well or mine located on the real estate described in the mortgage, (5) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (6) the mortgage is duly filed for record. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(g) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(h) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

[Acts 1967, 60th Leg., p. 1985, ch. 735, §§ 5, 6. Amended by Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 940, ch. 353, §§ 2, 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 1, eff. Aug. 29, 1977.]

§ 9.403. What Constitutes Filing; Duration of Filing; Effect of Lapsed Filing; Duties of Filing Officer

(a) Presentation for filing of a financing statement or other statement and tender of the filing fee or acceptance of the financing statement or other statement by the filing officer constitutes filing under this chapter.

(b) Except as provided in Subsection (f) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(c) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in Subsection (b). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in Subsection (b) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a

continuation statement or which are still effective under Subsection (f) shall be retained.

(d) Except as provided in Subsection (g) a filing officer shall mark each financing statement with a file number and with the date and hour of filing and shall hold the financing statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the financing statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the financing statement. The filing officer shall mark each continuation statement with the date and hour of filing and shall note it in the index of the original financing statement.

(e) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be \$50 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$15, plus in each case, if the financing statement is subject to Subsection (e) of Section 9.402, an amount equal to the fee prescribed by law for recording and indexing in the real property records of the county clerk.

(f) A mortgage which is effective as a filing under Subsection (f) of Section 9.402 remains effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(g) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or is filed as a fixture filing, it shall be filed for record and recorded, and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described.

(h) The filing and other fees paid to the Secretary of State under this chapter shall be deposited in the general revenue fund of the state treasury.

[Acts 1967, 60th Leg., p. 1986, ch. 735, § 7. Amended by Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1969, 61st Leg., p. 2466, ch. 830, § 6, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 941, ch. 353, § 4, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, §§ 2, 3, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 908, ch. 325, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 310, ch. 69, § 1, eff. Sept. 1, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Civil Statutes, art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 9.404. Termination Statement

(a) If a financing statement covering consumer goods is filed on or after January 1, 1974, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(b) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may remove the originals from the files at any time after receipt of the

termination statement, or if he has no such record, he may remove them from the files at any time after one year after receipt of the termination statement.

(c) If the termination statement is in the standard form prescribed by the Secretary of State, the uniform fee for filing and indexing the termination statement shall be \$5, and otherwise shall be \$15, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, an amount equal to the fee prescribed by law for recording and indexing in the real property records of the county clerk.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 7, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 2, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 942, ch. 353, § 5, eff. June 19, 1975; Acts 1981, 67th Leg., p. 908, ch. 325, § 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 310, ch. 69, § 2, eff. Sept. 1, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Civil Statutes, art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 9.405. Assignment of Security Interest: Duties of Filing Officer; Fees

(a) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the financing statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9.403.

(b) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presen-

tation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, he shall index the assignment under the name of the assignor or as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$5 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$15. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (Subsection (f) of Section 9.402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this code.

(c) After the disclosure of filing of an assignment under this section, the assignee is the secured party of record.

(d) The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be \$5 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$15, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, an amount equal to the fee prescribed by law for recording and indexing in the real property records of the county clerk.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 8, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2987, ch. 985, § 3, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 942, ch. 353, § 6, eff. June 19, 1975; Acts 1981, 67th Leg., p. 909, ch. 325, § 3, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 311, ch. 69, § 3, eff. Sept. 1, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Civil Statutes, art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective

date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 9.406. Release of Collateral; Duties of Filing Officer; Fees

A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with Subsection (b) of Section 9.405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$5 if the statement is in the standard form prescribed by the Secretary of State and otherwise shall be \$15, plus, in each case where the original financing statement was filed pursuant to Subsection (e) of Section 9.402, an amount equal to the fee prescribed by law for recording and indexing in the real property records of the county clerk.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 9, eff. Sept. 1, 1969; Acts 1971, 62nd Leg., p. 2988, ch. 985, § 4, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 942, ch. 353, § 7, eff. June 19, 1975; Acts 1981, 67th Leg., p. 909, ch. 325, § 4, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 312, ch. 69, § 4, eff. Sept. 1, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Civil Statutes, art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 9.407. Information From Filing Officer

(a) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and

hour of the filing of the original and deliver or send the copy to such person.

(b) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The filing officer of a county is required only to provide information about financing statements and statements of assignment on file in the financing statement records of the county and is not required to provide information from the real estate records of the county. The uniform fee for such a certificate shall be \$5.00 if the request for the certificate is in the standard form prescribed by the Secretary of State and otherwise shall be \$10.00. If a certificate issued by the filing officer of a county contains listings for more than 10 statements, the filing officer shall add 50 cents to the uniform fee for each statement in excess of 10. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of \$1.00 per page, but not less than \$5.00 per request concerning a debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2466, ch. 830, § 10, eff. Sept. 1, 1969; Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 3253, ch. 562, § 1, eff. Aug. 29, 1983.]

Repeal

Acts 1971, 62nd Leg., p. 2716, ch. 886, effective June 14, 1971, relating to the microfilming of records by counties, and classified as Vernon's Ann. Civ. St. art. 1941(a), provided in section 2 that all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, to the extent of conflict only, including but not limited to this section.

Section 2 of the 1983 amendatory act provides:

"This Act applies only to a request for information made on or after the effective date of this Act. A request made before the effective date of this Act is governed by the law as it existed when the request was made, and that law is continued in effect for that purpose."

§ 9.408. Financing Statements Covering Consigned or Leased Goods

A consignor or lessor of goods may file a financing statement using the terms "consignor," "consignee," "lessor," "lessee" or the like instead of the terms specified in Section 9.402. The provisions of this subchapter shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (Section 1.201(37)). However, if it is determined for other reasons that the consignment or lease is so intend-

ed, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

[Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1535, ch. 290, § 10, eff. Aug. 29, 1983.]

§ 9.409. Prescribed Forms

(a) The Secretary of State may prescribe the forms to be used in making any filing or in requesting any information of the filing officer under this chapter. Where the Secretary of State has prescribed the form and a person fails to use this form or attaches additional pages to the prescribed form, the filing or request for information is in nonstandard form.

(b) The filing and other fees paid to the Secretary of State under this chapter shall be deposited in the General Revenue Fund of the State Treasury.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 313, ch. 69, § 5, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

SUBCHAPTER E. DEFAULT

§ 9.501. Default; Procedure When Security Agreement Covers Both Real and Personal Property

(a) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this subchapter and except as limited by Subsection (c) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in Section 9.207. The rights and remedies referred to in this subsection are cumulative.

(b) After default, the debtor has the rights and remedies provided in this subchapter, those provided in the security agreement and those provided in Section 9.207.

(c) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (Subsection (c) of Section 9.504 and Section 9.505) and with respect to redemption of collateral (Section 9.506) but the parties may by agreement determine the standards by which the fulfillment of these

rights and duties is to be measured if such standards are not manifestly unreasonable:

(1) Subsection (b) of Section 9.502 and Subsection (b) of Section 9.504 insofar as they require accounting for surplus proceeds of collateral;

(2) Subsection (c) of Section 9.504 and Subsection (a) of Section 9.505 which deal with disposition of collateral;

(3) Subsection (b) of Section 9.505 which deals with acceptance of collateral as discharge of obligation;

(4) Section 9.506 which deals with redemption of collateral; and

(5) Subsection (a) of Section 9.507 which deals with the secured party's liability for failure to comply with this subchapter.

(d) If the security agreement covers both real and personal property, the secured party may proceed under this subchapter as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this subchapter do not apply.

(e) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1983, 68th Leg., p. 1535, ch. 290, § 11, eff. Aug. 29, 1983.]

§ 9.502. Collection Rights of Secured Party

(a) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under Section 9.306.

(b) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor

is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.503. Secured Party's Right to Take Possession After Default

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under Section 9.504.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.504. Secured Party's Right to Dispose of Collateral After Default; Effect of Disposition

(a) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the chapter on Sales (Chapter 2). The proceeds of disposition shall be applied in the order following to

(1) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(2) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(3) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(b) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(c) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale. In the case of consumer goods no other notification need be sent. In other cases notification shall be sent to any other secured party who has a security interest in the same collateral and who has duly filed in the office of the Secretary of State or of the county clerk in the proper county in this state a financing statement indexed in the name of the debtor or from whom the secured party has received (before sending his notification to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(d) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this subchapter or of any judicial proceedings

(1) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(2) in any other case, if the purchaser acts in good faith.

(e) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 942, ch. 353, § 8, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 4, eff. Aug. 29, 1977.]

§ 9.505. Compulsory Disposition of Collateral; Acceptance of the Collateral as Discharge of Obligation

(a) If the debtor has paid sixty per cent of the cash price in the case of a purchase money security interest in consumer goods or sixty per cent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this subchapter a secured party who has taken possession of collateral must dispose of it under Section 9.504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under Section 9.507(a) on secured party's liability.

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be given to any other secured party who has a security interest in the same collateral and who has duly filed in the office of the Secretary of State or the County Clerk in the proper county in this state a financing statement indexed in the name of the debtor or from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 943, ch. 353, § 9, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 6, eff. Aug. 29, 1977.]

§ 9.506. Debtor's Right to Redeem Collateral

At any time before the secured party has disposed of collateral or entered into a contract for its disposition under Section 9.504 or before the obligation has been discharged under Section 9.505(b) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by

law, his reasonable attorneys' fees and legal expenses.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

§ 9.507. Secured Party's Liability for Failure to Comply With This Subchapter

(a) If it is established that the secured party is not proceeding in accordance with the provisions of this subchapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this subchapter. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the debt or the time price differential plus ten per cent of the cash price.

(b) The fact that a better price could have been obtained by a sale at different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 999, ch. 400, § 5, eff. Jan. 1, 1974.]

[Chapter 10. Reserved for expansion]

CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973 AMENDMENTS

Sec.

- 11.101. Effective Date.
- 11.102. Preservation of Old Transition Provisions.
- 11.103. Transition to 1973 Amendments—General Rule.
- 11.104. Transition Provision on Change of Requirement of Filing.
- 11.105. Transition Provision on Change of Place of Filing.
- 11.106. Required Refilings.

Sec.

- 11.107. Transition Provisions as to Priorities.
- 11.108. Presumption That Rule of Law Continues Unchanged.

§ 11.101. Effective Date

This Act¹ (referred to as the "1973 amendments") takes effect on January 1, 1974.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

¹ Amending §§ 1.105, 1.201(9), and (37), 2.107, 5.116, 9.101 et seq., 35.01 to 35.09; Civil Statutes, art. 6630 and repealing art. 6645.

§ 11.102. Preservation of Old Transition Provisions

The provisions of Article 10 of the Uniform Commercial Code, as amended, shall continue to apply to the amended code, and for this purpose this code as amended shall be considered one continuous statute.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

§ 11.103. Transition to 1973 Amendments—General Rule

Transactions validly entered into after June 30, 1966, and before January 1, 1974, and which were subject to the provisions of this title and which would be subject to the 1973 amendments if they had been entered into on or after January 1, 1974, and the rights, duties and interests flowing from such transactions remain valid on and after the latter date and may be terminated, completed, consummated or enforced as required or permitted by the 1973 amendments. Security interests arising out of such transactions which are perfected when the 1973 amendments become effective shall remain perfected until they lapse as provided in the code as amended, and may be continued as permitted by the code as amended, except as stated in Section 11.105.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

§ 11.104. Transition Provision on Change of Requirement of Filing

A security interest for the perfection of which filing or the taking of possession was required under this code and which attached prior to January 1, 1974, but was not perfected shall be deemed perfected on January 1, 1974, if this code as amended permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

§ 11.105. Transition Provision on Change of Place of Filing

(a) A financing statement or continuation statement filed prior to January 1, 1974, which shall not have lapsed prior to January 1, 1974, shall remain effective for the period provided in the code before January 1, 1974, but not less than five years after the filing.

(b) With respect to any collateral, other than fixtures or minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, which are covered by a financing statement or security agreement filed as a financing statement or continuation statement filed prior to January 1, 1974, and which shall not have lapsed prior to January 1, 1974, acquired by the debtor on or after January 1, 1974, any effective financing statement or security agreement filed as a financing statement or continuation statement described in this section and purporting to cover such after-acquired collateral shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the code with its 1973 amendments.

(c) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1974, may be continued by a continuation statement as permitted by this code with 1973 amendments, except that if this code with 1973 amendments, requires a filing or a filing for record in an office where there was no previous financing statement, a new financing statement conforming to Section 11.106 shall be filed or filed for record in that office.

(d) If the filing for record of a mortgage would have been effective as to the types of collateral enumerated in Subsection (f) of Section 9.402 if the 1973 amendments had been in effect on the date of the filing for record of the mortgage, the mortgage shall be deemed effective as such a filing as to the types of collateral enumerated in Subsection (f) of Section 9.402 of this code, as amended, on January 1, 1974.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974; Acts 1975, 64th Leg., p. 944, ch. 353, §§ 10, 11, eff. June 19, 1975.]

§ 11.106. Required Refilings

(a) If a security interest is perfected or has priority when the 1973 amendments take effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the 1973 amendments, the perfection and priority rights of the security interest continue until January 1, 1977. The perfection will then lapse unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing.

(b) If a security interest is perfected when the 1973 amendments take effect under a law other than this title which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse on January 1, 1977, unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing, or unless under Subsection (c) of Section 9.302 the other law continues to govern filing.

(c) If a security interest is perfected by a filing, refiling or recording under a law repealed by this Act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in Subsection (d) or unless the security interest is perfected otherwise than by filing.

(d) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under this title or under any statute or other law repealed or modified by this Act is still effective. Section 9.401 and Section 9.103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of Section 9.403(c) for continuation statements apply to such a financing statement.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

§ 11.107. Transition Provisions as to Priorities

Except as otherwise provided in this chapter, this title as it existed before the 1973 amendments took effect shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1974. In other cases questions of priority shall be determined by this title with 1973 amendments.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974.]

§ 11.108. Presumption That Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this title with 1973, 1975, and 1977

amendments shall be deemed declaratory of the meaning of the title.

[Acts 1973, 63rd Leg., p. 1030, ch. 400, § 6, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 944, ch. 353, § 12, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 5, eff. Aug. 29, 1977.]

[Chapter 12 to 14. Reserved for expansion]

TITLE 2. COMPETITION AND TRADE PRACTICES

Chapter	Section
15. Monopolies, Trusts and Conspiracies in Restraint of Trade	15.01
16. Trademarks	16.01
17. Deceptive Trade Practices	17.01

CHAPTER 15. MONOPOLIES, TRUSTS AND CONSPIRACIES IN RESTRAINT OF TRADE

SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

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 - 15.02. Applicability of Provisions.
 - 15.03. Definitions.
 - 15.04. Purpose and Construction.
 - 15.05. Unlawful Practices.
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SUBCHAPTER B. PROCEDURE AND EVIDENCE

- 15.10. Civil Investigative Demands.
- 15.11. Party to Suit May Subpoena Witness.
- 15.12. Additional Procedures.
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- 15.14, 15.15. Repealed.
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SUBCHAPTER C. ENFORCEMENT

- 15.20. Civil Suits by the State.
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- 15.22. Criminal Suits.
- [Section 15.23 reserved for expansion]
- 15.24. Judgment in Favor of the State Evidence in Action.
- 15.25. Limitation of Actions.
- 15.26. Jurisdiction.

[Section 15.27 reserved for expansion]

15.28 to 15.34. Repealed.

SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST LAWS

- 15.40. Authority, Powers, and Duties of Attorney General.

SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

§ 15.01. Title of Act

This Act shall be known and may be cited as the Texas Free Enterprise and Antitrust Act of 1983.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983.]

§ 15.02. Applicability of Provisions

(a) The provisions of this Act are cumulative of each other and of any other provision of law of this state in effect relating to the same subject. Among other things, the provisions of this Act preserve the constitutional and common law authority of the attorney general to bring actions under state and federal law.

(b) If any of the provisions of this Act are held invalid, the remainder shall not be affected as a result; nor shall the application of the provision held invalid to persons or circumstances other than those as to which it is held invalid be affected as a result.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983.]

§ 15.03. Definitions

Except as otherwise provided in Subsection (a) of Section 15.10 of this Act, for purposes of this Act:

(1) The term "attorney general" means the Attorney General of Texas or any assistant attorney general acting under the direction of the Attorney General of Texas.

(2) The term "goods" means any property, tangible or intangible, real, personal, or mixed, and any article, commodity, or other thing of value, including insurance.

(3) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, but does not include the State of Texas, its departments, and its administrative agencies.

(4) The term "services" means any work or labor, including without limitation work or labor furnished in connection with the sale, lease, or repair of goods.

(5) The terms "trade" and "commerce" mean the sale, purchase, lease, exchange, or distribution of any goods or services; the offering for sale, purchase, lease, or exchange of any goods or services; the advertising of any goods or services; and all other economic activity undertaken in whole or in part for the purpose of financial gain involving or relating to any goods or services.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983.]

§ 15.04. Purpose and Construction

The purpose of this Act is to maintain and promote economic competition in trade and commerce occurring wholly or partly within the State of Texas and to provide the benefits of that competition to consumers in the state. The provisions of this Act shall be construed to accomplish this purpose and shall be construed in harmony with federal judicial

interpretations of comparable federal antitrust statutes to the extent consistent with this purpose. [Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983.]

§ 15.05. Unlawful Practices

(a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.

(b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

(c) It is unlawful for any person to sell, lease, or contract for the sale or lease of any goods, whether patented or unpatented, for use, consumption, or resale or to fix a price for such use, consumption, or resale or to discount from or rebate upon such price, on the condition, agreement, or understanding that the purchaser or lessee shall not use or deal in the goods of a competitor or competitors of the seller or lessor, where the effect of the condition, agreement, or understanding may be to lessen competition substantially in any line of trade or commerce.

(d) It is unlawful for any person to acquire, directly or indirectly, the whole or any part of the stock or other share capital or the assets of any other person or persons, where the effect of such acquisition may be to lessen competition substantially in any line of trade or commerce.

This subsection shall not be construed:

(1) to prohibit the purchase of stock or other share capital of another person where the purchase is made solely for investment and does not confer control of that person in a manner that could substantially lessen competition;

(2) to prevent a corporation from forming subsidiary or parent corporations for the purpose of conducting its immediately lawful business, or any natural and legitimate branch extensions of such business, or from owning and holding all or a part of the stock or other share capital of a subsidiary, or transferring all or part of its stock or other share capital to be owned and held by a parent, where the effect of such a transaction is not to lessen competition substantially;

(3) to affect or impair any right previously legally acquired; or

(4) to apply to transactions duly consummated pursuant to authority given by any statute of this state or of the United States or pursuant to authority or approval given by any regulatory agency of this state or of the United States under any constitutional or statutory provisions vesting the agency with such power.

(e) It is unlawful for an employer and a labor union or other organization to agree or combine so that:

(1) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or

(2) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.

(f) It is not unlawful for:

(1) employees to agree to quit their employment or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer is intended to induce or has the effect of inducing that employer to refrain from buying or otherwise acquiring tangible personal property from a person; or

(2) persons to agree to refer for employment a migratory worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or organization.

(g) Nothing in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws, 15 U.S.C. Section 1 et seq. Furthermore, nothing in this section shall apply to actions required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(h) In any lawsuit alleging a contract, combination, or conspiracy to fix prices, evidence of uniform prices alone shall not be sufficient to establish a violation of Subsection (a) of Section 15.05.

(i) In determining whether a restraint related to the sale or delivery of professional services is reasonable, except in cases involving price fixing, or other per se violations, the court may consider, but shall not reach its decision solely on the basis of, criteria which include: (1) whether the activities involved maintain or improve the quality of such services to benefit the public interest; (2) whether the activities involved limit or reduce the cost of such services to benefit the public interest. For purposes of this subsection, the term 'professional services' means services performed by any licensed accountant, physician, or professional engineer in connection with his or her professional employment or practice.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983.]

§ 15.06. Repealed by Acts 1983, 68th Leg., p. 3010, ch. 519, § 1, eff. Aug. 29, 1983

[Sections 15.07 to 15.09 reserved for expansion]

SUBCHAPTER B. PROCEDURE AND EVIDENCE

§ 15.10. Civil Investigative Demands

(a) Definitions. For purposes of this section:

(1) The terms "antitrust investigation" and "investigation" mean any inquiry conducted by the attorney general for the purpose of ascertaining whether any person is or has been engaged in or is actively preparing to engage in activities which may constitute an antitrust violation.

(2) The term "antitrust violation" means any act or omission in violation of any of the prohibitions contained in Section 15.05 of this Act or in violation of any of the antitrust laws set forth in Subsection (a) of Section 12 of Title 15, the United States Code.

(3) The terms "civil investigative demand" and "demand" mean any demand issued by the attorney general under Subsection (b) of this section.

(4) The terms "documentary material" and "material" include the original or any identical copy and all nonidentical copies of any contract, agreement, book, booklet, brochure, pamphlet, catalog, magazine, notice, announcement, circular, bulletin, instruction, minutes, agenda, study, analysis, report, graph, map, chart, table, schedule, note, letter, telegram, telephone or other message, product of discovery, magnetic or electronic recording, and any other written, printed, or recorded matter.

(5) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, and includes any person acting under color or authority of state law.

(6) The term "product of discovery" includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; any digest, analysis, selection, compilation, or other derivation thereof, and any index or manner of access thereto.

(b) Authority to Issue Demand. Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or may have any information relevant to a civil antitrust investigation, the attorney general may, prior to the institution of a civil proceeding, issue in writing and serve upon such person a civil investigative demand requiring the person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony, or to provide any combination of such material, answers, and testimony; provided, however, that the attorney general may not issue and serve a demand for documentary material upon a proprietorship or partnership whose annual gross income does not exceed \$5 million.

(c) Contents of Demand.

(1) Each demand shall describe the nature of the activities that are the subject of the investigation and shall set forth each statute and section of that statute that may have been or may be violated as a result of such activities. Each demand shall advise the person upon whom the demand is to be served that the person has the right to object to the demand as provided for in this section.

(2) Each demand for production of documentary material shall:

(A) describe the class or classes of material to be produced with reasonable specificity so that the material demanded is fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material is to be produced; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the material is to be made available for inspection and copying.

(3) Each demand for answers to written interrogatories shall:

(A) propound the interrogatories with definiteness and certainty;

(B) prescribe a date or dates by which answers to interrogatories shall be submitted; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the answers should be submitted.

(4) Each demand for the giving of oral testimony shall:

(A) prescribe a reasonable date, time, and place at which the testimony shall begin; and

(B) identify the individual or individuals acting on behalf of the attorney general who will conduct the examination.

(5) No demand for any product of discovery may be returned until 20 days after the attorney general serves a copy of the demand upon the person from whom the discovery was obtained.

(d) Protected Material and Information.

(1) A demand may require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony only if the material or information sought would be discoverable under the Texas Rules of Civil Procedure or other state law relating to discovery.

(2) Any demand for a product of discovery supercedes any inconsistent order, rule, or provision of law (other than this subchapter) preventing or restraining disclosure of such product of discovery; provided, however, that voluntary disclosure of a product of discovery under this section does not constitute a waiver of any right or privilege, including any right or privilege which may be invoked to resist discovery of trial prepara-

ration materials, to which the person making the disclosure may be entitled.

(e) Service; Proof of Service.

(1) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any natural person by delivering a duly executed copy of the demand or petition to the person to be served or by mailing such copy by registered or certified mail, return receipt requested, to such person at his or her residence or principal office or place of business.

(2) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any person other than a natural person by delivering a duly executed copy of the demand or petition to a person to whom delivery would be appropriate under state law if the demand or petition were process in a civil suit.

(3) A verified return by the individual serving any demand or any petition filed under Subsection (f) or (h) setting forth the manner of service shall be proof of such service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand or petition.

(f) Petition for Order Modifying or Setting Aside Demand. At any time before the return date specified in a demand or within 20 days after the demand has been served, whichever period is shorter, the person who has been served and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or in a district court of Travis County. Any such petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve a copy of the petition upon the attorney general. The attorney general may submit an answer to the petition. In ruling on the petition, the court shall presume absent evidence to the contrary that the attorney general issued the demand in good faith and within the scope of his or her authority.

(g) Compliance With Demand.

(1) A person on whom a demand is served shall comply with the terms of the demand unless otherwise provided by court order.

(2) The time for compliance with the demand in whole or in part shall not run during the pendency of any petition filed under Subsection (f) of this section; provided, however, that the petitioner shall comply with any portions of the demand not sought to be modified or set aside.

(3) Documentary Material.

(A) Any person upon whom any demand for the production of documentary material has been duly served under this section shall make such material available to the attorney general for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business or as otherwise may be agreed upon by the person and the attorney general. The attorney general shall bear the expense of any copying. The person may substitute copies for originals of all or part of the requested documents so long as the originals are made available for inspection. The person shall indicate in writing which if any of the documents produced contain trade secrets or confidential information.

(B) The production of documentary material in response to any demand shall be made under a sworn certificate in such form as the demand designates by a natural person having knowledge of the facts and circumstances relating to such production to the effect that all of the requested material in the possession, custody, or control of the person to whom the demand is directed has been produced.

(4) Interrogatories.

(A) Each interrogatory in any demand duly served under this section shall be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection shall be set forth in lieu of an answer. The person shall indicate in writing which if any of the answers contain trade secrets or confidential information.

(B) Answers to interrogatories shall be submitted under a sworn certificate in such form as the related demand designates by a natural person having knowledge of the facts and circumstances relating to the preparation of the answers to the effect that all of the requested information in the possession, custody, control, or knowledge of the person to whom the demand is directed has been set forth fully and accurately.

(5) Oral Examination.

(A) The examination of any person pursuant to a demand for oral testimony duly served under this section shall be taken before any person authorized to administer oaths and affirmations by the laws of Texas or the United States. The person before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction and in his or her presence record the witness's testimony. At the expense of the attorney general, the testimony shall be taken stenographically and may be transcribed.

(B) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides, is found, transacts business, or in such other place as may be agreed upon by the person and the attorney general.

(C) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise such person in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question arising in connection with the examination.

(D) The individual conducting the examination on behalf of the attorney general shall exclude from the place of examination all other persons except the person being examined, the person's counsel, the counsel of the person to whom the demand has been issued, the person before whom the testimony is to be taken, any stenographer taking the testimony, and any persons assisting the individual conducting the examination.

(E) During the examination, the person being examined or his or her counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Neither such person nor his or her counsel shall otherwise object to or refuse to answer any question or interrupt the oral examination. If the person refuses to answer any question, the attorney general may petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(F) If and when the testimony has been fully transcribed, the person before whom the testimony was taken shall promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general. The witness shall have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for such changes. The witness shall then sign and return the transcript, unless he or she is ill, cannot be found, refuses to sign, or in writing waives the signing. If the witness does not sign the transcript within 15 days of receiving it, the person before whom the testimony has been given shall sign it and state on the record the reason, if known, for the witness's failure to sign. The officer shall then certify on the transcript that

the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general.

(G) Upon request, the attorney general shall furnish a copy of the certified transcript to the witness.

(H) The witness shall be entitled to the same fees and mileage that are paid to witnesses in the district courts of Texas.

(h) Failure To Comply With Demand.

(1) Petition for Enforcement. Whenever any person fails to comply with any demand duly served on such person under this section, the attorney general may file in the district court in the county in which the person resides, is found, or transacts business and serve on the person a petition for an order of the court for enforcement of this section. If the person transacts business in more than one county, the petition shall be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed upon by the person and the attorney general.

(2) Deliberate Noncompliance. An person, who, with intent to avoid, evade, or prevent compliance in whole or part with a demand issued under this section, removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in county jail for not more than one year or by both.

(i) Disclosure and Use of Material and Information.

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.

(2) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required by the state in the course of any investigation or a judicial proceeding in which the state is a party.

(3) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required for official use by any officer of the State of Texas or

of the United States charged with the enforcement of the laws of the State of Texas or the United States; provided that any material disclosed under this subsection may not be used for criminal law enforcement purposes.

(4) Upon request, the attorney general shall make available copies of documentary material, answers to interrogatories, and transcripts of oral testimony for inspection by the person who produced such material or information and, in the case of a product of discovery, the person from whom the discovery was obtained or by any duly authorized representative of the person, including his or her counsel.

(5) Not later than 15 days prior to disclosing any documentary material or answers to written interrogatories designated as containing trade secrets or confidential information under this subsection, the attorney general shall notify the person who produced the material of the attorney general's intent to make such disclosure. The person who produced the documentary material or answers to written interrogatories may petition a district court in any county of this state in which the person resides, does business, or maintains its principal office for a protective order limiting the terms under which the attorney general may disclose such trade secrets or confidential information.

(6) Upon written request, the attorney general shall return documentary material produced under this section in connection with an antitrust investigation to the person who produced it whenever:

(A) any case or proceeding before any court arising out of the investigation has been completed; or

(B) the attorney general has decided after completing an examination and analysis of such material not to institute any case or proceeding before a court in connection with the investigation.

(j) Jurisdiction. Whenever any petition is filed in the district court in any county as provided for in this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this section. Any final order is subject to appeal. Failure to comply with any final order entered by a court under this section is punishable by the court as a contempt of the order.

(k) Nonexclusive Procedures. Nothing in this section shall preclude the attorney general from using procedures not specified in the section in conducting an antitrust investigation; provided, however, that in conducting such an investigation, the attorney general shall use the procedures set forth in this section in lieu of those set forth in

Article 1302-5.01 through Article 1302-5.06, Texas Miscellaneous Corporation Laws Act.

[Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983.]

§ 15.11. Party to Suit May Subpoena Witness

(a) A party to a suit brought to enforce any of the prohibitions in Section 15.05 of this Act or to enforce the laws conserving natural resources may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas for a party without first obtaining the court's written approval.

(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be fined not more than \$100 and attached and imprisoned in the county jail until he or she appears in court and testifies as required.

[Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983.]

§ 15.12. Additional Procedures

In addition to the procedures set forth in this subchapter, the attorney general and any other party to a suit brought by the attorney general to enforce any of the prohibitions in Section 15.05 of this Act may request discovery and production of documents and other things, serve written interrogatories, and subpoena and depose witnesses in accordance with the applicable provisions of the Texas Rules of Civil Procedure and other state law relating to discovery.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983.]

§ 15.13. Immunity from Criminal Prosecution

(a) Application by Attorney General. If a person upon whom an investigative demand or request for discovery has been properly served pursuant to Section 15.10, 15.11, or 15.12 of this Act refuses or is likely to refuse to comply with the demand or request on the basis of his or her privilege against self-incrimination, the attorney general may apply to a district court in the county in which the person is located for an order granting the person immunity from prosecution and compelling the person's compliance with the demand or request.

(b) Order Granting Immunity and Compelling Testimony and Production. Upon receipt of an application filed under Subsection (a) of this section, the court may issue an order granting the person immunity from prosecution and requiring the person to comply with the demand or request notwithstanding his or her claim of privilege. The order shall explain the scope of protection afforded by it.

(c) Effectiveness of Order. An order may be issued under Subsection (b) of this section prior to the assertion of the privilege against self-incrimination but shall not be effective until the person to whom it is directed asserts the privilege and is informed of the order.

(d) Compliance with Order. A person who has been informed of an order issued by a court under this section compelling his or her testimony or production of material may not refuse to comply with the order on the basis of his or her privilege against self-incrimination. A person who complies with the order may not be criminally prosecuted for or on account of any act, transaction, matter, or thing about which he or she is ordered to testify or produce unless the alleged offense is perjury or failure to comply with the order. Failure to comply with the order may be punished by the court as contempt of the order.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983.]

§§ 15.14, 15.15. Repealed by Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983

§ 15.16. Declaratory Judgment Action

(a) A person (other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his or her action or proposed action violates or will violate the prohibitions contained in Section 15.05 of this Act may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action or proposed action and all other relevant facts, and the court in its declaratory judgment shall fully recite the action or proposed action and other facts considered.

(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibitions contained in Section 15.05 of this Act:

- (1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;
- (2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and
- (3) does not estop the state from subsequently establishing a violation of the prohibitions contained in Section 15.05 of this Act based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, consti-

tutes a violation of the prohibitions contained in Section 15.05 of this Act.

(d) A person filing suit under this section shall pay all costs of the suit.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983.]

§§ 15.17 to 15.19. Repealed by Acts 1983, 68th Leg., p. 3019, ch. 519, § 2, eff. Aug. 29, 1983

SUBCHAPTER C. ENFORCEMENT

§ 15.20. Civil Suits by the State

(a) Suit to Collect Civil Fine. The attorney general may file suit in district court in Travis County or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a), (b), or (c) of Section 15.05 of this Act. Every person adjudged to have violated any of these prohibitions shall pay a fine to the state not to exceed \$1 million if a corporation, or, if any other person, \$100,000.

(b) Suit for Injunctive Relief. The attorney general may file suit against any person, other than a municipal corporation, in district court in Travis County, or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office on behalf of the State of Texas to enjoin temporarily or permanently any activity or contemplated activity that violates or threatens to violate any of the prohibitions in Section 15.05 of this Act. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the state substantially prevails on the merits, the state shall be entitled to recover the cost of suit.

Upon finding a violation of the prohibition against acquiring the stock, share capital, or assets of a person in Subsection (d) of Section 15.05 of this Act, the court shall, upon further finding that no other remedy will eliminate the lessening of competition, order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition.

(c) No suit filed under Subsection (a) or (b) of this section may be transferred to another county except on order of the court.

(d) Nothing in this section shall be construed to limit the constitutional or common law authority of

the attorney general to bring actions under state and federal law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

§ 15.21. Suits by Injured Persons or Governmental Entities

(a) Suit to Recover Damages.

(1) Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property has been injured by reason of any conduct declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose and shall recover actual damages sustained, interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee; provided, however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, it shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee; provided that interest on actual damages as specified above may not be recovered when recovered damages are increased threefold.

(2) Any person or governmental entity who obtains a judgment for damages under 15 U.S.C. Section 15 or any other provision of federal law comparable to this subsection may not recover damages in a suit under this subsection based on substantially the same conduct that was the subject of the federal suit.

(3) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court shall award to the defendant or defendants a reasonable attorney's fee, court costs, and other reasonable expenses of litigation.

(b) Suit for Injunctive Relief. Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property is threatened with injury by reason of anything declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a

municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose to enjoin the unlawful practice temporarily or permanently. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the plaintiff substantially prevails on the merits, the plaintiff shall be entitled to recover the cost of suit, including a reasonable attorney's fee based on the fair market value of the attorney services used.

(c) Copies of Complaints to Attorney General. Any person or governmental entity filing suit under this section shall mail a copy of the complaint to the Attorney General of Texas. The attorney general as representative of the public may intervene in the action by filing a notice of intervention with the court before which the action is pending and serving copies of the notice on all parties to the action. The penalty for failure to comply with this subsection shall be a monetary fine not in excess of \$200. The attorney general may file suit to recover the fine on behalf of the state in the district court in which the private suit has been brought.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1981, 67th Leg., p. 2637, ch. 707, § 21, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

§ 15.22. Criminal Suits

(a) Every person, other than a municipal corporation, who acts in violation of any of the prohibitions in Subsection (a) or (b) of Section 15.05 of this Act shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Corrections for a term of not more than three years or by a fine not to exceed \$5,000 or by both.

(b) A district attorney or criminal district attorney may file criminal suit to enforce the provisions in Subsection (a) of this section in district court in Travis County or in any county in which any of the acts that allegedly have contributed to a violation of any of the prohibitions in Subsections (a) and (b) of Section 15.05 of this Act are alleged to have occurred or to be occurring.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

[Section 15.23 reserved for expansion]

§ 15.24. Judgment in Favor of the State Evidence in Action

A final judgment rendered in an action brought under Section 15.20 or 15.22 of this Act to the effect

that a defendant or defendants have violated any of the prohibitions in Section 15.05 of this Act is prima facie evidence against such defendant or defendants in any action brought under Section 15.21 as to all matters with respect to which the judgment would be an estoppel between the parties to the suit. This section shall not apply to consent judgments or decrees entered before any testimony has been taken.

[Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

§ 15.25. Limitation of Actions

(a) Any suit to recover damages under Section 15.21 of this Act is barred unless filed within four years after the cause of action accrued or within one year after the conclusion of any action brought by the state under Section 15.20 or 15.22 of this Act based in whole or in part on the same conduct, whichever is longer. For the purpose of this subsection, a cause of action for a continuing violation is considered to accrue at any and all times during the period of the violation.

(b) No suit under this Act shall be barred on the grounds that the activity or conduct complained of in any way affects or involves interstate or foreign commerce. It is the intent of the legislature to exercise its powers to the full extent consistent with the constitutions of the State of Texas and the United States.

[Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

§ 15.26. Jurisdiction

Whenever any suit or petition is filed in the district court in any county in the State of Texas as provided for in Section 15.10, 15.20, 15.21, or 15.22 of this Act, the court shall have jurisdiction and venue to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this Act. Once suit is properly filed, it may be transferred to another county upon order of the court for good cause shown.

[Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983.]

[Section 15.27 reserved for expansion]

§§ 15.28 to 15.34. Repealed by Acts 1983, 68th Leg., p. 3034, ch. 519, § 3, eff. Aug. 29, 1983

SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST LAWS

§ 15.40. Authority, Powers, and Duties of Attorney General

(a) The attorney general may bring an action on behalf of the state or of any of its political subdivisions or tax supported institutions to recover the

damages provided for by the federal antitrust laws, Title 15, United States Code,¹ provided that the attorney general shall notify in writing any political subdivision or tax supported institution of his intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or tax supported institution may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the attorney general to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or tax supported institution of the state, the state shall retain for deposit in the general revenue fund of the State Treasury, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the state in the investigation and prosecution of such action.

(b) In any action brought by the attorney general pursuant to the federal antitrust laws for the recovery of damages by the estate or any of its political subdivisions or tax supported institutions, in addition to his other powers and authority the attorney general may enter into contracts relating to the investigation and the prosecution of such action with any other party who could bring a similar action or who has brought such an action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action the attorney general may undertake, among other things, either to render legal services as special counsel to, or to obtain the legal services of special counsel from, any department or agency of the United States, any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

[Acts 1969, 61st Leg., p. 1708, ch. 559, § 1, eff. June 10, 1969.]

¹ 15 U.S.C.A. § 15 et seq.

CHAPTER 16. TRADEMARKS

SUBCHAPTER A. GENERAL PROVISIONS

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- 16.02. When Mark Considered to be Used.

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SUBCHAPTER A. GENERAL PROVISIONS

§ 16.01. Definitions

(a) In this chapter, unless the context requires a different definition,

(1) "applicant" means the person applying for registration of a mark under this chapter and includes his legal representative, successor, assignee, and predecessor in title to the mark sought to be registered;

(2) "mark" includes service mark and trademark;

(3) "registrant" means the person to whom a registration has been issued under this chapter and includes his legal representative, successor, assignee, and predecessor in title to the registration;

(4) "service mark" means a word, name, symbol, device, slogan or any combination thereof which, whether registered or not, has been adopted and used by a person to identify his services and distinguish them from the services of others, and includes the titles, designations, character names, and distinctive features of broadcast or other advertising;

(5) "trademark" means a word, name, symbol, device, slogan or any combination thereof which, whether registered or not, has been adopted and used by a person to identify his goods and distinguish them from the goods manufactured or sold by others; and

(6) "trade name" includes individual name, surname, firm name, corporate name, and lawfully adopted name or title used by a person to identify his business, vocation, or occupation.

(b) This chapter does not apply to the registration or use of livestock brands or other indicia of ownership of goods which do not qualify as a "mark" as defined in this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.02. When Mark Considered to be Used

(a) A mark is considered to be used in this state in connection with goods when

(1) it is placed on

(A) the goods;

(B) containers of the goods;

(C) displays associated with the goods; or

(D) tags or labels affixed to the goods; and

(2) the goods are sold, displayed for sale, or otherwise publicly distributed in this state.

(b) A mark is considered to be used in this state in connection with services when

(1) it is used or displayed in this state in connection with selling or advertising the services; and

(2) the services are rendered in this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 16.03 to 16.07 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF MARK

§ 16.08. Registrable Marks

(a) A mark in actual use in connection with the applicant's goods or services, which distinguishes his goods or services from those of others, is registrable unless it

(1) is, or includes matter which is, immoral, deceptive, or scandalous;

(2) may disparage, or falsely suggest a connection with, or bring into contempt or disrepute

(A) a person, whether living or dead;

(B) an institution;

(C) a belief; or

(D) a national symbol;

(3) depicts or simulates the flag, coat of arms, or other insignia of

(A) the United States;

(B) a state;

(C) a municipality; or

(D) a foreign nation;

(4) is or includes the name, signature, or portrait of a living individual who has not consented in writing to its registration;

(5) is

(A) merely descriptive or deceptively misdescriptive of the applicant's goods or services;

(B) primarily geographically descriptive or deceptively misdescriptive of the applicant's goods or services; or

(C) primarily merely a surname; or

(6) is likely to cause confusion or mistake, or to deceive, because, when applied to the applicant's goods or services, it resembles another person's unabandoned mark registered in this state.

(b) Subsection (a)(5) of this section does not prevent the registration of a mark that has become distinctive as applied to the applicant's goods or services. The secretary of state may accept as evidence that a mark has become distinctive as applied to the applicant's goods or services proof of substantially exclusive and continuous use of the mark by the applicant in this state for the five years

next preceding the date on which the applicant filed his application for registration.

(c) A trade name is not registrable under this chapter. However, if a trade name is also a service mark or trademark, as defined in this chapter, it is registrable as a service mark or trademark.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.09. Classes of Goods and Services

(a) An applicant may include in a single application for registration of a mark all goods or services in connection with which the mark is actually being used and which are in a single class. An applicant may not include in a single application for registration goods or services which are not in a single class.

(b) The classes of goods are:

- (1) Class 1: raw or partly prepared materials;
- (2) Class 2: receptacles;
- (3) Class 3: baggage, animal equipments, portfolios, and pocketbooks;
- (4) Class 4: abrasives and polishing materials;
- (5) Class 5: adhesives;
- (6) Class 6: chemicals and chemical compositions;
- (7) Class 7: cordage;
- (8) Class 8: smokers' articles, not including tobacco products;
- (9) Class 9: explosives, firearms, equipments, and projectiles;
- (10) Class 10: fertilizers;
- (11) Class 11: inks and inking materials;
- (12) Class 12: construction materials;
- (13) Class 13: hardware, and plumbing and steam-fitting supplies;
- (14) Class 14: metals, and metal castings and forgings;
- (15) Class 15: oils and greases;
- (16) Class 16: protective and decorative coatings;
- (17) Class 17: tobacco products;
- (18) Class 18: medicines and pharmaceutical preparations;
- (19) Class 19: vehicles;
- (20) Class 20: linoleum and oilcloth;
- (21) Class 21: electrical apparatus, machines, and supplies;
- (22) Class 22: games, toys, and sporting goods;
- (23) Class 23: cutlery, machinery, and tools and parts thereof;
- (24) Class 24: laundry appliances and machines;
- (25) Class 25: locks and safes;
- (26) Class 26: measuring and scientific appliances;
- (27) Class 27: horological instruments;
- (28) Class 28: jewelry and precious metalware;

(29) Class 29: brooms, brushes, and dusters;

(30) Class 30: crockery, earthenware, and porcelain;

(31) Class 31: filters and refrigerators;

(32) Class 32: furniture and upholstery;

(33) Class 33: glassware;

(34) Class 34: heating, lighting, and ventilating apparatus;

(35) Class 35: belting, hose, machinery packing, and non-metallic tires;

(36) Class 36: musical instruments and supplies;

(37) Class 37: paper and stationery;

(38) Class 38: prints and publications;

(39) Class 39: clothing;

(40) Class 40: fancy goods, furnishings, and notions;

(41) Class 41: canes, parasols, and umbrellas;

(42) Class 42: knitted, netted, and textile fabrics, and substitutes therefor;

(43) Class 43: thread and yarn;

(44) Class 44: dental, medical, and surgical appliances;

(45) Class 45: soft drinks and carbonated waters;

(46) Class 46: foods and ingredients of foods;

(47) Class 47: wines;

(48) Class 48: malt beverages and liquors;

(49) Class 49: distilled alcoholic liquors;

(50) Class 50: merchandise not otherwise classified;

(51) Class 51: cosmetics and toilet preparations; and

(52) Class 52: detergents and soaps.

(c) The classes of services are:

(1) Class 100: miscellaneous;

(2) Class 101: advertising and business;

(3) Class 102: insurance and financial;

(4) Class 103: construction and repair;

(5) Class 104: communication;

(6) Class 105: transportation and storage;

(7) Class 106: material treatment; and

(8) Class 107: education and entertainment.

(d) The classes of goods and services enumerated in Subsections (b) and (c) of this section are established for the convenient administration of this chapter and do not limit or expand an applicant's or registrant's rights. The secretary of state may amend the classes of goods and services to conform to those now or later established by the U.S. Patent Office.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.10. Application for Registration

(a) A person shall file his application to register a mark in the office of the secretary of state on a form prescribed by the secretary of state.

(b) The applicant shall include in the application
(1) the name and business address of the applicant;

(2) the state of incorporation of the applicant if the applicant is a corporation;

(3) an appointment of the secretary of state as the applicant's agent for service of process only in suits relating to the registration which may be issued if the applicant

(A) is or becomes a

(i) nonresident individual, partnership, or association; or

(ii) foreign corporation without a certificate of authority to do business in this state; or

(B) cannot be found in this state;

(4) the names or a description of the goods or services in connection with which the mark is being used;

(5) the manner in which the mark is being used in connection with the goods or services;

(6) the class in which the applicant believes the goods or services belong;

(7) the date on which the applicant first used the mark anywhere in connection with the goods or services;

(8) the date on which the applicant first used the mark in this state in connection with the goods or services;

(9) a statement that the applicant believes he is the owner of the mark and that, to the best of his knowledge, no other person is entitled to use the mark in this state

(A) in the identical form used by the applicant; or

(B) in a form that is likely, when used in connection with the goods or services, to cause confusion or mistake, or to deceive, because of its resemblance to the mark used by the applicant; and

(10) such additional information or documents as the secretary of state may reasonably require.

(c) The applicant shall

(1) prepare and file the application and a copy of the application with the secretary of state; and

(2) submit as part of the application to the secretary of state

(A) two identical specimens or facsimiles of the mark as actually used, one specimen or facsimile with the original application and one specimen or facsimile with the copy and,

(B) a filing fee of \$25 payable to the secretary of state.

(d) The applicant or his agent shall sign and verify the application.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1979, 66th Leg., p. 233, ch. 120, § 47, eff. May 9, 1979; Acts 1983, 68th Leg., p. 313, ch. 69, § 6, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 16.11. Registration by Secretary of State

If the application satisfies the requirements of this chapter, and the filing fee is paid, the secretary of state shall

(1) endorse on the original and the copy of the application

(A) the word "filed"; and

(B) the date on which the application was filed;

(2) file the original in his office;

(3) issue a certificate of registration evidencing registration on the date on which the application was filed;

(4) attach the copy to the certificate of registration; and

(5) deliver the certificate of registration with the attached copy of the application to the applicant.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1979, 66th Leg., p. 233, ch. 120, § 48, eff. May 9, 1979.]

§ 16.12. Term of Registration

(a) The registration of a mark under this chapter is effective for a term of 10 years from the date of registration.

(b) A registration in force before May 2, 1962, expires 10 years from the date of registration.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.13. Notice of Expiration of Registration

(a) During the period beginning 12 months and ending 6 months before the day a registration expires, the secretary of state shall, by writing to the last known address of the registrant under this chapter or under a prior act, notify the registrant of the necessity for renewing or reregistering under Section 16.14 of this code.

(b) Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under Subsection (a) of this section

(1) extends the term of a registration; or

(2) excuses the registrant's failure to renew or reregister.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.14. **Renewal of Registration and Reregistration**

(a) The registration of a mark under this chapter may be renewed for an additional 10-year term by filing a renewal application within six months before the day the registration expires on a form prescribed by the secretary of state. The registrant shall submit as part of his renewal application to the secretary of state

- (1) an affidavit stating that
 - (A) the mark is still in use in this state; or
 - (B) nonuse of the mark in this state
 - (i) is due to special circumstances which excuse the nonuse; and
 - (ii) is not due to an intention to abandon the mark in this state; and
- (2) a renewal fee of \$25 payable to the secretary of state.

(b) A registrant may renew a registration under Subsection (a) of this section for successive terms of 10 years.

(c) A mark for which a registration was in force before May 2, 1962, may be reregistered by filing an original application under Section 16.10 of this code within six months before the day the registration expires.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 313, ch. 69, § 7, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 16.15. **Record, Notice, and Proof of Registration**

(a) The secretary of state shall keep for public examination a record of all

- (1) marks registered, reregistered, or renewed under this chapter; and
- (2) assignments recorded under Section 16.18 of this code.

(b) Registration of a mark under this chapter is constructive notice throughout this state of the registrant's claim of ownership of the mark throughout this state.

(c) A certificate of registration issued by the secretary of state under this chapter, or a copy of it certified by the secretary of state, is admissible in evidence as prima facie proof of

- (1) the validity of the registration;
- (2) the registrant's ownership of the mark; and
- (3) the registrant's exclusive right to use the mark in commerce in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.16. **Cancellation of Registration**

(a) The secretary of state shall cancel

(1) all registrations in force before May 2, 1962, which are more than 10 years old and which have not been reregistered under Section 16.14(c) of this code;

(2) a registration on receipt of a voluntary request for cancellation from the registrant under this chapter or under a prior act as identified by the records of the secretary of state;

(3) registrations granted under this chapter and not renewed under Section 16.14(a) of this code;

(4) a registration concerning which a district or appellate court has rendered a final judgment, which has become unappealable, cancelling the registration or finding that

- (A) the registered mark has been abandoned;
- (B) the registrant under this chapter or under a prior act is not the owner of the mark;
- (C) the registration was granted contrary to the provisions of this chapter;
- (D) the registration was obtained fraudulently; or
- (E) the registered mark has become incapable of serving as a mark.

(b) The clerk of the court whose final judgment cancels a registration or makes any of the findings specified in Subsection (a)(4) of this section shall, when the judgment becomes unappealable, transmit a certified copy of it to the secretary of state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.17. **Assignment of Mark and Registration**

(a) A mark and its registration under this chapter are assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill connected with the use of, and symbolized by, the mark.

(b) An assignment shall be made by duly executed written instrument.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.18. **Recordation of Assignment and Its Effect**

(a) An assignment made under Section 16.17 of this code may be recorded with the secretary of state by

- (1) filing with him
 - (A) the original assignment; and
 - (B) a duplicate original or legible photocopy on durable paper of the assignment; and
- (2) paying him a fee of \$10.

(b) If an assignment has been properly filed for record under Subsection (a) of this section, the secretary of state shall

- (1) issue in the assignee's name a new certificate of registration for the remainder of the term

of the mark's registration, reregistration, or last renewal;

(2) endorse on the original and duplicate original assignment or photocopy the

(A) words "Filed for record in the office of the Secretary of State, State of Texas"; and

(B) date on which the assignment was filed for record;

(3) file the duplicate original or photocopy of the assignment in his office; and

(4) return the endorsed original assignment to the assignee or his representative.

(c) The assignment of a mark registered under this chapter is void against a purchaser who purchases the mark for value after the assignment is made and without notice of it unless the assignment is recorded by the secretary of state

(1) within three months after the date of the assignment; or

(2) before the mark is purchased.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 314, ch. 69, § 8, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

[Sections 16.19 to 16.23 reserved for expansion]

SUBCHAPTER C. COURT ACTION

§ 16.24. Review of Secretary of State's Decisions

(a) Final action taken or a final decision made by the secretary of state under this chapter may be reviewed by a suit filed in one of the Travis County district courts.

(b) A suit filed under Subsection (a) of this section is tried de novo, as an appeal from a justice court to a county court, and

(1) every decision or action concerning an issue in the suit made or taken by the secretary of state before the suit was filed is void;

(2) the district court shall determine the issues in the suit as if no decision had been made or action taken by the secretary of state; and

(3) the district court may not apply in any form the substantial evidence rule in reviewing a decision or action of the secretary of state.

(c) The legislature declares that

(1) this section is not severable from the other sections of this chapter;

(2) it would not have enacted this chapter without this section; and

(3) this chapter is void if a court in a final judgment which becomes unappealable invalidates this section in whole or part.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.25. Suit to Cancel Registration

(a) A person who believes that he is or will be damaged by a registration under this chapter may sue to cancel the registration in a district court having venue.

(b) The clerk of a court in which suit is filed under Subsection (a) of this section shall transmit notice of the suit to the secretary of state, who shall place the notice in the registration file with proper notations and endorsements.

(c) When the registrant's agent for service of process is the secretary of state, the secretary of state shall forward notice of the suit by registered mail to the registrant at his last address of record.

(d) If the court finds that the losing party in a suit filed under Subsection (a) of this section should have known his position was without merit, the court may award the successful party his reasonable attorneys' fees and charge them as part of the costs against the losing party.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.26. Infringement of Registered Mark

(a) Subject to Section 16.27 of this code, a person commits an infringement if, without the registrant's consent, he

(1) uses anywhere in this state a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with selling, offering for sale, or advertising goods or services when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates a mark registered under this chapter and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print, package, wrapper, receptacle, or advertisement intended to be used in selling, leasing, distributing, or rendering goods or services in this state when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services.

(b) A registrant may sue for damages and to enjoin an infringement proscribed by Subsection (a) of this section in a district court having venue.

(c) If the district court determines that there has been an infringement, it shall enjoin the act of infringement and may

(1) require the infringer to pay the registrant all damages resulting from the acts of infringement and occurring from and after the date two years before the day the suit was filed; and

(2) order that the infringing reproductions, counterfeits, copies, or colorable imitations in the possession or under the control of the infringer be

(A) delivered to an officer of the court;

- (B) delivered to the registrant; or
- (C) destroyed.

(d) A registrant is entitled to recover damages under Subsection (c)(1) of this section only for an infringement that occurred during the period of time the infringer had actual knowledge of the registrant's mark.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.27. Exceptions to Liability for Infringement

(a) No registration under this chapter adversely affects common law rights acquired prior to registration under this chapter. However, during any period when the registration of a mark under this chapter is in force and the registrant has not abandoned the mark, no common law rights as against the registrant of the mark may be acquired.

(b) The owner or operator of a radio or television station, or the owner or publisher of a newspaper, magazine, directory, or other publication, is not liable in that business under Section 16.26 of this code for the use of a registered mark furnished by one of his advertisers or customers.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 16.28. Procuring Application or Registration by Fraud

(a) No person may procure for himself or another the filing of an application or the registration of a mark under this chapter by knowingly making a false or fraudulent representation or declaration, oral or written, or by any other fraudulent means.

(b) A person injured by the false or fraudulent procurement of an application or registration may sue the person who violated Subsection (a) of this section in a district court having venue and

- (1) recover from him damages resulting from use of the fraudulently registered mark, plus costs of suit, including attorneys' fees; and
- (2) have the registration cancelled.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 17. DECEPTIVE TRADE PRACTICES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 17.01. Definitions

In this chapter, unless the context requires a different definition,

- (1) "container" includes bale, barrel, bottle, box, cask, keg, and package; and
- (2) "proprietary mark" includes word, name, symbol, device, and any combination of them in any form or arrangement, used by a person to identify his tangible personal property and distinguish it from the tangible personal property of another.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.02 to 17.06 reserved for expansion]

SUBCHAPTER B. DECEPTIVE ADVERTISING,
PACKING, SELLING, AND EXPORTING

§ 17.07. Using Representation of Texas Flag in
Advertising and Selling

(a) No person may use a representation of the Texas flag

- (1) to advertise or publicize tangible personal property or a commercial undertaking; or
- (2) for a trade or commercial purpose.

(b) No person may offer to sell tangible personal property bearing a representation of the Texas flag.

(c) Subsection (a) of this section does not apply to a fraternal or patriotic organization using the Texas flag for an emblem.

(d) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$100.

(e) A person who violates Subsection (b) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$50.

(f) A person who violates Subsection (a) or (b) of this section commits a separate offense each day he violates a provision of either subsection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.08. Using Representation of Great Seal of
Texas in Advertising

(a) No person may use a representation of the Great Seal of Texas

- (1) to advertise or publicize tangible personal property or a commercial undertaking; or
- (2) for a commercial purpose.

(b) A person who reproduces an official document bearing the Great Seal of Texas does not violate Subsection (a) of this section if the document is

- (1) reproduced in complete form; and
- (2) used for a purpose related to the purpose for which the document was issued by the state.

(c) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$100.

(d) A person who violates Subsection (a) of this section commits a separate offense each day he violates a provision of that subsection.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§§ 17.09, 17.10. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. Jan. 1, 1974

§ 17.11. Deceptive Wholesale and Going-Out-Of-
Business Advertising

(a) In Subsection (b) of this section, unless the context requires a different definition, "wholesaler" means a person who sells for the purpose of resale and not directly to a consuming purchaser.

(b) No person may wilfully misrepresent the nature of his business by using in selling or advertising the word manufacturer, wholesaler, retailer, or other word of similar meaning.

(c) No person may wilfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business. A person who advertises a liquidation sale, auction sale, or going-out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertising.

(d) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.12. Deceptive Advertising

(a) No person may disseminate a statement he knows materially misrepresents the cost or character of tangible personal property, a security, service, or anything he may offer for the purpose of

(1) selling, contracting to sell, otherwise disposing of, or contracting to dispose of the tangible personal property, security, service, or anything he may offer; or

(2) inducing a person to contract with regard to the tangible personal property, security, service, or anything he may offer.

(b) No person may solicit advertising in the name of a club, association, or organization without the written permission of such club, association, or organization or distribute any publication purporting to represent officially a club, association, or organization without the written authority of or a contract with such club, association, or organization and without listing in such publication the complete name and address of the club, association, or organization endorsing it.

(c) A person's proprietary mark appearing on or in a statement described in Subsection (a) of this section is prima facie evidence that the person disseminated the statement.

(d) A person who violates a provision of Subsection (a) or (b) of this Section is guilty of a misde-

meanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2045, ch. 701, § 1, eff. June 12, 1969.]

[Sections 17.13 to 17.17 reserved for expansion]

SUBCHAPTER C. REGULATING THE SALE OR TRANSFER OF SECONDHAND WATCHES

§ 17.18. Applicability of Subchapter to Secondhand Watches

(a) A watch is secondhand if its

(1) case, movement, or case and movement as a unit, has been previously sold or transferred to a person for his own use or the use of another;

(2) serial number, movement number, or other identification mark or number has been removed, altered, or covered up;

(3) movement is more than one year old and has been repaired even though the watch has been returned to the seller or transferor for exchange or credit as described in Subsection (b)(1) of this section.

(b) A watch is not secondhand if

(1) after the sale or transfer described in Subsection (a)(1) of this section,

(A) the purchaser or transferee returns the watch to the seller or transferor for exchange or credit within one year from the date of sale or transfer to him;

(B) the seller or transferor keeps a written record showing

(i) the purchaser's or transferee's name;

(ii) the date of sale or transfer;

(iii) the serial number on the case and movement, if present; and

(iv) any proprietary mark;

(C) the record is kept for at least five years from the date of sale or transfer; and

(D) the record is open for inspection at the seller's or transferor's business address during business hours by

(i) the county or district attorney of the county in which the seller or transferor does business; or

(ii) his duly authorized representative; or

(2) Its movement is merely cleaned, oiled, or recased.

(c) The provisions of Subsections (a) and (b) of this section do not apply to a pawnbroker's auction sale of unredeemed pledges.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.19. Labeling Secondhand Watches

No person in the business of buying or selling watches may sell or exchange, offer to sell or exchange, possess, or display with intent to sell or exchange a secondhand watch unless he

(1) fastens to the watch a clearly written or printed tag bearing the word "secondhand"; and

(2) places the tag so the word "secondhand" is in plain sight at all times.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.20. Content of Invoice for Secondhand Watch

(a) No person in the business of buying or selling watches may sell or transfer a secondhand watch unless he gives the purchaser or transferee a written invoice

(1) bearing the words "secondhand watch" in letters larger than any other letters on the invoice, except those of the letterhead; and

(2) listing the following items:

(A) the seller's or transferor's name and address;

(B) the purchaser's or transferee's name and address;

(C) the date of sale or transfer;

(D) the name of the watch or its manufacturer; and

(E) the serial number or proprietary mark on the watch or, if the serial number or proprietary mark has been removed, altered, or covered up, a statement to that effect.

(b) The seller or transferor shall keep on file a duplicate of the invoice required by Subsection (a) of this section for at least five years from the date of sale or transfer.

(c) The county or district attorney, or his authorized representative, of the county in which the seller or transferor does business may inspect the duplicate invoice described in Subsection (b) of this section

(1) during the seller's or transferor's business hours; and

(2) at the seller's or transferor's business address.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.21. Advertising Watch as Secondhand

No person may advertise or display a secondhand watch for sale or exchange unless he clearly states in the advertisement or display that the watch is secondhand.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.22. Criminal Penalty

A person, or his agent or employee, who violates a provision of Section 17.19, 17.20, or 17.21 of this

code is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than 100 days or by a fine of not more than \$500 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.23 to 17.27 reserved for expansion]

**SUBCHAPTER D. COUNTERFEITING OR
CHANGING A REQUIRED MARK; MIS-
USE OF CONTAINER BEARING MARK**

§ 17.28. **Repealed by Acts 1973, 63rd Leg., p. 995,
ch. 399, § 3(d), eff. Jan. 1, 1974**

§ 17.29. **Misusing Container; Evidence of Misuse
and Container's Ownership**

(a) In this section, unless the context requires a different definition, "container" also includes drink-dispensing fountain.

(b) Unless the owner of a reusable container bearing a proprietary mark (or one acting with the owner's written permission) agrees, no person may

(1) fill the container for sale or other commercial purpose;

(2) deface, cover up, or remove the proprietary mark from the container; or

(3) refuse to return the container to the owner if he requests its return.

(c) A person's wilful

(1) possession of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section;

(2) use, purchase, sale, or other disposition of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section; and

(3) breaking, damaging, or destroying a full or empty reusable container is prima facie evidence of his violating a provision of Subsection (b) of this section.

(d) In an action in which the ownership of a reusable container is in issue, a person's proprietary mark on the container is prima facie evidence that the person or his licensee owns the container.

(e) A person who violates a provision of Subsection (b) of this section is guilty of a misdemeanor and upon conviction is punishable by

(1) a fine of not less than \$25 nor more than \$50 for each violation concerning a drink-dispensing fountain; or

(2) a fine of not less than \$5 nor more than \$10 for each violation concerning any other container.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 17.30. **Misusing Dairy Container Bearing Proprietary Mark**

(a) In this section, unless the context requires a different definition, "dairy container" includes butter box, ice cream can, ice cream tub, milk bottle, milk bottle case, milk can, and milk jar.

(b) Without the owner's consent, no person may

(1) fill with milk, cream, butter, or ice cream; damage; mutilate; or destroy a dairy container bearing the owner's commonly used proprietary mark; or

(2) wilfully refuse to return on request to the owner a dairy container bearing his commonly used proprietary mark.

(c) Without the owner's written consent, no person may

(1) deface or remove an owner's proprietary mark from a dairy container; or

(2) substitute on a dairy container his proprietary mark for that of the owner.

(d) A person's commonly used proprietary mark on a dairy container is prima facie evidence of that person's ownership of the container.

(e) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 17.31 to 17.40 reserved for expansion]

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

§ 17.41. **Short Title**

This subchapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.42. **Waivers: Public Policy**

Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a business consumer with assets of \$5 million or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that is not in a significantly disparate bargaining position may by written contract waive the provisions of this subchapter, other than Section 17.55A.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1981, 67th Leg., p. 863, ch. 307, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4943, ch. 883, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1981 amendatory act provides:

"Nothing in this Act shall affect procedurally or substantively a cause of action arising in whole or in part prior to the effective date of this Act."

Section 4 of the 1983 amendatory act provides:

"This Act applies only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law in effect when the contract was executed."

§ 17.43. Cumulative Remedies

The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1979, 66th Leg., p. 1327, ch. 603, § 1, eff. Aug. 27, 1979.]

§ 17.44. Construction and Application

This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.45. Definitions

As used in this subchapter:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

(3) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(4) "Consumer" means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of \$25 million or more, or that

is owned or controlled by a corporation or entity with assets of \$25 million or more.

(5) "Unconscionable action or course of action" means an act or practice which, to a person's detriment:

(A) takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or

(B) results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(7) "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(8) "Consumer protection division" means the antitrust and consumer protection division of the attorney general's office.

(9) "Knowingly" means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act or practice constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(10) "Business consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, ch. 216, § 1, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4943, ch. 883, §§ 2, 3, eff. Aug. 29, 1983.]

Section 4 of the 1983 amendatory act provides:

"This Act applies only to a contract executed on or after the effective date of this Act. A contract executed before the effective date of this Act is governed by the law in effect when the contract was executed."

§ 17.46. Deceptive Trade Practices Unlawful

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action

by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the

county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract; or

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

(c)(1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.

(d) For the purposes of the relief authorized in Subdivision (1) of Subsection (a) of Section 17.50 of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 601, ch. 216, §§ 2, 3, eff. May 23, 1977; Acts 1977, 65th Leg., p. 892, ch. 336, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, § 3, eff. Aug. 27, 1979.]

Section 9 of the 1979 amendatory act provided:

"This Act shall be applied prospectively only. Nothing in this Act affects either procedurally or substantively a cause of action that arose either in whole or in part prior to the effective date of this Act."

§ 17.47. Restraining Orders

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. The consumer protection division may bring any action under this section against a licensed insurer or insurance agent for a violation of this subchapter, Article 21.21, Texas Insurance Code, as amended, or the rules and regulations of the State Board of Insurance issued under Article 21.21, Texas Insurance Code, as amended, only on the written request of the State Board of Insurance or the commissioner of insurance.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made.

(b) An action brought under Subsection (a) of this section which alleges a claim to relief under this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, has done business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this subchapter and such injunctive relief shall be issued without bond.

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request a civil penalty of not more than \$2,000 per violation, not to exceed a total of \$10,000, to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation, not to exceed \$50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall

retain jurisdiction, and the cause shall be continued, and in these cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 602, ch. 216, § 4, eff. May 23, 1977.]

§ 17.48. Duty of District and County Attorney

(a) It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions seeking injunctive relief under this subchapter, after complying with the prior contact provisions of Subsection (a) of Section 17.47 of this subchapter. On request, the consumer protection division shall assist the district or county attorney in any action taken under this subchapter. If an action is prosecuted by a district or county attorney alone, he shall make a full report to the consumer protection division including the final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the commissioner of insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or commissioner of insurance.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.49. Exemptions

(a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as

used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.50. Relief for Consumers

(a) A consumer may maintain an action where any of the following constitute a producing cause of actual damages:

- (1) the use or employment by any person of a false, misleading, or deceptive act or practice that is specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter;
- (2) breach of an express or implied warranty;
- (3) any unconscionable action or course of action by any person; or
- (4) the use or employment by any person of an act or practice in violation of Article 21.21, Texas Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

- (1) the amount of actual damages found by the trier of fact. In addition the court shall award two times that portion of the actual damages that does not exceed \$1,000. If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of actual damages in excess of \$1,000;
- (2) an order enjoining such acts or failure to act;
- (3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and
- (4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or

regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 603, ch. 216, § 5, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1329, ch. 603, § 4, eff. Aug. 27, 1979.]

§ 17.50A. Notice: Offer of Settlement

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 30 days before filing the suit advising the person of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

(b) If the giving of 30 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and by Subsection (d), Section 17.50B of this subchapter may be made within 30 days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 30 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 30 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less.

(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (d) of this section.

[Acts 1977, 65th Leg., p. 604, ch. 216, § 6, eff. May 23, 1977. Amended by Acts 1979, 66th Leg., p. 1330, ch. 603, § 5, eff. Aug. 27, 1979.]

§ 17.50B. Damages: Defenses

(a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

(1) written information relating to the particular goods or service in question obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.50B above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.50B above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Subdivision (2) of Subsection (a) of Section 17.50B above, suit may be asserted against the third party

supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

- (1) the amount of actual damages claimed; and
- (2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

[Acts 1979, 66th Leg., p. 1331, ch. 603, § 6, eff. Aug. 27, 1979.]

§ 17.51 to 17.54. Repealed by Acts 1977, 65th Leg., p. 605, ch. 216, §§ 10 to 13, eff. May 23, 1977

See, now, § 17.50B.

§ 17.55. Promotional Material

If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

- (1) the seller received the advertisements or promotional material from the third party;
- (2) the seller's only action with regard to the advertisements or promotional material was to disseminate the material; and
- (3) the seller has ceased disseminating the material.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.55A. Indemnity

A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work per-

formed in maintaining his action for indemnity, and his costs.

[Acts 1977, 65th Leg., p. 604, ch. 216, § 7, eff. May 23, 1977.]

§ 17.56. Venue

An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought or in the county in which the alleged act or practice occurred or in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 8, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1332, ch. 603, § 7, eff. Aug. 27, 1979.]

§ 17.56A. Limitation

All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

[Acts 1979, 66th Leg., p. 1332, ch. 603, § 8, eff. Aug. 27, 1979.]

§ 17.57. Subpoenas

The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.58. Voluntary Compliance

(a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Travis County.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this subchapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this subchapter.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this subchapter. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this subchapter.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this subchapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.59. Post Judgment Relief

(a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

- (1) that the defendant is insolvent or in danger of becoming insolvent; and
- (2) that the defendant's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and
- (3) that the prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and
- (4) that there is no adequate remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of Subsection (a) of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the

court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in Subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 9, eff. May 23, 1977.]

§ 17.60. Reports and Examinations

Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

- (1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;
- (2) examine under oath any person in connection with this alleged violation;
- (3) examine any merchandise or sample of merchandise deemed necessary and proper; and
- (4) pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division until the completion of all proceedings in connection with which the merchandise is produced.

This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.61. Civil Investigative Demand

(a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying. This section shall not apply to licensed insurers or licensed insurance agents transacting an insurance business in this state under the authority and jurisdiction of the State Board of Insurance unless the State Board of Insurance or the Insurance Commissioner has requested in writing that the consumer protection division file an action under Section 17.47 of this subchapter.

(b) Each demand shall:

(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the members of the consumer protection division to whom the documentary material is to be made available for inspection and copying.

(c) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(d) Service of any demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served;

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business in this state, or if the person has no place of business in this state, to his principal office or place of business.

(e) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and places as may be agreed on by the person served and the consumer protection division.

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The consumer protection division may use the documentary material or copies of it as it determines necessary in the enforcement of this subchapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(g) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

(h) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

(i) Personal service of a similar investigative demand under this section may be made on any person outside of this state if the person has engaged in conduct in violation of this subchapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.62. Penalties

(a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000 or by confinement in the county jail for not more than one year, or both.

(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the

material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

§ 17.63. Application

The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended,¹ prior to the effective date of this subchapter.

[Acts 1973, 63rd Leg., p. 322, ch. 143, § 1, eff. May 21, 1973.]

¹ Civil Statutes, art. 5069-10.01 et seq.

[Chapters 18 to 22 reserved for expansion]

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

Chapter	Section
23. Assignments for the Benefit of Creditors	23.01
24. Fraudulent Transfers	24.01
25. Property under Lien	25.01
26. Statute of Frauds	26.01
27. Fraud	27.01

CHAPTER 23. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec.

- 23.01. Definitions.
- 23.02. Nature and Effect of Assignment.

SUBCHAPTER B. THE ASSIGNMENT

- 23.08. Form and Content of Assignment.
- 23.09. Fraud Does Not Defeat Assignment.
- 23.10. Assignment Discharges Debtor.

SUBCHAPTER C. DUTIES AND RIGHTS OF ASSIGNEE

Sec.

- 23.16. Assignee's Qualifications, Duty to Record Assignment, and Bond.
- 23.17. Notice of Assignee's Appointment.
- 23.18. Replacement of Assignee.
- 23.19. Assignee's Duty to Distribute Assigned Estate.
- 23.20. Discount of Claim Not Due and Allowance of Secured Claim.
- 23.21. Assignee's Entitlement to Compensation.
- 23.22. Examination of Debtor or Other Person.
- 23.23. Assignee's Final Report and Discharge.
- 23.24. Time Limit on Bringing Action Against Assignee.

SUBCHAPTER D. DUTIES AND RIGHTS OF CREDITORS

- 23.30. Creditor's Consent to Assignment.
- 23.31. Creditor's Proof and Assignee's Allowance of Claim.
- 23.32. Creditor's Suit on Disputed Claim.
- 23.33. Nonconsenting Creditor's Right to Surplus.

SUBCHAPTER A. GENERAL PROVISIONS

§ 23.01. Definitions

In this chapter, unless the context requires a different definition,

- (1) "assigned estate" means all the real and personal estate of an assigning debtor passing to the consenting creditors under an assignment by virtue of Section 23.02 or 23.09(b) of this code;
- (2) "assignee" means an assignee for the benefit of creditors;
- (3) "assigning debtor" means a person executing an assignment;
- (4) "assignment" means a general assignment for the benefit of creditors made under this chapter;
- (5) "consenting creditor" means a creditor who has consented to an assignment in one of the ways provided by Section 23.30 of this code; and
- (6) "real and personal estate" does not include property exempt by law from execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.02. Nature and Effect of Assignment

(a) A debtor may assign his real and personal estate under this chapter to an assignee for the benefit of the debtor's creditors.

(b) An assigning debtor shall provide in the assignment for distribution of all his real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

(c) Regardless of an expression to the contrary, an assignment passes all an assigning debtor's real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.03 to 23.07 reserved for expansion]

SUBCHAPTER B. THE ASSIGNMENT

§ 23.08. Form and Content of Assignment

- (a) For an assignment to be valid,
- (1) the assigning debtor must make the assignment in writing; and
 - (2) it must be proved or acknowledged and recorded in the manner provided by law for the conveyance of real estate.
- (b) The assigning debtor shall attach to his assignment an inventory containing the following information:
- (1) a list naming each creditor of the assigning debtor;
 - (2) the resident address, if known, of each creditor;
 - (3) the amount owed each creditor and the type of debt;
 - (4) the consideration for the debt and the place where the debt arose;
 - (5) a description of each existing judgment or security for the payment of the debt;
 - (6) a schedule of all the assigning debtor's real and personal estate at the date of the assignment;
 - (7) a description of
 - (A) each encumbrance on the real and personal estate; and
 - (B) each voucher and security relating to the estate; and
 - (8) the value of the estate.
- (c) The assigning debtor shall sign the inventory required by Subsection (b) of this section and swear that it is just and true.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.09. Fraud Does Not Defeat Assignment

- (a) An assignment is not affected and a consenting creditor is not deprived of his proportionate share of the assigned estate by the fraudulent act or intent of the assigning debtor or assignee. A consenting creditor is a proper party to a suit filed to enforce a right under an assignment, or to protect an interest in an assigned estate.
- (b) Except as to an innocent purchaser for value, a transfer of property made in contemplation of an assignment with an intent to defeat, delay, defraud, or give preference to a creditor is void and the property passes under the assignment rather than by the transfer.
- (c) An assignee may sue to recover property transferred with an intent described in Subsection (b) of this section, and when the property is recovered, the assignee shall apply it for the benefit of the assigning debtor's creditors along with property belonging to the assigned estate already in the assignee's possession. If an assignee neglects or

refuses to sue to recover property transferred with an intent described in Subsection (b) of this section, a creditor, after securing the assignee against cost or liability, may sue in the assignee's name to recover the property.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.10. Assignment Discharges Debtor

If an assigning debtor makes an assignment, he is discharged from liability on the claim of a consenting creditor unless the consenting creditor does not receive at least one-third of the amount allowed on his claim against the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.11 to 23.15 reserved for expansion]

SUBCHAPTER C. DUTIES AND RIGHTS OF ASSIGNEE

§ 23.16. Assignee's Qualifications, Duty to Record Assignment, and Bond

- (a) An assignee shall be a resident of this state and a resident of the county in which the assigning debtor resides, or in which the assigning debtor's principal business was conducted.
- (b) Immediately after the assignment instrument is executed and delivered to him, the assignee shall record it in the county of his residence and in each county in which there is real property conveyed to the assignee by the assignment.
- (c) Within five days after delivery to him of the assignment instrument, the assignee shall execute a bond
- (1) with a surety who must be approved by the judge of either the county or district court in the county of the assignee's residence;
 - (2) conditioned that he will perform faithfully his duties as assignee and distribute proportionately the net proceeds of the assigned estate to the consenting creditors entitled to it under the assignment;
 - (3) in an amount fixed by the county or district judge;
 - (4) payable to the state; and
 - (5) which inures to the benefit of the assigning debtor and each of the creditors.
- (d) The assignee shall file the bond with the county clerk of the county in which the assigning debtor resides and then the assignee shall take possession of the assigned estate and carry out the assignment.
- (e) An assignment is valid as against an assigning debtor or his creditors even though the assignee fails to execute and file a bond as required by Subsections (c) and (d) of this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.17. Notice of Assignee's Appointment

(a) Within 30 days after an assignment is executed, the assignee shall publish notice of his appointment as assignee in a newspaper published in the county

(1) where the assigning debtor resides or where he operated his principal business before the assignment; or

(2) nearest the assigning debtor's residence or principal business if a newspaper is not published in the county of the assigning debtor's residence or principal business.

(b) The assignee shall publish notice of his appointment as assignee once each week for three consecutive weeks.

(c) The assignee shall notify by mail each of the assigning debtor's listed creditors of his appointment as assignee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.18. Replacement of Assignee

(a) A county or district court of the county in which the assignee resides shall remove or replace the assignee on application of the assigning debtor or a creditor, or on its own motion,

(1) if the court is satisfied that the assignee has not executed and filed the bond required by Sections 23.16(c) and (d) of this code;

(2) if the assignee refuses or fails to serve for any reason; or

(3) for good cause.

(b) On removal, resignation, or death of the assignee, the court shall appoint in writing a new assignee in term time or vacation.

(c) As soon as the new assignee executes and files a bond as required by Sections 23.16(c) and (d) of this code, he shall take possession of the assigned estate and carry out the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.19. Assignee's Duty to Distribute Assigned Estate

Each time an assignee has enough money to pay 10 percent of the assigning debtor's debts, he shall distribute the money among the creditors entitled to receive it in proportion to their claims allowed under Section 23.31(b) of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.20. Discount of Claim Not Due and Allowance of Secured Claim

(a) The assignee may allow a claim which is not due at its present value by discounting it at the legal rate.

(b) If a creditor holds collateral to secure his claim worth less than his claim, the assignee may estimate the value of the collateral and allow the

creditor as a claim against the assigned estate only the difference between the value of the collateral and the amount of the claim.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.21. Assignee's Entitlement to Compensation

An assignee is entitled to reasonable compensation for his services and reimbursement for his necessary expenses, including an attorney's fee, all of which shall be fixed by the county or district court who approved his bond. The compensation, expenses, and attorney's fee fixed by the county or district court shall be paid out of the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.22. Examination of Debtor or Other Person

(a) The court in which a proceeding involving an assigned estate has been filed may, after reasonable notice to each person concerned, compel any person to answer questions under oath on

(1) application of a creditor of the assigning debtor; or

(2) its own motion.

(b) The court may compel attendance and an answer to any question concerning the assigned estate by writ or order as in other cases. Questions asked and answers given during the examination shall be in writing, the person examined shall swear to and sign his answers before the clerk, and the questions and answers shall be filed with the clerk for use by anyone interested in the proceeding.

(c) The court shall charge the cost of the examination against the applicant or the assigned estate, as the court deems proper.

(d) The assigning debtor may not be prosecuted or punished for an answer given by him during the examination.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.23. Assignee's Final Report and Discharge

(a) An assignee wishing to be discharged from his appointment shall prepare and file for record with the county clerk of the county in which his assignment is recorded a sworn report describing

(1) all property which came into his possession under the assignment; and

(2) how and to whom he distributed the property.

(b) The assignee shall also deposit in the registry of the court who approved his bond money belonging to the assigned estate still in his possession at the time he files his report under Subsection (a) of this section. The court shall distribute the money under this chapter to the consenting creditors and

assignee and, in the case of surplus, to the nonconsenting creditors and assigning debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.24. Time Limit on Bringing Action Against Assignee

An action against an assignee based on his conduct in carrying out the assignment, as shown in his report filed under Section 23.23(a) of this code, must be brought within 12 months after the report is filed or the action is barred.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 23.25 to 23.29 reserved for expansion]

SUBCHAPTER D. DUTIES AND RIGHTS OF CREDITORS

§ 23.30. Creditor's Consent to Assignment

(a) A creditor must inform the assignee in writing of his consent to the assignment within four months after the assignee gives the notice required by Section 23.17 of this code.

(b) If a creditor is not given actual notice of an assignment, but subsequently learns of the assignment, he may consent to the assignment at any time before the first distribution of the assigned estate is begun.

(c) Receipt by a creditor of payment for part of his claim from the assignee is conclusive evidence of the creditor's consent to the assignment.

(d) If a creditor does not consent to an assignment, he is not entitled to receive any of the assigned estate under the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.31. Creditor's Proof and Assignee's Allowance of Claim

(a) Within six months after the first publication of notice of appointment required by Section 23.17 of this code, a consenting creditor must file with the assignee a statement, sworn to by the creditor, his agent, or attorney,

- (1) describing the nature and amount of the creditor's claim against the assigning debtor; and
- (2) stating that
 - (A) the claim is true;
 - (B) the debt is just; and
 - (C) all proper credits or offsets have been allowed against the claim.

(b) The assignee shall allow a claim filed under Subsection (a) of this section against the assigned estate unless he has good reason to believe the claim is not just and true.

(c) If a creditor does not file a statement in the time required by Subsection (a) of this section, he is not entitled to receive any of the assigned estate.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.32. Creditor's Suit on Disputed Claim

(a) The assignee shall give any creditor a copy of any statement of claim filed under Section 23.31(a) of this code if the creditor requests a copy.

(b) Within eight months after the first publication of notice required by Section 23.17 of this code, an assigning debtor or creditor may sue to

- (1) set aside an allowance made on a claim by the assignee; and
- (2) restrain payment of the claim by the assignee.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 23.33. Nonconsenting Creditor's Right to Surplus

If a creditor does not consent to an assignment, he may garnishee the assignee for the excess of the assigned estate remaining in the assignee's possession after the assignee has paid

- (1) each consenting creditor the amount of his claim allowed under Section 23.31(b) of this code; and
- (2) the expense of carrying out the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 24. FRAUDULENT TRANSFERS

Sec.

- 24.01. Definition of Transfer.
- 24.02. Transfer to Defraud Is Void.
- 24.03. Debtor's Transfer Not for Value Is Void.
- 24.04. Fraudulent Gift of Tangible Personal Property Is Void.
- 24.05. Pretended Loan of Tangible Personal Property Is Ineffective.

§ 24.01. Definition of Transfer

In this chapter, unless the context requires a different definition, "transfer" includes conveyance, gift, assignment, and charge.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 24.02. Transfer to Defraud Is Void

(a) A transfer of real or personal property, a suit, a decree, judgment, or execution, or a bond or other writing is void with respect to a creditor, purchaser, or other interested person if the transfer, suit, decree, judgment, execution, or bond or other writing was intended to

- (1) delay or hinder any creditor, purchaser, or other interested person from obtaining that to which he is, or may become, entitled; or

(2) defraud any creditor, purchaser, or other interested person of that to which he is, or may become, entitled.

(b) The title of a purchaser for value is not void under Subsection (a) of this section unless he purchased with notice of

(1) the intent of his transferor to delay, hinder, or defraud; or

(2) the fraud that voided the title of his transferor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 24.03. Debtor's Transfer Not for Value Is Void

(a) A transfer by a debtor is void with respect to an existing creditor of the debtor if the transfer is not made for fair consideration, unless, in addition to the property transferred, the debtor has at the time of transfer enough property in this state subject to execution to pay all of his existing debts.

(b) Subsection (a) of this section does not void a transfer with respect to a subsequent creditor of or purchaser from the debtor.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 24.04. Fraudulent Gift of Tangible Personal Property Is Void

A gift of tangible personal property is void unless

(1) the gift is evidenced by

(A) a deed that has been duly acknowledged or proved and recorded; or

(B) a will that has been duly probated; or
 (2) actual possession of the subject matter of the gift is in the donee or someone claiming under him.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 24.05. Pretended Loan of Tangible Personal Property Is Ineffective

(a) With respect to a creditor of or purchaser from the possessor of tangible personal property, a pretended loan of tangible personal property is fraudulent, and the absolute title to the tangible personal property is in the possessor, if

(1) the possessor, or someone claiming under him, has possessed the tangible personal property for two years; and

(2) the lender of the tangible personal property has not, during those two years, made and pursued by law a demand for the tangible personal property.

(b) With respect to a creditor of or purchaser from the possessor of tangible personal property, a pretended reservation or limitation on the use of tangible personal property is fraudulent, and the absolute title to the tangible personal property is in the possessor, if the possessor, or someone claiming

under him, has possessed the tangible personal property for two years.

(c) Neither Subsection (a) nor (b) of this section applies to a loan, or reservation or limitation on the use, of tangible personal property if the loan, reservation, or limitation is evidenced by a

(1) duly probated will; or

(2) duly acknowledged or proved and recorded deed or other writing.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 25. PROPERTY UNDER LIEN

§§ 25.01 to 25.03. Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. Jan. 1, 1974

CHAPTER 26. STATUTE OF FRAUDS

Sec.

26.01. Promise or Agreement Must be In Writing.

§ 26.01. Promise or Agreement Must be In Writing

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement; and

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 1.03, Medical Liability and

Insurance Improvement Act of Texas.¹ This section shall not apply to pharmacists.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1977, 65th Leg., p. 2053, ch. 817, § 21.01, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 4590i.

CHAPTER 27. FRAUD

Sec.

27.01. Fraud In Real Estate and Stock Transactions.

§ 27.01. Fraud In Real Estate and Stock Transactions

(a) Fraud in a transaction involving real estate or stock in a corporation or joint stock company consists of a

(1) false representation of a past or existing material fact, when the false representation is

(A) made to a person for the purpose of inducing that person to enter into a contract; and

(B) relied on by that person in entering into that contract; or

(2) false promise to do an act, when the false promise is

(A) material;

(B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

(b) A person who makes a false representation or false promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for actual damages.

(c) A person who makes a false representation or false promise with actual awareness of the falsity thereof commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(d) A person who (1) has actual awareness of the falsity of a representation or promise made by another person and (2) fails to disclose the falsity of the representation or promise to the person defrauded, and (3) benefits from the false representation or promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(e) Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney's fees, expert

witness fees, costs for copies of depositions, and costs of court.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1983, 68th Leg., p. 5208, ch. 949, §§ 1, 2, eff. Sept. 1, 1983.]

Sections 3 and 4 of the 1983 amendatory act provide:

"Sec. 3. This Act applies to fraud if every element of the fraud occurred on or after the effective date of this Act. If an element of fraud occurred before the effective date of this Act, the fraud is governed by Section 27.01, Business & Commerce Code, as it existed before being amended by this Act, and that law is continued in effect for that purpose.

"Sec. 4. The provisions of Section 27.01, Business & Commerce Code, as amended, and this Act do not abrogate or repeal any other laws relating to the rights, duties, obligations, or liabilities of principals and agents to one another or to third parties."

[Chapters 28 to 32 reserved for expansion]

TITLE 4. MISCELLANEOUS COMMERCIAL PROVISIONS

Chapter	Section
33. Fiduciary Security Transfers	33.01
34. Principal and Surety	34.01
35. Miscellaneous	35.01
36. Assumed Business or Professional Name	36.01

CHAPTER 33. FIDUCIARY SECURITY TRANSFERS

Sec.

- 33.01. Definitions.
- 33.02. Registration In the Name of a Fiduciary.
- 33.03. Assignment by a Fiduciary.
- 33.04. Requirement of Signature Guarantee.
- 33.05. Evidence of Appointment or Incumbency.
- 33.06. Adverse Claims.
- 33.07. Nonliability of Corporation and Transfer Agent.
- 33.08. Nonliability of Third Persons.
- 33.09. Territorial Application.
- 33.10. Tax Obligations.

§ 33.01. Definitions

In this chapter, unless the context requires a different definition,

(1) "assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust, or other instrument of transfer;

(2) "claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant, a fiduciary, or any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;

(3) "corporation" means a private or public corporation, association, or trust issuing a security;

(4) "fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian, or nominee;

(5) "person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity;

(6) "security" includes any share of stock, bond, debenture, note, or other security issued by a corporation which is registered as to ownership on the books of the corporation;

(7) "transfer" means a change on the books of a corporation in the registered ownership of a security; and

(8) "transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.02. Registration In the Name of a Fiduciary

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.03. Assignment by a Fiduciary

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.04. Requirement of Signature Guarantee

For the transfer of a security to come within the terms of this Chapter, the signature on the assign-

ment of the security must be guaranteed by any state or national bank incorporated in the United States (acting by and through one of its officers), by an unincorporated bank duly licensed to do business in the State of Texas (acting by and through any proprietor or partner), or by a firm that is a member of the New York Stock Exchange (acting by and through a duly authorized agent).

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2018, ch. 691, § 1, eff. Sept. 1, 1969.]

§ 33.05. Evidence of Appointment or Incumbency

(a) A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in case of a fiduciary appointed or qualified by a court, a certificate issued by that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate.

(b) Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under Subsection (a)(2) of this section if the standards are not manifestly unreasonable.

(c) Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to Subsection (a)(2) of this section except to the extent that the contents relate directly to the appointment or incumbency.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.06. Adverse Claims

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue of which the security is a part, provides an address for communications directed to the claimant, and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in Subsection (b) of this section.

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assign-

ment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails this notice, it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by court order.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.07. Nonliability of Corporation and Transfer Agent

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.08. Nonliability of Third Persons

(a) No person who participates in the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary (including a person who guarantees the signature of the fiduciary) is liable for participation in a breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that

(1) he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary; or

(2) the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability on the corporation or its transfer agent.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 33.09. Territorial Application

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized; provided, however, that for purposes of this Act, a National Banking Association shall be deemed to have been organized in the state in which its principal banking house is located.

(b) This chapter applies to the rights and duties of a person

(1) other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposi-

tion, assignment, or transfer of a security by or to a fiduciary; and

(2) who guarantees in this state the signature of a fiduciary in connection with such a transaction.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1969, 61st Leg., p. 2019, ch. 692, § 1, eff. June 12, 1969.]

§ 33.10. Tax Obligations

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession, or other taxes imposed by the laws of this state.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 34. PRINCIPAL AND SURETY

Sec.

34.01. Definition of Surety.

34.02. Surety May Require Suit on Accrued Right of Action.

34.03. Levy First on Principal's Property.

34.04. Subrogation Rights of Surety.

34.05. Officer Compelled to Pay on Judgment Treated As Surety.

§ 34.01. Definition of Surety

In this chapter, unless the context requires a different definition, "surety" includes endorser, guarantor, drawer of a draft which has been accepted, and every other form of suretyship, whether created by express contract or by operation of law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 34.02. Surety May Require Suit on Accrued Right of Action

(a) When a right of action has accrued on a contract for the payment of money or performance of an act, a surety on the contract may require by written notice that the obligee forthwith sue on the contract.

(b) A surety who gives notice to an obligee under Subsection (a) of this section is discharged from all liability on the contract if the obligee

(1) is not under legal disability; and either

(2) fails to sue on the contract during the first term of court after receiving the notice, or during the second term showing good cause for the delay; or

(3) fails to prosecute the suit to judgment and execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 34.03. Levy First on Principal's Property

(a) If a judgment granted against two or more defendants finds a suretyship relation between or among them, the court shall order the sheriff to levy the execution

(1) first, against the principal's property which is located in the county where the judgment was granted;

(2) second, if the sheriff cannot find enough of the principal's property in the county to satisfy the execution, against so much of the principal's property as he finds; and

(3) third, against so much of the surety's property as is necessary to make up the balance of the amount shown in the writ of execution.

(b) The clerk shall note the order to the sheriff on the writ of execution.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 34.04. Subrogation Rights of Surety

(a) A judgment is not discharged by a surety's payment of it in whole or part if the payment is compelled or, if voluntarily made, is applied to the judgment because of the suretyship relation.

(b) A surety who pays on a judgment as described in Subsection (a) of this section is subrogated to all of the judgment creditor's rights under the judgment. A subrogated surety is entitled

(1) to execution on the judgment against the principal's property for the amount of his payment, plus interest and costs; and

(2) if there is more than one surety, to execution on the judgment against both the principal's property and the property of his cosurety or cosureties for the amount his payment exceeded his proportionate share of the judgment, plus interest and costs.

(c) A subrogated surety seeking execution under Subsection (b) of this section shall apply for it to the clerk or court, and execution shall be levied, collected, and returned as in other cases.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 34.05. Officer Compelled to Pay on Judgment Treated As Surety

(a) An officer has the rights of a surety provided in Section 34.04 of this code if compelled to pay a judgment in whole or part because of his default.

(b) An officer who fails to pay over money collected, or who wastes property levied on by him or in his possession, does not have the rights of a surety provided in Section 34.04 of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

CHAPTER 35. MISCELLANEOUS

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- 35.01A. Election to be Treated as a Utility.
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SUBCHAPTER A. FILING OF UTILITY SECURITY INSTRUMENTS

§ 35.01. Definitions

(a) In Sections 35.02-35.08 of this code, unless the context requires a different definition,

(1) "Security instrument" means a mortgage, deed of trust, security agreement or other instru-

ment executed to secure the payment of a bond, note, or other obligation of a utility, or instruments supplementary or amendatory thereto (including any signed copy thereof); and

(2) "Utility" means a person engaged in this state in the

(A) generation, transmission, or distribution and sale of electric power;

(B) transportation, distribution and sale through a local distribution system of natural or other gas for domestic, commercial, industrial, or other use;

(C) ownership or operation of a pipeline for the transmission or sale of natural or other gas, crude oil or petroleum products to other pipeline companies, refineries, local distribution systems, municipalities, or industrial consumers;

(D) provision of telephone or telegraph service to others;

(E) production, transmission, or distribution and sale of steam or water;

(F) operation of a railroad; and

(G) the provision of sewer service to others.

(b) The definitions in Chapters 1 and 9 of this code also apply to this subchapter.

[Acts 1967, 60th Leg., p. 1987, ch. 735, § 10. Amended by Acts 1967, 60th Leg., p. 2343, ch. 785, § 1; Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.01A. Election to be Treated as a Utility

In this chapter:

(1) Any person who is a utility under the definition contained in Subdivision (2) of Subsection (a) of Section 35.01 above shall nevertheless not be considered to be a utility and subject to the requirements and benefits of Subchapter A of this chapter, unless and until such person files a security instrument with the secretary of state which states conspicuously on its title page: "This Instrument Grants A Security Interest By A Utility."

(2) An election by a utility to be covered by this subchapter shall only be effective for the collateral covered by the security instrument upon which the election is made and shall not be effective for other collateral unless a similar election is made for such collateral.

(3) Any person who executes a security instrument with respect to which no election is made to be treated as a utility as provided in Subsection (a) of this section shall be subject to other applicable requirements of law pertaining to the perfection of a lien or security interest in the collateral covered by such security instrument.

[Acts 1981, 67th Leg., p. 2935, ch. 778, § 1, eff. Aug. 31, 1981.]

Section 2 of the 1981 Act provides:

"This Act applies only to security instruments filed after the effective date of this Act."

§ 35.02. Filing Utility Security Instruments With Secretary of State; Perfection; Notice

(a) Payment of the statutory filing fee and deposit for filing in the office of the Secretary of State of a security instrument executed by a utility which states conspicuously on its title page: "This Instrument Grants A Security Interest By A Utility" shall, subject to the provisions of Subsection (b) of this section

(1) constitute perfection of a security interest created by the security instrument in any personal property (including goods which are, or are to become, fixtures) in which a security interest may be perfected by filing under Chapter 9 of this code, located in this state, and owned by the utility when the security instrument was executed or to be acquired by the utility after execution of the security instrument; and

(2) be taken and held as notice to all persons of the existence of such security instrument and the interest granted therein, as security, in any real property (or fixtures thereon, or to be placed thereon) located in this state and owned by the utility when the security instrument was executed or to be acquired by the utility after the execution of the security instrument; provided that the security instrument shall first be proven, acknowledged or certified as otherwise required by law for the recording of real property mortgages.

(b) For perfection or notice to be effective as to a particular item of property, the filed security instrument must

(1) identify the property by type, character, or description if it is presently owned personal property (including fixtures); provided that for such purposes, any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described;

(2) provide a description of the property if it is presently owned real property; and

(3) state conspicuously on its title page: "This Instrument Contains After-Acquired Property Provisions" if the property is to be acquired after the execution of the security instrument.

(c) Filing under this section satisfies any requirement of

(1) filing of the security instrument or a financing statement in the office of a county clerk where such would otherwise be necessary to perfect a security interest; and

(2) recording of the security instrument in the office of a county clerk where such would otherwise cause the security instrument to be effective and valid as to all creditors and subsequent purchasers for valuable consideration without notice.

(d) The provisions in Chapter 9 of this code pertaining to priorities and remedies shall apply to

security interests in personal property (including fixtures) perfected under this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.03. Duration of Notice

The perfection or notice provided by any security instrument filed under Section 35.02 of this code is effective from the date of deposit for filing until the interest granted as security is released by the filing of a termination statement, or a release of all or a part of the property, signed by the secured party, and no renewal, refiling or continuation statement shall be required to continue such effectiveness.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.04. Notice of Name Change, Merger or Consolidation

(a) Where a utility changes its name or merges or consolidates with another person after the deposit for filing of a security instrument executed by it, a written statement of the name change, merger or consolidation shall promptly be deposited for filing in the office of the Secretary of State. Any such statement must be signed by the secured party and the utility, identify the appropriate security instrument by file number, and state the name of the utility after the name change, merger or consolidation.

(b) A security instrument deposited for filing before the name change, merger or consolidation is not effective to provide perfection or notice of interests granted as security under Section 35.02 of this Chapter in property acquired by the utility more than four months after the name change, merger or consolidation, unless the written statement is deposited for filing as required by Subsection (a) before the expiration of that time.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.05. Filing of Security Instruments and Statement of Name Change, Merger or Consolidation by Secretary of State; Fees

(a) The Secretary of State shall endorse upon any security instrument and any statement of name change, merger, or consolidation deposited for filing in his office, the day and hour of receipt and the file number assigned to it. Such endorsement shall, in the absence of other evidence, be conclusive proof of the time and fact of deposit for filing.

(b) The Secretary of State shall retain in his office all security instruments and statements of name change, merger, or consolidation deposited in

his office and shall file such in adequate filing devices.

(c) The uniform fee for filing and indexing a security instrument, or an instrument supplementary or amendatory thereto, and a statement of name change, merger, or consolidation and for stamping a copy of such documents, furnished by the secured party or the utility, to show the date and place of filing shall be \$6.00.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.06. Information From Secretary of State

Upon the request of any person, the Secretary of State shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective security instrument naming a particular utility, and if there is, giving the date and hour of filing of such instrument and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$5.00 if the request for the certificate is in the standard form prescribed by the Secretary of State, and otherwise shall be \$10.00. Upon request the Secretary of State shall furnish a copy of any filed security instrument for a uniform fee of \$1.00 per page, but not less than \$5.00 nor more than \$50.00 per request concerning a particular utility.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.07. Recording of Notice in County of Real Property; Separate Index by County Clerk of Security Instruments and Continuation Statements

(a) If any security instrument filed with the office of the Secretary of State under Section 35.02 of this code grants an interest, as security, in any real property owned by the utility, a notice of utility security instrument affecting real property shall be recorded in the office of the county clerk in the county where the real property is located, stating

(1) the name of the utility which executed the security instrument;

(2) that a security instrument affecting real property in the county has been executed by the utility; and

(3) that such security instrument was filed, and other security instruments may be on file, in the office of the Secretary of State.

(b) It shall not be necessary to record a notice regarding other security instruments executed by the utility, and the notice recorded under Subsection (a) of this section shall be sufficient to provide notice of any and all other security instruments

(1) executed by the utility;

(2) filed in the office of the Secretary of State; and

(3) granting an interest, as security, in any real property, and fixtures thereto, located in the county where such notice was recorded.

(c) Notices recorded under Subsection (a) of this section shall be recorded and indexed by the county clerk in the same records and indices as are mortgages on real property.

(d) The county clerk shall maintain a separate index of utility security instruments and continuation statements recorded under prior law.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.08. Prior Perfected Liens; Refiling With Secretary of State

The perfection or notice provided by any security instrument covering any real or personal property located in this state which was heretofore filed or recorded in the office of the Secretary of State or the office of the county clerk of any county in this state continues effective until it would have lapsed under prior law or January 1, 1978, whichever occurs first; but it may be filed or refiled prior to such time in the office of the Secretary of State as provided in Section 35.02 of this code, and such filing or refiling shall continue the effectiveness as provided in Sections 35.02 and 35.03 of this code.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1. Amended by Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

§ 35.09. Repealer

The following act and all other acts and parts of acts inconsistent herewith are hereby repealed:

Article 6645, Revised Civil Statutes of Texas, 1925, as amended.

[Acts 1973, 63rd Leg., p. 1032, ch. 400, § 7, eff. Jan. 1, 1974.]

[Sections 35.10 to 35.13 reserved for expansion]

SUBCHAPTER B. DUTIES OF RAILROAD COMMISSION AND CRIMINAL OFFENSES INVOLVING BILLS OF LADING

§ 35.14. Definitions

In Sections 35.15–35.21 of this code, unless the context requires a different definition,

(1) “agent” includes officer, employee, and receiver;

(2) “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;

(3) “bill of lading” means a document evidencing the receipt of goods for shipment issued by a

person engaged in the business of transporting or forwarding goods, and includes an airbill;

(4) “common carrier” in Sections 35.15–35.17 of this code does not include a pipeline company or express company; and

(5) “goods” means all things which are treated as movable for the purposes of a contract of storage or transportation.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.15. Duties of Railroad Commission

(a) The railroad commission shall

(1) prescribe forms, terms, and conditions for authenticating, certifying, or validating bills of lading issued by a common carrier;

(2) regulate the manner of issuing bills of lading by a common carrier; and

(3) take other action necessary to carry out the purposes of Chapter 7 of this code.

(b) After giving reasonable notice to interested common carriers and to the public, the railroad commission may amend a rule promulgated under Subsection (a) of this section.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.16. Agent Wrongfully Failing to Issue Bill of Lading

(a) An agent of a common carrier may not after lawful demand fail or refuse to issue a bill of lading in accordance with Chapter 7 of this code or a rule of the railroad commission.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than six months or by a fine of not more than \$200 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.17. Agent Issuing Fraudulent Bill of Lading

(a) An agent of a common carrier may not with intent to defraud a person

(1) issue a bill of lading;

(2) misdescribe in a bill of lading goods or their quantity described in the bill of lading; or

(3) issue a bill of lading without authority.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.18. Agent Issuing Duplicate Order Bill of Lading

(a) Except where customary in overseas transportation, an agent of a common carrier may not know-

ingly issue or aid in issuing an order bill of lading in duplicate or in a set of parts.

(b) An agent who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years and by a fine of not more than \$5,000.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.19. **Repealed by Acts 1973, 63rd Leg., p. 995, ch. 399, § 3(d), eff. Jan. 1, 1974**

§ 35.20. **Inducing Issuance of Fraudulent Bill of Lading**

(a) A person may not with intent to defraud induce an agent of a common carrier to

- (1) issue to him a bill of lading; or
- (2) materially misrepresent in a bill of lading issued on behalf of the common carrier the quantity of goods described in the bill of lading.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not less than two nor more than five years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.21. **Negotiating Fraudulent Bill of Lading**

(a) A person may not with intent to defraud negotiate or transfer a bill of lading

- (1) issued in violation of Chapter 7 of this code; or
- (2) containing a false, material statement of fact.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than 10 years.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 35.22 to 35.26 reserved for expansion]

SUBCHAPTER C. CRIMINAL OFFENSES INVOLVING WAREHOUSE RECEIPTS

§ 35.27. **Definitions**

In Sections 35.28-35.33 of this code, unless the context requires a different definition,

- (1) "goods" means all things which are treated as movable for the purposes of a contract of storage or transportation;
- (2) "issue" includes aiding in the issue of;
- (3) "warehouseman" means a person engaged in the business of storing goods for hire; and
- (4) "warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.28. **Warehouseman Issuing Fraudulent Warehouse Receipt**

(a) A warehouseman, his officer, agent, or employee, may not with intent to defraud issue a warehouse receipt which contains a false statement of fact.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.29. **Warehouseman Failing to State His Ownership of Goods on Receipt**

(a) A warehouseman, his officer, agent, or employee, may not knowingly issue a negotiable warehouse receipt describing goods the warehouseman owns and is storing (whether the warehouseman owns them solely, jointly, or in common) unless he states the warehouseman's ownership on the receipt.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.30. **Warehouseman Issuing Warehouse Receipt Without Goods**

(a) A warehouseman, his officer, agent, or employee, may not issue a warehouse receipt if he knows at the time of issuance that the goods described in the warehouse receipt are not under his actual control.

(b) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years or by a fine of not more than \$5,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.31. **Warehouseman Issuing Duplicate Warehouse Receipt**

(a) A warehouseman, his officer, agent, or employee, may not issue a duplicate or additional negotiable warehouse receipt for goods if he knows at the time of issuance that a previously issued negotiable warehouse receipt describing those goods is outstanding and uncanceled.

(b) Subsection (a) of this section does not apply if

(1) the word "Duplicate" is plainly placed on the duplicate or additional negotiable warehouse receipt; or

(2) goods described in the outstanding and uncanceled negotiable warehouse receipt were delivered pursuant to court order on proof that the receipt was lost or destroyed.

(c) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a felony and upon conviction is punishable by imprisonment in the penitentiary for not more than five years or by a fine of not more than \$5,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.32. Warehouseman Wrongfully Delivering Goods

(a) A warehouseman, his officer, agent, or employee, may not knowingly deliver goods described in a negotiable warehouse receipt and stored with him unless the receipt is surrendered to him at or before the time he delivers the goods.

(b) Subsection (a) of this section does not apply if the goods are

(1) delivered pursuant to court order on proof that the negotiable warehouse receipt describing them was lost or destroyed;

(2) lawfully sold to satisfy a warehouseman's lien; or

(3) disposed of because of their perishable or hazardous nature.

(c) A warehouseman, his officer, agent, or employee, who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.33. Failing to Disclose Ownership of Goods

(a) A person who obtains a negotiable warehouse receipt describing goods he does not own, or goods subject to a lien, may not with intent to defraud negotiate the receipt for value without disclosing his lack of ownership or the lien's existence.

(b) A person who violates a provision of Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than one year or by a fine of not more than \$1,000 or by both.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

[Sections 35.34 to 35.38 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS

§ 35.39. Damages on Protested, Out-of-State Draft

The holder of a protested draft is entitled to damages equalling 10 percent of the amount of the draft, plus interest and costs of suit, if the

(1) draft was drawn by a merchant in this state on his agent or factor outside this state; and

(2) drawer's or indorser's liability on the draft has been fixed.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.40. Identification of Patent Right Note or Lien

(a) A note or lien evidencing or securing the purchase price for a patent right or patent right territory must contain on its face a statement that it was given for a patent right or patent right territory.

(b) The statement required by Subsection (a) of this section

(1) is notice to a subsequent purchaser of the note or lien of all equities between the original parties to the note or lien; and

(2) subjects a subsequent holder of the note or lien to all defenses available against the original parties to the note or lien.

(c) A person selling a patent right or patent right territory may not take a note or lien evidencing or securing the purchase price for it without placing on the face of the note or lien the statement required by Subsection (a) of this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1967, 60th Leg., p. 2343, ch. 785, § 1.]

§ 35.41. Destruction of Die, Mold, or Form

(a) In this Act:

(1) "Owner" means an individual, firm, or corporation that holds title to a die, mold, or form.

(2) "Molder" means an individual, firm, or corporation that makes a die, mold, or form, or that uses a die, mold, or form to make another product.

(b) After the three-year period beginning on the day on which a die, mold, or form was last used or, if never used, on the day on which it was made, a molder in possession of the die, mold, or form may send notice to its owner of the molder's intent to destroy the die, mold, or form. Notice must be sent by registered mail, return receipt requested, to the last known address of the owner.

(c) If, before the 121st day after the day that the notice sent in accordance with Subsection (b) of this section is received, the owner does not take possession of the die, mold, or form or make arrangements with the molder for its removal or continued storage, the molder may destroy the die, mold, or form.

(d) On destruction of a die, mold, or form in accordance with this section, the owner's title to it ends.

(e) If a molder satisfies the requirements of this section, the molder may not be held criminally or civilly liable for the destruction of the die, mold, or form.

(f) This section does not prevent a molder that holds title to a die, mold or form from destroying it at any time.

[Acts 1983, 68th Leg., p. 4598, ch. 778, § 1, eff. Aug. 29, 1983.]

SUBCHAPTER E. TERMINATION OF FARM AND INDUSTRIAL EQUIPMENT FRANCHISE

§ 35.61. Definitions

In this subchapter:

(1) "Current price" means an amount equal to the price listed in the supplier's printed price list in effect when the franchise is terminated, less applicable trade and cash discounts.

(2) "Dealer cost" means an amount equal to the sum of the original invoice price that the dealer paid for inventory and the cost to the dealer of its delivery from the supplier to the dealer, less applicable discounts.

(3) "Dealer" means a person in the business of the retail sale of farm tractors, farm implements, or the attachments to or repair parts for farm tractors or farm implements.

(4) "Franchise" means a written contract or agreement between a supplier and a dealer, that may be called a "dealership" or by any other name, by which the dealer is authorized to engage in the business of the retail sale of inventory according to methods and procedures prescribed by the supplier.

(5) "Inventory" means new or unused farm tractors, farm implements, utility tractors, industrial tractors, attachments, and repair parts that are provided by a supplier to a dealer under a franchise agreement and that were purchased within 30 months of the termination of the franchise or were listed in the supplier's current sales manual at the time of termination.

(6) "Supplier" means a manufacturer, wholesaler, or distributor of farm tractors, farm implements, utility tractors, or industrial tractors or the attachments to or repair parts for that equipment.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

Section 2 of the 1983 Act provides:

"This Act applies only to a termination of a franchise occurring on or after the effective date of this Act. A termination occurring before the effective date of this Act is governed by the law in effect when the termination occurred."

§ 35.62. Return of Inventory

(a) If on termination of a franchise, the dealer delivers to the supplier the inventory that was purchased from the supplier and that is held by the dealer on the date of the termination, the supplier shall pay to the dealer:

(1) the dealer cost of new, unsold, undamaged, and complete farm tractors, farm implements, utility tractors, industrial tractors, and attachments returned by the dealer;

(2) an amount equal to 85 percent of the current price of new, undamaged repair parts returned by the dealer;

(3) an amount equal to an additional five percent of the current price of new, undamaged repair parts returned by the dealer, unless the supplier performs the handling, packing, and loading of the parts, in which case no additional amount is required under this subdivision.

(b) The supplier may subtract from the sum due under Subsection (a) of this section the amount of debts owed by the dealer to the supplier. The supplier and dealer are each responsible for one-half of the cost of delivering the inventory to the supplier.

(c) The supplier shall pay the amount due under this section before the 61st day after the day that the supplier receives inventory from the dealer and after the dealer has furnished proof that the inventory was purchased from the supplier.

(d) On payment of the amount due under this section, title to the inventory is transferred to the supplier.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.63. Exceptions

A supplier is not required to repurchase:

(1) inventory:

(A) that the dealer orders after the dealer receives notice of the termination of the franchise from the supplier; or

(B) for which the dealer cannot furnish evidence of clear title that is satisfactory to the supplier; or

(2) a repair part that:

(A) has a limited storage life;

(B) is in a broken or damaged package;

(C) is usually sold as part of a set, if the part is separated from the set; or

(D) cannot be sold without reconditioning or repackaging.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.64. Warranty Claim

If after the termination of a franchise the dealer submits a warranty claim to the supplier for work performed prior to the effective date of the termination, the supplier shall accept or reject the claim not later than the 45th day after the day that the supplier receives the claim. A claim not rejected before that deadline is deemed accepted. The supplier shall pay an accepted claim not later than the 60th day after the day that the supplier receives the claim.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.65. Late Payment

If a supplier does not make the payment required by this subchapter before the 61st day after the day that the supplier received the final shipment of the inventory from the dealer, the supplier is liable to the dealer for:

- (1) the greater of the dealer cost or current price of the inventory;
- (2) the expenses incurred by the dealer in returning the inventory to the supplier;
- (3) interest on the greater of the dealer cost or current price of the inventory, at the rate applicable to a judgment of a court of this state, for the period beginning on the 61st day after the day the supplier received the inventory;
- (4) reasonable attorney's fees; and
- (5) costs.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.66. Violation

A person injured by a violation of this subchapter may bring an action for:

- (1) an injunction to prevent further violation;
- (2) damages;
- (3) reasonable attorney's fees; and
- (4) costs.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.67. Security Interest

This subchapter does not affect a supplier's security interest in inventory.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

§ 35.68. Application of Bulk Transfer Law

Chapter 6 of this code does not apply to a transaction between a supplier and dealer that is required by this subchapter.

[Acts 1983, 68th Leg., p. 1744, ch. 337, § 1, eff. Aug. 29, 1983.]

CHAPTER 36. ASSUMED BUSINESS OR PROFESSIONAL NAME**SUBCHAPTER A. GENERAL PROVISIONS****Sec.**

- 36.01. Short Title.
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SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

- 36.10. For Unincorporated Business or Profession.
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36.15. Index of Certificates; Filing Fees.
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SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

- 36.25. Civil Penalties.
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SUBCHAPTER A. GENERAL PROVISIONS**§ 36.01. Short Title**

This chapter may be cited as the Assumed Business or Professional Name Act.

[Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed Civil Statutes, Arts. 5924 to 5927b; § 3 amended Insurance Code, art. 21.43(b); and § 4 thereof provided:

"If a court of competent jurisdiction shall adjudge any clause, sentence, subsection, or section of this Act to be invalid or unconstitutional, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, or section of this Act so adjudged to be invalid or unconstitutional."

§ 36.02. Definitions

In this chapter, unless the context otherwise requires:

- (1) "Partnership" means a joint venture, general partnership, or limited partnership.
- (2) "Company" means a real estate investment trust, joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated other than a partnership.
- (3) "Corporation" means a domestic or foreign corporation, professional corporation, professional association, other corporation, or any other business, professional, or other association or legal entity that is incorporated.
- (4) "Person" includes an individual, partnership, company, or corporation.
- (5) "Representative" means a trustee, administrator, executor, independent executor, guardian,

conservator, trustee in bankruptcy, receiver, or any other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

(6) "Estate" means the property of any person which is administered by a representative.

(7) "Assumed name" means:

(A) in the case of an individual, a name that does not include the surname of the individual;

(B) in the case of a joint venture or general partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) in the case of an individual, joint venture, or a general partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business or professional service being conducted or rendered;

(D) in the case of a limited partnership, any name other than the name stated in its certificate of limited partnership;

(E) in the case of a company, any name used by the company; and

(F) in the case of a corporation, any name other than the name stated in its articles of incorporation or association or comparable document.

(8) "Registrant" means any person that has filed, or on whose behalf there has been filed, an assumed name certificate under the provisions of this chapter or other law.

(9) "Office" means, in the case of any person that is not an individual or that is a corporation which is not required to or does not maintain a registered office in this state, the principal office of such person and also its principal place of business if not the same as its principal office. In the case of a corporation which is required to maintain a registered office in this state, "office" means the registered office and also its principal office if not the same as its registered office.

(10) "Address" means a post office address and also the street address if not the same as the post office address.

[Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.03. Exclusion of Insurance Companies

The provisions of this chapter shall not apply to any insurance company as defined in Article 1.29 of the Insurance Code which is authorized to do busi-

ness in this state except as such code shall specifically provide.

[Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

[Sections 36.04 to 36.09 reserved for expansion]

SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

§ 36.10. For Unincorporated Business or Profession

(a) Any person who regularly conducts business or renders professional services other than as a corporation in this state under an assumed name shall file in the office of the county clerk in each county in which such person has or will maintain business or professional premises or, if no business or professional premises are or will be maintained in any county, in each county where such person conducts business or renders a professional service, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) if the registrant is:

(A) an individual, his full name and residence address;

(B) a partnership, (i) the venture or partnership name, (ii) the venture or partnership office address, and (iii) the full name of each joint venturer or general partner and his residence address if he is an individual or its office address if not an individual;

(C) an estate, (i) the name of the estate, (ii) the estate's office address, if any, and (iii) the full name of each representative of the estate and his residence address if he is an individual or its office address if not an individual;

(D) a real estate investment trust, (i) the name of the trust, (ii) the address of the trust, (iii) the full name of each trustee manager and his residence address if he is an individual and its office address if not an individual; or

(E) a company other than a real estate investment trust, or a corporation, (i) the name of the company or corporation, (ii) the state, country, or other jurisdiction under the laws of which it was organized, incorporated, or associated, and (iii) its office address;

(3) the period, not to exceed 10 years, during which the assumed name will be used; and

(4) a statement specifying that the business or professional service that is or is to be conducted or rendered in the county under such assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, joint venture, general partnership, limited partnership, real estate investment trust, joint-stock company, or some other form of unincorporated business or

professional association or entity, as the case may be.

(b) A certificate filed under Subsection (a) of this section shall be executed and acknowledged by each individual whose name is required to be stated therein or by his representative or attorney in fact, and in the case of any person not an individual the name of which is required to be stated therein, the certificate shall be executed and acknowledged under oath on behalf of such person by its representative or attorney in fact or by a joint venturer, general partner, trustee manager, officer, or anyone having comparable authority, as the case may be, of such person. Any certificate executed and acknowledged by an attorney in fact shall include a statement that such attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

[Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.11. For Incorporated Business or Profession

(a) Any corporation which regularly conducts business or renders professional services in this state under an assumed name, or which may be required by law to use an assumed name in this state to conduct such business or render such services, shall file in the office of the Secretary of State and, (1) if such corporation is required to maintain a registered office in this state, in the office of the county clerk of the county in which such registered office is located and of the county in which its principal office is located if within this state and not the same county where the registered office is located; or (2) if such corporation is not required to or does not maintain a registered office in this state, in the office of the county clerk of the county in which its office within this state is located or if the corporation is not incorporated, organized, or associated under the laws of this state, in the office of the county clerk of the county in which its principal place of business in this state is located if not the same as its office, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) the name of the corporation as stated in its articles of incorporation or association or comparable document;

(3) the state, country, or other jurisdiction under the laws of which it was incorporated or associated and address of its registered or similar office in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the assumed name will be used;

(5) a statement specifying that the corporation is a business corporation, nonprofit corporation, professional corporation, professional association, other type of corporation, or some other type of

incorporated business, professional or other association, or legal entity;

(6) if the corporation is required to maintain a registered office in this state, (A) the address of such registered office and the name of its registered agent at such address, and (B) the address of its principal office if not the same as that of its registered office in this state;

(7) if the corporation is not required to or does not maintain a registered office in this state, its office address in this state and if the corporation is not incorporated, organized, or associated under the laws of this state, the address of its place of business in this state and its office address elsewhere, if any; and

(8) the county or counties within the state where business or professional services are being or are to be conducted or rendered under such assumed name.

(b) A certificate filed under Subsection (a) of this section shall be executed and duly acknowledged by an officer, representative, or attorney in fact for the corporation. A certificate executed and acknowledged by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

(c) Nothing in this chapter shall require a corporation or its shareholders, associates, or members to file an assumed business or professional name certificate in order to conduct business or render a professional service within this state under the name of the corporation as stated in its articles of incorporation, association, or comparable document.

[Acts 1977, 65th Leg., p. 1097, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.12. Material Change in Information; New Certificate

(a) Whenever an event occurs that causes the information in a certificate filed pursuant to this chapter by a person conducting business or rendering a professional service under an assumed name in this state to become materially misleading, a new certificate complying with Section 36.10 or Section 36.11 of this chapter, as the case may be, shall be filed in the office of the county clerk and of the Secretary of State, if applicable, in which an original or renewal certificate was filed. The new certificate shall be filed within 60 days after the occurrence of the events which necessitates its filing.

(b) An event that causes the information contained in a certificate filed under this chapter to become materially misleading includes such matters as:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) in the case of a proprietorship or sole practitioner, a change in ownership;

(3) in the case of a partnership, the admission of a new partner or joint venturer or whenever any general partner or joint venturer ceases to be associated with the partnership; or

(4) in the case of a registrant that is required by law to maintain a registered or similar office and a registered or similar agent at such office, a change in the address of such office or identity of such agent.

(c) A new certificate filed under this section shall be effective for a term not to exceed 10 years from the date it is filed.

[Acts 1977, 65th Leg., p. 1098, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.13. Duration of Certificate; Renewal; Termination of Existing Certificates

(a) A certificate filed pursuant to this chapter in the office of the county clerk and of the Secretary of State, if applicable, by any person conducting business or rendering a professional service under an assumed name in this state shall be effective for a term not to exceed 10 years from the date the certificate is filed.

(b) At the end of the stated term, not to exceed 10 years, the certificate shall become null and void and of no effect, unless within six months prior to its expiration a renewal certificate complying with the provisions of this chapter for an original certificate shall be filed in the office of the county clerk and of the Secretary of State, if applicable.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each such term shall not exceed 10 years in duration.

(d) Any assumed name certificate that has been filed pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, shall become null and void after December 31, 1978, unless before that date a new certificate complying with the requirements of this chapter has been filed. A new certificate thus filed shall be effective for a term not to exceed 10 years from the date it is filed.

(e) The county clerk of each county shall notify in writing each person that has conducted a business under an assumed name and for which an assumed name certificate has been filed in the office of that clerk pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, that under the provisions of Subsection (d) of this section the certificate shall become null and void after December 31, 1978, unless a new certificate is filed that complies with the provisions of this chapter. The written notice shall be effective by being deposited with the Unit-

ed States Postal Service, addressed to the name of the business at the office address given in the certificate as last filed.

[Acts 1977, 65th Leg., p. 1099, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.14. Abandonment of Use of Assumed Business or Professional Name

(a) A registrant that has filed an assumed business or professional name certificate under this chapter which ceases to transact business or render professional services under the assumed name stated in such certificate in this state may file in the office of the county clerk and of the Secretary of State, if applicable, where such certificate has been filed, a statement of abandonment of use of a business or professional name setting forth:

(1) the assumed business or professional name being abandoned;

(2) the date on which the certificate was filed in the office in which such statement is being filed and any other filing office or offices, if any, where the certificate has been filed; and

(3) the registrant's name and residence or office address as would be required to be stated if the certificate were being presently filed.

(b) A statement filed under Subsection (a) of this section shall be executed and acknowledged in the same manner as would be required if the registrant were filing an assumed business or professional name certificate under this chapter.

[Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.15. Index of Certificates; Filing Fees

Each county clerk and the Secretary of State shall keep an alphabetical index of all assumed names which have been filed in his office pursuant to the provisions of this chapter and of the persons filing the same. The county clerk shall receive a fee of \$2 for filing each certificate or statement required or permitted to be filed pursuant to this chapter, plus a fee of 50 cents for each name to be indexed. The Secretary of State shall collect for the use of the state a fee of \$25 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. The Secretary of State shall collect for the use of the state a fee of \$10 for filing each abandonment of use of assumed name. A copy of such certificate or statement duly certified to by the county clerk in whose office the same was filed or by the Secretary of State shall be presumptive evidence in all courts in this state of the facts therein contained.

[Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 752, ch. 284, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 314, ch. 69, § 9, eff. Sept. 1, 1983.]

Section 15 of the 1983 amendatory act provides:

"This Act applies only to a fee becoming due on or after the effective date of this Act. A fee becoming due before the effective

date of this Act is governed by the law in effect when the fee became due, and that law is continued in effect for that purpose."

§ 36.16. Prescribed Forms

The Secretary of State may prescribe the forms to be used for filing any assumed business or professional name certificate or statement that complies with this chapter in his office or in the office of any county clerk in this state. The use of such forms, however, shall not be mandatory unless otherwise specifically provided by law.

[Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.17. Effect of Filing

Nothing in this chapter shall be construed to give a registrant of an assumed business or professional name any right to use the name when contrary to the common law or statutory law of unfair competition, unfair trade practices, common law copyright, or similar law. The mere filing of an assumed business or professional name certificate pursuant to this chapter shall not constitute actual use of the assumed name set out therein for purposes of determining priority of rights.

[Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

[Sections 36.18 to 36.24 reserved for expansion]

SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

§ 36.25. Civil Penalties

Failure to comply with the provisions of this chapter by any person shall not impair the validity

of any contract or act by such person nor prevent such person from defending any action or proceeding in any court of this state, but such person shall not maintain an action or proceeding in any court of this state arising out of a contract or act in which an assumed name was used until an original, new, or renewed assumed business or professional name certificate has been filed as required by this chapter. In an action or proceeding brought against a person that has not complied with this chapter, the plaintiff or other party bringing the suit or proceeding may recover, if the court shall so determine, expenses incurred, including attorney's fees, in locating and effecting service of process on such person.

[Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.26. Criminal Penalty

A person conducting business or rendering a professional service in this state under an assumed name who intentionally violates a provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$2,000.

[Acts 1977, 65th Leg., p. 1101, ch. 403, § 1, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 867, ch. 391, § 1, eff. Aug. 27, 1979.]

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