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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 205**      Session of  
2001

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INTRODUCED BY HOLL, COSTA, EARLL, MUSTO, O'PAKE, ROBBINS,  
M. WHITE AND THOMPSON, JANUARY 31, 2001

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REFERRED TO BANKING AND INSURANCE, JANUARY 31, 2001

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AN ACT

1 Amending Title 13 (Commercial Code) of the Pennsylvania  
2 Consolidated Statutes, revising the division on letters of  
3 credit; and making conforming amendments to Divisions 1, 2  
4 and 9 of Title 13.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. This act shall be known and may be cited as the  
8 Uniform Commercial Code Modernization Act of (in printing this  
9 act in the Laws of Pennsylvania and the Pennsylvania  
10 Consolidated Statutes, the Legislative Reference Bureau shall  
11 insert here, in lieu of this statement, the year of enactment of  
12 this act).

13 Section 2. Sections 1105(b) and 2512(a) of Title 13 of the  
14 Pennsylvania Consolidated Statutes are amended to read:

15 § 1105. Territorial application of title; power of parties to  
16 choose applicable law.

17 \* \* \*

18 (b) Limitations on power of parties to choose applicable

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

5 Section 2402 (relating to rights of creditors of seller  
6 against sold goods).

7 Sections 2A105 (relating to territorial application of  
8 division to goods covered by certificate of title) and 2A106  
9 (relating to limitation on power of parties to consumer lease  
10 to choose applicable law and judicial forum).

11 Section 4102 (relating to applicability [of division on  
12 bank deposits and collections]).

13 Section 4A507 (relating to choice of law).

14 Section 5116 (relating to choice of law and forum).

15 Section 8110 (relating to applicability; choice of law).

16 Section 9103 (relating to perfection [provisions of  
17 division on secured] of security interests in multiple state  
18 transactions).

19 § 2512. Payment by buyer before inspection.

20 (a) General rule.--Where the contract requires payment  
21 before inspection nonconformity of the goods does not excuse the  
22 buyer from so making payment unless:

23 (1) the nonconformity appears without inspection; or

24 (2) despite tender of the required documents the  
25 circumstances would justify injunction against honor under  
26 [the provisions of] this title [(section 5114 (relating to  
27 duty and privilege of issuer to honor; right to  
28 reimbursement))] (section 5109(b) (relating to conditions for  
29 injunction)).

30 \* \* \*

1 Section 3. Division 5 of Title 13 is repealed.

2 Section 4. Title 13 is amended by adding a division to read:

3 DIVISION 5

4 LETTERS OF CREDIT

5 Chapter

6 51. Letters of Credit

7 CHAPTER 51

8 LETTERS OF CREDIT

9 Sec.

10 5101. Short title of division.

11 5102. Definitions.

12 5103. Scope.

13 5104. Formal requirements.

14 5105. Consideration.

15 5106. Issuance, amendment, cancellation and duration.

16 5107. Confirmer, nominated person and adviser.

17 5108. Issuer's rights and obligations.

18 5109. Fraud and forgery.

19 5110. Warranties.

20 5111. Remedies.

21 5112. Transfer of letter of credit.

22 5113. Transfer by operation of law.

23 5114. Assignment of proceeds.

24 5115. Statute of limitations.

25 5116. Choice of law and forum.

26 5117. Subrogation of issuer, applicant and nominated person.

27 § 5101. Short title of division.

28 This division shall be known and may be cited as the Uniform  
29 Commercial Code, Article 5, Letters of Credit.

30 § 5102. Definitions.

1 (a) Definitions.--The following words and phrases when used  
2 in this division shall have, unless the context clearly  
3 indicates otherwise, the meanings given to them in this  
4 subsection:

5 "Adviser." A person who, at the request of the issuer, a  
6 confirmer or another adviser, notifies or requests another  
7 adviser to notify the beneficiary that a letter of credit has  
8 been issued, confirmed or amended.

9 "Applicant." A person at whose request or for whose account  
10 a letter of credit is issued. The term includes a person who  
11 requests an issuer to issue a letter of credit on behalf of  
12 another if the person making the request undertakes an  
13 obligation to reimburse the issuer.

14 "Beneficiary." A person who under the terms of a letter of  
15 credit is entitled to have its complying presentation honored.  
16 The term includes a person to whom drawing rights have been  
17 transferred under a transferable letter of credit.

18 "Confirmer." A nominated person who undertakes, at the  
19 request or with the consent of the issuer, to honor a  
20 presentation under a letter of credit issued by another.

21 "Dishonor (of a letter of credit)." Failure timely to honor  
22 or to take an interim action, such as acceptance of a draft,  
23 that may be required by the letter of credit.

24 "Document." A draft or other demand, document of title,  
25 investment security, certificate, invoice or other record,  
26 statement or representation of fact, law, right or opinion which  
27 is:

28 (1) presented in a written or other medium permitted by  
29 the letter of credit or, unless prohibited by the letter of  
30 credit, by the standard practice referred to in section

1 5108(e) (relating to standard practice and role of court);  
2 and

3 (2) capable of being examined for compliance with the  
4 terms and conditions of the letter of credit.

5 A document may not be oral.

6 "Good faith." Honesty in fact in the conduct or transaction  
7 concerned.

8 "Honor (of a letter of credit)." Performance of the issuer's  
9 undertaking in the letter of credit to pay or deliver an item of  
10 value. Unless the letter of credit otherwise provides, "honor"  
11 occurs:

12 (1) upon payment;

13 (2) if the letter of credit provides for acceptance,  
14 upon acceptance of a draft and, at maturity, its payment; or

15 (3) if the letter of credit provides for incurring a  
16 deferred obligation, upon incurring the obligation and, at  
17 maturity, its performance.

18 "Issuer." A bank or other person that issues a letter of  
19 credit, but does not include an individual who makes an  
20 engagement for personal, family or household purposes.

21 "Letter of credit." A definite undertaking that satisfies  
22 the requirements of section 5104 (relating to formal  
23 requirements) by an issuer to a beneficiary at the request or  
24 for the account of an applicant or, in the case of a financial  
25 institution, to itself or for its own account, to honor a  
26 documentary presentation by payment or delivery of an item of  
27 value.

28 "Nominated person." A person whom the issuer:

29 (1) designates or authorizes to pay, accept, negotiate  
30 or otherwise give value under a letter of credit; and

1 (2) undertakes by agreement or custom and practice to  
2 reimburse.

3 "Presentation." Delivery of a document to an issuer or  
4 nominated person for honor or giving of value under a letter of  
5 credit.

6 "Presenter." A person making a presentation as or on behalf  
7 of a beneficiary or nominated person.

8 "Record." Information that is inscribed on a tangible  
9 medium, or that is stored in an electronic or other medium and  
10 is retrievable in perceivable form.

11 "Successor of a beneficiary." A person who succeeds to  
12 substantially all of the rights of a beneficiary by operation of  
13 law, including a corporation with or into which the beneficiary  
14 has been merged or consolidated, an administrator, executor,  
15 personal representative, trustee in bankruptcy, debtor in  
16 possession, liquidator and receiver.

17 (b) Index of other definitions.--Definitions in other  
18 divisions applying to this division and the sections in which  
19 they appear are:

20 "Accept" or "acceptance." Section 3409 (relating to  
21 acceptance of draft; certified check).

22 "Value." Sections 3303 (relating to value and consideration)  
23 and 4211 (relating to when bank gives value for purposes of  
24 holder in due course).

25 (c) Applicability of general definitions and principles.--  
26 Division 1 (relating to general provisions) contains certain  
27 additional general definitions and principles of construction  
28 and interpretation applicable throughout this division.

29 § 5103. Scope.

30 (a) Applicability of division.--This division applies to

1 letters of credit and to certain rights and obligations arising  
2 out of transactions involving letters of credit.

3 (b) Effect of statement of rule in this division.--The  
4 statement of a rule in this division does not by itself require,  
5 imply or negate application of the same or a different rule to a  
6 situation not provided for, or to a person not specified, in  
7 this division.

8 (c) Variation by agreement or undertaking.--With the  
9 exception of this subsection, subsections (a) and (d), the  
10 definitions of "issuer" and "letter of credit" under section  
11 5102(a) (relating to definitions) and sections 5106(d) (relating  
12 to perpetual letters of credit) and 5114(d) (relating to consent  
13 to assignment of proceeds), and except to the extent prohibited  
14 under sections 1102(c) (relating to variation of title by  
15 agreement) and 5117(d) (relating to time at which subrogation  
16 rights arise), the effect of this division may be varied by  
17 agreement or by a provision stated or incorporated by reference  
18 in an undertaking. A term in an agreement or undertaking  
19 generally excusing liability or generally limiting remedies for  
20 failure to perform obligations is not sufficient to vary  
21 obligations prescribed by this division.

22 (d) Independence of rights and obligations of issuer.--  
23 Rights and obligations of an issuer to a beneficiary or a  
24 nominated person under a letter of credit are independent of the  
25 existence, performance or nonperformance of a contract or  
26 arrangement out of which the letter of credit arises or which  
27 underlies it, including contracts or arrangements between the  
28 issuer and the applicant and between the applicant and the  
29 beneficiary.

30 § 5104. Formal requirements.

1 A letter of credit, confirmation, advice, transfer, amendment  
2 or cancellation may be issued in any form that is a record and  
3 is authenticated:

4 (1) by a signature; or

5 (2) in accordance with the agreement of the parties or  
6 the standard practice referred to in section 5108(e)  
7 (relating to standard practice and role of court).

8 § 5105. Consideration.

9 Consideration is not required to issue, amend, transfer or  
10 cancel a letter of credit, advice or confirmation.

11 § 5106. Issuance, amendment, cancellation and duration.

12 (a) Issuance; revocability.--A letter of credit is issued  
13 and becomes enforceable according to its terms against the  
14 issuer when the issuer sends or otherwise transmits it to the  
15 person requested to advise or to the beneficiary. A letter of  
16 credit is revocable only if it so provides.

17 (b) Effect of amendment or cancellation in certain  
18 circumstances.--After a letter of credit is issued, rights and  
19 obligations of a beneficiary, applicant, confirmer and issuer  
20 are not affected by an amendment or cancellation to which that  
21 person has not consented except to the extent the letter of  
22 credit provides that it is revocable or that the issuer may  
23 amend or cancel the letter of credit without that consent.

24 (c) No stated expiration date.--If there is no stated  
25 expiration date or other provision that determines its duration,  
26 a letter of credit expires one year after its stated date of  
27 issuance or, if none is stated, after the date on which it is  
28 issued.

29 (d) Perpetual letters of credit.--A letter of credit that  
30 states that it is perpetual expires five years after its stated

1 date of issuance or, if none is stated, after the date on which  
2 it is issued.

3 § 5107. Confirmer, nominated person and adviser.

4 (a) Rights and obligations of a confirmer.--A confirmer is  
5 directly obligated on a letter of credit and has the rights and  
6 obligations of an issuer to the extent of its confirmation. The  
7 confirmer also has rights against and obligations to the issuer  
8 as if the issuer were an applicant and the confirmer had issued  
9 the letter of credit at the request and for the account of the  
10 issuer.

11 (b) Nominated person.--A nominated person who is not a  
12 confirmer is not obligated to honor or otherwise give value for  
13 a presentation.

14 (c) Advisers.--A person requested to advise may decline to  
15 act as an adviser. An adviser that is not a confirmer is not  
16 obligated to honor or give value for a presentation. An adviser  
17 undertakes to the issuer and to the beneficiary accurately to  
18 advise the terms of the letter of credit, confirmation,  
19 amendment or advice received by that person and undertakes to  
20 the beneficiary to check the apparent authenticity of the  
21 request to advise. Even if the advice is inaccurate, the letter  
22 of credit, confirmation or amendment is enforceable as issued.

23 (d) Notice to transferee beneficiary.--A person who notifies  
24 a transferee beneficiary of the terms of a letter of credit,  
25 confirmation, amendment or advice has the rights and obligations  
26 of an adviser under subsection (c). The terms in the notice to  
27 the transferee beneficiary may differ from the terms in any  
28 notice to the transferor beneficiary to the extent permitted by  
29 the letter of credit, confirmation, amendment or advice received  
30 by the person who so notifies.

1 § 5108. Issuer's rights and obligations.

2 (a) Duty to honor, dishonor.--Except as otherwise provided  
3 in section 5109 (relating to fraud and forgery), an issuer shall  
4 honor a presentation that, as determined by the standard  
5 practice referred to in subsection (e), appears on its face  
6 strictly to comply with the terms and conditions of the letter  
7 of credit. Except as otherwise provided in section 5113  
8 (relating to transfer by operation of law) and unless otherwise  
9 agreed with the applicant, an issuer shall dishonor a  
10 presentation that does not appear so to comply.

11 (b) Time for honor, etc.--An issuer has a reasonable time  
12 after presentation, but not beyond the end of the seventh  
13 business day of the issuer after the day of its receipt of  
14 documents:

15 (1) to honor;

16 (2) if the letter of credit provides for honor to be  
17 completed more than seven business days after presentation,  
18 to accept a draft or incur a deferred obligation; or

19 (3) to give notice to the presenter of discrepancies in  
20 the presentation.

21 (c) Preclusion, generally.--Except as otherwise provided in  
22 subsection (d), an issuer is precluded from asserting as a basis  
23 for dishonor any discrepancy if timely notice is not given, or  
24 any discrepancy not stated in the notice if timely notice is  
25 given.

26 (d) Preclusion for fraud, forgery or expiration.--Failure to  
27 give the notice specified in subsection (b) or to mention fraud,  
28 forgery or expiration in the notice does not preclude the issuer  
29 from asserting as a basis for dishonor fraud or forgery as  
30 described in section 5109(a) or expiration of the letter of

1 credit before presentation.

2 (e) Standard practice and role of court.--An issuer shall  
3 observe standard practice of financial institutions that  
4 regularly issue letters of credit. Determination of the standard  
5 practice is a matter of interpretation for the court. The court  
6 shall offer the parties a reasonable opportunity to present  
7 evidence of the standard practice.

8 (f) Issuer not responsible for certain matters.--An issuer  
9 is not responsible for:

10 (1) the performance or nonperformance of the underlying  
11 contract, arrangement or transaction;

12 (2) an act or omission of others; or

13 (3) observance or knowledge of the usage of a particular  
14 trade other than standard practice referred to in subsection  
15 (e).

16 (g) Nondocumentary conditions.--If an undertaking  
17 constituting a letter of credit under the definition of "letter  
18 of credit" under section 5102(a) (relating to definitions)  
19 contains nondocumentary conditions, an issuer shall disregard  
20 the nondocumentary conditions and treat them as if they were not  
21 stated.

22 (h) Disposition of documents following dishonor.--An issuer  
23 that has dishonored a presentation shall return the documents or  
24 hold them at the disposal of, and send advice to that effect to,  
25 the presenter.

26 (i) Certain consequences of honor.--An issuer that has  
27 honored a presentation as permitted or required by this  
28 division:

29 (1) is entitled to be reimbursed by the applicant in  
30 immediately available funds not later than the date of its

1 payment of funds;

2 (2) takes the documents free of claims of the  
3 beneficiary or presenter;

4 (3) is precluded from asserting a right of recourse on a  
5 draft under sections 3414 (relating to obligation of drawer)  
6 and 3415 (relating to obligation of indorser);

7 (4) except as otherwise provided in sections 5110  
8 (relating to warranties) and 5117 (relating to subrogation of  
9 issuer, applicant and nominated person), is precluded from  
10 restitution of money paid or other value given by the mistake  
11 to the extent the mistake concerns discrepancies in the  
12 documents or tender which are apparent on the face of the  
13 presentation; and

14 (5) is discharged to the extent of its performance under  
15 the letter of credit.

16 § 5109. Fraud and forgery.

17 (a) Fraud and forgery generally.--If a presentation is made  
18 that appears on its face strictly to comply with the terms and  
19 conditions of the letter of credit, but a required document is  
20 forged or materially fraudulent, or honor of the presentation  
21 would facilitate a material fraud by the beneficiary on the  
22 issuer or applicant:

23 (1) the issuer shall honor the presentation, if honor is  
24 demanded by:

25 (i) a nominated person who has given value in good  
26 faith and without notice of forgery or material fraud;

27 (ii) a confirmer who has honored its confirmation in  
28 good faith;

29 (iii) a holder in due course of a draft drawn under  
30 the letter of credit which was taken after acceptance by

1 the issuer or nominated person; or  
2 (iv) an assignee of the issuer's or nominated  
3 person's deferred obligation that was taken for value and  
4 without notice of forgery or material fraud after the  
5 obligation was incurred by the issuer or nominated  
6 person; and

7 (2) the issuer, acting in good faith, may honor or  
8 dishonor the presentation in any other case.

9 (b) Conditions for injunction.--If an applicant claims that  
10 a required document is forged or materially fraudulent or that  
11 honor of the presentation would facilitate a material fraud by  
12 the beneficiary on the issuer or applicant, a court of competent  
13 jurisdiction may temporarily or permanently enjoin the issuer  
14 from honoring a presentation or grant similar relief against the  
15 issuer or other persons only if the court finds that:

16 (1) the relief is not prohibited under the law  
17 applicable to an accepted draft or deferred obligation  
18 incurred by the issuer;

19 (2) a beneficiary, issuer or nominated person who may be  
20 adversely affected is adequately protected against loss that  
21 it may suffer because the relief is granted;

22 (3) all of the conditions to entitle a person to the  
23 relief under the law of this Commonwealth have been met; and

24 (4) on the basis of the information submitted to the  
25 court, the applicant is more likely than not to succeed under  
26 its claim of forgery or material fraud and the person  
27 demanding honor does not qualify for protection under  
28 subsection (a)(1).

29 § 5110. Warranties.

30 (a) Warranties generally.--If its presentation is honored,

1 the beneficiary warrants:

2 (1) to the issuer, any other person to whom presentation  
3 is made and the applicant that there is no fraud or forgery  
4 of the kind described in section 5109(a) (relating to fraud  
5 and forgery generally); and

6 (2) to the applicant that the drawing does not violate  
7 any agreement between the applicant and beneficiary or any  
8 other agreement intended by them to be augmented by the  
9 letter of credit.

10 (b) Warranties arising under other divisions.--The  
11 warranties in subsection (a) are in addition to warranties  
12 arising under Divisions 3 (relating to negotiable instruments),  
13 4 (relating to bank deposits and collections), 7 (relating to  
14 warehouse receipts, bills of lading and other documents of  
15 title) and 8 (relating to investment securities) because of the  
16 presentation or transfer of documents covered by any of those  
17 divisions.

18 § 5111. Remedies.

19 (a) Wrongful dishonor or repudiation before presentation.--  
20 If an issuer wrongfully dishonors or repudiates its obligation  
21 to pay money under a letter of credit before presentation, the  
22 beneficiary, successor or nominated person presenting on its own  
23 behalf may recover from the issuer the amount that is the  
24 subject of the dishonor or repudiation. If the issuer's  
25 obligation under the letter of credit is not for the payment of  
26 money, the claimant may obtain specific performance or, at the  
27 claimant's election, recover an amount equal to the value of  
28 performance from the issuer. In either case, the claimant may  
29 also recover incidental but not consequential damages. The  
30 claimant is not obligated to take action to avoid damages that

1 might be due from the issuer under this subsection. If, although  
2 not obligated to do so, the claimant avoids damages, the  
3 claimant's recovery from the issuer must be reduced by the  
4 amount of damages avoided. The issuer has the burden of proving  
5 the amount of damages avoided. In the case of repudiation the  
6 claimant need not present any document.

7 (b) Wrongful dishonor upon presentation; wrongful honor.--If  
8 an issuer wrongfully dishonors a draft or demand presented under  
9 a letter of credit or honors a draft or demand in breach of its  
10 obligation to the applicant, the applicant may recover damages  
11 resulting from the breach, including incidental but not  
12 consequential damages, less any amount saved as a result of the  
13 breach.

14 (c) Certain other breaches.--If an adviser or nominated  
15 person other than a confirmer breaches an obligation under this  
16 division or an issuer breaches an obligation not covered in  
17 subsection (a) or (b), a person to whom the obligation is owed  
18 may recover damages resulting from the breach, including  
19 incidental but not consequential damages, less any amount saved  
20 as a result of the breach. To the extent of the confirmation, a  
21 confirmer has the liability of an issuer specified in this  
22 subsection and subsections (a) and (b).

23 (d) Interest.--An issuer, nominated person or advisor who is  
24 found liable under subsection (a), (b) or (c) shall pay interest  
25 on the amount owed thereunder from the date of wrongful dishonor  
26 or other appropriate date.

27 (e) Attorney fees.--Reasonable attorney fees and other  
28 expenses of litigation may be awarded to the prevailing party in  
29 an action in which a remedy is sought under this division.

30 (f) Liquidated damages.--Damages that would otherwise be

1 payable by a party for breach of an obligation under this  
2 division may be liquidated by agreement or undertaking, but only  
3 in an amount or by a formula that is reasonable in light of the  
4 harm anticipated.

5 § 5112. Transfer of letter of credit.

6 (a) Transfer generally.--Except as otherwise provided in  
7 section 5113 (relating to transfer by operation of law), unless  
8 a letter of credit provides that it is transferable, the right  
9 of a beneficiary to draw or otherwise demand performance under a  
10 letter of credit may not be transferred.

11 (b) Limitations on duty to recognize or carry out a  
12 transfer.--Even if a letter of credit provides that it is  
13 transferable, the issuer may refuse to recognize or carry out a  
14 transfer if:

15 (1) the transfer would violate applicable law; or

16 (2) the transferor or transferee has failed to comply  
17 with any requirement stated in the letter of credit or any  
18 other requirement relating to transfer imposed by the issuer  
19 which is within the standard practice referred to in section  
20 5108(e) (relating to standard practice and role of court) or  
21 is otherwise reasonable under the circumstances.

22 § 5113. Transfer by operation of law.

23 (a) Undisclosed successor.--A successor of a beneficiary may  
24 consent to amendments, sign and present documents and receive  
25 payment or other items of value in the name of the beneficiary  
26 without disclosing its status as a successor.

27 (b) Disclosed successor.--A successor of a beneficiary may  
28 consent to amendments, sign and present documents and receive  
29 payment or other items of value in its own name as the disclosed  
30 successor of the beneficiary. Except as otherwise provided in

1 subsection (e), an issuer shall recognize a disclosed successor  
2 of a beneficiary as beneficiary in full substitution for its  
3 predecessor upon compliance with the requirements for  
4 recognition by the issuer of a transfer of drawing rights by  
5 operation of law under the standard practice referred to in  
6 section 5108(e) (relating to standard practice and role of  
7 court) or, in the absence of such a practice, compliance with  
8 other reasonable procedures sufficient to protect the issuer.

9 (c) Determination of successor status, signature.--An issuer  
10 is not obliged to determine whether a purported successor is a  
11 successor of a beneficiary or whether the signature of a  
12 purported successor is genuine or authorized.

13 (d) Effect of honor of presentation by purported  
14 successor.--Honor of a purported successor's apparently  
15 complying presentation under subsection (a) or (b) has the  
16 consequences specified in section 5108(i) (relating to certain  
17 consequences of honor) even if the purported successor is not  
18 the successor of a beneficiary. Documents signed in the name of  
19 the beneficiary or of a disclosed successor by a person who is  
20 neither the beneficiary nor the successor of the beneficiary are  
21 forged documents for the purposes of section 5109 (relating to  
22 fraud and forgery).

23 (e) Right to decline to recognize presentation.--An issuer  
24 whose rights of reimbursement are not covered by subsection (d)  
25 or substantially similar law and any confirmer or nominated  
26 person may decline to recognize a presentation under subsection  
27 (b).

28 (f) Change of name.--A beneficiary whose name is changed  
29 after the issuance of a letter of credit has the same rights and  
30 obligations as a successor of a beneficiary under this section.

1 § 5114. Assignment of proceeds.

2 (a) Definition.--As used in this section, the term "proceeds  
3 of a letter of credit" means the cash, check, accepted draft or  
4 other item of value paid or delivered upon honor or giving of  
5 value by the issuer or any nominated person under the letter of  
6 credit. The term does not include a beneficiary's drawing rights  
7 or documents presented by the beneficiary.

8 (b) Beneficiary's right to assign proceeds.--A beneficiary  
9 may assign its right to part or all of the proceeds of a letter  
10 of credit. The beneficiary may do so before presentation as a  
11 present assignment of its right to receive proceeds contingent  
12 upon its compliance with the terms and conditions of the letter  
13 of credit.

14 (c) Recognition of assignment of proceeds.--An issuer or  
15 nominated person need not recognize an assignment of proceeds of  
16 a letter of credit until it consents to the assignment.

17 (d) Consent to assignment of proceeds.--An issuer or  
18 nominated person has no obligation to give or withhold its  
19 consent to an assignment of proceeds of a letter of credit, but  
20 consent may not be unreasonably withheld if the assignee  
21 possesses and exhibits the letter of credit and presentation of  
22 the letter of credit is a condition to honor.

23 (e) Rights of transferee beneficiary or nominated person.--  
24 Rights of a transferee beneficiary or nominated person are  
25 independent of the beneficiary's assignment of the proceeds of a  
26 letter of credit and are superior to the assignee's right to the  
27 proceeds.

28 (f) Certain rights not affected; relationship to Division  
29 9.--Neither the rights recognized by this section between an  
30 assignee and an issuer, transferee beneficiary or nominated

1 person nor the issuer's or nominated person's payment of  
2 proceeds to an assignee or a third person affect the rights  
3 between the assignee and any person other than the issuer,  
4 transferee beneficiary or nominated person. The mode of creating  
5 and perfecting a security interest in or granting an assignment  
6 of a beneficiary's right to proceeds is governed by Division 9  
7 (relating to secured transactions; sales of accounts, contract  
8 rights and chattel paper) or other law. Against persons other  
9 than the issuer, transferee beneficiary or nominated person, the  
10 rights and obligations arising upon the creation of a security  
11 interest or other assignment of a beneficiary's right to  
12 proceeds and its perfection are governed by Division 9 or other  
13 law.

14 § 5115. Statute of limitations.

15 An action to enforce a right or obligation arising under this  
16 division must be commenced within one year after the expiration  
17 date of the relevant letter of credit or one year after the  
18 cause of action accrues, whichever occurs later. A cause of  
19 action accrues when the breach occurs, regardless of the  
20 aggrieved party's lack of knowledge of the breach, except that,  
21 in the event of a fraud or forgery adversely affecting the  
22 aggrieved party, a cause of action accrues on the earlier of the  
23 date on which the fraud or forgery was discovered by the  
24 aggrieved party or the date on which the fraud or forgery could  
25 have been discovered by the aggrieved party by the exercise of  
26 reasonable diligence.

27 § 5116. Choice of law and forum.

28 (a) Express choice of law.--The liability of an issuer,  
29 nominated person or advisor for action or omission is governed  
30 by the law of the jurisdiction chosen by an agreement in the

1 form of a record signed or otherwise authenticated by the  
2 affected parties in the manner provided in section 5104  
3 (relating to formal requirements) or by a provision in the  
4 person's letter of credit, confirmation or other undertaking.  
5 The jurisdiction whose law is chosen need not bear any relation  
6 to the transaction.

7 (b) Governing law otherwise.--Unless subsection (a) applies,  
8 the liability of an issuer, nominated person or adviser for  
9 action or omission is governed by the law of the jurisdiction in  
10 which the person is located. The person is considered to be  
11 located at the address indicated in the person's undertaking. If  
12 more than one address is indicated, the person is considered to  
13 be located at the address from which the person's undertaking  
14 was issued. For the purpose of jurisdiction, choice of law and  
15 recognition of interbranch letters of credit, but not  
16 enforcement of a judgment, all branches of a bank are considered  
17 separate juridical entities and a bank is considered to be  
18 located at the place where its relevant branch is considered to  
19 be located under this subsection.

20 (c) Role of custom or practice.--Except as otherwise  
21 provided in this subsection, the liability of an issuer,  
22 nominated person or adviser is governed by any rules of custom  
23 or practice, such as the Uniform Customs and Practice for  
24 Documentary Credits, to which the letter of credit, confirmation  
25 or other undertaking is expressly made subject. If:

26 (1) this division would govern the liability of an  
27 issuer, nominated person or adviser under subsection (a) or  
28 (b);

29 (2) the relevant undertaking incorporates rules of  
30 custom or practice; and

1           (3) there is conflict between this division and those  
2       rules as applied to that undertaking;  
3 those rules govern except to the extent of any conflict with the  
4 nonvariable provisions specified in section 5103(c) (relating to  
5 variation by agreement or undertaking).

6       (d) Conflict with certain other divisions.--If there is  
7 conflict between this division and Division 3 (relating to  
8 negotiable instruments), 4 (relating to bank deposits and  
9 collections), 4A (relating to funds transfers) or 9 (relating to  
10 secured transactions; sales of accounts, contract rights and  
11 chattel paper), this division governs.

12       (e) Forum.--The forum for settling disputes arising out of  
13 an undertaking within this division may be chosen in the manner  
14 and with the binding effect that governing law may be chosen in  
15 accordance with subsection (a).

16 § 5117. Subrogation of issuer, applicant and nominated person.

17       (a) Subrogation rights of issuer.--An issuer that honors a  
18 beneficiary's presentation is subrogated to the rights of the  
19 beneficiary to the same extent as if the issuer were a secondary  
20 obligor of the underlying obligation owed to the beneficiary and  
21 of the applicant to the same extent as if the issuer were the  
22 secondary obligor of the underlying obligation owed to the  
23 applicant.

24       (b) Subrogation rights of applicant.--An applicant that  
25 reimburses an issuer is subrogated to the rights of the issuer  
26 against any beneficiary, presenter or nominated person to the  
27 same extent as if the applicant were the secondary obligor of  
28 the obligations owed to the issuer and has the rights of  
29 subrogation of the issuer to the rights of the beneficiary  
30 stated in subsection (a).

1 (c) Subrogation rights of nominated person.--A nominated  
2 person who pays or gives value against a draft or demand  
3 presented under a letter of credit is subrogated to the rights  
4 of:

5 (1) the issuer against the applicant to the same extent  
6 as if the nominated person were a secondary obligor of the  
7 obligation owed to the issuer by the applicant;

8 (2) the beneficiary to the same extent as if the  
9 nominated person were a secondary obligor of the underlying  
10 obligation owed to the beneficiary; and

11 (3) the applicant to the same extent as if the nominated  
12 person were a secondary obligor of the underlying obligation  
13 owed to the applicant.

14 (d) Time at which subrogation rights arise.--Notwithstanding  
15 any agreement or term to the contrary, the rights of subrogation  
16 stated in subsections (a) and (b) do not arise until the issuer  
17 honors the letter of credit or otherwise pays and the rights in  
18 subsection (c) do not arise until the nominated person pays or  
19 otherwise gives value. Until then, the issuer, nominated person  
20 and the applicant do not derive under this section present or  
21 prospective rights forming the basis of a claim, defense or  
22 excuse.

23 Section 5. Sections 9103(a) heading and (1), 9104, 9105(c),  
24 9106, 9304 heading and (a) and 9305 of Title 13 are amended to  
25 read:

26 § 9103. Perfection of security interests in multiple state  
27 transactions.

28 (a) Documents, instruments, letters of credit and ordinary  
29 goods.--

30 (1) This subsection applies to documents [and],

1 instruments, rights to proceeds of written letters of credit  
2 and [to] goods other than those covered by a certificate of  
3 title described in subsection (b), mobile goods described in  
4 subsection (c) and minerals described in subsection (e).

5 \* \* \*

6 § 9104. Transactions excluded from division.

7 This division does not apply:

8 (1) to a security interest subject to any statute of the  
9 United States to the extent that such statute governs the  
10 rights of parties to and third parties affected by  
11 transactions in particular types of property;

12 (2) to the lien of a landlord;

13 (3) to a lien given by statute or other rule of law for  
14 services or materials except as provided in section 9310  
15 (relating to priority of certain liens arising by operation  
16 of law) on priority of such liens;

17 (4) to a transfer of a claim for wages, salary or other  
18 compensation of an employee;

19 (6) to a sale of accounts or chattel paper as a part of  
20 a sale of the business out of which they arose, or an  
21 assignment of accounts or chattel paper which is for the  
22 purpose of collection only, or a transfer of a right to  
23 payment under a contract to an assignee who is also to do the  
24 performance under the contract or a transfer of a single  
25 account to an assignee in whole or partial satisfaction of a  
26 preexisting indebtedness;

27 (7) to a transfer of an interest or claim in or under  
28 any policy of insurance, except as provided with respect to  
29 proceeds (section 9306) and priorities in proceeds (section  
30 9312);

1 (8) to a right represented by a judgment (other than a  
2 judgment taken on a right to payment which was collateral);

3 (9) to any right of set-off;

4 (10) except to the extent that provision is made for  
5 fixtures in section 9313 (relating to priority of security  
6 interests in fixtures), to the creation or transfer of an  
7 interest in or lien on real estate, including a lease or  
8 rents thereunder;

9 (11) to a transfer in whole or in part of any claim  
10 arising out of tort; [or]

11 (12) to a transfer of an interest in any deposit account  
12 (section 9105(a)), except as provided with respect to  
13 proceeds (section 9306) and priorities in proceeds (section  
14 9312)[.]; or

15 (13) to a transfer of an interest in a letter of credit  
16 other than the right to proceeds of a written letter of  
17 credit.

18 § 9105. Definitions and index of definitions.

19 \* \* \*

20 (c) Index of definitions in other divisions.--The following  
21 definitions in other divisions of this title apply to this  
22 division:

23 "Broker." Section 8102.

24 "Certificated security." Section 8102.

25 "Check." Section 3104.

26 "Clearing corporation." Section 8102.

27 "Contract for sale." Section 2106.

28 "Control." Section 8106.

29 "Delivery." Section 8301.

30 "Entitlement holder." Section 8102.

1 "Financial asset." Section 8102.  
2 "Holder in due course." Section 3302.  
3 "Letter of credit." Section 5102.  
4 "Note." Section 3104.  
5 "Proceeds of a letter of credit." Section 5114(a).  
6 "Sale." Section 2106.  
7 "Securities intermediary." Section 8102.  
8 "Security." Section 8102.  
9 "Security certificate." Section 8102.  
10 "Security entitlement." Section 8102.  
11 "Uncertificated security." Section 8102.

12 \* \* \*

13 § 9106. Definitions: "account"; "general intangibles."

14 The following words and phrases when used in this division  
15 shall have, unless the context clearly indicates otherwise, the  
16 meanings given to them in this section:

17 "Account." Any right to payment for goods sold or leased or  
18 for services rendered which is not evidenced by an instrument or  
19 chattel paper, whether or not it has been earned by performance.

20 "General intangibles." Any personal property (including  
21 things in action) other than goods, accounts, chattel paper,  
22 documents, instruments, investment property, rights to proceeds  
23 of written letters of credit and money. All rights to payment  
24 earned or unearned under a charter or other contract involving  
25 the use or hire of a vessel and all rights incident to the  
26 charter or contract are accounts.

27 § 9304. Perfection of security interest in instruments,  
28 documents, proceeds of a written letter of credit and  
29 goods covered by documents; perfection by permissive  
30 filing; temporary perfection without filing or

1 transfer of possession.

2 (a) Chattel paper, negotiable documents, proceeds of a  
3 written letter of credit, money and instruments.--A security  
4 interest in chattel paper or negotiable documents may be  
5 perfected by filing. A security interest in the right to  
6 proceeds of a written letter of credit can be perfected only by  
7 the secured party's taking possession of the letter of credit. A  
8 security interest in money or instruments (other than  
9 instruments which constitute part of chattel paper) can be  
10 perfected only by the secured party's taking possession, except  
11 as provided in subsections (d) and (e) and section 9306(b) and  
12 (c) (relating to "proceeds"; rights of secured party on  
13 disposition of collateral).

14 \* \* \*

15 § 9305. When possession by secured party perfects security  
16 interest without filing.

17 A security interest in [letters of credit and advices of  
18 credit (section 5116(b)(1)),] goods, instruments, money,  
19 negotiable documents or chattel paper may be perfected by the  
20 secured party's taking possession of the collateral. A security  
21 interest in the right to proceeds of a written letter of credit  
22 may be perfected by the secured party's taking possession of the  
23 letter of credit. If such collateral other than goods covered by  
24 a negotiable document is held by a bailee, the secured party is  
25 deemed to have possession from the time the bailee receives  
26 notification of the interest of the secured party. A security  
27 interest is perfected by possession from the time possession is  
28 taken without relation back and continues only so long as  
29 possession is retained, unless otherwise specified in this  
30 division. The security interest may be otherwise perfected as

1 provided in this division before or after the period of  
2 possession by the secured party.

3 Section 6. A transaction arising out of or associated with a  
4 letter of credit that was issued before the effective date of  
5 this act and the rights, obligations and interests flowing from  
6 that transaction are governed by any statute or other law  
7 amended or repealed by this act as if repeal or amendment had  
8 not occurred and may be terminated, completed, consummated or  
9 enforced under that statute or other law.

10 Section 7. This act applies to a letter of credit that is  
11 issued on or after the effective date of this act. This act does  
12 not apply to a transaction, event, obligation or duty arising  
13 out of or associated with a letter of credit that was issued  
14 before the effective date of this act.

15 Section 8. This act shall take effect in 180 days.