

## CHAPTER 336

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Article 1

GENERAL PROVISIONS

Part 1

SHORT TITLE, CONSTRUCTION,  
APPLICATION, AND

SUBJECT MATTER OF THE CHAPTER

**336.1-101 SHORT TITLE AND NUMBERING SYSTEM.**

This chapter shall be known and may be cited as Uniform Commercial Code. It is arranged and numbered, subject, however, to the provisions of section 3C.10, subdivision 1, so that the enacted chapter may be compiled in the next published edition of Minnesota Statutes without change and in conformity with the official numbering of the Uniform Commercial Code.

**History:** 1965 c 811 s 336.1-101; 1984 c 480 s 17; 1984 c 655 art 2 s 19 subd 5

**336.1-102 PURPOSES; RULES OF CONSTRUCTION; VARIATION BY AGREEMENT.**

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

(2) Underlying purposes and policies of this chapter are



(a) to simplify, clarify, and modernize the law governing commercial transactions;  
 (b) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;

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

(3) The effect of provisions of this chapter may be varied by agreement, except as otherwise provided in this chapter and except that the obligations of good faith, diligence, reasonableness, and care prescribed by this chapter 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.

(4) The presence in certain provisions of this chapter 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 (3).

(5) In this chapter unless the context otherwise requires

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

(b) words of one gender include the other genders, and when the sense so indicates words of the neuter gender may refer to any gender.

(6) Nothing in this chapter shall be construed to authorize the establishment of branch offices for banks, savings banks, trust companies, savings and loan associations, or building and loan associations.

*History: 1965 c 811 s 336.1-102; 1986 c 444*

### **336.1-103 SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE.**

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

*History: 1965 c 811 s 336.1-103*

### **336.1-104 CONSTRUCTION AGAINST IMPLICIT REPEAL.**

This chapter being a general act 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.

*History: 1965 c 811 s 336.1-104*

### **336.1-105 TERRITORIAL APPLICATION OF THE CHAPTER; PARTIES' POWER TO CHOOSE APPLICABLE LAW.**

(1) 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 chapter applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter 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 336.2-402.

Applicability of the article on leases. Sections 336.2A-105 and 336.2A-106.

Applicability of the article on bank deposits and collections. Section 336.4-102.

Governing law in the article on funds transfers. Section 336.4A-507.

Bulk transfers subject to the article on bulk transfers. Section 336.6-102.

Applicability of the article on investment securities. Section 336.8-106.

Perfection provisions of the article on secured transactions. Section 336.9-103.

*History: 1965 c 811 s 336.1-105; 1976 c 135 s 1; 1989 c 232 art 2 s 2; 1990 c 582 art 2 s 1*

### **336.1-106 REMEDIES TO BE LIBERALLY ADMINISTERED.**

(1) The remedies provided by this chapter 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 chapter or by other rule of law.

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

*History: 1965 c 811 s 336.1-106*

### **336.1-107 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.

*History: 1965 c 811 s 336.1-107*

### **336.1-108 SEVERABILITY.**

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

*History: 1965 c 811 s 336.1-108*

### **336.1-109 SECTION CAPTIONS.**

Section captions are parts of this chapter.

*History: 1965 c 811 s 336.1-109*

## **Part 2**

### **GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

#### **336.1-201 GENERAL DEFINITIONS.**

Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, 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 chapter (sections 336.1-205 and 336.2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 336.1-103). (Compare "Contract.")

(4) "Bank" means any person engaged in the business of banking.

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

(6) "Bill of lading" means a document evidencing the receipt of goods for ship-

ment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(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 nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to that person 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 preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(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 printing heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". 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 chapter 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 chapter 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 endorsed to that person or that person's 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 debts in the ordinary course of business or cannot pay the 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 that person

(a) has actual knowledge of it; or

(b) has received a notice or notification of it; or

(c) from all the facts and circumstances known to that person at the time in question, has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when that person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this chapter.

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

(a) it comes to that person's 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 that person as the place for receipt of such communications.

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

(30) "Person" includes an individual or an organization (see section 336.1-102).

(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 nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, 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 336.2-401) 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 article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 336.2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article 9. Unless a consignment is intended as security, reservation of title thereunder is not a "security interest," but a consignment in any event is subject to the provisions on consignment sales (section 336.2-326).

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(a) the original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) the lessee has an option to renew the lease or to become the owner of the goods,

(d) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the

interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(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 endorsement 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 336.3-303, 336.4-208 and 336.4-209) a person gives "value" for rights by acquiring 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 chargeback is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting 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.

**History:** 1965 c 811 s 336.1-201; 1976 c 135 s 2; 1978 c 695 s 1; 1986 c 444; 1989 c 232 art 2 s 3

### **336.1-202 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.

**History:** 1965 c 811 s 336.1-202

### **336.1-203 OBLIGATION OF GOOD FAITH.**

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

**History:** 1965 c 811 s 336.1-203

### **336.1-204 TIME; REASONABLE TIME; "SEASONABLY".**

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

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

(3) 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.

*History: 1965 c 811 s 336.1-204*

### **336.1-205 COURSE OF DEALING AND USAGE OF TRADE.**

(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

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

*History: 1965 c 811 s 336.1-205; 1986 c 444*

### **336.1-206 STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE COVERED.**

(1) Except in the cases described in subsection (2) 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 that party's authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 336.2-201) nor of securities (section 336.8-319) nor to security agreements (section 336.9-203).

*History: 1965 c 811 s 336.1-206; 1986 c 444*

### **336.1-207 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.

*History: 1965 c 811 s 336.1-207*

### **336.1-208 OPTION TO ACCELERATE AT WILL.**

A term providing that one party or a successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party claims to be insecure" or in words of similar import shall be construed to mean that

the party shall have power to do so only with the good faith belief 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.

**History:** 1965 c 811 s 336.1-208; 1986 c 444

### **336.1-209 SUBORDINATED OBLIGATIONS.**

An obligation may be issued as subordinated to payment of another obligation of the person obligated, or a creditor may subordinate the creditor's right to payment of an obligation by agreement with either the person obligated or another creditor of the person obligated. Such a subordination does not create a security interest as against either the common debtor or a subordinated creditor. This section shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it.

**History:** 1969 c 621 s 5; 1986 c 444

## **Article 2**

### **SALES**

#### **Part 1**

### **SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER**

#### **336.2-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code Sales.

**History:** 1965 c 811 s 336.2-101

#### **336.2-102 SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS EXCLUDED FROM THIS ARTICLE.**

Unless the context otherwise requires, this article 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 article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

**History:** 1965 c 811 s 336.2-102

#### **336.2-103 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article unless the context otherwise requires:

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

(b) "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.

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

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

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Acceptance," section 336.2-606.

"Banker's credit," section 336.2-325.

"Between merchants," section 336.2-104.

"Cancellation," section 336.2-106(4).

"Commercial unit," section 336.2-105.

"Confirmed credit," section 336.2-325.

"Conforming to contract," section 336.2-106.



- “Contract for sale,” section 336.2-106.
- “Cover,” section 336.2-712.
- “Entrusting,” section 336.2-403.
- “Financing agency,” section 336.2-104.
- “Future goods,” section 336.2-105.
- “Goods,” section 336.2-105.
- “Identification,” section 336.2-501.
- “Installment contract,” section 336.2-612.
- “Letter of credit,” section 336.2-325.
- “Lot,” section 336.2-105.
- “Merchant,” section 336.2-104.
- “Overseas,” section 336.2-323.
- “Person in position of seller,” section 336.2-707.
- “Present sale,” section 336.2-106.
- “Sale,” section 336.2-106.
- “Sale on approval,” section 336.2-326.
- “Sale or return,” section 336.2-326.
- “Termination,” section 336.2-106.

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

- “Check,” section 336.3-104.
- “Consignee,” section 336.7-102.
- “Consignor,” section 336.7-102.
- “Consumer goods,” section 336.9-109.
- “Dishonor,” section 336.3-507.
- “Draft,” section 336.3-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1965 c 811 s 336.2-103

### **336.2-104 DEFINITIONS: “MERCHANT”; “BETWEEN MERCHANTS”; “FINANCING AGENCY.”**

(1) “Merchant” means a person who deals in goods of the kind or otherwise by occupation holds 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 employment of an agent or broker or other intermediary who by occupation holds out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany 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 336.2-707).

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

**History:** 1965 c 811 s 336.2-104; 1986 c 444

### **336.2-105 DEFINITIONS: TRANSFERABILITY; “GOODS”; “FUTURE” GOODS; “LOT”; “COMMERCIAL UNIT.”**

(1) “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 (article 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 336.2-107).

(2) 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.

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

(4) 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.

(5) "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.

(6) "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.

*History: 1965 c 811 s 336.2-105*

**336.2-106 DEFINITIONS: "CONTRACT"; "AGREEMENT"; "CONTRACT FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING TO CONTRACT"; "TERMINATION"; "CANCELLATION."**

(1) In this article 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 336.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) 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.

(3) "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.

(4) "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 canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

*History: 1965 c 811 s 336.2-106*

**336.2-107 GOODS TO BE SEVERED FROM REALTY: RECORDING.**

(1) 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 article 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.

(2) 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 (1) or of timber to be cut is a contract for the sale of goods within this article 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.

(3) The provisions of subsection (1) 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.

**History:** 1965 c 811 s 336.2-107; 1976 c 135 s 3

## Part 2

### FORM, FORMATION AND READJUSTMENT OF CONTRACT

#### 336.2-201 FORMAL REQUIREMENTS; STATUTE OF FRAUDS.

(1) 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 the party's 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.

(2) 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 (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) 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

(b) if the party against whom enforcement is sought admits in 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

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 336.2-606).

**History:** 1965 c 811 s 336.2-201; 1986 c 444

#### 336.2-202 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

(a) by course of dealing or usage of trade (section 336.1-205) or by course of performance (section 336.2-208); and

(b) 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.

**History:** 1965 c 811 s 336.2-202

**336.2-203 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.

*History: 1965 c 811 s 336.2-203*

**336.2-204 FORMATION IN GENERAL.**

(1) 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.

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

(3) 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.

*History: 1965 c 811 s 336.2-204*

**336.2-205 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.

*History: 1965 c 811 s 336.2-205*

**336.2-206 OFFER AND ACCEPTANCE IN FORMATION OF CONTRACT.**

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

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

(b) 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 nonconforming goods, but such a shipment of nonconforming 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.

(2) 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.

*History: 1965 c 811 s 336.2-206*

**336.2-207 ADDITIONAL TERMS IN ACCEPTANCE OR CONFIRMATION.**

(1) 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.

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

(a) The offer expressly limits acceptance to the terms of the offer;

(b) They materially alter it; or

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

(3) 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 chapter.

**History:** 1965 c 811 s 336.2-207

### **336.2-208 COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.**

(1) 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 without objection shall be relevant to determine the meaning of the agreement.

(2) 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 336.1-205).

(3) 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.

**History:** 1965 c 811 s 336.2-208

### **336.2-209 MODIFICATION, RESCISSION AND WAIVER.**

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

(2) 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.

(3) The requirements of the statute of frauds section of this article (section 336.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) 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.

**History:** 1965 c 811 s 336.2-209

### **336.2-210 DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS.**

(1) A party may perform a duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the 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.

(2) 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 the other party by the contract, or impair materially the other party's 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 the assignor's entire obligation can be assigned despite agreement otherwise.

(3) 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.

(4) 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 dele-

gation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to the rights of the other party against the assignor demand assurances from the assignee (section 336.2-609).

*History: 1965 c 811 s 336.2-210; 1986 c 444*

### Part 3

## GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

### 336.2-301 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.

*History: 1965 c 811 s 336.2-301*

### 336.2-302 UNCONSCIONABLE CONTRACT OR CLAUSE.

(1) 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.

(2) 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.

*History: 1965 c 811 s 336.2-302*

### 336.2-303 ALLOCATION OR DIVISION OF RISKS.

Where this article 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.

*History: 1965 c 811 s 336.2-303*

### 336.2-304 PRICE PAYABLE IN MONEY, GOODS, REALTY, OR OTHERWISE.

(1) 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 that party is to transfer.

(2) 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 article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

*History: 1965 c 811 s 336.2-304; 1986 c 444*

### 336.2-305 OPEN PRICE TERM.

(1) 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

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) 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.

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

(3) 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 either treat the contract as canceled or fix a reasonable price.

(4) 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.

**History:** 1965 c 811 s 336.2-305; 1986 c 444

### **336.2-306 OUTPUT, REQUIREMENTS AND EXCLUSIVE DEALINGS.**

(1) 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.

(2) 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.

**History:** 1965 c 811 s 336.2-306

### **336.2-307 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.

**History:** 1965 c 811 s 336.2-307

### **336.2-308 ABSENCE OF SPECIFIED PLACE FOR DELIVERY.**

Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if there is none, the seller's residence; but

(b) 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

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

**History:** 1965 c 811 s 336.2-308; 1986 c 444

### **336.2-309 ABSENCE OF SPECIFIC TIME PROVISIONS; NOTICE OF TERMINATION.**

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

(2) 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.

(3) 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.

**History:** 1965 c 811 s 336.2-309

**336.2-310 OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION.**

Unless otherwise agreed

(a) 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

(b) if the seller is authorized to send the goods the seller 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 336.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) 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

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

**History:** 1965 c 811 s 336.2-310; 1986 c 444

**336.2-311 OPTIONS AND COOPERATION RESPECTING PERFORMANCE.**

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 336.2-204) 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.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1) (c) and (3) of section 336.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) 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

(a) is excused for any resulting delay in performance; and

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

**History:** 1965 c 811 s 336.2-311; 1986 c 444

**336.2-312 WARRANTY OF TITLE AND AGAINST INFRINGEMENT; BUYER'S OBLIGATION AGAINST INFRINGEMENT.**

(1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

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

(b) 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.

(2) A warranty under subsection (1) 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 to be the titleholder or to be selling only such right or title as the person selling or a third person may have.

(3) 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.

**History:** 1965 c 811 s 336.2-312; 1986 c 444



**336.2-313 EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE.**

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

(a) 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.

(b) 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.

(c) 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.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that the seller 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.

**History:** 1965 c 811 s 336.2-313; 1986 c 444

**336.2-314 IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE.**

(1) Unless excluded or modified (section 336.2-316), 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.

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

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

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

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

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

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

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

(3) Unless excluded or modified (section 336.2-316) other implied warranties may arise from course of dealing or usage of trade.

**History:** 1965 c 811 s 336.2-314

**336.2-315 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.

**History:** 1965 c 811 s 336.2-315

**336.2-316 EXCLUSION OR MODIFICATION OF WARRANTIES.**

(1) 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 article on parol or extrinsic evidence (section 336.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), 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."

(3) Notwithstanding subsection (2)

(a) 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

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as 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; and

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

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 336.2-718 and 336.2-719).

**History:** 1965 c 811 s 336.2-316; 1986 c 444

**336.2-317 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:

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

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

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

**History:** 1965 c 811 s 336.2-317

**336.2-318 THIRD PARTY BENEFICIARIES OF WARRANTIES EXPRESS OR IMPLIED.**

A seller's warranty whether express or implied extends to any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty. A seller may not exclude or limit the operation of this section.

**History:** 1965 c 811 s 336.2-318; 1969 c 621 s 6

**336.2-319 F.O.B. AND F.A.S. TERMS.**

(1) Unless otherwise agreed the terms 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

(a) 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 article (section 336.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must pay for, and stand the risk of, the transportation of the goods to that place and there tender delivery of them in the manner provided in this article (section 336.2-504);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition pay for, and stand the risk of, the loading of 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 article on the form of bill of lading (section 336.2-323).

(2) 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

(a) pay for, and stand the risk of, the delivery of the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

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

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) 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 article (section 336.2-311). The seller also has the option to move the goods in any reasonable manner preparatory to delivery or shipment.

(4) 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.

*History: 1965 c 811 s 336.2-319; 1986 c 444*

### **336.2-320 C.I.F. AND C.& F. TERMS.**

(1) 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.

(2) 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 to pay for, and stand the risk of

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

(b) loading the goods and obtaining 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

(c) obtaining 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

(d) preparing an invoice of the goods and procuring any other documents required to effect shipment or to comply with the contract; and

(e) forwarding and tendering with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(3) 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.

(4) 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.

*History: 1965 c 811 s 336.2-320; 1986 c 444*

### **336.2-321 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.

(1) 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.

(2) An agreement described in subsection (1) 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.

(3) 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.

*History: 1965 c 811 s 336.2-321*

### **336.2-322 DELIVERY "EX-SHIP".**

(1) 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.

(2) Under such a term unless otherwise agreed

(a) 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

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

*History: 1965 c 811 s 336.2-322*

### **336.2-323 FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT; "OVERSEAS".**

(1) 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.

(2) Wherein a case within subsection (1) 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

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 336.2-508); and

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

(3) 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.

*History: 1965 c 811 s 336.2-323*

### **336.2-324 "NO ARRIVAL, NO SALE" TERM.**

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

(a) the seller must properly ship conforming goods and if they arrive by any means the seller must tender them on arrival but does not assume any obligation that the goods will arrive unless the seller has caused the nonarrival; and

(b) 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 336.2-613).

**History:** 1965 c 811 s 336.2-324; 1986 c 444

### **336.2-325 "LETTER OF CREDIT" TERM; "CONFIRMED CREDIT".**

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

(2) 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 the buyer.

(3) 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.

**History:** 1965 c 811 s 336.2-325; 1986 c 444

### **336.2-326 SALE ON APPROVAL AND SALE OR RETURN; CONSIGNMENT SALES AND RIGHTS OF CREDITORS.**

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

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

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

(2) Except as provided in subsection (3), 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.

(3) Where goods are delivered to a person for sale and such person maintains a place of business dealing 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

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

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

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) 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 article (section 336.2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 336.2-202).

**History:** 1965 c 811 s 336.2-326; 1986 c 444

### **336.2-327 SPECIAL INCIDENTS OF SALE ON APPROVAL AND SALE OR RETURN.**

(1) Under a sale on approval unless otherwise agreed

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

(b) use of the goods consistent with the purpose of trial is not acceptance but fail-

ure 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

(c) 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.

(2) Under a sale or return unless otherwise agreed

(a) 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

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

**History:** 1965 c 811 s 336.2-327

### **336.2-328 SALE BY AUCTION.**

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

(2) 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 reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) 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 before announcing 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 a bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) 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 either 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.

**History:** 1965 c 811 s 336.2-328; 1986 c 444

## **Part 4**

### **TITLE, CREDITORS AND GOOD**

#### **FAITH PURCHASERS**

### **336.2-401 PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION.**

Each provision of this article 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 article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 336.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. 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 article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes 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

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

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

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

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

(b) 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.

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

**History:** 1965 c 811 s 336.2-401; 1986 c 444

### **336.2-402 RIGHTS OF SELLER'S CREDITORS AGAINST SOLD GOODS.**

(1) Except as provided in subsections (2) and (3), 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 article (sections 336.2-502 and 336.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor 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.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting 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 article constitute the transaction a fraudulent transfer or voidable preference.

**History:** 1965 c 811 s 336.2-402; 1986 c 444

### **336.2-403 POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; "ENTRUSTING".**

(1) A purchaser of goods acquires all title which the purchaser's 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

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

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

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

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

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

(3) "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.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7).

**History:** 1965 c 811 s 336.2-403; 1986 c 444

## Part 5

### PERFORMANCE

#### 336.2-501 INSURABLE INTEREST IN GOODS; MANNER OF IDENTIFICATION OF GOODS.

(1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and the buyer 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

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

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

(c) 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 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

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

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

**History:** 1965 c 811 s 336.2-501; 1986 c 444

#### 336.2-502 BUYER'S RIGHT TO GOODS ON SELLER'S INSOLVENCY.

(1) Subject to subsection (2) 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 the buyer 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.

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

**History:** 1965 c 811 s 336.2-502; 1986 c 444

#### 336.2-503 MANNER OF SELLER'S TENDER OF DELIVERY.

(1) 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 the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular



(a) 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

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

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

(3) Where the seller is required to deliver at a particular destination tender requires that the seller comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

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

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a written direction to 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 nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

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

(a) the seller must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 336.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

*History: 1965 c 811 s 336.2-503; 1986 c 444*

### **336.2-504 SHIPMENT BY SELLER.**

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

(a) 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

(b) 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

(c) promptly notify the buyer of the shipment.

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

*History: 1965 c 811 s 336.2-504; 1986 c 444*

### **336.2-505 SELLER'S SHIPMENT UNDER RESERVATION.**

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

(a) The seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection

(2) of section 336.2-507) a nonnegotiable bill of lading naming the buyer as a consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within 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.

**History:** 1965 c 811 s 336.2-505; 1986 c 444

### **336.2-506 RIGHTS OF FINANCING AGENCY.**

(1) 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.

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

**History:** 1965 c 811 s 336.2-506

### **336.2-507 EFFECT OF SELLER'S TENDER; DELIVERY ON CONDITION.**

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

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

**History:** 1965 c 811 s 336.2-507; 1986 c 444

### **336.2-508 CURE BY SELLER OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.**

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

(2) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may on seasonably notifying the buyer have a further reasonable time to substitute a conforming tender.

**History:** 1965 c 811 s 336.2-508; 1986 c 444

### **336.2-509 RISK OF LOSS IN THE ABSENCE OF BREACH.**

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

(a) if it does not require the seller 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 336.2-505); but

(b) if it does require the seller 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.

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

(a) on the buyer's receipt of a negotiable document of title covering the goods; or  
(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after the buyer's receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (4) (b) of section 336.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 336.2-327) and on effect of breach on risk of loss (section 336.2-510).

*History: 1965 c 811 s 336.2-509; 1986 c 444*

### **336.2-510 EFFECT OF BREACH ON RISK OF LOSS.**

(1) 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.

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

(3) 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 the buyer, the seller may to the extent of any deficiency in the seller's effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

*History: 1965 c 811 s 336.2-510; 1986 c 444*

### **336.2-511 TENDER OF PAYMENT BY BUYER; PAYMENT BY CHECK.**

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

(2) 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.

(3) Subject to the provisions of this chapter on the effect of an instrument on an obligation (section 336.3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

*History: 1965 c 811 s 336.2-511*

### **336.2-512 PAYMENT BY BUYER BEFORE INSPECTION.**

(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this chapter (section 336.5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of the buyer's remedies.

*History: 1965 c 811 s 336.2-512; 1986 c 444*

### **336.2-513 BUYER'S RIGHT TO INSPECTION OF GOODS.**

(1) Unless otherwise agreed and subject to subsection (3), 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.

(2) 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.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 336.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

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

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

(4) 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.

*History: 1965 c 811 s 336.2-513*

### **336.2-514 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.

*History: 1965 c 811 s 336.2-514*

### **336.2-515 PRESERVING EVIDENCE OF GOODS IN DISPUTE.**

In furtherance of the adjustment of any claim or dispute

(a) 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

(b) 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.

*History: 1965 c 811 s 336.2-515*

## **Part 6**

### **BREACH, REPUDIATION AND EXCUSE**

#### **336.2-601 BUYER'S RIGHTS ON IMPROPER DELIVERY.**

Subject to the provisions of this article on breach in installment contracts (section 336.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 336.2-718 and 336.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

*History: 1965 c 811 s 336.2-601*

#### **336.2-602 MANNER AND EFFECT OF RIGHTFUL REJECTION.**

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

(2) Subject to the provisions of the two following sections on rejected goods (sections 336.2-603 and 336.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which the buyer does not have a security interest under the provisions of this article (subsection (3) of section 336.2-711), the buyer 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

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (section 336.2-703).

*History: 1965 c 811 s 336.2-602; 1986 c 444*

### **336.2-603 MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.**

(1) Subject to any security interest in the buyer (subsection (3) of section 336.2-711), 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 the merchant buyer's 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.

(2) When the buyer sells goods under subsection (1), the buyer 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 percent on the gross proceeds.

(3) 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.

*History: 1965 c 811 s 336.2-603; 1986 c 444*

### **336.2-604 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 the seller or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

*History: 1965 c 811 s 336.2-604; 1986 c 444*

### **336.2-605 WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE.**

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

(a) where the seller could have cured it if stated seasonably; or

(b) 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.

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

*History: 1965 c 811 s 336.2-605; 1986 c 444*

### **336.2-606 WHAT CONSTITUTES ACCEPTANCE OF GOODS.**

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that the buyer will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 336.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) 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 the seller.

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

*History: 1965 c 811 s 336.2-606; 1986 c 444*

**336.2-607 EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN OF ESTABLISHING BREACH AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.**

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

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

(3) Where a tender has been accepted

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

(b) if the claim is one for infringement or the like (subsection (3) of section 336.2-312) and the buyer is sued as a result of such a breach the buyer must so notify the seller within a reasonable time after receiving notice of the litigation or be barred from any remedy over for liability established by the litigation.

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

(5) Where the buyer is sued for breach of a warranty or other obligation for which the buyer's seller is answerable over

(a) the buyer may give that 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 the seller will be bound in any action against the seller by the buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend the seller is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of section 336.2-312) the original seller may demand in writing that the original seller's buyer turn over control of the litigation including settlement or else be barred from any remedy over and if the original seller also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 336.2-312).

*History: 1965 c 811 s 336.2-607; 1986 c 444*

**336.2-608 REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART.**

(1) The buyer may revoke an acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the buyer if it was accepted

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if the acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) 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.

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

**History:** 1965 c 811 s 336.2-608; 1986 c 444

### **336.2-609 RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE.**

(1) 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 such assurance is received may if commercially reasonable suspend any performance for which the person making the demand has not already received the agreed return.

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

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

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

**History:** 1965 c 811 s 336.2-609; 1986 c 444

### **336.2-610 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

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

(b) resort to any remedy for breach (section 336.2-703 or section 336.2-711), even though the aggrieved party has notified the repudiating party that the aggrieved party would await the latter's performance and has urged retraction; and

(c) in either case suspend the aggrieved party's performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 336.2-704).

**History:** 1965 c 811 s 336.2-610; 1986 c 444

### **336.2-611 RETRACTION OF ANTICIPATORY REPUDIATION.**

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

(2) 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 article (section 336.2-609).

(3) 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.

**History:** 1965 c 811 s 336.2-611; 1986 c 444

**336.2-612 "INSTALLMENT CONTRACT"; BREACH.**

(1) 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.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity 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 by accepting a nonconforming installment without seasonably notifying of cancellation or by bringing an action with respect only to past installments or by demanding performance as to future installments.

*History: 1965 c 811 s 336.2-612; 1986 c 444*

**336.2-613 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 336.2-324) then

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

(b) 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 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.

*History: 1965 c 811 s 336.2-613; 1986 c 444*

**336.2-614 SUBSTITUTED PERFORMANCE.**

(1) 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.

(2) 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.

*History: 1965 c 811 s 336.2-614*

**336.2-615 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:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence 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.

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



(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

**History:** 1965 c 811 s 336.2-615; 1986 c 444

### **336.2-616 PROCEDURE ON NOTICE CLAIMING EXCUSE.**

(1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section the buyer 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 article relating to breach of installment contracts section (336.2-612), then also as to the whole,

- (a) terminate and thereby discharge any unexecuted portion of the contract; or
- (b) modify the contract by agreeing to take the available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) 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.

**History:** 1965 c 811 s 336.2-616; 1986 c 444

## **Part 7**

### **REMEDIES**

#### **336.2-701 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 article.

**History:** 1965 c 811 s 336.2-701

#### **336.2-702 SELLER'S REMEDIES ON DISCOVERY OF BUYER'S INSOLVENCY.**

(1) Where the seller discovers the buyer to be insolvent the seller may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 336.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent the seller 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.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this article (section 336.2-403). Successful reclamation of goods excludes all other remedies with respect to them.

**History:** 1965 c 811 s 336.2-702; 1969 c 621 s 1; 1986 c 444

#### **336.2-703 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 of the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 336.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (section 336.2-705);

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

(d) resell and recover damages as hereafter provided (section 336.2-706);

(e) recover damages for nonacceptance (section 336.2-708) or in a proper case the price (section 336.2-709);

(f) cancel.

*History: 1965 c 811 s 336.2-703*

**336.2-704 SELLER'S RIGHT TO IDENTIFY GOODS TO THE CONTRACT NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS.**

(1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if the aggrieved seller possessed or controlled the goods at the time of learning of the breach;

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

(2) 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.

*History: 1965 c 811 s 336.2-704; 1986 c 444*

**336.2-705 SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.**

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee on discovering the buyer to be insolvent (section 336.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

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

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

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

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouse operator; or

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

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

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

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

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

*History: 1965 c 811 s 336.2-705; 1986 c 444*

**336.2-706 SELLER'S RESALE INCLUDING CONTRACT FOR RESALE.**

(1) Under the conditions stated in section 336.2-703 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 article (section 336.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) 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 commercially 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.

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

(4) Where the resale is at public sale

(a) 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

(b) 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

(c) 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

(d) the seller may buy.

(5) 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.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 336.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of a security interest, as hereinafter defined (subsection (3) of section 336.2-711).

**History:** 1965 c 811 s 336.2-706; 1986 c 444

### 336.2-707 "PERSON IN THE POSITION OF A SELLER".

(1) 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 the principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 336.2-705) and resell (section 336.2-706) and recover incidental damages (section 336.2-710).

**History:** 1965 c 811 s 336.2-707; 1986 c 444

### 336.2-708 SELLER'S DAMAGES FOR NONACCEPTANCE OR REPUDIATION.

(1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 336.2-723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 336.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) 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 article (section 336.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

**History:** 1965 c 811 s 336.2-708

**336.2-709 ACTION FOR THE PRICE.**

(1) 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

(a) 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

(b) 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.

(2) Where the seller sues for the price the seller must hold for the buyer any goods which have been identified to the contract and are still in the seller's control except that if resale becomes possible the seller 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 the buyer to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 336.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

*History: 1965 c 811 s 336.2-709; 1986 c 444*

**336.2-710 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.

*History: 1965 c 811 s 336.2-710*

**336.2-711 BUYER'S REMEDIES IN GENERAL; BUYER'S SECURITY INTEREST IN REJECTED GOODS.**

(1) 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 336.2-612), the buyer may cancel and with or without having done so may in addition to recovering so much of the price as has been paid

(a) "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

(b) recover damages for nondelivery as provided in this article (section 336.2-713).

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

(a) if the goods have been identified recover them as provided in this article (section 336.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this article (section 336.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in the buyer's 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 336.2-706).

*History: 1965 c 811 s 336.2-711; 1986 c 444*

**336.2-712 "COVER"; BUYER'S PROCUREMENT OF SUBSTITUTE GOODS.**

(1) 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.

(2) 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 336.2-715), but less expenses saved in consequence of the seller's breach.

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

**History:** 1965 c 811 s 336.2-712; 1986 c 444

### **336.2-713 BUYER'S DAMAGES FOR NONDELIVERY OR REPUDIATION.**

(1) Subject to the provisions of this article with respect to proof of market price (section 336.2-723), the measure of damages for nondelivery 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 article (section 336.2-715), but less expenses saved in consequence of the seller's breach.

(2) 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.

**History:** 1965 c 811 s 336.2-713

### **336.2-714 BUYER'S DAMAGES FOR BREACH IN REGARD TO ACCEPTED GOODS.**

(1) Where the buyer has accepted goods and given notification (subsection (3) of section 336.2-607) the buyer may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) 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.

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

**History:** 1965 c 811 s 336.2-714; 1986 c 444

### **336.2-715 BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.**

(1) 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.

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

(a) 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

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

**History:** 1965 c 811 s 336.2-715

### **336.2-716 BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.**

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

(2) 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.

(3) The buyer has a right of replevin for goods identified to the contract if after

reasonable effort the buyer 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.

*History: 1965 c 811 s 336.2-716; 1986 c 444*

### **336.2-717 DEDUCTION OF DAMAGES FROM THE PRICE.**

The buyer on notifying the seller of an 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.

*History: 1965 c 811 s 336.2-717; 1986 c 444*

### **336.2-718 LIQUIDATION OR LIMITATION OF DAMAGES; DEPOSITS.**

(1) 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 nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) 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 the buyer's payments exceeds

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

(b) in the absence of such terms, 20 percent of the value of the total performance for which the buyer is obligated under the contract or \$500, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

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

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

(4) 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 (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, the seller's resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 336.2-706).

*History: 1965 c 811 s 336.2-718; 1986 c 444*

### **336.2-719 CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY.**

(1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

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

(b) 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.

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

(3) 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.

*History: 1965 c 811 s 336.2-719*

**336.2-720 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.

**History:** 1965 c 811 s 336.2-720

**336.2-721 REMEDIES FOR FRAUD.**

Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent 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.

**History:** 1965 c 811 s 336.2-721

**336.2-722 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

(a) 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;

(b) 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, the plaintiff's suit or settlement is, subject to the plaintiff's own interest, as a fiduciary for the other party to the contract;

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

**History:** 1965 c 811 s 336.2-722; 1986 c 444

**336.2-723 PROOF OF MARKET PRICE: TIME AND PLACE.**

(1) 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 336.2-708 or section 336.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article 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.

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

**History:** 1965 c 811 s 336.2-723; 1986 c 444

**336.2-724 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.

**History:** 1965 c 811 s 336.2-724

**336.2-725 STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE.**

(1) 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.

(2) 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.

(3) Where an action commenced within the time limited by subsection (1) 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.

(4) 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 chapter becomes effective. Nor does this section apply to actions for the breach of any contract for sale of a grain storage structure that is an improvement to real property, which actions shall be subject only to the statute of limitations set forth in section 541.051.

**History:** 1965 c 811 s 336.2-725; 1989 c 187 s 1

**ARTICLE 2A - LEASES****PART 1. GENERAL PROVISIONS****336.2A-101 SHORT TITLE.**

This article shall be known and may be cited as the Uniform Commercial Code - Leases.

**History:** 1989 c 232 art 1 s 2A-101

**336.2A-102 SCOPE.**

This article applies to any transaction, regardless of form, that creates a lease.

**History:** 1989 c 232 art 1 s 2A-102

**336.2A-103 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article unless the context otherwise requires:

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

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means a unit of goods that by commercial usage is a single whole for purposes of lease 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 a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business



of leasing or selling makes to a lessee, except an organization, who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

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

(g) "Finance lease" means a lease in which (1) the lessor does not select, manufacture, or supply the goods, (2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and (3) either (i) the lessee receives a copy of the contract evidencing the lessor's purchase of the goods or a disclaimer statement on or before signing the lease contract, or (ii) the lessee's approval of the contract evidencing the lessor's purchase of the goods or a disclaimer statement is a condition to effectiveness of the lease contract. "Disclaimer statement" means a written statement that is part of or separate from the lease contract that discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee in a conspicuous manner that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the statement.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 336.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee 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 article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

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

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

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

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

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

"Accessions." Section 336.2A-310(1).

"Construction mortgage." Section 336.2A-309(1)(d).

"Encumbrance." Section 336.2A-309(1)(e).

"Fixtures." Section 336.2A-309(1)(a).

"Fixture filing." Section 336.2A-309(1)(b).

"Purchase money lease." Section 336.2A-309(1)(c).

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

"Accounts." Section 336.9-106.

"Between merchants." Section 336.2-104(3).

"Buyer." Section 336.2-103(1)(a).

"Chattel paper." Section 336.9-105(1)(b).

"Consumer goods." Section 336.9-109(1).

"Documents." Section 336.9-105(1)(f).

"Entrusting." Section 336.2-403(3).

"General intangibles." Section 336.9-106.

"Good faith." Section 336.2-103(1)(b).

"Instruments." Section 336.9-105(1)(i).

"Merchant." Section 336.2-104(1).

"Mortgage." Section 336.9-105(1)(j).

"Pursuant to commitment." Section 336.9-105(1)(k).

"Receipt." Section 336.2-103(1)(c).

"Sale." Section 336.2-106(1).

"Sale on Approval." Section 336.2-326.

"Sale or Return." Section 336.2-326.

"Seller." Section 336.2-103(1)(d).

(4) In addition sections 336.1-101 to 336.1-109 contain general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1989 c 232 art 1 s 2A-103

**336.2A-104 LEASES SUBJECT TO OTHER STATUTES.**

- (1) A lease, although subject to this article, is also subject to any applicable:
- (a) statute of the United States;
  - (b) certificate of title statute of this state: sections 86B.820 to 86B.920 and chapter 168A;
  - (c) certificate of title statute of another jurisdiction (section 336.2A-105); or
  - (d) consumer protection statute of this state.
- (2) In case of conflict between the provisions of this article, other than sections 336.2A-105, 336.2A-304(3), and 336.2A-305(3), and any statute referred to in subsection (1), the provisions of that statute control.
- (3) Failure to comply with any applicable statute has only the effect specified in the statute.

**History:** 1989 c 232 art 1 s 2A-104; 1990 c 391 art 10 s 3; 1990 c 426 art 1 s 39

**336.2A-105 TERRITORIAL APPLICATION OF ARTICLE TO GOODS COVERED BY CERTIFICATE OF TITLE.**

Subject to the provisions of sections 336.2A-304(3) and 336.2A-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate or (b) four months after the goods are removed from that jurisdiction and after that until a new certificate of title is issued by another jurisdiction.

**History:** 1989 c 232 art 1 s 2A-105

**336.2A-106 LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM.**

- (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee signed the lease or in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days after that or in which the goods are to be used, the choice is not enforceable.
- (2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

**History:** 1989 c 232 art 1 s 2A-106

**336.2A-107 WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT.**

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

**History:** 1989 c 232 art 1 s 2A-107

**336.2A-108 UNCONSCIONABILITY.**

- (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
- (2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.
- (3) Before making a finding of unconscionability under subsection (1) or (2), the

court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause, or of the conduct.

(4) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(a) If the court finds unconscionability under subsection (1) or (2), the court may award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability, the court may make an award under section 549.21 to the party against whom the claim is made.

(c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (1) and (2) is not controlling.

**History:** 1989 c 232 art 1 s 2A-108

### 336.2A-109 OPTION TO ACCELERATE AT WILL.

A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems self insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

**History:** 1989 c 232 art 1 s 2A-109

## PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

### 336.2A-201 STATUTE OF FRAUDS.

(1) A lease contract is not enforceable by way of action or defense unless:

(a) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or

(b) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

(3) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and the quantity of goods shown in the writing.

(4) A lease contract that does not satisfy the requirements of subsection (1), but which is valid in other respects, is enforceable:

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

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

(c) with respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) is:

(a) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) a reasonable lease term.

**History:** 1989 c 232 art 1 s 2A-201

### **336.2A-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 the included terms may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of dealing or usage of trade or by course of performance; and

(b) 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.

**History:** 1989 c 232 art 1 s 2A-202

### **336.2A-203 SEALS INOPERATIVE.**

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

**History:** 1989 c 232 art 1 s 2A-203

### **336.2A-204 FORMATION IN GENERAL.**

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

(2) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

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

**History:** 1989 c 232 art 1 s 2A-204

### **336.2A-205 FIRM OFFERS.**

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance 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 the period of irrevocability exceed three months. Any term of assurance on a form supplied by the offeree must be separately signed by the offeror.

**History:** 1989 c 232 art 1 s 2A-205

### **336.2A-206 OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT.**

(1) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(2) If 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.

**History:** 1989 c 232 art 1 s 2A-206

### **336.2A-207 COURSE OF PERFORMANCE OR PRACTICAL CONSTRUCTION.**

(1) If a lease contract 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 without objection is relevant to determine the meaning of the lease agreement.

(2) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.

(3) Subject to the provisions of section 336.2A-208 on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

**History:** 1989 c 232 art 1 s 2A-207

### **336.2A-208 MODIFICATION, RESCISSION AND WAIVER.**

(1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, this requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease 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.

**History:** 1989 c 232 art 1 s 2A-208

### **336.2A-209 LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT.**

(1) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, under the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but subject to the terms of the supply contract and all of the supplier's defenses or claims arising from the supply contract.

(2) The extension of the benefit of the supplier's promises and warranties to the lessee (section 336.2A-209(1)) does not: (a) modify the rights and obligations of the parties to the supply contract, whether arising from the supply contract or otherwise, or (b) impose any duty or liability under the supply contract on the lessee.

(3) Any modification or rescission of the supply contract by the supplier and the lessor is effective against the lessee unless, prior to the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the supply contract is modified or rescinded after the lessee enters the finance lease, the lessee has a cause of action against the lessor, and against the supplier if the supplier has notice of the lessee's entering the finance lease when the supply contract is modified or rescinded. The lessee's recovery from such action shall put the lessee in as good a position as if the modification or rescission had not occurred.

**History:** 1989 c 232 art 1 s 2A-209

### **336.2A-210 EXPRESS WARRANTIES.**

(1) Express warranties by the lessor are created as follows:

(a) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

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

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

(2) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor 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 lessor's opinion or commendation of the goods does not create a warranty.

**History:** 1989 c 232 art 1 s 2A-210

### **336.2A-211 WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT.**

(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

**History:** 1989 c 232 art 1 s 2A-211

### **336.2A-212 IMPLIED WARRANTY OF MERCHANTABILITY.**

(1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(2) Goods to be merchantable must be at least goods that:

(a) pass without objection in the trade under the description in the lease agreement;

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

(c) are fit for the ordinary purposes for which goods of that type are used;

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

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

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

(3) Other implied warranties may arise from course of dealing or usage of trade.

**History:** 1989 c 232 art 1 s 2A-212

### **336.2A-213 IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.**

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

**History:** 1989 c 232 art 1 s 2A-213

### **336.2A-214 EXCLUSION OR MODIFICATION OF WARRANTIES.**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of section 336.2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(3) Notwithstanding subsection (2), but subject to subsection (4):

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

(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(4) To exclude or modify a warranty against interference or against infringement (section 336.2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

**History:** 1989 c 232 art 1 s 2A-214

### **336.2A-215 CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED.**

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

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

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

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

**History:** 1989 c 232 art 1 s 2A-215

### **336.2A-216 THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES.**

A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against the beneficiary designated under this section.

**History:** 1989 c 232 art 1 s 2A-216

### **336.2A-217 IDENTIFICATION.**

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:



- (a) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;
- (b) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or
- (c) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

**History:** 1989 c 232 art 1 s 2A-217

### **336.2A-218 INSURANCE AND PROCEEDS.**

(1) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(2) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(3) Notwithstanding a lessee's insurable interest under subsections (1) and (2), the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.

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

(5) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

**History:** 1989 c 232 art 1 s 2A-218

### **336.2A-219 RISK OF LOSS.**

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this article on the effect of default on risk of loss (section 336.2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier (i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(ii) if it does require delivery 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 lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(b) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.

(c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

**History:** 1989 c 232 art 1 s 2A-219

### **336.2A-220 EFFECT OF DEFAULT ON RISK OF LOSS.**

(1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(a) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.

(b) If the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

**History:** 1989 c 232 art 1 s 2A-220

### **336.2A-221 CASUALTY TO IDENTIFIED GOODS.**

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or section 336.2A-219, then:

(a) if the loss is total, the lease contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

**History:** 1989 c 232 art 1 s 2A-221

## **PART 3. EFFECT OF LEASE CONTRACT**

### **336.2A-301 ENFORCEABILITY OF LEASE CONTRACT.**

Except as otherwise provided in this article, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

**History:** 1989 c 232 art 1 s 2A-301

### **336.2A-302 TITLE TO AND POSSESSION OF GOODS.**

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

**History:** 1989 c 232 art 1 s 2A-302

### **336.2A-303 ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS.**

(1) Any interest of a party under a lease contract and the lessor's residual interest in the goods may be transferred unless

(a) the transfer is voluntary and the lease contract prohibits the transfer; or

(b) the transfer materially changes the duty of or materially increases the burden or risk imposed on the other party to the lease contract, and within a reasonable time after notice of the transfer the other party demands that the transferee comply with subsection (2) and the transferee fails to comply.

(2) Within a reasonable time after demand pursuant to subsection (1)(b), the transferee shall:

(a) cure or provide adequate assurance that the transferee will promptly cure any default other than one arising from the transfer;

(b) compensate or provide adequate assurance that the transferee will promptly compensate the other party to the lease contract and any other person holding an interest in the lease contract, except the party whose interest is being transferred, for any loss to that party resulting from the transfer;

(c) provide adequate assurance of future due performance under the lease contract; and

(d) assume the lease contract.

(3) Demand pursuant to subsection (1)(b) is without prejudice to the other party's rights against the transferee and the party whose interest is transferred.

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

(5) Unless otherwise agreed by the lessor and the lessee, no delegation of performance relieves the assignor as against the other party of any duty to perform or any liability for default.

(6) A right to damages for default with respect to the whole lease contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.

(7) To prohibit the transfer of an interest of a party under a lease contract, the language of prohibition must be specific, by a writing, and conspicuous.

**History:** 1989 c 232 art 1 s 2A-303

### 336.2A-304 SUBSEQUENT LEASE OF GOODS BY LESSOR.

(1) Subject to the provisions of section 336.2A-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (2) and section 336.2A-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of purchase the lessor has that power even though:

(a) the lessor's transferor was deceived as to the identity of the lessor;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

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

(2) If a lessee has entrusted leased goods to the lessee's lessor who is a merchant dealing in goods of that kind, a subsequent lessee from that lessor under a lease entered into after the entrustment and in the ordinary course of business takes those goods free of the existing lease contract and obtains, to the extent of the leasehold interest transferred, all of the lessor's and the earlier lessee's rights to the goods.

(3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

**History:** 1989 c 232 art 1 s 2A-304

### 336.2A-305 SALE OR SUBLEASE OF GOODS BY LESSEE.

(1) Subject to the provisions of section 336.2A-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (2) and section 336.2A-511(4), takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (a) the lessor was deceived as to the identity of the lessee;
- (b) the delivery was in exchange for a check which is later dishonored; or
- (c) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

*History: 1989 c 232 art 1 s 2A-305*

### **336.2A-306 PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.**

If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

*History: 1989 c 232 art 1 s 2A-306*

### **336.2A-307 PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS.**

(1) Except as otherwise provided in section 336.2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsections (3) and (4) and in sections 336.2A-306 and 336.2A-308, a creditor of a lessor takes subject to the lease contract:

(a) unless the creditor holds a lien that attached to the goods before the lease contract became enforceable, or

(b) unless the creditor holds a security interest in the goods that under the article on secured transactions (article 9) would have priority over any other security interest in the goods perfected by a filing covering the goods and made at the time the lease contract became enforceable, whether or not any other security interest existed.

(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected and the lessee knows of its existence.

(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

*History: 1989 c 232 art 1 s 2A-307*

### **336.2A-308 SPECIAL RIGHTS OF CREDITORS.**

(1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.

(2) Nothing in this article impairs the rights of creditors of a lessor if the lease contract (a) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and (b) is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.

(3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

**History:** 1989 c 232 art 1 s 2A-308

### 336.2A-309 LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES.

(1) In this section:

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgage on the real estate would be recorded or registered, of a financing statement concerning goods that are or are to become fixtures and conforming to the requirements of subsection (5) of section 336.9-402;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) a mortgage is a "construction mortgage" to the extent 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; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days after that, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may: (a) on default, expiration, termination, or cancellation of the lease agreement by the other party but subject to the provisions of the lease agreement and this article, or (b) if necessary to enforce the lessor's or lessee's other rights and remedies under this article; remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee 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 party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Article on Secured Transactions (article 9).

**History:** 1989 c 232 art 1 s 2A-309

### **336.2A-310 LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS.**

(1) Goods are "accessions" when they are installed in or affixed to other goods.

(2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (4).

(3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (4) but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of the interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(4) The interest of a lessor or a lessee under a lease contract described in subsection (2) or (3) is subordinate to the interest of

(a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(5) When under subsections (2) or (3) and (4) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may: (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or (b) if necessary to enforce the lessor's or lessee's other rights and remedies under this article; remove the goods from the whole, free and clear of all interests in the whole, but the lessor or lessee must reimburse any holder of an interest in the whole who is not the lessee 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 party seeking removal gives adequate security for the performance of this obligation.

**History:** 1989 c 232 art 1 s 2A-310

#### **PART 4. PERFORMANCE OF LEASED CONTRACT: REPUDIATED, SUBSTITUTED, AND EXCUSED**

##### **336.2A-401 INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.**

(1) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(2) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which the insecure party has not already received the agreed return.

(3) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

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

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

**History:** 1989 c 232 art 1 s 2A-401

##### **336.2A-402 ANTICIPATORY REPUDIATION.**

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

(a) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;

(b) make demand pursuant to section 336.2A-401 and await assurance of future performance adequate under the circumstances of the particular case; or

(c) resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.

In addition, whether or not the aggrieved party is pursuing one of the remedies in this section, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (section 336.2A-524).

**History:** 1989 c 232 art 1 s 2A-402

**336.2A-403 RETRACTION OF ANTICIPATORY REPUDIATION.**

(1) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(2) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under section 336.2A-401.

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

*History: 1989 c 232 art 1 s 2A-403*

**336.2A-404 SUBSTITUTED PERFORMANCE.**

(1) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(a) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(b) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

*History: 1989 c 232 art 1 s 2A-404*

**336.2A-405 EXCUSED PERFORMANCE.**

Subject to section 336.2A-404 on substituted performance, the following rules apply:

(a) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but may include regular customers not then under contract for sale or lease as well as other requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

(c) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (b), of the estimated quota made available for the lessee.

*History: 1989 c 232 art 1 s 2A-405*

**336.2A-406 PROCEDURE ON EXCUSED PERFORMANCE.**

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under section 336.2A-405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an install-



ment lease contract the value of the whole lease contract is substantially impaired (section 336.2A-510):

- (a) terminate the lease contract (section 336.2A-505(2)); or
  - (b) except in a finance lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
- (2) If, after receipt of a notification from the lessor under section 336.2A-405, the lessee fails so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

**History:** 1989 c 232 art 1 s 2A-406

### **336.2A-407 IRREVOCABLE PROMISES: FINANCE LEASES.**

- (1) In the case of a finance lease, the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
- (2) A promise that has become irrevocable and independent under subsection (1):
- (a) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and
  - (b) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

**History:** 1989 c 232 art 1 s 2A-407

## **PART 5. DEFAULT**

### **A. IN GENERAL**

#### **336.2A-501 DEFAULT: PROCEDURE.**

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with the party's rights and remedies in respect of the real property, in which case this part does not apply.

**History:** 1989 c 232 art 1 s 2A-501

#### **336.2A-502 NOTICE AFTER DEFAULT.**

Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

**History:** 1989 c 232 art 1 s 2A-502

#### **336.2A-503 MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES.**

- (1) Except as otherwise provided in this article, the lease agreement may include

rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.

(2) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.

(3) Consequential damages may be liquidated under section 336.2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, 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.

(4) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article.

**History:** 1989 c 232 art 1 s 2A-503

### **336.2A-504 LIQUIDATION OF DAMAGES.**

(1) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.

(2) If the lease agreement provides for liquidation of damages, and the provision does not comply with subsection (1), or the provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (section 336.2A-525 or 336.2A-526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

(a) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (1); or

(b) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or \$500.

(4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the lessor establishes:

(a) a right to recover damages under the provisions of this article other than subsection (1); and

(b) the amount or value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

**History:** 1989 c 232 art 1 s 2A-504

### **336.2A-505 CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES.**

(1) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(2) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(3) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(4) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(5) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

*History: 1989 c 232 art 1 s 2A-505*

### **336.2A-506 STATUTE OF LIMITATIONS.**

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. If the lease contract is not a consumer lease, the parties may reduce the period of limitation to not less than one year in the original lease contract.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party.

(3) If an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the 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.

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

*History: 1989 c 232 art 1 s 2A-506*

### **336.2A-507 PROOF OF MARKET RENT: TIME AND PLACE.**

(1) Damages based on market rent (section 336.2A-519 or 336.2A-528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the time of the default.

(2) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term 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 difference, including the cost of transporting the goods to or from the other place.

(3) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until the party has given the other party notice the court finds sufficient to prevent unfair surprise.

(4) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

*History: 1989 c 232 art 1 s 2A-507*

## **B. DEFAULT BY LESSOR**

### **336.2A-508 LESSEE'S REMEDIES.**

(1) If a lessor fails to deliver the goods in conformity to the lease contract (section

336.2A-509) or repudiates the lease contract (section 336.2A-402), or a lessee rightfully rejects the goods (section 336.2A-509) or justifiably revokes acceptance of the goods (section 336.2A-517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 336.2A-510), the lessor is in default under the lease contract and the lessee may pursue any or all of the following remedies:

(a) cancel the lease contract (section 336.2A-505(1));

(b) recover so much of the rent and security as has been paid, but in the case of an installment lease contract the recovery is that which is just under the circumstances;

(c) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (sections 336.2A-518 and 336.2A-520), or recover damages for nondelivery (sections 336.2A-519 and 336.2A-520).

(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(a) if the goods have been identified, recover them (section 336.2A-522); or

(b) in a proper case, obtain specific performance or replevy the goods (section 336.2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and remedies provided in the lease contract and this article.

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (section 336.2A-519(4)).

(5) On rightful rejection or justifiable revocation of acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to the provisions of section 336.2A-527(5).

(6) Subject to the provisions of section 336.2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

*History: 1989 c 232 art 1 s 2A-508*

### **336.2A-509 LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION.**

(1) Subject to the provisions of section 336.2A.510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

*History: 1989 c 232 art 1 s 2A-509*

### **336.2A-510 INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT.**

(1) Under an installment lease contract, a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.

(2) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without season-

ably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

**History:** 1989 c 232 art 1 s 2A-510

### **336.2A-511 MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.**

(1) Subject to any security interest of a lessee (section 336.2A-508(5)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) If a merchant lessee (subsection (1)) or any other lessee (section 336.2A-512) disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to a commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent of the gross proceeds.

(3) In complying with this section or section 336.2A-512, the lessee is held only to good faith. Good faith conduct is neither acceptance or conversion nor the basis of an action for damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or section 336.2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this article.

**History:** 1989 c 232 art 1 s 2A-511

### **336.2A-512 LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS.**

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (section 336.2A-511) and subject to any security interest of a lessee (section 336.2A-508(5)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's reasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in section 336.2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

**History:** 1989 c 232 art 1 s 2A-512

### **336.2A-513 CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT.**

(1) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided in the lease contract.

(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

**History:** 1989 c 232 art 1 s 2A-513

**336.2A-514 WAIVER OF LESSEE'S OBJECTIONS.**

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (section 336.2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

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

**History:** 1989 c 232 art 1 s 2A-514

**336.2A-515 ACCEPTANCE OF GOODS.**

(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and

(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(b) the lessee fails to make an effective rejection of the goods (section 336.2A-509(2)).

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

**History:** 1989 c 232 art 1 s 2A-515

**336.2A-516 EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER.**

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, or be barred from any remedy;

(b) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (section 336.2A-211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(c) the burden is on the lessee to establish any default.

(4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over:

(a) The lessee may give the lessor or the supplier written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so the lessor or supplier will be bound in any action against the lessor or supplier by the lessee by any determination of fact common to the two litigations, then unless the lessor or the supplier after reasonable receipt of the notice does come in and defend the lessor or supplier is so bound.

(b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (section 336.2A-211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

(5) The provisions of subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (section 336.2A-211).

**History:** 1989 c 232 art 1 s 2A-516

### **336.2A-517 REVOCATION OF ACCEPTANCE OF GOODS.**

(1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(a) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.

(2) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

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

**History:** 1989 c 232 art 1 s 2A-517

### **336.2A-518 COVER; SUBSTITUTE GOODS.**

(1) After default by a lessor under the lease contract (section 336.2A-508(1)), the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or determined by agreement of the parties (section 336.1-102(3)), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (a) the present value, as of the date of default, of the difference between the total rent for the lease term of the new lease agreement and the total rent for the remaining lease term of the original lease agreement and (b) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 336.2A-519 governs.

**History:** 1989 c 232 art 1 s 2A-518

### **336.2A-519 LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS.**

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or determined by agreement of the parties (section 336.1-102(3)), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 336.2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is

the present value as of the date of the default of the difference between the then market rent and the original rent, computed for the remaining lease term of the original lease agreement together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent 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.

(3) If the lessee has accepted goods and given notification (section 336.2A-516(3)), the measure of damages for nonconforming tender or delivery by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) The measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

**History:** 1989 c 232 art 1 s 2A-519

### **336.2A-520 LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES.**

(1) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(2) Consequential damages resulting from a lessor's default include:

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

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

**History:** 1989 c 232 art 1 s 2A-520

### **336.2A-521 LESSEE'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.**

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

(2) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(3) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

**History:** 1989 c 232 art 1 s 2A-521

### **336.2A-522 LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY.**

(1) Subject to subsection (2) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (section 336.2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten days after receipt of the first installment of rent and security.

(2) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

**History:** 1989 c 232 art 1 s 2A-522



**C. DEFAULT BY LESSEE****336.2A-523 LESSOR'S REMEDIES.**

(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (section 336.2A-510), the lessee is in default under the lease contract and the lessor may pursue any or all of the following remedies:

- (a) cancel the lease contract (section 336.2A-505(1));
- (b) proceed respecting goods not identified to the lease contract (section 336.2A-524);
- (c) withhold delivery of the goods and take possession of goods previously delivered (section 336.2A-525);
- (d) stop delivery of the goods by any bailee (section 336.2A-526);
- (e) dispose of the goods and recover damages (section 336.2A-527), or retain the goods and recover damages (section 336.2A-528), or in a proper case recover rent (section 336.2A-529).

(2) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and remedies provided in the lease agreement and this article.

**History:** 1989 c 232 art 1 s 2A-523

**336.2A-524 LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT.**

(1) A lessor aggrieved under section 336.2A-523(1) may:

- (a) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
- (b) dispose of goods (section 336.2A-527(1)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(2) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

**History:** 1989 c 232 art 1 s 2A-524

**336.2A-525 LESSOR'S RIGHT TO POSSESSION OF GOODS.**

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) The lessor has on default by the lessee under the lease contract the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (section 336.2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

**History:** 1989 c 232 art 1 s 2A-525

**336.2A-526 LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE.**

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truck-

load, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

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

**History:** 1989 c 232 art 1 s 2A-526

### 336.2A-527 LESSOR'S RIGHTS TO DISPOSE OF GOODS.

(1) After a default by a lessee under the lease contract (section 336.2A-523(1)) or after the lessor refuses to deliver or takes possession of goods (section 336.2A-525 or 336.2A-526), the lessor may dispose of the goods concerned or the undelivered balance by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or determined by agreement of the parties (section 336.1-102(3)), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (a) accrued and unpaid rent as of the date of the start of the term of the new lease agreement, (b) the present value as of the date of the start of the term of the new lease agreement of the difference between the total rent for the remaining lease term of the original lease agreement and the total rent for the lease term of the new lease agreement, and (c) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 336.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 336.2A-508(5)).

**History:** 1989 c 232 art 1 s 2A-527

### 336.2A-528 LESSOR'S DAMAGES FOR NONACCEPTANCE OR REPUDIATION.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 336.2A-504) or determined by agreement of the parties (section 336.1-102(3)), if a lessor elects to retain the goods or a lessor elects to dispose of the

goods and disposition is by lease agreement that for any reason does not qualify for treatment under section 336.2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for nonacceptance or repudiation by the lessee (a) accrued and unpaid rent as of the date the lessor obtained possession of the goods or an earlier date when the lessee made an effective tender of possession of the goods back to the lessor, (b) the present value as of the date determined under paragraph (a) of the difference between the total rent for the then remaining lease term of the original lease agreement and the market rent at the time determined under paragraph (a), and place for tender computed for the same lease term, and (c) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 336.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

**History:** 1989 c 232 art 1 s 2A-528

### **336.2A-529 LESSOR'S ACTION FOR THE RENT.**

(1) After default by the lessee under the lease contract (section 336.2A-523(1)), if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) for goods accepted by the lessee and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (section 336.2A-219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the date of entry of judgment in favor of the lessor of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default; and

(b) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the date of entry of judgment in favor of the lessor of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under section 336.2A-530, less expenses saved in consequence of the lessee's default.

(2) Except as provided in subsection (3), the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(3) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages will be governed by section 336.2A-527 or 336.2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to use and possession of the goods not then disposed of for the remaining lease term of the lease agreement.

(5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (section 336.2A-402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under sections 336.2A-527 and 336.2A-528.

**History:** 1989 c 232 art 1 s 2A-529

### **336.2A-530 LESSOR'S INCIDENTAL DAMAGES.**

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation,

care, and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

*History: 1989 c 232 art 1 s 2A-530*

### **336.2A-531 STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS.**

(1) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract (a) the lessor has a right of action against the third party, and (b) the lessee also has a right of action against the third party if the lessee:

- (i) has a security interest in the goods;
- (ii) has an insurable interest in the goods; or

(iii) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(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 lease contract and there is no arrangement between them for disposition of the recovery, the party plaintiff's suit or settlement, subject to the party plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

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

*History: 1989 c 232 art 1 s 2A-531*

## **Article 3**

### **COMMERCIAL PAPER**

#### **Part 1**

### **SHORT TITLE, FORM AND INTERPRETATION**

#### **336.3-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code Commercial Paper.

*History: 1965 c 811 s 336.3-101*

#### **336.3-102 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article unless the context otherwise requires:

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

(b) 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.

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

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

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

"Acceptance," section 336.3-410.

"Accommodation party," section 336.3-415.

"Alteration," section 336.3-407.

"Certificate of deposit," section 336.3-104.

"Certification," section 336.3-411.

- “Check,” section 336.3-104.
- “Definite time,” section 336.3-109.
- “Dishonor,” section 336.3-507.
- “Draft,” section 336.3-104.
- “Holder in due course,” section 336.3-302.
- “Negotiation,” section 336.3-202.
- “Note,” section 336.3-104.
- “Notice of dishonor,” section 336.3-508.
- “On demand,” section 336.3-108.
- “Presentment,” section 336.3-504.
- “Protest,” section 336.3-509.
- “Restrictive endorsement,” section 336.3-205.
- “Signature,” section 336.3-401.

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

- “Account,” section 336.4-104.
- “Banking day,” section 336.4-104.
- “Clearing house,” section 336.4-104.
- “Collecting bank,” section 336.4-105.
- “Customer,” section 336.4-104.
- “Depository bank,” section 336.4-105.
- “Documentary draft,” section 336.4-104.
- “Intermediary bank,” section 336.4-105.
- “Item,” section 336.4-104.
- “Midnight deadline,” section 336.4-104.
- “Payor bank,” section 336.4-105.

(4) In addition article 1 contains general definitions and principles of constructions and interpretation applicable throughout this article.

**History:** 1965 c 811 s 336.3-102

### 336.3-103 LIMITATIONS ON SCOPE OF ARTICLE.

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

(2) The provisions of this article are subject to the provisions of the article on bank deposits and collections (article 4) and secured transactions (article 9).

**History:** 1965 c 811 s 336.3-103

### 336.3-104 FORM OF NEGOTIABLE INSTRUMENTS; “DRAFT”; “CHECK”; “CERTIFICATE OF DEPOSIT”; “NOTE”.

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

- (a) be signed by the maker or drawer; and
- (b) 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 article; and
- (c) be payable on demand or at a definite time; and
- (d) be payable to order or to bearer.

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

- (a) a “draft” (“bill of exchange”) if it is an order;
- (b) a “check” if it is a draft drawn on a bank and payable on demand;
- (c) a “certificate of deposit” if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

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

(3) As used in other articles of this chapter, 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 article as well as to instruments which are so negotiable.

**History:** 1965 c 811 s 336.3-104

### 336.3-105 WHEN PROMISE OR ORDER UNCONDITIONAL.

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

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

(b) 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

(c) 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

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

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

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

(g) 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

(h) 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.

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

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

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

**History:** 1965 c 811 s 336.3-105

### 336.3-106 SUM CERTAIN.

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

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

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

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

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

(e) with costs of collection or an attorney's fees or both upon default.

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

**History:** 1965 c 811 s 336.3-106

### 336.3-107 MONEY.

(1) 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.

(2) 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.

**History:** 1965 c 811 s 336.3-107

### **336.3-108 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.

**History:** 1965 c 811 s 336.3-108

### **336.3-109 DEFINITE TIME.**

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

- (a) on or before a stated date or at a fixed period after a stated date; or
- (b) at a fixed period after sight; or
- (c) at a definite time subject to any acceleration; or
- (d) 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.

(2) 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.

**History:** 1965 c 811 s 336.3-109

### **336.3-110 PAYABLE TO ORDER.**

(1) 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 the person or the person's 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

- (a) the maker or drawer; or
- (b) the drawee; or
- (c) a payee who is not maker, drawer or drawee; or
- (d) two or more payees together or in the alternative; or
- (e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or the representative's successors; or
- (f) an office, or an officer by title as such in which case it is payable to the principal but the incumbent of the office or the incumbent's successors may act as if the incumbent or a successor were the holder; or
- (g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be endorsed or transferred by any person thereto authorized.

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

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

**History:** 1965 c 811 s 336.3-110; 1986 c 444

### **336.3-111 PAYABLE TO BEARER.**

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

- (a) bearer or the order of bearer; or
- (b) a specified person or bearer; or
- (c) "cash" or the order of "cash," or any other indication which does not purport to designate a specific payee.

**History:** 1965 c 811 s 336.3-111

**336.3-112 TERMS AND OMISSIONS NOT AFFECTING NEGOTIABILITY.**

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

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

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

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

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

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

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

(g) a statement in a draft drawn in a set of parts (section 336.3-801) to the effect that the order is effective only if no other part has been honored.

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

*History: 1965 c 811 s 336.3-112*

**336.3-113 SEAL.**

An instrument otherwise negotiable is within this article even though it is under a seal.

*History: 1965 c 811 s 336.3-113*

**336.3-114 DATE, ANTEDATING, POSTDATING.**

(1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) 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.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

*History: 1965 c 811 s 336.3-114*

**336.3-115 INCOMPLETE INSTRUMENTS.**

(1) 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.

(2) If the completion is unauthorized the rules as to material alteration apply (section 336.3-407), 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.

*History: 1965 c 811 s 336.3-115*

**336.3-116 INSTRUMENTS PAYABLE TO TWO OR MORE PERSONS.**

An instrument payable to the order of two or more persons

(a) 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;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

*History: 1965 c 811 s 336.3-116*



**336.3-117 INSTRUMENTS PAYABLE WITH WORDS OF DESCRIPTION.**

An instrument made payable to a named person with the addition of words describing the named person

- (a) as agent or officer of a specified person is payable to the principal but the agent or officer may act as if the agent or officer were the holder;
- (b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by the payee;
- (c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

*History: 1965 c 811 s 336.3-117; 1986 c 444*

**336.3-118 AMBIGUOUS TERMS AND RULES OF CONSTRUCTION.**

The following rules apply to every instrument:

- (a) 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.
- (b) Handwritten terms control typewritten and printed terms, and typewritten control printed.
- (c) Words control figures except that if the words are ambiguous figures control.
- (d) 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.
- (e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or endorser 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."
- (f) 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 the option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 336.3-604 tenders full payment when the instrument is due.

*History: 1965 c 811 s 336.3-118; 1986 c 444*

**336.3-119 OTHER WRITINGS AFFECTING INSTRUMENT.**

(1) As between the obligor and the obligor's 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 the holder's rights arising out of the separate written agreement if the holder had no notice of the limitation when taking the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

*History: 1965 c 811 s 336.3-119; 1986 c 444*

**336.3-120 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.

*History: 1965 c 811 s 336.3-120*

**336.3-121 INSTRUMENTS PAYABLE AT BANK.**

A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

*History: 1965 c 811 s 336.3-121*

**336.3-122 ACCRUAL OF CAUSE OF ACTION.**

(1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date, or, if no date is stated, on the date of issue.

(2) 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.

(3) A cause of action against a drawer of a draft or an endorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

**History:** 1965 c 811 s 336.3-122

**Part 2****TRANSFER AND NEGOTIATION****336.3-201 TRANSFER: RIGHT TO ENDORSEMENT.**

(1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has 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 position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) 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 endorsement of the transferor. Negotiation takes effect only when the endorsement is made and until that time there is no presumption that the transferee is the owner.

**History:** 1965 c 811 s 336.3-201; 1986 c 444

**336.3-202 NEGOTIATION.**

(1) 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 endorsement; if payable to bearer it is negotiated by delivery.

(2) An endorsement 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.

(3) An endorsement 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.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an endorsement do not effect its character as an endorsement.

**History:** 1965 c 811 s 336.3-202

**336.3-203 WRONG OR MISSPELLED NAME.**

Where an instrument is made payable to a person under a misspelled name or one other than the person's own the person may endorse in that name or the person's own or both; but signature in both names may be required by a person paying or giving value for the instrument.

**History:** 1965 c 811 s 336.3-203; 1986 c 444

**336.3-204 SPECIAL ENDORSEMENT; BLANK ENDORSEMENT.**

(1) A special endorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially endorsed becomes payable to the order of the special endorsee and may be further negotiated only by the special endorsee's endorsement.

(2) An endorsement in blank specifies no particular endorsee and may consist of a mere signature. An instrument payable to order and endorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially endorsed.

(3) The holder may convert a blank endorsement into a special endorsement by writing over the signature of the endorser in blank any contract consistent with the character of the endorsement.

*History: 1965 c 811 s 336.3-204; 1986 c 444*

**336.3-205 RESTRICTIVE ENDORSEMENTS.**

An endorsement is restrictive which either

- (a) is conditional; or
- (b) purports to prohibit further transfer of the instrument; or
- (c) includes the words "for collection," "for deposit," "pay any bank," or like terms signifying a purpose of deposit or collection; or
- (d) otherwise states that it is for the benefit or use of the endorser or of another person.

*History: 1965 c 811 s 336.3-205*

**336.3-206 EFFECT OF RESTRICTIVE ENDORSEMENT.**

(1) No restrictive endorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an endorsement which is conditional or includes the words "for collection," "for deposit," "pay any bank," or like terms (subparagraphs (a) and (c) of section 336.3-205) must pay or apply any value given by the transferee for or on the security of the instrument consistently with the endorsement and the transferee to the extent of doing so becomes a holder for value. In addition such transferee is a holder in due course by virtue of otherwise complying with the requirements of section 336.3-302 on what constitutes a holder in due course.

(4) The first taker under an endorsement for the benefit of the endorser or another person (subparagraph (d) of section 336.3-205) must pay or apply any value given by the first taker for or on the security of the instrument consistently with the endorsement and to the extent of doing so becomes a holder for value. In addition such taker becomes a holder in due course by otherwise complying with the requirements of section 336.3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive endorsement unless that holder has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for that person's own benefit or otherwise in breach of duty (subsection (2) of section 336.3-304).

*History: 1965 c 811 s 336.3-206; 1986 c 444*

**336.3-207 NEGOTIATION EFFECTIVE ALTHOUGH IT MAY BE RESCINDED.**

- (1) Negotiation is effective to transfer the instrument although the negotiation is
- (a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
  - (b) obtained by fraud, duress or mistake of any kind; or

- (c) part of an illegal transaction; or
- (d) made in breach of duty.

(2) 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.

**History:** 1965 c 811 s 336.3-207

### 336.3-208 REACQUISITION.

Where an instrument is returned to or reacquired by a prior party the prior party may cancel any endorsement which is not necessary to the prior party's 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 the intervening party's endorsement has been canceled is discharged as against subsequent holders in due course as well.

**History:** 1965 c 811 s 336.3-208; 1986 c 444

## Part 3

### RIGHTS OF A HOLDER

#### 336.3-301 RIGHTS OF A HOLDER.

The holder of an instrument whether or not the holder is the owner may transfer or negotiate it and, except as otherwise provided in section 336.3-603 on payment or satisfaction, discharge it or enforce payment in the holder's own name.

**History:** 1965 c 811 s 336.3-301; 1986 c 444

#### 336.3-302 HOLDER IN DUE COURSE.

- (1) A holder in due course is a holder who takes the instrument
  - (a) for value; and
  - (b) in good faith; and
  - (c) 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.
- (2) A payee may be a holder in due course.
- (3) A holder does not become a holder in due course of an instrument
  - (a) by purchase of it at judicial sale or by taking it under legal process; or
  - (b) by acquiring it in taking over an estate; or
  - (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.
- (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

**History:** 1965 c 811 s 336.3-302

#### 336.3-303 TAKING FOR VALUE.

A holder takes the instrument for value

- (a) to the extent that the agreed consideration has been performed or that the holder acquires a security interest in or a lien on the instrument otherwise than by legal process; or
- (b) when the holder takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or
- (c) when the holder gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

**History:** 1965 c 811 s 336.3-303; 1986 c 444

**336.3-304 NOTICE TO PURCHASER.**

(1) The purchaser has notice of a claim or defense if

(a) 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

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when the purchaser has knowledge that a fiduciary has negotiated the instrument in payment of or as security for the fiduciary's own debt or in any transaction for the fiduciary's own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if the purchaser has reason to know

(a) 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

(b) that acceleration of the instrument has been made; or

(c) that the purchaser 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 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim:

(a) That the instrument is antedated or postdated;

(b) 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;

(c) That any party has signed for accommodation;

(d) That an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) That any person negotiating the instrument is or was a fiduciary;

(f) 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.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

**History:** 1965 c 811 s 336.3-304; 1986 c 444

**336.3-305 RIGHTS OF A HOLDER IN DUE COURSE.**

To the extent that a holder is a holder in due course the holder takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) 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

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when taking the instrument.

**History:** 1965 c 811 s 336.3-305; 1986 c 444

**336.3-306 RIGHTS OF ONE NOT HOLDER IN DUE COURSE.**

Unless a person has the rights of a holder in due course the person takes the instrument subject to

- (a) all valid claims to it on the part of any person; and
- (b) all defenses of any party which would be available in an action on a simple contract; and
- (c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 336.3-408); and
- (d) the defense that the taker or a person through whom the taker holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive endorsement. 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 actually defends the action for such party.

*History: 1965 c 811 s 336.3-306; 1986 c 444*

**336.3-307 BURDEN OF ESTABLISHING SIGNATURES, DEFENSES AND DUE COURSE.**

(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

- (a) the burden of establishing it is on the party claiming under the signature; but
- (b) 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.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) 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 the claimant or some person under whom the claimant claims is in all respects a holder in due course.

*History: 1965 c 811 s 336.3-307; 1986 c 444*

**Part 4****LIABILITY OF PARTIES****336.3-401 SIGNATURE.**

(1) No person is liable on an instrument unless the person's signature appears thereon.

(2) 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.

*History: 1965 c 811 s 336.3-401; 1986 c 444*

**336.3-402 SIGNATURE IN AMBIGUOUS CAPACITY.**

Unless the instrument clearly indicates that a signature is made in some other capacity it is an endorsement.

*History: 1965 c 811 s 336.3-402*

**336.3-403 SIGNATURE BY AUTHORIZED REPRESENTATIVE.**

(1) A signature may be made by an agent or other representative, and the authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs the authorized representative's name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but 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.

(3) 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.

**History:** 1965 c 811 s 336.3-403; 1986 c 444

### **336.3-404 UNAUTHORIZED SIGNATURES.**

(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless the named person 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.

(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

**History:** 1965 c 811 s 336.3-404; 1986 c 444

### **336.3-405 IMPOSTORS; SIGNATURE IN NAME OF PAYEE.**

(1) An endorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to the impostor or a confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied the maker or drawer with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so endorsing.

**History:** 1965 c 811 s 336.3-405; 1986 c 444

### **336.3-406 NEGLIGENCE CONTRIBUTING TO ALTERATION OR UNAUTHORIZED SIGNATURE.**

Any person whose 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.

**History:** 1965 c 811 s 336.3-406; 1986 c 444

### **336.3-407\* ALTERATION.**

(1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) 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;

(b) 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.

(3) 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, that holder may enforce it as completed.

*History: 1965 c 811 s 336.3-407; 1986 c 444*

### **336.3-408 CONSIDERATION.**

Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 336.3-305), 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 chapter 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.

*History: 1965 c 811 s 336.3-408*

### **336.3-409 DRAFT NOT AN ASSIGNMENT.**

(1) 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 accepting it.

(2) 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.

*History: 1965 c 811 s 336.3-409; 1986 c 444*

### **336.3-410 DEFINITION AND OPERATION OF ACCEPTANCE.**

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of the drawee's signature alone. It becomes operative when completed by delivery or notification.

(2) 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.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date the acceptance the holder may complete it by supplying a date in good faith.

*History: 1965 c 811 s 336.3-410; 1986 c 444*

### **336.3-411 CERTIFICATION OF A CHECK.**

(1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior endorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper endorsement. If it does so the drawer is discharged.

*History: 1965 c 811 s 336.3-411*

### **336.3-412 ACCEPTANCE VARYING DRAFT.**

(1) 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 the acceptance canceled.

(2) 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.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and endorser who does not affirmatively assent is discharged.

*History: 1965 c 811 s 336.3-412; 1986 c 444*



**336.3-413 CONTRACT OF MAKER, DRAWER AND ACCEPTOR.**

(1) The maker or acceptor engages to pay the instrument according to its tenor at the time of the engagement or as completed pursuant to section 336.3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest the drawer will pay the amount of the draft to the holder or to any endorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and the payee's then capacity to endorse.

*History: 1965 c 811 s 336.3-413; 1986 c 444*

**336.3-414 CONTRACT OF ENDORSER; ORDER OF LIABILITY.**

(1) Unless the endorsement otherwise specifies (as by such words as "without recourse") every endorser engages that upon dishonor and any necessary notice of dishonor and protest the endorser will pay the instrument according to its tenor at the time of the endorsement to the holder or to any subsequent endorser who takes it up, even though the endorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree endorsers are liable to one another in the order in which they endorse, which is presumed to be the order in which their signatures appear on the instrument.

*History: 1965 c 811 s 336.3-414; 1986 c 444*

**336.3-415 CONTRACT OF ACCOMMODATION PARTY.**

(1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending the accommodation party's name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which the accommodation party has signed even though the taker knows of the accommodation.

(3) 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 the accommodation party's character as such. In other cases the accommodation character may be shown by oral proof.

(4) An endorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and on paying the instrument has a right of recourse on the instrument against such party.

*History: 1965 c 811 s 336.3-415; 1986 c 444*

**336.3-416 CONTRACT OF GUARANTOR.**

(1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due the signer will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due the signer will pay it according to its tenor, but only after the holder has reduced the holder's 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 the maker or acceptor.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect the maker's or acceptor's 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.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

**History:** 1965 c 811 s 336.3-416; 1986 c 444

### 336.3-417 WARRANTIES ON PRESENTMENT AND TRANSFER.

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) the warrantor 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

(b) the warrantor 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

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) 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

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) 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

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to the transferee and if the transfer is by endorsement to any subsequent holder who takes the instrument in good faith that

(a) the transferor has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has had a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against the transferor; and

(e) the transferor has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that the transferor has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that the agent or broker is acting only as such gives the warranties provided in this section, but by making such disclosure warrants only the agent's or broker's good faith and authority.

**History:** 1965 c 811 s 336.3-417; 1986 c 444

### 336.3-418 FINALITY OF PAYMENT OR ACCEPTANCE.

Except for recovery of bank payments as provided in the article on bank deposits

and collections (article 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 position in reliance on the payment.

**History:** 1965 c 811 s 336.3-418; 1986 c 444

### **336.3-419 CONVERSION OF INSTRUMENT; INNOCENT REPRESENTATIVE.**

(1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged endorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this chapter concerning restrictive endorsements 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 its hands.

(4) 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 endorsed restrictively (sections 336.3-205 and 336.3-206) are not paid or applied consistently with the restrictive endorsement of an endorser other than its immediate transferor.

**History:** 1965 c 811 s 336.3-419; 1986 c 444

## **Part 5**

### **PRESENTMENT, NOTICE OF DISHONOR AND PROTEST**

#### **336.3-501 WHEN PRESENTMENT, NOTICE OF DISHONOR, AND PROTEST NECESSARY OR PERMISSIBLE.**

(1) Unless excused (section 336.3-511) presentment is necessary to charge secondary parties as follows:

(a) Presentment for acceptance is necessary to charge the drawer and endorsers 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 has the option of presenting for acceptance any other draft payable at a stated date;

(b) Presentment for payment is necessary to charge any endorser;

(c) 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 336.3-502(1) (b).

(2) Unless excused (section 336.3-511)

(a) notice of any dishonor is necessary to charge any endorser;

(b) 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 336.3-502(1) (b).

(3) Unless excused (section 336.3-511) protest of any dishonor is necessary to charge the drawer and endorsers 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 has the option of making 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.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an endorser who has endorsed an instrument after maturity.

**History:** 1965 c 811 s 336.3-501; 1969 c 621 s 3; 1986 c 444

### 336.3-502 UNEXCUSED DELAY; DISCHARGE.

(1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any endorser is discharged; and

(b) 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 liability by written assignment to the holder of that person's rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or endorser is discharged.

**History:** 1965 c 811 s 336.3-502; 1986 c 444

### 336.3-503 TIME OF PRESENTMENT.

(1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) 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;

(b) 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;

(c) Where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) Where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) 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.

(2) 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:

(a) With respect to the liability of the drawer, 30 days after date or issue whichever is later; and

(b) With respect to the liability of an endorser, seven days after endorsement.

(3) 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.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

**History:** 1965 c 811 s 336.3-503; 1986 c 444

**336.3-504 HOW PRESENTMENT MADE.**

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) 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 that party is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in section 336.4-210 presentment may be made in the manner and with the result stated in that section.

**History:** 1965 c 811 s 336.3-504; 1986 c 444

**336.3-505 RIGHTS OF PARTY TO WHOM PRESENTMENT IS MADE.**

(1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of the presenter's authority to make it if made for another; and

(c) 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

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) 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.

**History:** 1965 c 811 s 336.3-505; 1986 c 444

**336.3-506 TIME ALLOWED FOR ACCEPTANCE OR PAYMENT.**

(1) 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 dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) 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.

**History:** 1965 c 811 s 336.3-506

**336.3-507 DISHONOR; HOLDER'S RIGHT OF RECOURSE; TERM ALLOWING RE-PRESENTMENT.**

(1) An instrument is dishonored when

(a) 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 336.4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and endorsers.

(3) Return of an instrument for lack of proper endorsement is not dishonor.

(4) A term in a draft or an endorsement 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 the holder may present again up to the end of the stated time.

**History:** 1965 c 811 s 336.3-507; 1986 c 444

### **336.3-508 NOTICE OF DISHONOR.**

(1) 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 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 its principal or customer or to another agent or bank from which the instrument was received.

(2) 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.

(3) 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.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) 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 the party's estate.

(7) When any party is dead or incompetent notice may be sent to the party's last known address or given to a personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

**History:** 1965 c 811 s 336.3-508; 1986 c 444

### **336.3-509 PROTEST; NOTING FOR PROTEST.**

(1) 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.

(2) 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.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) 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.

**History:** 1965 c 811 s 336.3-509

**336.3-510 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:

(a) A document regular in form as provided in the preceding section which purports to be a protest;

(b) 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;

(c) 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.

**History:** 1965 c 811 s 336.3-510

**336.3-511 WAIVED OR EXCUSED PRESENTMENT, PROTEST OR NOTICE OF DISHONOR OR DELAY THEREIN.**

(1) 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 the party's control and the party exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has dishonored the instrument or has countermanded payment or otherwise has no reason to except or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) 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

(b) acceptance or payment is refused but not for want of proper presentment.

(4) 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.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) 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 endorser it binds the endorser only.

**History:** 1965 c 811 s 336.3-511; 1986 c 444

**Part 6****DISCHARGE****336.3-601 DISCHARGE OF PARTIES.**

(1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (section 336.3-603); or

(b) tender of payment (section 336.3-604); or

(c) cancellation or renunciation (section 336.3-605); or

(d) impairment of right of recourse or of collateral (section 336.3-606); or

(e) reacquisition of the instrument by a prior party (section 336.3-208); or

- (f) fraudulent and material alteration (section 336.3-407); or
- (g) certification of a check (section 336.3-411); or
- (h) acceptance varying a draft (section 336.3-412); or
- (i) unexcused delay in presentment or notice of dishonor or protest (section 336.3-502).

(2) Any party is also discharged from liability on an instrument to another party by any other act or agreement with such party which would discharge the former's simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has no right of action or recourse on the instrument

(a) reacquires the instrument in the reacquiring person's own right; or

(b) is discharged under any provision of this article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 336.3-606).

**History:** 1965 c 811 s 336.3-601; 1986 c 444

### 336.3-602 EFFECT OF DISCHARGE AGAINST HOLDER IN DUE COURSE.

No discharge of any party provided by this article is effective against a subsequent holder in due course unless the holder has notice thereof when taking the instrument.

**History:** 1965 c 811 s 336.3-602; 1986 c 444

### 336.3-603 PAYMENT OR SATISFACTION.

(1) The liability of any party is discharged to the extent of the party's 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

(a) 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

(b) 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 endorsed in a manner not consistent with the terms of such restrictive endorsement.

(2) 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 that person the rights of a transferee (section 336.3-201).

**History:** 1965 c 811 s 336.3-603; 1986 c 444

### 336.3-604 TENDER OF PAYMENT.

(1) 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 attorneys' fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) 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.

**History:** 1965 c 811 s 336.3-604

### 336.3-605 CANCELLATION AND RENUNCIATION.

(1) The holder of an instrument may even without consideration discharge any party



(a) in any manner apparent on the face of the instrument or the endorsement, as by intentionally canceling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing the holder's rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

**History:** 1965 c 811 s 336.3-605; 1986 c 444

### **336.3-606 IMPAIRMENT OF RECOURSE OR OF COLLATERAL.**

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) 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

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom the party has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all the holder's rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

**History:** 1965 c 811 s 336.3-606; 1986 c 444

## **Part 7**

### **ADVICE OF INTERNATIONAL**

#### **SIGHT DRAFT**

### **336.3-701 LETTER OF ADVICE OF INTERNATIONAL SIGHT DRAFT.**

(1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) 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.

(3) 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.

**History:** 1965 c 811 s 336.3-701

## Part 8

## MISCELLANEOUS

**336.3-801 DRAFTS IN A SET.**

(1) 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.

(2) Any person who negotiates, endorses 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.

(3) 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 (2). 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 336.4-407).

(4) 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.

**History:** 1965 c 811 s 336.3-801

**336.3-802 EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH IT IS GIVEN.**

(1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) 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

(b) 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 that obligor on the obligation.

(2) 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.

**History:** 1965 c 811 s 336.3-802; 1986 c 444

**336.3-803 NOTICE TO THIRD PARTY.**

Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article the defendant 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 the third person under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so such a person will in any action against the person notified 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 such a person is so bound.

**History:** 1965 c 811 s 336.3-803; 1986 c 444

**336.3-804 LOST, DESTROYED OR STOLEN INSTRUMENTS.**

The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in the owner's name and recover from any party liable thereon upon due proof of ownership, the facts which prevent the owner's 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.

*History: 1965 c 811 s 336.3-804; 1986 c 444*

### **336.3-805 INSTRUMENTS NOT PAYABLE TO ORDER OR TO BEARER.**

This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument.

*History: 1965 c 811 s 336.3-805*

## **Article 4**

### **BANK DEPOSITS AND COLLECTIONS**

#### **Part 1**

#### **GENERAL PROVISIONS AND DEFINITIONS**

### **336.4-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code - Bank Deposits and Collections.

*History: 1965 c 811 s 336.4-101*

### **336.4-102 APPLICABILITY.**

(1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or nonaction 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 nonaction 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.

*History: 1965 c 811 s 336.4-102*

### **336.4-103 VARIATION BY AGREEMENT; MEASURE OF DAMAGES; CERTAIN ACTION CONSTITUTING ORDINARY CARE.**

(1) The effect of the provisions of this article 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.

(2) Federal reserve regulations and operating letters, clearinghouse rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or nonaction approved by this article or pursuant to federal reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) 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 real-

ized 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.

**History:** 1965 c 811 s 336.4-103

### 336.4-104 DEFINITIONS AND INDEX OF DEFINITIONS.

(1) In this article unless the context otherwise requires:

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day, excluding Saturday, Sunday and holidays, on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearinghouse" means any association of banks or other payors regularly clearing items;

(e) "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;

(f) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "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;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "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.

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

"Collecting bank," section 336.4-105

"Depository bank," section 336.4-105

"Intermediary bank," section 336.4-105

"Payor bank," section 336.4-105

"Presenting bank," section 336.4-105

"Remitting bank," section 336.4-105

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

"Acceptance," section 336.3-410

"Certificate of deposit," section 336.3-104

"Certification," section 336.3-411

"Check," section 336.3-104

"Draft," section 336.3-104

"Holder in due course," section 336.3-302

"Notice of dishonor," section 336.3-508

"Presentment," section 336.3-504

"Protest," section 336.3-509

“Secondary party,” section 336.3-102

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

*History: 1965 c 811 s 336.4-104; 1978 c 529 s 1*

**336.4-105 “DEPOSITARY BANK”; “INTERMEDIARY BANK”; “COLLECTING BANK”; “PAYOR BANK”; “PRESENTING BANK”; “REMITTING BANK”.**

In this article unless the context otherwise requires:

(a) “Depositary bank” means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) “Payor bank” means a bank by which an item is payable as drawn or accepted;

(c) “Intermediary bank” means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) “Collecting bank” means any bank handling the item for collection except the payor bank;

(e) “Presenting bank” means any bank presenting an item except a payor bank;

(f) “Remitting bank” means any payor or intermediary bank remitting for an item.

*History: 1965 c 811 s 336.4-105*

**336.4-106 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 article and under article 3.

*History: 1965 c 811 s 336.4-106*

**336.4-107 TIME OF RECEIPT OF ITEMS.**

(1) 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 cutoff hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cutoff 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.

*History: 1965 c 811 s 336.4-107*

**336.4-108 DELAYS.**

(1) 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 chapter 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.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this chapter 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.

*History: 1965 c 811 s 336.4-108*

**336.4-109 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:

(a) Verification of any signature;

- (b) Ascertaining that sufficient funds are available;
- (c) Affixing a "paid" or other stamp;
- (d) Entering a charge or entry to a customer's account;
- (e) Correcting or reversing an entry or erroneous action with respect to the item.

**History:** 1965 c 811 s 336.4-109

## Part 2

### COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

#### 336.4-201 PRESUMPTION AND DURATION OF AGENCY STATUS OF COLLECTING BANKS AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY OF ARTICLE; ITEM ENDORSED "PAY ANY BANK".

(1) 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 (3) of section 336.4-211 and sections 336.4-212 and 336.4-213) the bank is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement 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 article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been endorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially endorsed by a bank to a person who is not a bank.

**History:** 1965 c 811 s 336.4-201

#### 336.4-202 RESPONSIBILITY FOR COLLECTION; WHEN ACTION SEASONABLE.

(1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of section 336.4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) 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.

(3) Subject to subsection (1) (a), 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.

**History:** 1965 c 811 s 336.4-202

**336.4-203 EFFECT OF INSTRUCTIONS.**

Subject to the provisions of article 3 concerning conversion of instruments (section 336.3-419) and the provisions of both article 3 and this article concerning restrictive endorsements 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.

*History: 1965 c 811 s 336.4-203*

**336.4-204 METHODS OF SENDING AND PRESENTING; SENDING DIRECT TO PAYOR BANK.**

(1) 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.

(2) A collecting bank may send

- (a) any item direct to the payor bank;
- (b) any item to any nonbank payor if authorized by its transferor; and
- (c) any item other than documentary drafts to any nonbank payor, if authorized by federal reserve regulation or operating letter, clearinghouse rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

*History: 1965 c 811 s 336.4-204*

**336.4-205 SUPPLYING MISSING ENDORSEMENT; NO NOTICE FROM PRIOR ENDORSEMENT.**

(1) A depository bank which has taken an item for collection may supply any endorsement of the customer which is necessary to title unless the item contains the words "payee's endorsement 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 the customer's account is effective as the customer's endorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the bank's immediate transferor.

*History: 1965 c 811 s 336.4-205; 1986 c 444*

**336.4-206 TRANSFER BETWEEN BANKS.**

Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

*History: 1965 c 811 s 336.4-206*

**336.4-207 WARRANTIES OF CUSTOMER AND COLLECTING BANK ON TRANSFER OR PRESENTMENT OF ITEMS; TIME FOR CLAIMS.**

(1) 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

(a) it 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

(b) it 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

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) 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

(c) 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

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) 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

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to its transferee and to any subsequent collecting bank who takes the item in good faith that

(a) it 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

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against it; and

(e) it 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 it will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of endorsement 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.

(4) 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.

*History: 1965 c 811 s 336.4-207; 1986 c 444*

### **336.4-208 SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS, AND PROCEEDS.**

(1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) 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 chargeback; or

(c) if it makes an advance on or against the item.

(2) 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.

(3) Receipt by a collecting bank of a final settlement for an item is a realization



on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1) (b) of section 336.9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

**History:** 1965 c 811 s 336.4-208

### **336.4-209 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 336.3-302 on what constitutes a holder in due course.

**History:** 1965 c 811 s 336.4-209

### **336.4-210 PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A BANK; LIABILITY OF SECONDARY PARTIES.**

(1) 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 336.3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 336.3-505 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 the secondary party notice of the facts.

**History:** 1965 c 811 s 336.4-210; 1986 c 444

### **336.4-211 MEDIA OF REMITTANCE; PROVISIONAL AND FINAL SETTLEMENT IN REMITTANCE CASES.**

(1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) 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 clearinghouse or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) 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.

(2) 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 (1) 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.

(3) 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

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) 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;

(b) if the person receiving the settlement has authorized remittance by a nonbank 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 (1) (b), - at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by subparagraphs (a) or (b) 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.

**History:** 1965 c 811 s 336.4-211

### **336.4-212 RIGHT OF CHARGEBACK OR REFUND.**

(1) 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 (3) of section 336.4-211 and subsections (2) and (3) of section 336.4-213).

(2) Within the time and manner prescribed by this section and section 336.4-301, 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.

(3) 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 336.4-301).

(4) The right to charge back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) 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 chargeback 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 chargeback or refund learns that it will not receive payment in ordinary course.

**History:** 1965 c 811 s 336.4-212

### **336.4-213 FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL.**

(1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

- (a) Paid the item in cash; or
- (b) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement; or
- (c) Completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (d) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearinghouse rule or agreement.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse 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.

(3) If a collection bank receives a settlement for an item which is or becomes final (subsection (3) of section 336.4-211, subsection (2) of section 336.4-213) 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.

(4) 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

(a) 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;

(b) 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.

(5) 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.

**History:** 1965 c 811 s 336.4-213

### **336.4-214 INSOLVENCY AND PREFERENCE.**

(1) 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.

(2) 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.

(3) 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 (3) of section 336.4-211, subsections (1) (d), (2) and (3) of section 336.4-213).

(4) 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.

**History:** 1965 c 811 s 336.4-214

## Part 3

## COLLECTION OF ITEMS: PAYOR BANKS

**336.4-301 DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF DISHONOR.**

(1) 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 (1) of section 336.4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) 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.

(3) 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.

(4) An item is returned:

(a) As to an item received through a clearinghouse, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with its rules; or

(b) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to either's instructions.

*History: 1965 c 811 s 336.4-301; 1986 c 444*

**336.4-302 PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM.**

In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 336.4-207), 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

(a) 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

(b) 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.

*History: 1965 c 811 s 336.4-302*

**336.4-303 WHEN ITEMS SUBJECT TO NOTICE, STOP ORDER, LEGAL PROCESS OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED.**

(1) 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:

(a) Accepted or certified the item;

- (b) Paid the item in cash;
  - (c) Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule or agreement;
  - (d) 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
  - (e) Become accountable for the amount of the item under subsection (1) (d) of section 336.4-213 and section 336.4-302 dealing with the payor bank's responsibility for late return of items.
- (2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

**History:** 1965 c 811 s 336.4-303; 1969 c 621 s 2

#### Part 4

### RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

#### 336.4-401 WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT.

(1) As against its customer, a bank may charge against the customer's account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (a) the original tenor of the customer's altered item; or
- (b) the tenor of the customer's completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

**History:** 1965 c 811 s 336.4-401; 1986 c 444

#### 336.4-402 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.

**History:** 1965 c 811 s 336.4-402

#### 336.4-403 CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS.

(1) A customer may by order to the customer's bank stop payment of any item payable for the customer's 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 336.4-303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) 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.

**History:** 1965 c 811 s 336.4-403; 1986 c 444

**336.4-404 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.

**History:** 1965 c 811 s 336.4-404

**336.4-405 DEATH OR INCOMPETENCE OF CUSTOMER.**

(1) 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.

(2) 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.

**History:** 1965 c 811 s 336.4-405

**336.4-406 CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION.**

(1) 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 the customer's unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) the customer's unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) 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 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) 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 (1)) discover and report the customer's 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 endorsement is precluded from asserting against the bank such unauthorized signature or endorsement or such alteration.

(5) 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.

**History:** 1965 c 811 s 336.4-406; 1986 c 444

**336.4-407 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

- (a) of any holder in due course on the item against the drawer or maker; and
- (b) 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
- (c) 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.

*History: 1965 c 811 s 336.4-407*

**Part 5****COLLECTION OF DOCUMENTARY DRAFTS****336.4-501 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.

*History: 1965 c 811 s 336.4-501*

**336.4-502 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.

*History: 1965 c 811 s 336.4-502*

**336.4-503 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 article 5 a bank presenting a documentary draft

- (a) 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
- (b) 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 the referee's 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 seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

*History: 1965 c 811 s 336.4-503; 1986 c 444*

**336.4-504 PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS; SECURITY INTEREST FOR EXPENSES.**

(1) 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.

(2) For its reasonable expenses incurred by action under subsection (1) 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.

**History:** 1965 c 811 s 336.4-504

**Article 4A****FUND TRANSFERS****Part 1****SUBJECT MATTER AND DEFINITIONS****336.4A-101 SHORT TITLE.**

This article may be cited as Uniform Commercial Code—Funds Transfers.

**History:** 1990 c 582 art 1 s 1

**336.4A-102 SUBJECT MATTER.**

Except as otherwise provided in section 336.4A-108, this article applies to funds transfers defined in section 336.4A-104.

**History:** 1990 c 582 art 1 s 2

**336.4A-103 PAYMENT ORDER-DEFINITIONS.**

(a) In this article:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

**History:** 1990 c 582 art 1 s 3



**336.4A-104 FUNDS TRANSFER-DEFINITIONS.**

In this article:

(a) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(b) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(c) "Originator" means the sender of the first payment order in a funds transfer.

(d) "Originator's bank" means (i) the receiving bank to which the payment order of the originator is issued if the originator is not a bank, or (ii) the originator if the originator is a bank.

*History: 1990 c 582 art 1 s 4*

**336.4A-105 OTHER DEFINITIONS.**

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 336.1-201(8)).

(b) Other definitions applying to the article and the sections in which they appear:

"Acceptance." Section 336.4A-209.

"Beneficiary." Section 336.4A-103.

"Beneficiary's bank." Section 336.4A-103.

"Executed." Section 336.4A-301.

"Execution date." Section 336.4A-301.

"Funds transfer." Section 336.4A-104.

"Funds-transfer system rule." Section 336.4A-501.

"Intermediary bank." Section 336.4A-104.

"Originator." Section 336.4A-104.

"Originator's bank." Section 336.4A-104.

"Payment by beneficiary's bank to beneficiary." Section 336.4A-405.

"Payment by originator to beneficiary." Section 336.4A-406.

“Payment by sender to receiving bank.” Section 336.4A-403.

“Payment date.” Section 336.4A-401.

“Payment order.” Section 336.4A-103.

“Receiving bank.” Section 336.4A-103.

“Security procedure.” Section 336.4A-201.

“Sender.” Section 336.4A-103.

(c) The following definitions in article 4 apply to this article:

“Clearing house.” Section 336.4-104.

“Item.” Section 336.4-104.

“Suspends payments.” Section 336.4-104.

(d) In addition, sections 336.1-101 to 336.1-209 contain general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1990 c 582 art 1 s 5

### **336.4A-106 TIME PAYMENT ORDER IS RECEIVED.**

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 336.1-201(27). A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

**History:** 1990 c 582 art 1 s 6

### **336.4A-107 FEDERAL RESERVE REGULATIONS AND OPERATING CIRCULARS.**

Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this article to the extent of the inconsistency.

**History:** 1990 c 582 art 1 s 7

### **336.4A-108 EXCLUSION OF CONSUMER TRANSACTIONS GOVERNED BY FEDERAL LAW.**

This article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law Number 95-630, 92 Stat. 3728, 15 U.S.C. Section 1693 et seq.) as amended from time to time.

**History:** 1990 c 582 art 1 s 8

## Part 2

ISSUANCE AND ACCEPTANCE  
OF PAYMENT ORDER**336.4A-201 SECURITY PROCEDURE.**

“Security procedure” means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or canceling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

**History:** 1990 c 582 art 1 s 9

**336.4A-202 AUTHORIZED AND VERIFIED PAYMENT ORDERS.**

(a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term “sender” in this article includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in section 336.4A-203(a)(1), rights and obligations arising under this section or section 336.4A-203 may not be varied by agreement.

**History:** 1990 c 582 art 1 s 10

**336.4A-203 UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT ORDERS.**

(a) If an accepted payment order is not, under section 336.4A.202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to section 336.4A.202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

*History: 1990 c 582 art 1 s 11*

**336.4A-204 REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER.**

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 336.4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 336.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 336.1-204(1), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

*History: 1990 c 582 art 1 s 12*

**336.4A-205 ERRONEOUS PAYMENT ORDERS.**

(a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to section 336.4A-206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in paragraphs (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

*History: 1990 c 582 art 1 s 13*

### **336.4A-206 TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS-TRANSFER OR OTHER COMMUNICATION SYSTEM.**

(a) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds-transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

*History: 1990 c 582 art 1 s 14*

### **336.4A-207 MISDESCRIPTION OF BENEFICIARY.**

(a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

*History: 1990 c 582 art 1 s 15*

### **336.4A-208 MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S BANK.**

(a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in section 336.4A-302(a)(1).

*History: 1990 c 582 art 1 s 16*

### **336.4A-209 ACCEPTANCE OF PAYMENT ORDER.**

(a) Subject to subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in section 336.4A-405(a) or 336.4A-405(b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to section 336.4A-403(a)(1) or 336.4A-403(a)(2); or

(3) the opening of the next funds-transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under subsection (b)(2) or (b)(3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to section 336.4A-211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

*History: 1990 c 582 art 1 s 17*

### **336.4A-210 REJECTION OF PAYMENT ORDER.**

(a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to section 336.4A-211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

**History:** 1990 c 582 art 1 s 18

### **336.4A-211 CANCELLATION AND AMENDMENT OF PAYMENT ORDER.**

(a) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds-transfer system



rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

*History: 1990 c 582 art 1 s 19*

### **336.4A-212 LIABILITY AND DUTY OF RECEIVING BANK REGARDING UNACCEPTED PAYMENT ORDER.**

If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this article, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this article or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in section 336.4A-209, and liability is limited to that provided in this article. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this article or by express agreement.

*History: 1990 c 582 art 1 s 20*

## **Part 3**

### **EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK**

#### **336.4A-301 EXECUTION AND EXECUTION DATE.**

(a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the day on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

*History: 1990 c 582 art 1 s 21*

#### **336.4A-302 OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF PAYMENT ORDER.**

(a) Except as provided in subsections (b) through (d), if the receiving bank accepts a payment order pursuant to section 336.4A-209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds-transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the

originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means, and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds-transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds-transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds transfer.

(c) Unless subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

*History: 1990 c 582 art 1 s 22*

### **336.4A-303 ERRONEOUS EXECUTION OF PAYMENT ORDER.**

(a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order, or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under section 336.4A-402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under section 336.4A-402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the

funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

*History: 1990 c 582 art 1 s 23*

### **336.4A-304 DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED PAYMENT ORDER.**

If the sender of a payment order that is erroneously executed as stated in section 336.4A-303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under section 336.4A-402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

*History: 1990 c 582 art 1 s 24*

### **336.4A-305 LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE TO EXECUTE PAYMENT ORDER.**

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of section 336.4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of section 336.4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

*History: 1990 c 582 art 1 s 25*

**Part 4**  
**PAYMENT**

**336.4A-401 PAYMENT DATE.**

“Payment date” of a payment order means the day on which the amount of the order is payable to the beneficiary by the beneficiary’s bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary’s bank and, unless otherwise determined, is the day the order is received by the beneficiary’s bank.

*History: 1990 c 582 art 1 s 26*

**336.4A-402 OBLIGATION OF SENDER TO PAY RECEIVING BANK.**

(a) This section is subject to sections 336.4A-205 and 336.4A-207.

(b) With respect to a payment order issued to the beneficiary’s bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to subsection (e) and to section 336.4A-303. With respect to a payment order issued to a receiving bank other than the beneficiary’s bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender’s order. Payment by the sender is not due until the execution date of the sender’s order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary’s bank of a payment order instructing payment to the beneficiary of that sender’s payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided in sections 336.4A-204 and 336.4A-304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as stated in subsection (c) and an intermediary bank is obliged to refund payment as stated in subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as stated in section 336.4A-302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary bank is subrogated to the right of the bank that paid the intermediary bank to refund as stated in subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in subsection (c) or to receive refund under subsection (d) may not be varied by agreement.

*History: 1990 c 582 art 1 s 27*

**336.4A-403 PAYMENT BY SENDER TO RECEIVING BANK.**

(a) Payment of the sender’s obligation under section 336.4A-402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds-transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank,

payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds-transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds-transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds-transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under section 336.4A-402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by subsection (a), the time when payment of the sender's obligation under section 336.4A-402(b) or 336.4A-402(c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

**History:** 1990 c 582 art 1 s 28

#### **336.4A-404 OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE NOTICE TO BENEFICIARY.**

(a) Subject to sections 336.4A-211(e), 336.4A-405(d), and 336.4A-405(e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in subsection (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subsection (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

**History:** 1990 c 582 art 1 s 29

**336.4A-405 PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY.**

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under section 336.4A-404(a) occurs when and to the extent (i) the beneficiary is notified of the right to withdraw the credit, (ii) the bank lawfully applies the credit to a debt of the beneficiary, or (iii) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under section 336.4A-404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds-transfer system rule may provide that payments made to beneficiaries of funds transfers made through the system are provisional until receipt of payment by the beneficiary's bank of the payment order it accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank, and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under section 336.4A-406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds-transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer, (i) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance, (ii) the beneficiary's bank is entitled to recover payment from the beneficiary, (iii) no payment by the originator to the beneficiary occurs under section 336.4A-406, and (iv) subject to section 336.4A-402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under section 336.4A-402(c) because the funds transfer has not been completed.

*History: 1990 c 582 art 1 s 30*

**336.4A-406 PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF UNDERLYING OBLIGATION.**

(a) Subject to sections 336.4A-211(e), 336.4A-405(d), and 336.4A-405(e), the originator of a funds transfer pays the beneficiary of the originator's payment order (i) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer and (ii) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under subsection (a) was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order

by the beneficiary's bank, notified the originator of the beneficiary's refusal of payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under section 336.4A-404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

*History: 1990 c 582 art 1 s 31*

## Part 5

### MISCELLANEOUS PROVISIONS

#### **336.4A-501 VARIATION BY AGREEMENT AND EFFECT OF FUNDS-TRANSFER SYSTEM RULE.**

(a) Except as otherwise provided in this article, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds-transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds-transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this article, a funds-transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this article and indirectly affects another party to the funds transfer who does not consent to the rule. A funds-transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in sections 336.4A-404(c), 336.4A-405(d), and 336.4A-507(c).

*History: 1990 c 582 art 1 s 32*

#### **336.4A-502 CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF BY BENEFICIARY'S BANK.**

(a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank, the following rules apply:

(1) The bank may credit the beneficiary's account. The amount credited may be

set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

*History: 1990 c 582 art 1 s 33*

### **336.4A-503 INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO FUNDS TRANSFER.**

For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

*History: 1990 c 582 art 1 s 34*

### **336.4A-504 ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT.**

(a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

*History: 1990 c 582 art 1 s 35*

### **336.4A-505 PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT.**

If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

*History: 1990 c 582 art 1 s 36*

### **336.4A-506 RATE OF INTEREST.**

(a) If, under this article, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by a funds-transfer system rule if the payment order is transmitted through a funds-transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in subsection (a), the amount is calculated by multiplying the applicable Federal Funds



rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the receiving bank.

**History:** 1990 c 582 art 1 s 37

### 336.4A-507 CHOICE OF LAW.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described in each paragraph of subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction.

(c) A funds-transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds-transfer system might be used in the funds transfer and of the choice of law by the system. The law of a jurisdiction selected pursuant to this subsection may govern, whether or not that law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under subsection (b) and a choice-of-law rule under subsection (c), the agreement under subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds-transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

**History:** 1990 c 582 art 1 s 38

## Article 5

## LETTERS OF CREDIT

**336.5-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code - Letters of Credit.

*History: 1965 c 811 s 336.5-101*

**336.5-102 SCOPE.**

(1) This article applies

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

(b) 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

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

(2) Unless the engagement meets the requirements of subsection (1), this article 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.

(3) This article 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 chapter or may hereafter develop. The fact that this article 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 article.

*History: 1965 c 811 s 336.5-102*

**336.5-103 DEFINITIONS.**

(1) In this article unless the context otherwise requires:

(a) "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 article (section 336.5-102) 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.

(b) 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.

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

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

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

(f) 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.

(g) 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.

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

"Notation of credit," section 336.5-108.

“Presenter,” section 336.5-112(3).

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

“Accept” or “acceptance,” section 336.3-410.

“Contract for sale,” section 336.2-106.

“Draft,” section 336.3-104.

“Holder in due course,” section 336.3-302.

“Midnight deadline,” section 336.4-104.

“Security,” section 336.8-102.

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1965 c 811 s 336.5-103

### 336.5-104 FORMAL REQUIREMENTS; SIGNING.

(1) Except as otherwise required in subsection (1) (c) of section 336.5-102 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.

(2) 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.

**History:** 1965 c 811 s 336.5-104

### 336.5-105 CONSIDERATION.

No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

**History:** 1965 c 811 s 336.5-105

### 336.5-106 TIME AND EFFECT OF ESTABLISHMENT OF CREDIT.

(1) Unless otherwise agreed a credit is established

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

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

(2) 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 the beneficiary's consent.

(3) 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.

(4) 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.

**History:** 1965 c 811 s 336.5-106; 1986 c 444

**336.5-107 ADVICE OF CREDIT; CONFIRMATION; ERROR IN STATEMENT OF TERMS.**

(1) 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.

(2) 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.

(3) 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.

(4) 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.

*History: 1965 c 811 s 336.5-107*

**336.5-108 "NOTATION CREDIT"; EXHAUSTION OF CREDIT.**

(1) 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."

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from the beneficiary 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

(b) 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 30 days to obtain such evidence.

(3) If the credit is not a notation credit

(a) 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;

(b) 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.

*History: 1965 c 811 s 336.5-108; 1986 c 444*

**336.5-109 ISSUER'S OBLIGATION TO ITS CUSTOMER.**

(1) 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

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

(b) 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

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

(2) 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.

(3) A nonbank issuer is not bound by any banking usage of which it has no knowledge.

**History:** 1965 c 811 s 336.5-109

**336.5-110 AVAILABILITY OF CREDIT IN PORTIONS; PRESENTER'S RESERVATION OF LIEN OR CLAIM.**

(1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) 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 noncomplying.

**History:** 1965 c 811 s 336.5-110

**336.5-111 WARRANTIES ON TRANSFER AND PRESENTMENT.**

(1) 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 articles 3, 4, 7, and 8.

(2) 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 article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8.

**History:** 1965 c 811 s 336.5-111

**336.5-112 TIME ALLOWED FOR HONOR OR REJECTION; WITHHOLDING HONOR OR REJECTION BY CONSENT; "PRESENTER".**

(1) 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

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

(b) 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 (4) of section 336.5-114 on conditional payment.

(2) 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 the presenter an advice to that effect.

(3) "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.

**History:** 1965 c 811 s 336.5-112; 1986 c 444

**336.5-113 INDEMNITIES.**

(1) 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.

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

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

(b) 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 the ultimate customer received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

*History: 1965 c 811 s 336.5-113; 1986 c 444*

### **336.5-114 ISSUER'S DUTY AND PRIVILEGE TO HONOR; RIGHT TO REIMBURSEMENT.**

(1) 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.

(2) 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 336.7-507) or of a certificated security (section 336.8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft on 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 336.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 336.7-502) or a bona fide purchaser of a certificated security (section 336.8-302); and

(b) 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.

(3) 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.

(4) 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

(a) any payment made on receipt of such notice is conditional; and

(b) 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

(c) in the event of such rejection, the issuer is entitled by chargeback or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

*History: 1965 c 811 s 336.5-114; 1978 c 695 s 2*

### **336.5-115 REMEDY FOR IMPROPER DISHONOR OR ANTICIPATORY REPUDIATION.**

(1) 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 336.2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 336.2-710 on seller's incidental damages and interest but less any amount real-

ized 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.

(2) 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 336.2-610 if the beneficiary 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.

**History:** 1965 c 811 s 336.5-115; 1986 c 444

### **336.5-116 TRANSFER AND ASSIGNMENT.**

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign the beneficiary's right to proceeds. Such an assignment is an assignment of an account under article 9 on secured transactions and is governed by that article except that

(a) 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 article 9; and

(b) 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

(c) 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.

(3) Except where the beneficiary has effectively assigned the beneficiary's right to draw or right to proceeds, nothing in this section limits the beneficiary's right to transfer or negotiate drafts or demands drawn under the credit.

**History:** 1965 c 811 s 336.5-116; 1976 c 135 s 4; 1986 c 444

### **336.5-117 INSOLVENCY OF BANK HOLDING FUNDS FOR DOCUMENTARY CREDIT.**

(1) 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 article is made applicable by paragraphs (a) or (b) of section 336.5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) 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

(b) 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

(c) 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.

(2) 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.

**History:** 1965 c 811 s 336.5-117

## Article 6

### BULK TRANSFERS

#### 336.6-101 SHORT TITLE.

This article shall be known and may be cited as Uniform Commercial Code - Bulk Transfers.

**History:** 1965 c 811 s 336.6-101

#### 336.6-102 "BULK TRANSFER"; TRANSFERS OF EQUIPMENT; ENTERPRISES SUBJECT TO THIS ARTICLE; BULK TRANSFERS SUBJECT TO THIS ARTICLE.

(1) 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 336.9-109) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (section 336.9-109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this article.

**History:** 1965 c 811 s 336.6-102

#### 336.6-103 TRANSFERS EXCEPTED FROM THIS ARTICLE.

The following transfers are not subject to this article:

- (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, who receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;
- (8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (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.

**History:** 1965 c 811 s 336.6-103; 1986 c 444



**336.6-104 SCHEDULE OF PROPERTY, LIST OF CREDITORS.**

(1) Except as provided with respect to auction sales (section 336.6-108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of the transferor's existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) 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 secretary of state.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or the transferor's 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 the transferor 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.

(3) 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.

**History:** 1965 c 811 s 336.6-104; 1986 c 444

**336.6-105 NOTICE TO CREDITORS.**

In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 336.6-108) is ineffective against any creditor of the transferor unless at least ten days before the transferee 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 336.6-107).

**History:** 1965 c 811 s 336.6-105; 1986 c 444

**336.6-106 APPLICATION OF THE PROCEEDS.**

In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that the new 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 336.6-104) or filed in writing in the place stated in the notice (section 336.6-107) within 30 days after the mailing of the notice. This duty of the transferee runs to all the holders of shown or filed debts, and may be enforced by any of them for the benefit of all;

(2) If any of the 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 the debts in full, distribution shall be made pro rata unless there is an agreement among the creditors to distribute the proceeds on another basis;

(4) The transferee may within ten days after taking possession of the goods pay the consideration into the district court in the county where the transferor had its principal place of business in this state and thereafter may discharge duties under this section by giving notice by certified mail to all the persons to whom a duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it.

**History:** 1979 c 52 s 1; 1986 c 444

**336.6-107 THE NOTICE.**

(1) The notice to creditors (section 336.6-105) shall state:

(a) That a bulk transfer is about to be made; and

(b) 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

(c) 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.

(2) 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:

(a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule of property and list of creditors (section 336.6-104) may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment;

(e) If the transfer is for new consideration, the time and place where creditors of the transferor are to file their claims.

(3) 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 336.6-104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

**History:** 1965 c 811 s 336.6-107; 1979 c 52 s 2

**336.6-108 AUCTION SALES; "AUCTIONEER".**

(1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 336.6-104).

(3) 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:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 336.6-104);

(b) 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 the auctioneer to hold or assert claims against the transferor;

(c) Assure that the net proceeds of the auction are applied as provided in this article (section 336.6-106).

(4) 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.

**History:** 1965 c 811 s 336.6-108; 1979 c 52 s 3; 1986 c 444

**336.6-109 WHAT CREDITORS PROTECTED.**

(1) The creditors of the transferor mentioned in this article 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 336.6-105 and 336.6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this article concerning the application of the proceeds (section 336.6-106 and subsection (3)(c) of 336.6-108) 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 the creditors.

**History:** 1965 c 811 s 336.6-109; 1979 c 52 s 4

### **336.6-110 SUBSEQUENT TRANSFERS.**

When the title of a transferee to property is subject to a defect by reason of the transferee's noncompliance with the requirements of this article, 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.

**History:** 1965 c 811 s 336.6-110; 1986 c 444

### **336.6-111 LIMITATION OF ACTIONS AND LEVIES.**

No action under this article 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.

**History:** 1965 c 811 s 336.6-111

## **Article 7**

### **WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE**

#### **Part 1**

#### **GENERAL**

### **336.7-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code - Documents of Title.

**History:** 1965 c 811 s 336.7-101

### **336.7-102 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article, unless the context otherwise requires:

(a) "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.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouse operator, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in article 1 (section 336.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "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 instructions.

(h) "Warehouse operator" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate," section 336.7-501.

"Person entitled under the document," section 336.7-403(4).

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

"Contract for sale," section 336.2-106.

"Overseas," section 336.2-323.

"Receipt" of goods, section 336.2-103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

*History: 1965 c 811 s 336.7-102; 1986 c 444*

### **336.7-103 RELATION OF ARTICLE 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 article are subject thereto.

*History: 1965 c 811 s 336.7-103*

### **336.7-104 NEGOTIABLE AND NONNEGOTIABLE WAREHOUSE RECEIPT, BILL OF LADING OR OTHER DOCUMENT OF TITLE.**

(1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. 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.

*History: 1965 c 811 s 336.7-104*

### **336.7-105 CONSTRUCTION AGAINST NEGATIVE IMPLICATION.**

The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

*History: 1965 c 811 s 336.7-105*

## Part 2

## WAREHOUSE RECEIPTS:

## SPECIAL PROVISIONS

**336.7-201 WHO MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER GOVERNMENT BOND.**

(1) A warehouse receipt may be issued by any warehouse operator.

(2) 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 warehouse operator.

*History: 1965 c 811 s 336.7-201; 1986 c 444*

**336.7-202 FORM OF WAREHOUSE RECEIPT; ESSENTIAL TERMS; OPTIONAL TERMS.**

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

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouse operator is liable for damages caused by the omission to a person injured thereby:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or the person's order;

(e) 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 nonnegotiable receipt;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouse operator, which may be made by an authorized agent;

(h) If the receipt is issued for goods of which the warehouse operator is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouse operator claims a lien or security interest (section 336.7-209). 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 warehouse operator or to the warehouse operator's agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouse operator may insert in the receipt any other terms which are not contrary to the provisions of this chapter and do not impair the warehouse operator's obligation of delivery (section 336.7-403) or duty of care (section 336.7-204). Any contrary provisions shall be ineffective.

*History: 1965 c 811 s 336.7-202; 1986 c 444*

**336.7-203 LIABILITY FOR NONRECEIPT OR MISDESCRIPTION.**

A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt 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, quan-

tity 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.

*History: 1965 c 811 s 336.7-203*

### **336.7-204 DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE OPERATOR'S LIABILITY.**

(1) A warehouse operator is liable for damages for loss of or injury to the goods caused by the operator's failure to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed the warehouse operator is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouse operator 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 warehouse operator's tariff, if any. No such limitation is effective with respect to the warehouse operator's liability for conversion to the warehouse operator's own use.

(3) 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.

*History: 1965 c 811 s 336.7-204; 1986 c 444*

### **336.7-205 TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES.**

A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse operator 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.

*History: 1965 c 811 s 336.7-205; 1986 c 444*

### **336.7-206 TERMINATION OF STORAGE AT WAREHOUSE OPERATOR'S OPTION.**

(1) A warehouse operator may on notifying the person on 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 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouse operator may sell them in accordance with the provisions of the section on enforcement of a warehouse operator's lien (section 336.7-210).

(2) If a warehouse operator in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the warehouse operator's lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouse operator 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.

(3) If as a result of a quality or condition of the goods of which the warehouse operator had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouse operator 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. A warehouse operator who after a reasonable effort is unable to sell the goods may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouse operator must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouse operator may satisfy a 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 the warehouse operator would have been bound to deliver the goods.

*History: 1965 c 811 s 336.7-206; 1986 c 444*

### **336.7-207 GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS.**

(1) Unless the warehouse receipt otherwise provides, a warehouse operator 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.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouse operator 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 warehouse operator has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

*History: 1965 c 811 s 336.7-207; 1986 c 444*

### **336.7-208 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.

*History: 1965 c 811 s 336.7-208*

### **336.7-209 LIEN OF WAREHOUSE OPERATOR.**

(1) A warehouse operator has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in the warehouse operator's 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. 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 warehouse operator also has a lien against the person for such charges and expenses whether or not the other goods have been delivered by the warehouse operator. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouse operator'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.

(2) The warehouse operator 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 (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) (a) A warehouse operator's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 336.7-503.

(b) A warehouse operator's lien on household goods for charges and expenses in relation to the goods under subsection (1) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. "Household goods" means furniture, furnishings and personal effects used by the depositor in a dwelling.

(4) A warehouse operator loses a lien on any goods which the warehouse operator voluntarily delivers or unjustifiably refuses to deliver.

*History: 1965 c 811 s 336.7-209; 1969 c 621 s 4; 1986 c 444*

### **336.7-210 ENFORCEMENT OF WAREHOUSE OPERATOR'S LIEN.**

(1) Except as provided in subsection (2), a warehouse operator's lien may be enforced by public or private sale of the goods in bloc 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 warehouse operator is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouse operator either sells the goods in the usual manner in any recognized market therefor, or sells at the price current in such market at the time of sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, the warehouse operator 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.

(2) A warehouse operator's lien on goods other than goods stored by a merchant in the course of business may be enforced only as follows:

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

(b) 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.

(c) 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.

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

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) 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 15 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.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouse operator subject to the terms of the receipt and this article.

(4) The warehouse operator may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouse operator's lien takes the goods free of any rights of persons against whom the lien was valid despite noncompliance by the warehouse operator with the requirements of this section.

(6) The warehouse operator may satisfy a lien from the proceeds of any sale pursu-



ant to this section but must hold the balance, if any, for delivery on demand to any person to whom the warehouse operator would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against the creditor's debtor.

(8) Where a lien is on goods stored by a merchant in the course of business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouse operator 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.

**History:** 1965 c 811 s 336.7-210; 1986 c 444

### Part 3

#### BILLS OF LADING: SPECIAL PROVISIONS

##### **336.7-301 LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING.**

(1) A consignee of a nonnegotiable 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 nonreceipt 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.

(2) 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 if 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.

(3) 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.

(4) 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.

(5) 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 the shipper; 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 the issuer's responsibility and liability under the contract of carriage to any person other than the shipper.

**History:** 1965 c 811 s 336.7-301; 1986 c 444

##### **336.7-302 THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS.**

(1) 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 contigu-

ous to the United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) 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, the receiver is subject with respect to the receiver's own performance while possessing the goods to the obligation of the issuer. The 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.

(3) 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.

**History:** 1965 c 811 s 336.7-302; 1986 c 444

### **336.7-303 DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.**

(1) 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

(a) the holder of a negotiable bill; or

(b) the consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a nonnegotiable bill if the consignee is entitled as against the consignor to dispose of them.

(2) 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.

**History:** 1965 c 811 s 336.7-303; 1986 c 444

### **336.7-304 BILLS OF LADING IN A SET.**

(1) 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.

(2) 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.

(3) 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 the later holder's part.

(4) 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.

(5) The bailee is obliged to deliver in accordance with part 4 of this article 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.

**History:** 1965 c 811 s 336.7-304; 1986 c 444

**336.7-305 DESTINATION BILLS.**

(1) 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.

(2) 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.

*History: 1965 c 811 s 336.7-305*

**336.7-306 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.

*History: 1965 c 811 s 336.7-306*

**336.7-307 LIEN OF CARRIER.**

(1) 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.

(2) A lien for charges and expenses under subsection (1) 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 (1) 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.

(3) A carrier loses a lien on any goods which the carrier voluntarily delivers or unjustifiably refuses to deliver.

*History: 1965 c 811 s 336.7-307; 1986 c 444*

**336.7-308 ENFORCEMENT OF CARRIER'S LIEN.**

(1) A carrier's lien may be enforced by public or private sale of the goods, in bloc 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 sells at the price current in such market at the time of sale or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold the carrier 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.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred 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 article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy a 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 the carrier would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against the creditor's debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 336.7-210.

(8) 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.

**History:** 1965 c 811 s 336.7-308; 1986 c 444

### **336.7-309 DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY.**

(1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person 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.

(2) 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 the consignor 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.

(3) 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.

**History:** 1965 c 811 s 336.7-309; 1986 c 444

## **Part 4**

### **WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS**

#### **336.7-401 IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER.**

The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouse operator if it purports to be a warehouse receipt.

**History:** 1965 c 811 s 336.7-401; 1986 c 444

#### **336.7-402 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 and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by the issuer's overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

**History:** 1965 c 811 s 336.7-402; 1986 c 444

### **336.7-403 OBLIGATION OF WAREHOUSE OPERATOR OR CARRIER TO DELIVER; EXCUSE.**

(1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

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

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

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

(d) The exercise by a seller of the right to stop delivery pursuant to the provisions of the article on sales (section 336.2-705);

(e) A diversion, reconsignment or other disposition pursuant to the provisions of this article (section 336.7-303) or tariff regulating such right;

(f) Release, satisfaction or any other fact affording a personal defense against the claimant;

(g) Any other lawful excuse.

(2) 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.

(3) Unless the person claiming is one against whom the document confers no right under section 336.7-503(1), the person 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.

(4) "Person entitled under the document" means the 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 nonnegotiable document.

**History:** 1965 c 811 s 336.7-403; 1986 c 444

### **336.7-404 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 article is not liable therefor. This rule applies even though the person from whom the bailee received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom the bailee delivered the goods had no authority to receive them.

**History:** 1965 c 811 s 336.7-404; 1986 c 444

## Part 5

**WAREHOUSE RECEIPTS AND BILLS OF  
LADING: NEGOTIATION AND TRANSFER****336.7-501 FORM OF NEGOTIATION AND REQUIREMENTS OF "DUE NEGOTIATION."**

(1) A negotiable document of title running to the order of a named person is negotiated by the named person's endorsement and delivery. After the named person's endorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to the named person the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been endorsed to a specified person requires endorsement by the special endorsee as well as delivery.

(4) 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.

(5) Endorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) 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.

*History: 1965 c 811 s 336.7-501; 1986 c 444*

**336.7-502 RIGHTS ACQUIRED BY DUE NEGOTIATION.**

(1) Subject to the following section and to the provisions of section 336.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

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

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article. 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 endorser will procure the acceptance of the bailee.

(2) 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.

*History: 1965 c 811 s 336.7-502; 1986 c 444*

**336.7-503 DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES.**

(1) 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

(a) delivered or entrusted them or any document of title covering them to the bailor or the bailor's nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 336.7-403) or with power of disposition under this chapter (sections 336.2-403 and 336.9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or the bailor's nominee of any document of title.

(2) 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.

(3) 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 part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

**History:** 1965 c 811 s 336.7-503; 1986 c 444

### **336.7-504 RIGHTS ACQUIRED IN THE ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; SELLER'S STOPPAGE OF DELIVERY.**

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

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 336.2-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a 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.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under section 336.2-705, 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.

**History:** 1965 c 811 s 336.7-504; 1986 c 444

### **336.7-505 ENDORSER NOT A GUARANTOR FOR OTHER PARTIES.**

The endorsement of a document of title issued by a bailee does not make the endorser liable for any default by the bailee or by previous endorsers.

**History:** 1965 c 811 s 336.7-505

### **336.7-506 DELIVERY WITHOUT ENDORSEMENT: RIGHT TO COMPEL ENDORSEMENT.**

The transferee of a negotiable document of title has a specifically enforceable right to have the transferor supply any necessary endorsement but the transfer becomes a negotiation only as of the time the endorsement is supplied.

**History:** 1965 c 811 s 336.7-506; 1986 c 444

**336.7-507 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 the person warrants to the person's immediate purchaser only in addition to any warranty made in selling the goods

- (a) that the document is genuine; and
- (b) that the warrantor has no knowledge of any fact which would impair its validity or worth; and
- (c) that the warrantor's negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

**History:** 1965 c 811 s 336.7-507; 1986 c 444

**336.7-508 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.

**History:** 1965 c 811 s 336.7-508

**336.7-509 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 articles on sales (article 2) and on letters of credit (article 5).

**History:** 1965 c 811 s 336.7-509

**Part 6****WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS****336.7-601 LOST AND MISSING DOCUMENTS.**

(1) 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 nonsurrender 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.

(2) 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.

**History:** 1965 c 811 s 336.7-601

**336.7-602 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 the bailee 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.

*History: 1965 c 811 s 336.7-602; 1986 c 444*

### **336.7-603 CONFLICTING CLAIMS; INTERPLEADER.**

If more than one person claims title or possession of the goods, the bailee has a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead before making delivery, and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

*History: 1965 c 811 s 336.7-603; 1986 c 444*

## **Article 8**

### **INVESTMENT SECURITIES**

#### **Part 1**

#### **SHORT TITLE AND GENERAL MATTERS**

### **336.8-101 SHORT TITLE.**

This article shall be known and may be cited as Uniform Commercial Code - Investment Securities.

*History: 1965 c 811 s 336.8-101*

### **336.8-102 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article, unless the context otherwise requires:

(a) A "certificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is

(i) represented by an instrument issued in bearer or registered form;

(ii) 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

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(b) 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

(i) 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;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) 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 article and not by article 3, even though it also meets the requirements of that article. This article 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 the purposes of this article.

(d) A certificated security is in "registered form" if

(i) it specifies a person entitled to the security or the rights it represents, and  
 (ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) 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

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws,

(ii) a broker or dealer or investment company registered under the federal securities laws, or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) 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.

(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim," section 336.8-302.

"Bona fide purchaser," section 336.8-302.

"Broker," section 336.8-303.

"Debtor," section 336.9-105.

"Financial intermediary," section 336.8-313.

"Guarantee of the signature," section 336.8-402.

"Initial transaction statement," section 336.8-408.

"Instruction," section 336.8-308.

"Intermediary bank," section 336.4-105.

"Issuer," section 336.8-201.

"Overissue," section 336.8-104.

"Secured party," section 336.9-105.

"Security agreement," section 336.9-105.

(6) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1965 c 811 s 336.8-102; 1974 c 46 s 1; 1978 c 695 s 3

### 336.8-103 ISSUER'S LIEN.

A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(a) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(b) 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 the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge,

or release, the initial transaction statement sent to the registered owner or the registered pledgee.

**History:** 1965 c 811 s 336.8-103; 1978 c 695 s 4; 1986 c 444

### **336.8-104 EFFECT OF OVERISSUE; "OVERISSUE".**

(1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in over-issue; but if:

(a) an identical security that 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 that person and either deliver a certificated security or register the transfer of an uncertificated security to that person, against surrender of any certificated security the person holds; or

(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of demand.

(2) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue.

**History:** 1965 c 811 s 336.8-104; 1978 c 695 s 5; 1986 c 444

### **336.8-105 CERTIFICATED SECURITIES NEGOTIABLE; STATEMENTS AND INSTRUCTIONS NOT NEGOTIABLE; PRESUMPTIONS.**

(1) Certificated securities governed by this article are negotiable instruments.

(2) Statements (section 336.8-408), notices, or the like, sent by the issuer of uncertificated securities and instructions (section 336.8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleadings, each signature on a certificated security, in a necessary endorsement, on an initial transaction statement, or on an instruction, is admitted;

(b) 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;

(c) 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;

(d) 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

(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect is ineffective (section 336.8-202).

**History:** 1965 c 811 s 336.8-105; 1978 c 695 s 6; 1986 c 444

### **336.8-106 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:

(a) registration of transfer of a certificated security;

(b) registration of transfer, pledge, or release of an uncertificated security; and

(c) sending of statements of uncertificated securities.

**History:** 1965 c 811 s 336.8-106; 1978 c 695 s 7

**336.8-107 SECURITIES TRANSFERABLE; ACTION FOR PRICE.**

(1) 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 endorsed to the transferee or in blank, or the person may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) certificated securities accepted by the buyers;

(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

**History:** 1965 c 811 s 336.8-107; 1978 c 695 s 8; 1986 c 444

**336.8-108 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 the secured party. 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 article are terminated by the registration of release.

**History:** 1978 c 695 s 9; 1986 c 444

**Part 2****ISSUE - ISSUER****336.8-201 "ISSUER".**

(1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of the person's name on a certificated security (otherwise than as an authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in the person's property or in an enterprise, or to evidence the person's duty to perform an obligation represented by the certificated security;

(b) creates shares, participations, or other interests in the property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in the person's rights or property, which fractional interests are represented by certificated securities; or

(d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of the guaranty, whether or not the guarantor's obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to section 336.8-408.

(3) With respect to registration of transfer, pledge, or release (part 4 of this article), "issuer" means a person on whose behalf transfer books are maintained.

**History:** 1965 c 811 s 336.8-201; 1978 c 695 s 10; 1986 c 444

**336.8-202 ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF DEFECT OR DEFENSE.**

(1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) 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.

(2) 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 the purchaser 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.

(3) Except as provided in the case of certain unauthorized signatures (section 336.8-205), 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.

(4) 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.

(5) 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.

*History: 1965 c 811 s 336.8-202; 1978 c 695 s 11; 1986 c 444*

**336.8-203 STALENESS AS NOTICE OF DEFECTS OR DEFENSES.**

(1) 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:

(a) 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 the purchaser takes the security more than one year after that date; and

(b) the act or event is not covered by paragraph (a) and the purchaser takes the security more than two years after the date set for surrender or presentation or the date on which performance became due.

(2) A call that has been revoked is not within subsection (1).

**History:** 1965 c 811 s 336.8-203; 1978 c 695 s 12; 1986 c 444

### **336.8-204 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:

(a) the security is certificated and the restriction is noted conspicuously thereon;

or

(b) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if the person's interest is transferred to the person other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

**History:** 1965 c 811 s 336.8-204; 1978 c 695 s 13; 1986 c 444

### **336.8-205 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:

(a) 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 signing of any of them; or

(b) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

**History:** 1965 c 811 s 336.8-205; 1978 c 695 s 14

### **336.8-206 COMPLETION OR ALTERATION OF CERTIFICATED SECURITY OR INITIAL TRANSACTION STATEMENT.**

(1) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) 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.

(2) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks, as authorized; and

(b) 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 the person purchased the security referred to therein for value and without notice of the incorrectness.

(4) 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.

**History:** 1965 c 811 s 336.8-206; 1978 c 695 s 15; 1986 c 444

### **336.8-207 RIGHTS AND DUTIES OF ISSUER WITH RESPECT TO REGISTERED OWNERS AND REGISTERED PLEDGEEES.**

(1) 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.

(2) Subject to the provisions of subsections (3), (4), and (6), 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.

(3) 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.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) 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;

(b) 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

(c) 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.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4) (b) or by registration of release and pledge under subsection (4) (c), if the security interest is assigned.

(6) If a uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like.

**History:** 1965 c 811 s 336.8-207; 1978 c 695 s 16

### **336.8-208 EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE, REGISTRAR, OR TRANSFER AGENT.**

(1) A person placing the person's 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:

(a) the certificated security or initial transaction statement is genuine;

(b) the signer's own participation in the issue or registration of the transfer, pledge, or release of the security is within the signer's capacity and within the scope of the authority received by the signer from the issuer; and

(c) the signer has reasonable grounds to believe the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so signing does not assume responsibility for the validity of the security in other respects.

**History:** 1965 c 811 s 336.8-208; 1978 c 695 s 17; 1986 c 444

## Part 3

## PURCHASE

**336.8-301 RIGHTS ACQUIRED BY PURCHASER.**

(1) Upon transfer of a security to a purchaser (section 336.8-313), the purchaser acquires the rights in the security which the purchaser's transferor had or had actual authority to convey unless the purchaser's rights are limited by section 336.8-302 (4).

(2) 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.

*History: 1965 c 811 s 336.8-301; 1978 c 695 s 18; 1986 c 444*

**336.8-302 "BONA FIDE PURCHASER"; "ADVERSE CLAIM"; TITLE ACQUIRED BY BONA FIDE PURCHASER.**

(1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(a) who takes delivery of a certificated security in bearer form or in registered form, issued or endorsed to the purchaser or in blank;

(b) to whom the transfer, pledge, or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of paragraph (c), (d) (i), or (g) of section 336.8-313 (1).

(2) "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.

(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (section 336.8-301) also acquires the purchaser's interest in the security free of any adverse claim.

(4) Notwithstanding section 336.8-301 (1), 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 position by taking from a bona fide purchaser.

*History: 1965 c 811 s 336.8-302; 1978 c 695 s 19; 1986 c 444*

**336.8-303 "BROKER".**

"Broker" means a person engaged full or part-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 article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

*History: 1965 c 811 s 336.8-303; 1978 c 695 s 20; 1986 c 444*

**336.8-304 NOTICE TO PURCHASER OF ADVERSE CLAIMS.**

(1) 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:

(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) 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.

(2) 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 336.8-403 (4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if the purchaser's interest is transferred



to the purchaser other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(3) 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 endorsed 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 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.

*History: 1965 c 811 s 336.8-304; 1978 c 695 s 21; 1986 c 444*

### **336.8-305 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 sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:

(a) after one year from any date set for presentment or surrender for redemption or exchange; or

(b) 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.

*History: 1965 c 811 s 336.8-305; 1978 c 695 s 22*

### **336.8-306 WARRANTIES ON PRESENTMENT AND TRANSFER OF CERTIFICATED SECURITIES; WARRANTIES OF ORIGINATORS OF INSTRUCTIONS.**

(1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the presenter is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to such a purchaser warrants only that the warrantor has no knowledge of any unauthorized signature (section 336.8-311) in a necessary endorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) the transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) no fact which might impair the validity of the security is known to the person making the transfer.

(3) 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 the intermediary's good faith and authority, even though the intermediary has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers a 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 (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) the person is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer the person will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing the warrantor's signature (subsection 336.8-312 (3)) that:

- (a) the warrantor is an appropriate person to originate the instruction;
  - (b) at the time the instruction is presented to the issuer
  - (i) the warrantor will be entitled to the registration of transfer, pledge, or release;
- and
- (ii) 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.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (section 336.8-312 (6)) that:

- (a) the person is an appropriate person to originate the instruction;
- (b) the uncertificated security referred to therein is valid; and
- (c) at the time the instruction is presented to the issuer
- (i) the transferor will be entitled to the registration of transfer, pledge, or release;
- (ii) 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
- (iii) the requested transfer, pledge, or release will be rightful.

(8) 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 the warrantor 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 paragraphs (b) and (c) (ii) and (iii) of subsection (7).

(9) 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:

- (a) the transfer is effective and rightful; and
- (b) the uncertificated security is valid.

(10) A broker gives to a 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 the broker's customer.

**History:** 1965 c 811 s 336.8-306; 1978 c 695 s 23; 1986 c 444

### **336.8-307 EFFECT OF DELIVERY WITHOUT ENDORSEMENT; RIGHT TO COMPEL ENDORSEMENT.**

If a certificated security in registered form has been delivered to a purchaser without a necessary endorsement the purchaser may become a bona fide purchaser only as of the time the endorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

**History:** 1965 c 811 s 336.8-307; 1978 c 695 s 24; 1986 c 444

### **336.8-308 ENDORSEMENTS; INSTRUCTIONS.**

(1) An endorsement 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 the person's signature is written without more upon the back of the security.

(2) An endorsement may be in blank or special. An endorsement in blank includes an endorsement to bearer. A special endorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank endorsement into a special endorsement.

(3) An endorsement 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 endorsement.

(4) 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.

(5) An instruction originated by an appropriate person is:

(a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in 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.

(6) "An appropriate person" in subsection (1) means the person specified by the certificated security or by special endorsement to be entitled to the security.

(7) "An appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), "an appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or a successor;

(b) 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 qualified;

(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, the person's executor, administrator, guardian, or like fiduciary;

(d) 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;

(e) a person having power to sign under applicable law or controlling instrument; and

(f) to the extent that the person designated or any of the foregoing persons may act through an agent, the authorized agent.

(9) Unless otherwise agreed, the endorser of a certificated security by the endorsement or the originator of an instruction by the origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in section 336.8-306.

(10) Whether the person signing is appropriate is determined as of the date of signing and an endorsement made by or an instruction originated by the person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

(11) 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 the fiduciary's endorsement or an instruction originated by the fiduciary unauthorized for the purposes of this article.

**History:** 1965 c 811 s 336.8-308; 1978 c 695 s 25; 1986 c 444

**336.8-309 EFFECT OF ENDORSEMENT WITHOUT DELIVERY.**

An endorsement 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 endorsement is on a separate document, until delivery of both the document and the certificated security.

*History: 1965 c 811 s 336.8-309; 1978 c 695 s 26*

**336.8-310 ENDORSEMENT OF CERTIFICATED SECURITY IN BEARER FORM.**

An endorsement of a certificated security in bearer form may give notice of adverse claims (section 336.8-304) but does not otherwise affect any right to registration the holder possesses.

*History: 1965 c 811 s 336.8-310; 1978 c 695 s 27*

**336.8-311 EFFECT OF UNAUTHORIZED ENDORSEMENT OR INSTRUCTION.**

Unless the owner or pledgee has ratified an unauthorized endorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(a) the owner or pledgee 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 reregistered 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 the same purchaser for value; and

(b) an issuer who registers the transfer of a certificated security upon the unauthorized endorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (section 336.8-404).

*History: 1965 c 811 s 336.8-311; 1978 c 695 s 28; 1986 c 444*

**336.8-312 EFFECT OF GUARANTEEING SIGNATURE, ENDORSEMENT OR INSTRUCTION.**

(1) Any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing:

- (a) the signature was genuine;
- (b) the signer was an appropriate person to endorse (section 336.8-308); and
- (c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

- (a) the signature was genuine;
- (b) the signer was an appropriate person to originate the instruction (section 336.8-308) 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;
- (c) the signer had legal capacity to sign; and
- (d) 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.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

- (a) 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

(b) 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.

(4) The guarantor under subsections (1) and (2) or the special guarantor under subsection (3) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(5) Any person guaranteeing an endorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (1) but also warrants the rightfulness of the particular transfer in all respects.

(6) 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 (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of endorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

(8) 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.

**History:** 1965 c 811 s 336.8-312; 1978 c 695 s 29

**336.8-313 WHEN TRANSFER TO PURCHASER OCCURS; FINANCIAL INTERMEDIARY AS BONA FIDE PURCHASER; "FINANCIAL INTERMEDIARY".**

(1) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

(a) at the time the purchaser or a person designated by the purchaser acquires possession of a certificated security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to the purchaser or a person designated by the purchaser;

(c) at the time the purchaser's financial intermediary acquires possession of a certificated security specially endorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends the purchaser confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser

(i) a specific certificated security in the financial intermediary's possession;

(ii) 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

(iii) 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;

(e) 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 holding for the purchaser;

(f) 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 holding for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by the purchaser on the books of a clearing corporation are made under section 336.8-320.

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, 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 paragraph, is signed by the secured party, is received by

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) 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

(iv) 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;

(i) 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

(j) 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 paragraphs (a), (b), (c), (d), or (g), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for the purchaser by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (c), (d) (i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (d) (ii) and (d) (iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) 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.

(4) 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 customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

**History:** 1965 c 811 s 336.8-313; 1978 c 695 s 30; 1986 c 444

### **336.8-314 DUTY TO TRANSFER, WHEN COMPLETED.**

(1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer's duty to transfer is fulfilled at the time the selling customer:

(i) places a certificated security in the possession of the selling broker or a person designated by the broker;

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) 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

(b) the duty of a selling broker, including a correspondent broker acting for a selling customer, to transfer is fulfilled at the time the selling broker:

(i) places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) 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

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) 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 the transferor:

(a) 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;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for the broker's own account is within subsection (2) and not within subsection (1).

**History:** 1965 c 811 s 336.8-314; 1978 c 695 s 31; 1986 c 444

### **336.8-315 ACTION AGAINST TRANSFEREE BASED UPON WRONGFUL TRANSFER.**

(1) Any person against whom the transfer of a security is wrongful for any reason, including the person's incapacity, as against anyone except a bona fide purchaser, may:

(a) reclaim possession of the certificated security wrongfully transferred;

(b) obtain possession of any new certificated security representing all or part of the same rights;

(c) compel the origination of an instruction to transfer to such a person or another designated by the person an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized endorsement of a certificated security, the owner may also reclaim or obtain possession of the security or new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported endorsement can be asserted against the bona fide purchaser under the provisions of this article on unauthorized endorsements (section 336.8-311).

(3) 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.

**History:** 1965 c 811 s 336.8-315; 1978 c 695 s 32; 1986 c 444

### **336.8-316 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 a purchaser with any proof of 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.

*History: 1965 c 811 s 336.8-316; 1978 c 695 s 33; 1986 c 444*

### **336.8-317 CREDITOR'S RIGHTS.**

(1) Subject to the exceptions in subsections (3) and (4), 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.

(2) 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.

(3) 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.

(4) 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.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) 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.

(6) 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.

*History: 1965 c 811 s 336.8-317; 1978 c 695 s 34*

### **336.8-318 NO CONVERSION BY GOOD FAITH CONDUCT.**

An agent or bailee who in good faith (including observance of reasonable commercial standards if 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 the agent or bailee had control according to the instructions of the agent's or bailee's 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.

*History: 1965 c 811 s 336.8-318; 1978 c 695 s 35; 1986 c 444*

### **336.8-319 STATUTE OF FRAUDS.**

A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by the party's 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;

(b) delivery of a certificated security or transfer instruction has been accepted, transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten days after receipt of the initial transac-



tion 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;

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and the recipient has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price.

**History:** 1965 c 811 s 336.8-319; 1978 c 695 s 36; 1986 c 444

### 336.8-320 TRANSFER OR PLEDGE WITHIN CENTRAL DEPOSITORY SYSTEM.

(1) 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 transferee, 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

(a) if certificated,

(i) is in the custody of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them; and

(ii) is in bearer form or endorsed 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

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) 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.

(3) A transfer under this section is effective (section 336.8-313) and the purchaser acquires the rights of the transferor (section 336.8-301). 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 both value is given by the pledgee and the transfer entries are made (section 336.8-321). A transferee or pledgee under this section may be a bona fide purchaser (section 336.8-302).

(4) A transfer or pledge under this section is not a registration of transfer under part 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) 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.

**History:** 1965 c 811 s 336.8-320; 1974 c 46 s 2; 1978 c 695 s 37

### 336.8-321 ENFORCEABILITY, ATTACHMENT, PERFECTION AND TERMINATION OF SECURITY INTERESTS.

(1) 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 the secured party pursuant to a provision of section 336.8-313 (1).

(2) 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 paragraph (i) of section 336.8-313 (1) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of section 336.8-313 (1) are satisfied.

(3) A security interest in a security is subject to the provisions of article 9, but:

(a) no filing is required to perfect the security interest; and

(b) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as provided in paragraph (h), (i), or (j) of section 336.8-313 (1). The secured party has the rights and duties provided under section 336.9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in the secured party's possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by the debtor pursuant to a provision of section 336.8-313 (1). 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 the secured party pursuant to a provision of section 336.8-313 (1).

**History:** 1978 c 695 s 38; 1986 c 444

#### Part 4

### REGISTRATION

#### 336.8-401 DUTY OF ISSUER TO REGISTER TRANSFER, PLEDGE, OR RELEASE.

(1) 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:

(a) the security is endorsed or the instruction was originated by the appropriate person or persons (section 336.8-308);

(b) reasonable assurance is given that those endorsements or instructions are genuine and effective (section 336.8-402);

(c) the issuer has no duty as to adverse claims or has discharged the duty (section 336.8-403);

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(2) 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 the person's principal for loss resulting from any unreasonable delay in registration, or from failure or refusal to register the transfer, pledge, or release.

**History:** 1965 c 811 s 336.8-401; 1978 c 695 s 39; 1986 c 444

#### 336.8-402 ASSURANCE THAT ENDORSEMENTS AND INSTRUCTIONS ARE EFFECTIVE.

(1) The issuer may require the following assurance that each necessary endorsement of a certificated security or each instruction (section 336.8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (section 336.8-312 (1) or (2)) of the person endorsing 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;

(b) if the endorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) if the endorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the endorsement 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.

(2) A "guarantee of the signature" in subsection (1) 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.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) 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

(b) 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 paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) 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 (3) (b), both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release.

**History:** 1965 c 811 s 336.8-402; 1978 c 695 s 40

### 336.8-403 ISSUER'S DUTY AS TO ADVERSE CLAIMS.

(1) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(a) 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, reissued, or reregistered 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

(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under section 336.8-402 (4).

(2) 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 the claimant or, if there be no such address, at the claimant's 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:

(a) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(b) 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.

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(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under section 336.8-402 (4) or receives notification of an adverse claim under subsection (1), if a certificated security presented for registration is endorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) 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;

(b) an issuer registering transfer on an endorsement 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

(c) 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 endorsement of a fiduciary to the same fiduciary or to the fiduciary's nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) 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 (5);

(b) 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 (5);

(c) 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 that owner; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under section 336.8-402 (4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, the issuer discharges that duty by:

(a) including a notation of the claim in any statements sent with respect to the security under section 336.8-408 (3), (6), and (7); and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) 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 336.8-408.

(7) Notwithstanding subsections (4) and (5), 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:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under section 336.8-402 (4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner.

**History:** 1965 c 811 s 336.8-403; 1978 c 695 s 41; 1986 c 444

**336.8-404 LIABILITY AND NONLIABILITY FOR REGISTRATION.**

(1) 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:

(a) there were on or with a certificated security the necessary endorsements or the issuer had received an instruction originated by an appropriate person (section 336.8-308); and

(b) the issuer had no duty as to adverse claims or has discharged the duty (section 336.8-403).

(2) 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:

(a) the registration was pursuant to subsection (1);

(b) the owner is precluded from asserting any claim for registering the transfer under section 336.8-405 (1); or

(c) the delivery would result in overissue, in which case the issuer's liability is governed by section 336.8-104.

(3) 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:

(a) the registration was pursuant to subsection (1); or

(b) the registration would result in overissue, in which case the issuer's liability is governed by section 336.8-104.

*History: 1965 c 811 s 336.8-404; 1978 c 695 s 42*

**336.8-405 LOST, DESTROYED, AND STOLEN CERTIFICATED SECURITIES.**

(1) 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 having 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 336.8-404 or any claim to a new security under this section.

(2) 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:

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a 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 336.8-104. 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 that person 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.

*History: 1965 c 811 s 336.8-405; 1978 c 695 s 43; 1986 c 444*

**336.8-406 DUTY OF AUTHENTICATING TRUSTEE, TRANSFER AGENT, OR REGISTRAR.**

(1) 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:

(a) the person is under a duty to the issuer to exercise good faith and due diligence in performing functions; and

(b) with regard to the particular functions performed, the person 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.

(2) 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.

*History: 1965 c 811 s 336.8-406; 1978 c 695 s 44; 1986 c 444*

**336.8-407 EXCHANGEABILITY OF SECURITIES.**

(1) 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.

(2) Upon surrender of a certificated security with all necessary endorsements and presentation of a written request by the person surrendering the security, the issuer, having no duty as to adverse claims or having discharged the duty (section 336.8-403), shall issue to the person or a person designated by the person an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) 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 336.8-403 (4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

(a) the registered owner, if the uncertificated security was not subject to a registered pledge; or

(b) the registered pledgee, if the uncertificated security was subject to a registered pledge.

*History: 1978 c 695 s 45; 1986 c 444*

**336.8-408 STATEMENTS OF UNCERTIFICATED SECURITIES.**

(1) 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:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) 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;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 336.8-403 (4)) 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

(e) the date the transfer was registered.

(2) 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:

- (a) a description of the issue of which the uncertificated security is a part;
- (b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 336.8-403 (4)) 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

- (e) the date the pledge was registered.

(3) 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:

- (a) a description of the issue of which the uncertificated security is a part;
- (b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 336.8-403 (4)) 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

- (e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to:

(a) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1);

(b) the registered pledgee pursuant to subsection (2); or

(c) the registered owner pursuant to subsection (3).

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) 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:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) 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:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) 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

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 336.8-403 (4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) 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:

- (a) a description of the issue of which the uncertificated security is a part;
- (b) the name and address and any taxpayer identification number of the registered owner;
- (c) the name and address and any taxpayer identification number of the registered pledgee;
- (d) the number of shares or units subject to the pledge; and
- (e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 336.8-403 (4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) 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.

(9) 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."

**History:** 1978 c 695 s 46

## Article 9

### SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

#### Part 1

#### SHORT TITLE, APPLICABILITY AND DEFINITIONS

#### 336.9-101 SHORT TITLE.

This article shall be known and may be cited as Uniform Commercial Code - Secured Transactions.

**History:** 1965 c 811 s 336.9-101

#### 336.9-102 POLICY AND SCOPE OF ARTICLE.

(1) Except as otherwise provided in section 336.9-104 on excluded transactions, this article applies

- (a) 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
- (b) to any sale of accounts or chattel paper.

(2) This article 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 article does not apply to statutory liens except as provided in section 336.9-310.

(3) The application of this article 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 article does not apply.

**History:** 1965 c 811 s 336.9-102; 1976 c 135 s 5

### 336.9-103 PERFECTION OF SECURITY INTERESTS IN MULTIPLE STATE TRANSACTIONS.

(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

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

(c) 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 nonperfection 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.

(d) 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 part 3 of this article to perfect the security interest,

(i) 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;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 336.9-307), 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 subparagraphs (i) and (ii).

(2) Certificate of title.

(a) 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.

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

(c) 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 (d) of subsection (1).

(d) 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 the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) 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 (2).

(b) 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 nonperfection of the security interest.

(c) If, however, the debtor is located in a 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 nonperfection 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.

(d) A debtor shall be deemed located at the debtor's place of business if the debtor has one, at the chief executive office if there is more than one place of business, otherwise at the debtor's residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, 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.

(e) 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.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection 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.

(6) 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 nonperfection of a security interest in uncertificated securities.

**History:** 1965 c 811 s 336.9-103; 1976 c 135 s 6; 1978 c 695 s 47; 1986 c 444

**336.9-104 TRANSACTIONS EXCLUDED FROM ARTICLE.**

This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in section 336.9-310 on priority of such liens; or

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

(e) to a transfer by a government or governmental subdivision or agency to the extent that this article conflicts with special statutory provisions relating to such a transfer; or

(f) 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

(g) to a transfer of an interest or claim in or under any policy of insurance, except as provided with reference to proceeds (section 336.9-306) and priorities in proceeds section (336.9-312); or

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

(i) to any right of setoff; or

(j) except to the extent that provision is made for fixtures in section 336.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

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

(l) to a transfer of an interest in any deposit account (subsection (l) of section 336.9-105), except as provided with respect to proceeds (section 336.9-306) and priorities in proceeds (section 336.9-312).

(m) except to the extent this article is not superseded by sections 327.61 to 327.67, to the repossession of a manufactured home meeting the definition contained in section 327.62.

**History:** 1965 c 811 s 336.9-104; 1976 c 135 s 7; 1976 c 250 s 8; 1977 c 347 s 46; 1981 c 365 s 9

**336.9-105 DEFINITIONS AND INDEX OF DEFINITIONS.**

(1) In this article unless the context otherwise requires:

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

(b) "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;

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

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not the person 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 article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "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;

(f) "Document" means document of title as defined in the general definitions of article 1 (section 336.1-201) and a receipt of the kind described in subsection (2) of section 336.7-201;

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

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 336.9-313), 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 include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 336.3-104), or a certificated security (defined in section 336.8-102) 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 endorsement or assignment;

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

(k) An advance is made "pursuant to commitment" if the secured party has made a binding promise to make it, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the obligation;

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

(m) "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 represented by a trustee or other person, the representative is the secured party; and

(n) "Transmitting utility" means any person engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service. Any person filing a financing statement under this article and under authority of the provisions of Minnesota Statutes 1974, Sections 300.111 to 300.115 shall be deemed a "transmitting utility" hereunder.

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

"Account," section 336.9-106.

"Attach," section 336.9-203.

"Construction mortgage," section 336.9-313(1).

"Consumer goods," section 336.9-109(1).

"Equipment," section 336.9-109(2).

"Farm products," section 336.9-109(3).

"Fixture," section 336.9-313.

"Fixture filing," section 336.9-313.

"General intangibles," section 336.9-106.

"Inventory," section 336.9-109(4).

"Lien creditor," section 336.9-301(3).

"Motor vehicle," section 336.9-401(7).

“Proceeds,” section 336.9-306(1).

“Purchase money security interest,” section 336.9-107.

“United States,” section 336.9-103.

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

“Check,” section 336.3-104.

“Contract for sale,” section 336.2-106.

“Holder in due course,” section 336.3-302.

“Note,” section 336.3-104.

“Sale,” section 336.2-106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

**History:** 1965 c 811 s 336.9-105; 1969 c 621 s 7; 1976 c 135 s 8; 1977 c 347 s 47,48; 1978 c 695 s 48; 1986 c 444; 1990 c 426 art 1 s 40

### **336.9-106 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 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.

**History:** 1965 c 811 s 336.9-106; 1969 c 621 s 8; 1976 c 135 s 9

### **336.9-107 DEFINITIONS: “PURCHASE MONEY SECURITY INTEREST”.**

A security interest is a “purchase money security interest” to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) 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.

**History:** 1965 c 811 s 336.9-107

### **336.9-108 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 the 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 rights in such collateral either in the ordinary course of business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

**History:** 1965 c 811 s 336.9-108; 1986 c 444

### **336.9-109 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 nonprofit 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 the person 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 the person's equipment.

**History:** 1965 c 811 s 336.9-109; 1986 c 444

### **336.9-110 SUFFICIENCY OF DESCRIPTION.**

For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

**History:** 1965 c 811 s 336.9-110

### **336.9-111 APPLICABILITY OF BULK TRANSFER LAWS.**

The creation of a security interest is not a bulk transfer under article 6 (see section 336.6-103).

**History:** 1965 c 811 s 336.9-111

### **336.9-112 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 336.9-502(2) or under section 336.9-504(1), and is not liable for the debt or for any deficiency after resale, and the owner has the same right as the debtor

(a) to receive statements under section 336.9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 336.9-505;

(c) to redeem the collateral under section 336.9-506;

(d) to obtain injunctive or other relief under section 336.9-507(1); and

(e) to recover losses caused to the owner under section 336.9-208(2).

**History:** 1965 c 811 s 336.9-112; 1986 c 444

### **336.9-113 SECURITY INTERESTS ARISING UNDER ARTICLE ON SALES OR LEASES.**

A security interest arising solely under the article on sales (article 2) or the article on leases (article 2A) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed (i) by the article on sales (article 2) in the case of a security interest arising solely under such article or (ii) by the article on leases (article 2A) in the case of a security interest arising solely under such article.

**History:** 1965 c 811 s 336.9-113; 1989 c 232 art 2 s 4

### **336.9-114 CONSIGNMENT.**

(1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this article by paragraph (3) (c) of section

336.2-326 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

(a) the consignor complies with the filing provision of the article on sales with respect to consignments (paragraph (3) (c) of section 336.2-326) before the consignee receives possession of the goods; and

(b) 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

(c) the holder of the security interest received the notification within five years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) 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.

**History:** 1976 c 135 s 10

## Part 2

### VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

#### 336.9-201 GENERAL VALIDITY OF SECURITY AGREEMENT.

Except as otherwise provided by this chapter a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article 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.

**History:** 1965 c 811 s 336.9-201

#### 336.9-202 TITLE TO COLLATERAL IMMATERIAL.

Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

**History:** 1965 c 811 s 336.9-202

#### 336.9-203 ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; FORMAL REQUISITES.

(1) Subject to the provisions of section 336.4-208 on the security interest of a collecting bank, section 336.8-321 on security interests in securities and section 336.9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) 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;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) 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 (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by section 336.9-306.

(4) A transaction, although subject to this article, is also subject to Minnesota Statutes, Sections 48.153 to 48.157; Chapters 52, 53, and 56; and Sections 168.66 to 168.77, 222.13 to 222.16, and 334.01 to 334.06, and in the case of conflict between the provisions of this article 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.

*History: 1965 c 811 s 336.9-203; 1976 c 135 s 11; 1978 c 695 s 49*

### **336.9-204 AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES.**

(1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (section 336.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) 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 (1) of section 336.9-105).

*History: 1965 c 811 s 336.9-204; 1976 c 135 s 12*

### **336.9-205 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.

*History: 1965 c 811 s 336.9-205; 1976 c 135 s 13*

### **336.9-206 AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE; MODIFICATION OF SALES WARRANTIES WHERE SECURITY AGREEMENT EXISTS.**

(1) 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 not to assert against an assignee any claim or defense which the buyer or lessee may have against the seller or lessor is enforceable by an assignee who takes an 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 article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

*History: 1965 c 811 s 336.9-206; 1986 c 444*



**336.9-207 RIGHTS AND DUTIES WHEN COLLATERAL IS IN SECURED PARTY'S POSSESSION.**

(1) A secured party must use reasonable care in the custody and preservation of collateral in the secured party's 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.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) 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;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) 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;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by the secured party's failure to meet any obligation imposed by the preceding subsections but does not lose the security interest.

(4) 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.

**History:** 1965 c 811 s 336.9-207; 1986 c 444

**336.9-208 REQUEST FOR STATEMENT OF ACCOUNT OR LIST OF COLLATERAL.**

(1) A debtor may sign a statement indicating what the debtor 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.

(2) 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 the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply the secured party is liable for any loss caused to the debtor thereby; and if the debtor has properly included in the 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 the failure to comply. If the secured party no longer has an interest in the obligation or collateral at the time the request is received the secured party must disclose the name and address of any known successor in interest and the secured party 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 the successor.

(3) 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.

**History:** 1965 c 811 s 336.9-208; 1986 c 444

**Part 3**  
**RIGHTS OF THIRD PARTIES;**  
**PERFECTED AND UNPERFECTED**  
**SECURITY INTERESTS;**  
**RULES OF PRIORITY**

**336.9-301 PERSONS WHO TAKE PRIORITY OVER UNPERFECTED SECURITY INTERESTS; RIGHT OF "LIEN CREDITOR."**

(1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under section 336.9-312;
- (b) a person who becomes a lien creditor before the security interest is perfected;
- (c) 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 the ordinary course of business, to the extent that the person gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) 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 the person gives value without knowledge of the security interest and before it is perfected.

(2) 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, the secured party 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.

(3) 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.

(4) 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 the person 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.

**History:** 1965 c 811 s 336.9-301; 1976 c 135 s 14; 1983 c 50 s 1; 1986 c 444

**336.9-302 WHEN FILING IS REQUIRED TO PERFECT SECURITY INTEREST; SECURITY INTERESTS TO WHICH FILING PROVISIONS OF THIS ARTICLE DO NOT APPLY.**

(1) A financing statement must be filed to perfect all security interest except the following:

- (a) A security interest in collateral in possession of the secured party under section 336.9-305;
- (b) A security interest temporarily perfected in instruments or documents without delivery under section 336.9-304 or in proceeds for a 20 day period under section 336.9-306;
- (c) A security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
- (d) A purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 336.9-313;
- (e) 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;

(f) A security interest of a collecting bank (section 336.4-208) or in securities (section 336.8-321) or arising under the article on sales (see section 336.9-113) or covered in subsection (3) of this section;

(g) An assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to the following statutes or treaties; except that to the extent such statutes or treaties are silent on a specific matter, the provisions of this article shall govern:

(a) 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 article for filing of the security interest; or

(b) the following statutes of this state;

(i) Sections 168A.01 to 168A.31 and 86B.820 to 86B.920; 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 article (part 4) apply to a security interest in that collateral created by the person as a debtor; or

(ii) Sections 300.11 to 300.115.

(c) 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 (2) of section 336.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 336.9-103 on multiple state transactions. A security interest perfected by compliance with such a statute or treaty is governed by this article in all respects not inconsistent with the provisions of the statute or treaty under which it was perfected, provided that this article shall not be deemed inconsistent if it provides for a more extensive duration of effectiveness.

**History:** 1965 c 811 s 336.9-302; 1976 c 135 s 15; 1978 c 695 s 50; 1983 c 50 s 2; 1986 c 444; 1989 c 335 art 1 s 214; 1990 c 391 art 10 s 3

### **336.9-303 WHEN SECURITY INTEREST IS PERFECTED; CONTINUITY OF PERFECTION.**

(1) 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 336.9-302, 336.9-304, 336.9-305, and 336.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

**History:** 1965 c 811 s 336.9-303

### **336.9-304 PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.**

(1) 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 (4) and (5) of this section and subsections (2) and (3) of section 336.9-306 on proceeds.

(2) 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.

(3) 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.

(4) 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.

(5) 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:

(a) 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 (3) of section 336.9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the 21 day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.

**History:** 1965 c 811 s 336.9-304; 1976 c 135 s 16; 1978 c 695 s 51

### **336.9-305 WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING.**

A security interest in letters of credit and advices of credit (subsection (2) (a) of section 336.5-116), 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 article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

**History:** 1965 c 811 s 336.9-305; 1976 c 135 s 17; 1978 c 695 s 52

### **336.9-306 "PROCEEDS"; SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL.**

(1) "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 "noncash proceeds."

(2) Except where this article 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.

(3) 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 20 days after receipt of the proceeds by the debtor unless

(a) 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

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the 20 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 article for original collateral of the same type.

(4) 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:

(a) in identifiable noncash proceeds and in separate deposit accounts containing only proceeds;

(b) 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;

(c) 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

(d) 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 paragraph (d) is

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 20 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 paragraphs (a) to (c) of this subsection (4).

(5) 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:

(a) 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.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 336.9-308.

(c) 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 paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

**History:** 1965 c 811 s 336.9-306; 1976 c 135 s 18; 1983 c 50 s 3

**336.9-307 PROTECTION OF BUYERS OF GOODS.**

(1) A buyer in ordinary course of business (subsection (9) of section 336.1-201) takes free of a security interest created by the seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if buying without knowledge of the security interest, for value and for personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) 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.

**History:** 1965 c 811 s 336.9-307; 1976 c 135 s 19; 1985 c 233 s 7; 1985 c 276 s 10; 1985 c 306 s 23; 1986 c 322 s 3; 1986 c 444

**336.9-308 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 business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under section 336.9-304 (permissive filing and temporary perfection) or under section 336.9-306 (perfection as to proceeds) if acting without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (section 336.9-306) even though the purchaser knows that the specific paper or instrument is subject to the security interest.

**History:** 1965 c 811 s 336.9-308; 1976 c 135 s 20; 1986 c 444

**336.9-309 PROTECTION OF PURCHASERS OF INSTRUMENTS, DOCUMENTS AND SECURITIES.**

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 336.3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 336.7-501) or a bona fide purchaser of a security (section 336.8-302) and the holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to the holders or purchasers.

**History:** 1965 c 811 s 336.9-309; 1978 c 695 s 53

**336.9-310 PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.**

When a person in the ordinary course of 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.

**History:** 1965 c 811 s 336.9-310; 1986 c 444

**336.9-311 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 prohibiting any transfer or making the transfer constitute a default.

**History:** 1965 c 811 s 336.9-311

**336.9-312 PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME COLLATERAL.**

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section 336.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 336.9-103 on security interests related to other jurisdictions; section 336.9-114 on consignments.

(2) 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.

(3) 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

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) 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 (5) of section 336.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) 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.

(4) 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.

(5) 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 (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) 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.

(b) so long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 336.8-321 on securities, the security interest has the same priority for the purposes of subsection (5) 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.

**History:** 1965 c 811 s 336.9-312; 1976 c 135 s 21; 1978 c 695 s 54; 1983 c 50 s 4

**336.9-313 PRIORITY OF SECURITY INTERESTS IN FIXTURES.**

(1) In this section and in the provisions of part 4 of this article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law.

(b) 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 (5) of section 336.9-402 except in the case of a fixture filing by a transmitting utility, which shall be governed by subsection (5) of section 336.9-401.

(c) 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.

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

(3) This article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) 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 20 days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) 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

(c) 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 article; or

(d) 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 article.

(5) 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

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) 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.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), 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.

(7) 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.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, the secured party may, on default, subject to the provisions of part 5, remove collateral from the real estate but the secured party 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 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.

**History:** 1965 c 811 s 336.9-313; 1976 c 135 s 22; 1986 c 444; 1989 c 31 s 1

### 336.9-314 ACCESSIONS.

(1) 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 (3) and subject to section 336.9-315(1).

(2) 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 (3) 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.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or  
(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that the creditor 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 the holder's own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, the secured party may on default subject to the provisions of part 5 remove collateral from the whole but the secured party 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.

**History:** 1965 c 811 s 336.9-314; 1986 c 444

### 336.9-315 PRIORITY WHEN GOODS ARE COMMINGLED OR PROCESSED.

(1) 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

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) 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 paragraph (b) 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 336.9-314.

(2) When under subsection (1) 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.

**History:** 1965 c 811 s 336.9-315

**336.9-316 PRIORITY SUBJECT TO SUBORDINATION.**

Nothing in this article prevents subordination by agreement by any person entitled to priority.

*History: 1965 c 811 s 336.9-316*

**336.9-317 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.

*History: 1965 c 811 s 336.9-317*

**336.9-318 DEFENSES AGAINST ASSIGNEE; MODIFICATION OF CONTRACT AFTER NOTIFICATION OF ASSIGNMENT; TERM PROHIBITING ASSIGNMENT INEFFECTIVE; IDENTIFICATION AND PROOF OF ASSIGNMENT.**

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 336.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and the assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) 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.

(3) 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 the assignee does so the account debtor may pay the assignor.

(4) 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.

*History: 1965 c 811 s 336.9-318; 1976 c 135 s 23; 1986 c 444*

**Part 4****FILING****336.9-401 PLACE OF FILING; ERRONEOUS FILING; REMOVAL OF COLLATERAL.**

(1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is consumer goods, or motor vehicles which are not covered by a certificate of title, then in the office of the county recorder in the county of the debtor's residence if the debtor is an individual who is a resident of this state but if the debtor is an individual who is not a resident of this state or is a corporation, partnership or other organization then in the office of the secretary of state;

(b) When the collateral is equipment to be 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 crops growing or to be grown, then in the office of the county recorder in the county of the debtor's residence if the debtor is an individual or organization with residence in this state, but if the debtor is not a resident of this state, then in the office of the secretary of state;

(c) When the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 336.9-103, or when the financing statement is filed as a fixture filing (section 336.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(d) In all other cases, in the office of the secretary of state.

(2) 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 article 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.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence in this state or the use of the collateral, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in section 336.9-103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. Such a filing shall not be deemed a separate filing from the filings required by other laws, if applicable, set forth in subsection (3) of section 336.9-302. This filing constitutes a fixture filing (section 336.9-313) as to the collateral described therein which is or is to become fixtures.

(6) 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.

(7) "Motor vehicle" means any device propelled or drawn by any power other than muscular power in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting building and road construction equipment and vehicles that are inventory of licensed dealers.

**History:** 1965 c 811 s 336.9-401; 1976 c 135 s 24; 1976 c 181 s 2; 1983 c 374 s 18; 1984 c 618 s 46

### **336.9-402 FORMAL REQUISITES OF FINANCING STATEMENT; AMENDMENTS; MORTGAGE AS FINANCING STATEMENT.**

(1) A financing statement is sufficient if it gives the name 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 and the name of the record owner thereof and the crop years that are covered by the financing statement. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 336.9-103, or when the financing statement is filed as a fixture filing (section 336.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). 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.

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(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor when it is filed to perfect a security interest in

(a) 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

(b) proceeds under section 336.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed within one year; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)); or

(e) a lien filed pursuant to chapter 514; or

(f) collateral which is subject to a filed judgment.

(2a) Except for documents filed under clauses (e) and (f), the reason for the omission of the debtor signature must be stated on the front of the financing statement.

(3) A form substantially as follows is sufficient to comply with subsection (1):

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 and the name of the record owner thereof) .....

.....

3. (If applicable) The above goods are to become fixtures 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 is .....

4. (If products of collateral are claimed)

Products of the collateral are also covered.

Use whichever signature line is applicable.

Signature of debtor (or assignor)

.....

Signature of secured party (or assignee)

.....

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. If the sole purpose of the amendment is to change the name or address of the secured party, only the secured party need sign the amendment. A writing is sufficient if it sets forth the name and address of the debtor and secured party as those items appear on the original financing statement or the most recently filed amendment, the file number and date of filing of the financing statement. 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 article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 336.9-103, or a financing statement filed as a fixture filing (section 336.9-313) where the debtor is not a transmitting utility, 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. No description of the real estate or the name of the record owner thereof is required for a fixture filing where the debtor is a transmitting utility. Notwithstanding the foregoing a general description of the real estate is sufficient for a fixture filing where a railroad is the record owner of the real estate on which the fixtures are or are to be located; and for the purposes of this subsection, the requirement of a general description is satisfied if the fixture filing (1) identifies the section, township and range numbers of the county in which the land is located; (2) identifies the quarter-quarter of the section that the land is located in; (3) indicates the name of the record owner of the real estate; and (4) states the street address of the real estate if one exists.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) 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 (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) 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 a personal 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.

(8) A financing statement, amendment, continuation, assignment, release, or termination substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

*History:* 1965 c 811 s 336.9-402; 1976 c 135 s 25; 1984 c 618 s 47; 1985 c 233 s 8; 1985 c 306 s 24; 1Sp1985 c 18 s 4; 1986 c 444

### **336.9-403 WHAT CONSTITUTES FILING; DURATION OF FILING; EFFECT OF LAPSED FILING; DUTIES OF FILING OFFICER.**

(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) 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 60 days or until expiration of the five-year period, whichever occurs later regardless of whether the financing statement filed as to that security interest is destroyed by the filing officer pursuant to subsection (3). 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.

(3) 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 (2). Any such continuation statement must be signed by the secured party, set forth the name and address of the debtor and secured party as those items appear on the original financing statement or the most recently filed amendment, identify the original statement by file number and filing date, 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 (2) of section 336.9-405, 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 (2) 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 the officer 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 the officer 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 (6) shall be retained. If insolvency proceedings are commenced by or against the debtor, the secured party shall notify the filing officer both upon commencement and termination of the proceedings, and the filing officer shall not destroy any financing statements filed with respect to the debtor until termination of the insolvency proceedings. The security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of 60 days or until expiration of the five-year period, whichever occurs later.

(4) Except as provided in subsection (7) a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the 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 statement.

(5) The secretary of state shall prescribe uniform forms for statements and samples thereof shall be furnished to all filing officers in the state. 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 \$7 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$10, plus in each case, if the financing statement is subject to subsection (5) of section 336.9-402, \$5. An additional fee of \$7 shall be collected if more than one name is required to be indexed or if the secured party chooses to show a trade name for any debtor listed. The uniform fee collected for the filing of an amendment to a financing statement if the amendment is in the standard form prescribed by the secretary of state and does not add additional debtor names to the financing statement shall be \$7. The fee for an amendment adding additional debtor names shall be \$14 if the amendment is in the form prescribed by the secretary of state and, if otherwise, \$17. The fee for an amendment which is not in the form prescribed by the secretary of state but which does not add additional names shall be \$10.

The secretary of state shall adopt rules for filing, amendment, continuation, termination, removal, and destruction of financing statements.

(6) If the debtor is a transmitting utility (subsection (5) of section 336.9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of section 336.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of section 336.9-103, or is filed as a fixture filing, it shall be filed for record 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 the secured party were the mortgagee thereunder, or, for filing offices other than the secretary of state, where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. If requested of the filing officer on the financing statement, a financing statement filed for record as a fixture filing in the same office where nonfixture filings are made is effective, without a dual filing, as to collateral listed thereon for which filing is required in such office pursuant to section 336.9-401 (1) (a); in such case, the filing officer shall also index the recorded statement in accordance with subsection (4) using the recording data in lieu of a file number.

(8) The fees provided for in this article shall supersede the fees for similar services otherwise provided for by law except in the case of security interests filed in connection with a certificate of title on a motor vehicle.

**History:** 1965 c 811 s 336.9-403; 1976 c 135 s 26; 1981 c 356 s 347; 1984 c 618 s 48; 1985 c 233 s 9; 1985 c 306 s 25; 1Sp1985 c 18 s 5; 1986 c 444; 1989 c 335 art 1 s 215

#### **336.9-404 TERMINATION STATEMENT.**

(1) If a financing statement covering consumer goods is filed on or after January 1, 1977, 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 the secured party no longer claims a security interest under the financing statement. The termination statement must set forth the name and address of the debtor and secured party as those items appear on the original financing statement or the most recently filed amendment; identify the original financing statement by file number and filing date; and be signed by the secured party. 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 the secured party 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 (2) of section 336.9-405, 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 the secured party shall be liable to the debtor for \$100, and in addition for any loss caused to the debtor by such failure.

(2) On being presented with such a termination statement the filing officer must note it in the index. If a duplicate termination statement is provided, the filing officer 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, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or having no such record, the filing officer may remove them from the files at any time after one year after receipt of the termination statement.

(3) There shall be no fee collected for the filing of a termination if the termination statement is in the standard form prescribed by the secretary of state and otherwise shall be \$5, plus in each case, if the original financing statement was subject to subsec-

tion (5) of section 336.9-402, the fee prescribed by section 357.18, subdivision 1, clause (1).

**History:** 1965 c 811 s 336.9-404; 1976 c 135 s 27; 1977 c 347 s 50; 1981 c 356 s 348; 1984 c 618 s 49; 1986 c 444

### **336.9-405 ASSIGNMENT OF SECURITY INTEREST; DUTIES OF FILING OFFICER; FEES.**

(1) 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 of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 336.9-403, clause (4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be the same as the fee prescribed in section 336.9-403, clause (5).

(2) A secured party of record may record an assignment of all or a part of the secured party's 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, setting forth the name and address of the secured party of record and the debtor as those items appear on the original financing statement or the most recently filed amendment, identifying the file number and the date of filing of the financing statement, giving 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 presentation 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. The filing officer 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 (5) of section 336.9-103. The filing officer shall also index the assignment under the name of the assignor 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, 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 \$7 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$10, plus in each case, if the original financing statement was subject to subsection (5) of section 336.9-402, the fee prescribed by section 357.18, subdivision 1, clause (1). An additional fee of \$7 shall be charged if there is more than one name against which the statement of assignment is required to be indexed. 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 (6) of section 336.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than Laws 1976, chapter 135.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

**History:** 1965 c 811 s 336.9-405; 1976 c 135 s 28; 1981 c 356 s 349; 1984 c 618 s 50; 1986 c 444; 1989 c 335 art 1 s 216

### **336.9-406 RELEASE OF COLLATERAL; DUTIES OF FILING OFFICER; FEES.**

A secured party of record may by 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 and secured party as those items appear on the original financing statement or the most recently filed amendment, and identifies the original financing statement by file number and filing date. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assign-



ment signed by the secured party of record and complying with subsection (2) of section 336.9-405, including payment of the required fee. Upon being presented with such a statement of release the filing officer 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 \$7 if the statement is in the standard form prescribed by the secretary of state and otherwise shall be \$10, plus in each case, if the original financing statement was subject to subsection (5) of section 336.9-402, the fee prescribed by section 357.18, subdivision 1, clause (1).

**History:** 1965 c 811 s 336.9-406; 1976 c 135 s 29; 1981 c 356 s 350; 1984 c 618 s 51; 1986 c 444; 1989 c 335 art 1 s 217

### 336.9-407 INFORMATION FROM FILING OFFICER.

(1) 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.

(2) Upon request of any person, the filing officer shall conduct a search of the state-wide computerized uniform commercial code data base for any effective financing statements naming a particular debtor and any statement of assignment thereof. The filing officer shall report the findings as of that date and hour by issuing:

(a) a certificate listing the file number, date, and hour of each filing and the names and addresses of each secured party therein;

(b) photocopies of those original documents on file and located in the office of the filing officer; or

(c) upon request, both the certificate and the photocopies referred to in (b).

The uniform fee for conducting the search and for preparing a certificate showing up to five listed filings or for preparing up to five photocopies of original documents, or any combination of up to five listed filings and photocopies, shall be \$7 if the request is in the standard form prescribed by the secretary of state and otherwise shall be \$10. Another fee, at the same rate, shall also be charged for conducting a search and preparing a certificate showing federal and state tax liens on file with the filing officer naming a particular debtor. There shall be an additional fee of 50 cents for each financing statement and each statement of assignment or tax lien listed on the certificate and for each photocopy prepared in excess of the first five. Notwithstanding the fees set in this section, a natural person who is the subject of data must, upon the person's request, be shown the data without charge, and upon request be provided with photocopies of the data upon payment of no more than the actual cost of making the copies.

**History:** 1965 c 811 s 336.9-407; 1976 c 135 s 30; 1981 c 356 s 351; 1985 c 281 s 4; 1986 c 444; 1987 c 356 s 1; 1988 c 589 s 1; 1989 c 335 art 1 s 218

**336.9-408** MS 1974 [Repealed, 1976 c 135 s 38]

### 336.9-408 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 336.9-402. The provisions of this part 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 336.1-201, clause (37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

**History:** 1976 c 135 s 31

**336.9-410 DESTRUCTION OF OLD RECORDS.**

Unless a filing officer has notice of an action pending relative thereto, the filing officer may remove from the files and destroy

(a) a lapsed financing statement, a lapsed continuation statement, a statement of assignment or release relating to either, and any index of any of them, one year or more after lapse; and

(b) a termination statement and the index on which it is noted, three years or more after the filing of the termination statement.

*History: 1976 c 135 s 32; 1986 c 444*

**336.9-411 COMPUTERIZED FILING SYSTEM.**

(a) The secretary of state shall develop and implement a statewide computerized filing system to accumulate and disseminate information relative to lien statements, financing statements, state and federal tax lien notices, and other uniform commercial code documents. The computerized filing system must allow information to be entered and retrieved from the computerized filing system by county recorders.

(b) County recorders shall enter information relative to lien statements, financing statements, state and federal tax lien notices, and other uniform commercial code documents filed in their offices into a central data base maintained by the secretary of state. The information must be entered under the rules of the secretary of state.

(c) The secretary of state may allow private parties to have electronic-view-only access to the computerized filing system and to other computerized records maintained by the secretary of state on a fee basis. If the computerized filing system allows a form of electronic access to information regarding the obligations of debtors, the access must be available 24 hours a day, every day of the year.

(d) The secretary of state shall adopt rules to implement the computerized filing system. The secretary of state may adopt permanent and emergency rules. The rules must:

(1) allow filings to be made at the offices of all county recorders and the secretary of state's office as required by section 336.9-401;

(2) establish a central data base for all information relating to liens and security interests that are filed at the offices of county recorders and the secretary of state;

(3) provide procedures for entering data into a central data base;

(4) allow the offices of all county recorders and the secretary of state's office to add, modify, and delete information in the central data base as required by the uniform commercial code;

(5) allow the offices of all county recorders and the secretary of state's office to have access to the central data base for review and search capabilities;

(6) allow the offices of all county recorders to have electronic-view-only access to the computerized business information records on file with the secretary of state;

(7) require the secretary of state to maintain the central data base;

(8) provide security and protection of all information in the central data base and monitor the central data base to ensure that unauthorized entry is not allowed;

(9) require standardized information for entry into the central data base;

(10) prescribe an identification procedure for debtors and secured parties that will enhance lien and financing statement searches; and

(11) prescribe a procedure for phasing-in or converting from the existing filing system to a computerized filing system.

*History: 1987 c 356 s 2; 1988 c 589 s 2*

**336.9-412 LIABILITY FOR INFORMATION ERRORS.**

The state, the secretary of state, counties, county recorders, and their employees and agents are immune from liability that occurs as a result of errors in or omissions from information provided from the computerized filing system.

*History: 1987 c 356 s 3*

**336.9-413 UNIFORM COMMERCIAL CODE ACCOUNT.**

(a) The uniform commercial code account is established as an account in the state treasury.

(b) The filing officer with whom a financing statement, amendment, assignment, statement of release, or continuation statement is filed, or to whom a request for search is made, shall collect a \$3 surcharge on each filing or search. By the 15th day following the end of each fiscal quarter, each county recorder shall forward the receipts from the surcharge accumulated during that fiscal quarter to the secretary of state. The surcharge does not apply to a search request made by a natural person who is the subject of the data to be searched except when a certificate is requested as a part of the search.

(c) The surcharge amounts received from county recorders and the surcharge amounts collected by the secretary of state's office must be deposited in the state treasury and credited to the general fund.

(d) Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing a service under sections 336.9-411 to 336.9-413 must be deposited in the state treasury and credited to the uniform commercial code account.

(e) Fees that are not expressly set by statute but are charged by the secretary of state to offset the costs of providing information contained in the computerized records maintained by the secretary of state must be deposited in the state treasury and credited to the uniform commercial code account.

(f) Money in the uniform commercial code account is continuously appropriated to the secretary of state to implement and maintain the computerized uniform commercial code filing system under section 336.9-411 and to provide electronic-view-only access to other computerized records maintained by the secretary of state.

**History:** 1987 c 356 s 4; 1988 c 589 s 3; 1989 c 335 art 4 s 81; 1989 c 335 art 1 s 219

**NOTE:** The amendment to this section by Laws 1989, chapter 335, article 4, section 81, is effective June 30, 1991. See Laws 1989, chapter 335, article 4, section 110.

**Part 5****DEFAULT****336.9-501 DEFAULT; PROCEDURE WHEN SECURITY AGREEMENT COVERS BOTH REAL AND PERSONAL PROPERTY.**

(1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. The secured party may reduce a 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 336.9-207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement, and those provided in section 336.9-207.

(3) 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 (3) of section 336.9-504 and section 336.9-505) and with respect to redemption of collateral (section 336.9-506) 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:

(a) Subsection (2) of section 336.9-502 and subsection (2) of section 336.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) Subsection (3) of section 336.9-504 and subsection (1) of section 336.9-505 which deal with disposition of collateral;

(c) Subsection (2) of section 336.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) Section 336.9-506 which deals with redemption of collateral; and

(e) Subsection (1) of section 336.9-507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or may proceed as to both the real and the personal property in accordance with the secured party's rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced a claim to judgment the lien of any levy which may be made upon 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 article.

(6) A person may not begin to enforce a security interest in collateral that is agricultural property subject to sections 583.20 to 583.32 that has secured a debt of more than \$5,000 unless: a mediation notice under subsection (7) is served on the debtor after a condition of default has occurred in the security agreement and a copy served on the director; and the debtor and creditor have completed mediation under sections 583.20 to 583.32; or as otherwise allowed under sections 583.20 to 583.32.

(7) A mediation notice under subsection (6) must contain the following notice with the blanks properly filled in.

"TO: ....(Name of Debtor)....

YOU HAVE DEFAULTED ON THE ....(Debt in Default).... SECURED BY AGRICULTURAL PROPERTY DESCRIBED AS ....(Reasonable Description of Agricultural Property Collateral)....

AS A SECURED PARTY, ....(Name of Secured Party).... INTENDS TO ENFORCE THE SECURITY AGREEMENT AGAINST THE AGRICULTURAL PROPERTY DESCRIBED ABOVE BY REPOSSESSING, FORECLOSING ON, OR OBTAINING A COURT JUDGMENT AGAINST THE PROPERTY.

YOU HAVE THE RIGHT TO HAVE THE DEBT REVIEWED FOR MEDIATION. IF YOU REQUEST MEDIATION, A DEBT THAT IS IN DEFAULT WILL BE MEDIATED ONLY ONCE. IF YOU DO NOT REQUEST MEDIATION, THIS DEBT WILL NOT BE SUBJECT TO FUTURE MEDIATION IF THE SECURED PARTY ENFORCES THE DEBT.

IF YOU PARTICIPATE IN MEDIATION, THE DIRECTOR OF THE AGRICULTURAL EXTENSION SERVICE WILL PROVIDE AN ORIENTATION MEETING AND A FINANCIAL ANALYST TO HELP YOU TO PREPARE FINANCIAL INFORMATION. IF YOU DECIDE TO PARTICIPATE IN MEDIATION, IT WILL BE TO YOUR ADVANTAGE TO ASSEMBLE YOUR FARM FINANCE AND OPERATION RECORDS AND TO CONTACT A COUNTY EXTENSION OFFICE AS SOON AS POSSIBLE. MEDIATION WILL ATTEMPT TO ARRIVE AT AN AGREEMENT FOR HANDLING FUTURE FINANCIAL RELATIONS.

TO HAVE THE DEBT REVIEWED FOR MEDIATION YOU MUST FILE A MEDIATION REQUEST WITH THE DIRECTOR WITHIN 14 DAYS AFTER YOU RECEIVE THIS NOTICE. THE MEDIATION REQUEST FORM IS AVAILABLE AT ANY COUNTY RECORDER'S OR COUNTY EXTENSION OFFICE.

FROM: ....(Name and Address of Secured Party)...."

**History:** 1965 c 811 s 336.9-501; 1976 c 135 s 33; 1977 c 347 s 49; 1986 c 398 art 1 s 1; 1986 c 444; 1987 c 292 s 2

**NOTE:** This section, as amended by Laws 1986, chapter 398, article 1, section 1, is repealed July 1, 1992. See Laws

1986, chapter 398, article 1, section 18, as amended by Laws 1987, chapter 292, section 37; Laws 1989 c 350 art 16 s 8; Laws 1990 c 525 s 1.

### 336.9-502 COLLECTION RIGHTS OF SECURED PARTY.

(1) 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 the secured party whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which the secured party is entitled under section 336.9-306.

(2) 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 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.

*History: 1965 c 811 s 336.9-502; 1976 c 135 s 34; 1986 c 444*

### 336.9-503 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 336.9-504.

*History: 1965 c 811 s 336.9-503*

### 336.9-504 SECURED PARTY'S RIGHT TO DISPOSE OF COLLATERAL AFTER DEFAULT; EFFECT OF DISPOSITION.

(1) 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 article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) 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;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) 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 the holder's interest, and unless the holder does so, the secured party need not comply with the demand.

(2) 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, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) 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 the debtor has not signed after default a statement renouncing or modifying the 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 from whom the secured party has received (before sending notification to the debtor or before the debtor's renunciation of 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 the secured party may buy at private sale.

(4) 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 part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if the purchaser does not buy in collusion with the secured party, other bidders, or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, endorsement, repurchase agreement, or the like and who receives a transfer of collateral from the secured party or is subrogated to the secured party's 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 article.

*History: 1965 c 811 s 336.9-504; 1976 c 135 s 35; 1986 c 444*

### **336.9-505 COMPULSORY DISPOSITION OF COLLATERAL; ACCEPTANCE OF THE COLLATERAL AS DISCHARGE OF OBLIGATION.**

(1) If the debtor has paid 60 percent of the cash price in the case of a purchase money security interest in consumer goods or 60 percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying the debtor's rights under this part a secured party who has taken possession of collateral must dispose of it under section 336.9-504 and if the secured party fails to do so within 90 days after taking possession the debtor either may recover in conversion or under section 336.9-507(1) on secured party's liability.

(2) 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 the debtor has not signed after default a statement renouncing or modifying the debtor's rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending notice to the debtor or before the debtor's renunciation of 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 21 days after the notice was sent, the secured party must dispose of the collateral under section 336.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

*History: 1965 c 811 s 336.9-505; 1976 c 135 s 36; 1986 c 444*

### **336.9-506 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 336.9-504 or before the obligation has been discharged under section 336.9-505(2) 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, reasonable attorneys' fees and legal expenses.

**History:** 1965 c 811 s 336.9-506; 1986 c 444

### **336.9-507 SECURED PARTY'S LIABILITY FOR FAILURE TO COMPLY WITH THIS PART.**

(1) If it is established that the secured party is not proceeding in accordance with the provisions of this part 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 part. 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 percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) 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 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 the secured party sells at the price current in such market at the time of the sale or if the secured party has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold the sale has been made 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.

**History:** 1965 c 811 s 336.9-507; 1986 c 444

### **336.9-508 RECORDING PROCEEDINGS OF SALE OF COLLATERAL.**

Any secured party desiring to perpetuate the evidence of any sale made under the terms of any security agreement may within ten days after such a sale file in the appropriate office for the filing of a financing statement covering the goods sold a report of the proceedings of the sale, specifying the property sold and that returned, if any, the amount received, the name of the purchaser, an itemized statement of all costs and expenses, the amount applied on the obligation secured, and the amount, if any, returned to the debtor. The report shall be made by the person conducting the sale and verified or, if the person conducting the sale be an officer, certified by that person. An affidavit or officer's certificate of the service or posting of notice of the sale, executed by the person who served or posted the notice of sale, may be filed with the report of the proceedings of the sale. When such a report, affidavit, or certificate has been filed, it is prima facie evidence of the facts therein stated.

**History:** 1965 c 811 s 336.9-508; 1986 c 444

## **Article 10**

### **EFFECTIVE DATE AND REPEALER**

#### **336.10-101 [Expired]**

**336.10-102 LAWS REPEALED; PROVISION FOR TRANSITION.**

(1) Minnesota Statutes 1961, Sections 48.29; 48.515; 48.518; 227.01 to 227.49; 227.56 to 227.59; 228.01 to 228.44; 228.52 to 228.55; 300.56; 302.01 to 302.22; 334.08; 334.09; 334.12; 335.01 to 335.03; 335.035 to 335.275; 335.276, as amended by Laws 1963, Chapter 301, Section 1; 335.28 to 335.80; 359.09; 359.10; 511.01 to 511.05; 511.06, as amended by Laws 1963, Chapter 173, Section 1; 511.07 to 511.32; 512.01 to 512.79; 513.12 to 513.19; 514.80 to 514.86; 514.87, as amended by Laws 1963, Chapter 59, Section 1; 514.88 to 514.91; 520.04 to 520.06; 521.01 to 521.07; 522.01 to 522.18; 601.02; and 601.03, are repealed.

(2) Transactions validly entered into before the effective date specified in section 336.10-105 and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law repealed by this chapter as though such repeal had not occurred.

**History:** 1965 c 811 s 336.10-102

**336.10-103 GENERAL REPEALER.**

Except as provided in the following section, all laws and parts of laws inconsistent with this chapter are hereby repealed.

**History:** 1965 c 811 s 336.10-103

**336.10-104 LAWS NOT REPEALED.**

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 336.1-201).

(2) This chapter does not repeal Minnesota Statutes 1961, Sections 520.21 to 520.31, cited as the uniform act for the simplification of fiduciary security transfers, and if in any respect there is any inconsistency between that act and the article of this chapter on investment securities (article 8) the provisions of the former act shall control.

**History:** 1965 c 811 s 336.10-104

**336.10-105 EFFECTIVE DATE.**

Except as otherwise provided for in section 336.10-101, this chapter shall become effective July 1, 1966. It applies to transactions entered into and occurring on and after that date.

**History:** 1965 c 811 s 336.10-105

**Article 11****EFFECTIVE DATE****336.11-101 EFFECTIVE DATE.**

Laws 1976, Chapter 135 shall become effective at 12:01 a.m. on January 1, 1977.

**History:** 1976 c 135 s 37

**336.11-102 PRESERVATION OF OLD TRANSACTION PROVISION.**

The provisions of section 336.10-102 shall continue to apply to chapter 336 as amended by Laws 1976, Chapter 135 and for this purpose Minnesota Statutes 1971, Chapter 336 and its amendments by Laws 1976, Chapter 135 shall be considered one continuous statute.

**History:** 1976 c 135 s 37



**336.11-103 TRANSITION TO AMENDED UNIFORM COMMERCIAL CODE; GENERAL RULE.**

Transactions validly entered into after June 30, 1966 and before January 1, 1977, and which were subject to the provisions of Minnesota Statutes 1971, Chapter 336, and which would be subject to chapter 336 as amended if they had been entered into after December 31, 1976 and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by chapter 336 as amended by Laws 1976, Chapter 135. Security interests arising out of such transactions which are perfected before January 1, 1977 shall remain perfected until they lapse as provided in chapter 336, as amended by Laws 1976, Chapter 135, and may be continued as permitted by chapter 336 as amended by Laws 1976, Chapter 135, except as stated in section 336.11-105.

*History: 1976 c 135 s 37*

**336.11-104 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 Minnesota Statutes 1971, Chapter 336, and which attached prior to January 1, 1977 but was not perfected shall be deemed perfected on January 1, 1977 if chapter 336, as amended by Laws 1976, Chapter 135, permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

*History: 1976 c 135 s 37*

**336.11-105 TRANSITION PROVISION ON CHANGE OF PLACE OF FILING.**

(1) A financing statement or continuation statement filed prior to January 1, 1977 which shall not have lapsed prior to January 1, 1977 shall remain effective for the period provided in Minnesota Statutes 1971, Chapter 336, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to December 31, 1976, any effective financing statement or continuation statement described in this section 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 chapter 336 as amended by Laws 1976, Chapter 135.

(3) The effectiveness of any financing statement or continuation statement filed prior to January 1, 1977 may be continued by a continuation statement as permitted by chapter 336 as amended by Laws 1976, Chapter 135, except that if chapter 336, as amended by Laws 1976, Chapter 135 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to section 336.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if chapter 336 as amended by Laws 1976, Chapter 135 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of section 336.9-402 of chapter 336 as amended by Laws 1976, Chapter 135 on January 1, 1977.

*History: 1976 c 135 s 37*

**336.11-106 REQUIRED REFILINGS.**

(1) If a security interest is perfected or has priority when Laws 1976, Chapter 135 takes 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 chapter 336, as amended by Laws 1976, Chapter 135, the perfection and priority rights of the security interest continue until January 1, 1979. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when chapter 336, as amended by Laws 1976, Chapter 135 takes effect under a law other than chapter 336 which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse January 1, 1980, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of section 336.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by Laws 1976, Chapter 135 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 (4) or unless the security interest is perfected otherwise than by filing.

(4) 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 Laws 1976, Chapter 135), 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 chapter 336 or under any statute or other law repealed or modified by Laws 1976, Chapter 135 is still effective. Section 336.9-401 and section 336.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of section 336.9-403(3) for continuation statements apply to such a financing statement.

**History:** 1976 c 135 s 37

#### **336.11-107 TRANSITION PROVISIONS AS TO PRIORITIES.**

Except as otherwise provided in article XI, Minnesota Statutes 1971, Chapter 336 shall apply to any questions of priority if the positions of the parties were fixed prior to January 1, 1977. In other cases questions of priority shall be determined by chapter 336 as amended by Laws 1976, Chapter 135.

**History:** 1976 c 135 s 37

#### **336.11-108 PRESUMPTION THAT RULE OF LAW CONTINUES UNCHANGED.**

Unless a change in law has clearly been made, the provisions of chapter 336, as amended shall be deemed declaratory of the meaning of Minnesota Statutes 1971, Chapter 336.

**History:** 1976 c 135 s 37