

SENATE BILL 747

I4

2lr1643
CF HB 700

By: **Senator Middleton**

Introduced and read first time: February 3, 2012

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2012

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law – Uniform Commercial Code – Revisions to Title 1**

3 FOR the purpose of revising, updating, reorganizing, and clarifying Title 1 of the
4 Maryland Uniform Commercial Code (MUCC) relating to general provisions
5 applicable to the MUCC; establishing a certain short title; clarifying the
6 transactions to which Title 1 of the MUCC applies; providing for the effect of
7 Title 1 of the MUCC on a certain federal law; authorizing the subordination of
8 an obligation or a right to performance under certain circumstances; providing
9 that subordination does not create a certain security interest; making certain
10 stylistic changes; defining certain terms; altering and repealing certain
11 definitions; making conforming changes to certain provisions of the MUCC; and
12 generally relating to the Maryland Uniform Commercial Code.

13 BY repealing

14 Article – Commercial Law

15 Section 1–101 through 1–208 and the title “Title 1. General Provisions”; and
16 2–208 and 2A–207

17 Annotated Code of Maryland

18 (2002 Replacement Volume and 2011 Supplement)

19 BY adding to

20 Article – Commercial Law

21 Section 1–101 through 1–108 to be under the new subtitle “Subtitle 1. General
22 Provisions”; 1–201 through 1–206 to be under the new subtitle “Subtitle
23 2. General Definitions and Principles of Interpretation”; and 1–301

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 through 1–310 to be under the new subtitle “Subtitle 3. Territorial
2 Applicability and Applicable Law”; and the new title “Title 1. General
3 Provisions”

4 Annotated Code of Maryland
5 (2002 Replacement Volume and 2011 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Commercial Law
8 Section 2–103(1), 2–202, 2A–103(3), 2A–501(4), 2A–518(2), 2A–519(1),
9 2A–527(2), 2A–528(1), 3–103(a)(4) and (10), 4–104(c), 4A–105(a)(6) and
10 (7), 4A–106(a)(1), 4A–204(b), 5–103(c), 8–102(a)(10), and 9–102(a)(43)
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2011 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That Section(s) 1–101 through 1–208 and the title “Title 1. General
15 Provisions” of Article – Commercial Law of the Annotated Code of Maryland be
16 repealed.

17 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
18 read as follows:

19 **Article – Commercial Law**

20 **TITLE 1. GENERAL PROVISIONS.**

21 **SUBTITLE 1. GENERAL PROVISIONS.**

22 **1–101. SHORT TITLES.**

23 (A) TITLES 1 THROUGH 10 OF THIS ARTICLE MAY BE CITED AS THE
24 MARYLAND UNIFORM COMMERCIAL CODE.

25 (B) THIS TITLE MAY BE CITED AS MARYLAND UNIFORM COMMERCIAL
26 CODE – GENERAL PROVISIONS.

27 **1–102. SCOPE OF TITLE.**

28 THIS TITLE APPLIES TO A TRANSACTION TO THE EXTENT THAT IT IS
29 GOVERNED BY ANOTHER TITLE OF THE MARYLAND UNIFORM COMMERCIAL
30 CODE.

31 **1–103. CONSTRUCTION OF MARYLAND UNIFORM COMMERCIAL CODE;
32 APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**

1 **(A) THE MARYLAND UNIFORM COMMERCIAL CODE SHALL BE**
2 **LIBERALLY CONSTRUED AND APPLIED TO PROMOTE ITS UNDERLYING**
3 **PURPOSES AND POLICIES.**

4 **(B) THE UNDERLYING PURPOSES AND POLICIES OF THE MARYLAND**
5 **UNIFORM COMMERCIAL CODE ARE:**

6 **(1) TO SIMPLIFY, CLARIFY, AND MODERNIZE THE LAW**
7 **GOVERNING COMMERCIAL TRANSACTIONS;**

8 **(2) TO PERMIT THE CONTINUED EXPANSION OF COMMERCIAL**
9 **PRACTICES THROUGH CUSTOM, USAGE, AND AGREEMENT OF THE PARTIES; AND**

10 **(3) TO MAKE UNIFORM THE LAW AMONG THE VARIOUS**
11 **JURISDICTIONS.**

12 **(C) UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THE**
13 **MARYLAND UNIFORM COMMERCIAL CODE, THE PRINCIPLES OF LAW AND**
14 **EQUITY, INCLUDING THE LAW MERCHANT AND THE LAW RELATIVE TO CAPACITY**
15 **TO CONTRACT, PRINCIPAL AND AGENT, ESTOPPEL, FRAUD,**
16 **MISREPRESENTATION, DURESS, COERCION, MISTAKE, BANKRUPTCY, OR OTHER**
17 **VALIDATING OR INVALIDATING CAUSE SHALL SUPPLEMENT ITS PROVISIONS,**
18 **EXCEPT THAT:**

19 **(1) THE AGE OF MAJORITY AS IT PERTAINS TO THE CAPACITY TO**
20 **CONTRACT IS 18 YEARS OF AGE; AND**

21 **(2) NO PERSON WHO IS AT LEAST 18 YEARS OLD SHALL BE**
22 **CONSIDERED TO BE WITHOUT CAPACITY BY REASON OF AGE.**

23 **1-104. CONSTRUCTION AGAINST IMPLIED REPEAL.**

24 **THE MARYLAND UNIFORM COMMERCIAL CODE BEING A GENERAL ACT**
25 **INTENDED AS A UNIFIED COVERAGE OF ITS SUBJECT MATTER, NO PART OF IT**
26 **SHALL BE DEEMED TO BE IMPLIEDLY REPEALED BY SUBSEQUENT LEGISLATION**
27 **IF SUCH CONSTRUCTION CAN REASONABLY BE AVOIDED.**

28 **1-105. SEVERABILITY.**

29 **IF ANY PROVISION OR CLAUSE OF THE MARYLAND UNIFORM**
30 **COMMERCIAL CODE OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES**
31 **IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR**
32 **APPLICATIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE THAT CAN BE**
33 **GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO**

1 THIS END THE PROVISIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE
2 ARE SEVERABLE.

3 **1-106. USE OF SINGULAR AND PLURAL; GENDER.**

4 IN THE MARYLAND UNIFORM COMMERCIAL CODE, UNLESS THE CONTEXT
5 OTHERWISE REQUIRES:

6 (1) WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL,
7 AND THOSE IN THE PLURAL INCLUDE THE SINGULAR; AND

8 (2) WORDS OF ANY GENDER ALSO REFER TO ANY OTHER GENDER.

9 **1-107. SECTION CAPTIONS.**

10 SECTION CAPTIONS ARE PART OF THE MARYLAND UNIFORM
11 COMMERCIAL CODE.

12 **1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
13 NATIONAL COMMERCE ACT.**

14 THIS TITLE MODIFIES, LIMITS, AND SUPERSEDES THE FEDERAL
15 ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15
16 U.S.C. § 7001 ET SEQ., EXCEPT THAT NOTHING IN THIS TITLE MODIFIES, LIMITS,
17 OR SUPERSEDES § 7001(C) OF THAT ACT OR AUTHORIZES ELECTRONIC
18 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN § 7003(B) OF THAT ACT.

19 **SUBTITLE 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.**

20 **1-201. GENERAL DEFINITIONS.**

21 (A) UNLESS THE CONTEXT OTHERWISE REQUIRES, WORDS OR PHRASES
22 DEFINED IN THIS SECTION, OR IN THE ADDITIONAL DEFINITIONS CONTAINED IN
23 OTHER TITLES OF THE MARYLAND UNIFORM COMMERCIAL CODE THAT APPLY
24 TO PARTICULAR TITLES OR PARTS OF TITLES OF THE MARYLAND UNIFORM
25 COMMERCIAL CODE, HAVE THE MEANINGS STATED.

26 (B) SUBJECT TO DEFINITIONS CONTAINED IN OTHER ARTICLES OF THE
27 MARYLAND UNIFORM COMMERCIAL CODE THAT APPLY TO PARTICULAR TITLES
28 OR PARTS OF TITLES OF THE MARYLAND UNIFORM COMMERCIAL CODE:

29 (1) "ACTION", IN THE SENSE OF A JUDICIAL PROCEEDING,
30 INCLUDES RECOUPMENT, COUNTERCLAIM, SET-OFF, SUIT IN EQUITY, AND ANY
31 OTHER PROCEEDING IN WHICH RIGHTS ARE DETERMINED.

1 (2) “AGGRIEVED PARTY” MEANS A PARTY ENTITLED TO PURSUE A
2 REMEDY.

3 (3) “AGREEMENT”, AS DISTINGUISHED FROM “CONTRACT”,
4 MEANS THE BARGAIN OF THE PARTIES IN FACT, AS FOUND IN THEIR LANGUAGE
5 OR INFERRED FROM OTHER CIRCUMSTANCES, INCLUDING COURSE OF
6 PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE AS PROVIDED IN §
7 1-303 OF THIS TITLE.

8 (4) “BANK” MEANS A PERSON ENGAGED IN THE BUSINESS OF
9 BANKING AND INCLUDES A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
10 CREDIT UNION, AND TRUST COMPANY.

11 (5) “BEARER” MEANS A PERSON IN POSSESSION OF A
12 NEGOTIABLE INSTRUMENT, DOCUMENT OF TITLE, OR CERTIFICATED SECURITY
13 THAT IS PAYABLE TO BEARER OR ENDORSED IN BLANK.

14 (6) “BILL OF LADING” MEANS A DOCUMENT EVIDENCING THE
15 RECEIPT OF GOODS FOR SHIPMENT ISSUED BY A PERSON ENGAGED IN THE
16 BUSINESS OF TRANSPORTING OR FORWARDING GOODS.

17 (7) “BRANCH” INCLUDES A SEPARATELY INCORPORATED
18 FOREIGN BRANCH OF A BANK.

19 (8) “BURDEN OF ESTABLISHING” A FACT MEANS THE BURDEN OF
20 PERSUADING THE TRIER OF FACT THAT THE EXISTENCE OF THE FACT IS MORE
21 PROBABLE THAN ITS NONEXISTENCE.

22 (9) “BUYER IN ORDINARY COURSE OF BUSINESS” MEANS A
23 PERSON THAT BUYS GOODS IN GOOD FAITH, WITHOUT KNOWLEDGE THAT THE
24 SALE VIOLATES THE RIGHTS OF ANOTHER PERSON IN THE GOODS, AND IN THE
25 ORDINARY COURSE FROM A PERSON, OTHER THAN A PAWNBROKER, IN THE
26 BUSINESS OF SELLING GOODS OF THAT KIND. A PERSON BUYS GOODS IN THE
27 ORDINARY COURSE IF THE SALE TO THE PERSON COMPORTS WITH THE USUAL
28 OR CUSTOMARY PRACTICES IN THE KIND OF BUSINESS IN WHICH THE SELLER IS
29 ENGAGED OR WITH THE SELLER’S OWN USUAL OR CUSTOMARY PRACTICES. A
30 PERSON THAT SELLS OIL, GAS, OR OTHER MINERALS AT THE WELLHEAD OR
31 MINEHEAD IS A PERSON IN THE BUSINESS OF SELLING GOODS OF THAT KIND. A
32 BUYER IN ORDINARY COURSE OF BUSINESS MAY BUY FOR CASH, BY EXCHANGE
33 OF OTHER PROPERTY, OR ON SECURED OR UNSECURED CREDIT, AND MAY
34 ACQUIRE GOODS OR DOCUMENTS OF TITLE UNDER A PREEXISTING CONTRACT
35 FOR SALE. ONLY A BUYER THAT TAKES POSSESSION OF THE GOODS OR HAS A
36 RIGHT TO RECOVER THE GOODS FROM THE SELLER UNDER TITLE 2 OF THIS

1 ARTICLE MAY BE A BUYER IN ORDINARY COURSE OF BUSINESS. “BUYER IN
2 ORDINARY COURSE OF BUSINESS” DOES NOT INCLUDE A PERSON THAT
3 ACQUIRES GOODS IN A TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL
4 OR PARTIAL SATISFACTION OF A MONEY DEBT.

5 (10) “CONSPICUOUS”, WITH REFERENCE TO A TERM, MEANS SO
6 WRITTEN, DISPLAYED, OR PRESENTED THAT A REASONABLE PERSON AGAINST
7 WHICH IT IS TO OPERATE OUGHT TO HAVE NOTICED IT. WHETHER A TERM IS
8 “CONSPICUOUS” OR NOT IS A DECISION FOR THE COURT. CONSPICUOUS TERMS
9 INCLUDE THE FOLLOWING:

10 (I) A HEADING IN CAPITALS EQUAL TO OR GREATER IN SIZE
11 THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR COLOR TO
12 THE SURROUNDING TEXT OF THE SAME OR LESSER SIZE; AND

13 (II) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IN
14 LARGER TYPE THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT,
15 OR COLOR TO THE SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM
16 SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS THAT
17 CALL ATTENTION TO THE LANGUAGE.

18 (11) “CONSUMER” MEANS AN INDIVIDUAL WHO ENTERS INTO A
19 TRANSACTION PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

20 (12) “CONTRACT”, AS DISTINGUISHED FROM “AGREEMENT”,
21 MEANS THE TOTAL LEGAL OBLIGATION THAT RESULTS FROM THE PARTIES’
22 AGREEMENT AS DETERMINED BY THE MARYLAND UNIFORM COMMERCIAL
23 CODE AS SUPPLEMENTED BY ANY OTHER APPLICABLE LAWS.

24 (13) “CREDITOR” INCLUDES A GENERAL CREDITOR, A SECURED
25 CREDITOR, A LIEN CREDITOR, AND ANY REPRESENTATIVE OF CREDITORS,
26 INCLUDING AN ASSIGNEE FOR THE BENEFIT OF CREDITORS, A TRUSTEE IN
27 BANKRUPTCY, A RECEIVER IN EQUITY, AND AN EXECUTOR OR ADMINISTRATOR
28 OF AN INSOLVENT DEBTOR’S OR ASSIGNOR’S ESTATE.

29 (14) “DEFENDANT” INCLUDES A PERSON IN THE POSITION OF
30 DEFENDANT IN A COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM.

31 (15) “DELIVERY”, WITH RESPECT TO AN INSTRUMENT, DOCUMENT
32 OF TITLE, OR CHATTEL PAPER, MEANS VOLUNTARY TRANSFER OF POSSESSION.

33 (16) “DOCUMENT OF TITLE” INCLUDES A BILL OF LADING, DOCK
34 WARRANT, DOCK RECEIPT, WAREHOUSE RECEIPT OR ORDER FOR THE DELIVERY
35 OF GOODS, AND ALSO ANY OTHER DOCUMENT WHICH IN THE REGULAR COURSE

1 OF BUSINESS OR FINANCING IS TREATED AS ADEQUATELY EVIDENCING THAT
2 THE PERSON IN POSSESSION OF THE DOCUMENT IS ENTITLED TO RECEIVE,
3 HOLD, AND DISPOSE OF THE DOCUMENT AND THE GOODS IT COVERS. TO BE A
4 DOCUMENT OF TITLE, A DOCUMENT MUST PURPORT TO BE ISSUED BY OR
5 ADDRESSED TO A BAILEE AND PURPORT TO COVER GOODS IN THE BAILEE'S
6 POSSESSION WHICH ARE EITHER IDENTIFIED OR ARE FUNGIBLE PORTIONS OF
7 AN IDENTIFIED MASS.

8 (17) "FAULT" MEANS A DEFAULT, BREACH, OR WRONGFUL ACT OR
9 OMISSION.

10 (18) "FUNGIBLE GOODS" MEANS:

11 (I) GOODS OF WHICH ANY UNIT, BY NATURE OR USAGE OF
12 TRADE, IS THE EQUIVALENT OF ANY OTHER LIKE UNIT; OR

13 (II) GOODS THAT BY AGREEMENT ARE TREATED AS
14 EQUIVALENT.

15 (19) "GENUINE" MEANS FREE OF FORGERY OR COUNTERFEITING.

16 (20) "GOOD FAITH", ~~EXCEPT AS OTHERWISE PROVIDED IN TITLE 5~~
17 ~~OF THIS ARTICLE,~~ MEANS HONESTY IN FACT ~~AND THE OBSERVANCE OF~~
18 ~~REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING~~ IN THE CONDUCT OR
19 TRANSACTION CONCERNED.

20 (21) "HOLDER" MEANS:

21 (I) THE PERSON IN POSSESSION OF A NEGOTIABLE
22 INSTRUMENT THAT IS PAYABLE EITHER TO BEARER OR TO AN IDENTIFIED
23 PERSON THAT IS THE PERSON IN POSSESSION; OR

24 (II) THE PERSON IN POSSESSION OF A DOCUMENT OF TITLE
25 IF THE GOODS ARE DELIVERABLE EITHER TO BEARER OR TO THE ORDER OF THE
26 PERSON IN POSSESSION.

27 (22) "INSOLVENCY PROCEEDING" INCLUDES AN ASSIGNMENT FOR
28 THE BENEFIT OF CREDITORS OR OTHER PROCEEDING INTENDED TO LIQUIDATE
29 OR REHABILITATE THE ESTATE OF THE PERSON INVOLVED.

30 (23) "INSOLVENT" MEANS:

1 **(I) HAVING GENERALLY CEASED TO PAY DEBTS IN THE**
2 **ORDINARY COURSE OF BUSINESS OTHER THAN AS A RESULT OF BONA FIDE**
3 **DISPUTE;**

4 **(II) BEING UNABLE TO PAY DEBTS AS THEY BECOME DUE;**
5 **OR**

6 **(III) BEING INSOLVENT WITHIN THE MEANING OF FEDERAL**
7 **BANKRUPTCY LAW.**

8 **(24) “MONEY” MEANS A MEDIUM OF EXCHANGE CURRENTLY**
9 **AUTHORIZED OR ADOPTED BY A DOMESTIC OR FOREIGN GOVERNMENT. THE**
10 **TERM INCLUDES A MONETARY UNIT OF ACCOUNT ESTABLISHED BY AN**
11 **INTERGOVERNMENTAL ORGANIZATION OR BY AGREEMENT BETWEEN TWO OR**
12 **MORE COUNTRIES.**

13 **(25) “ORGANIZATION” MEANS A PERSON OTHER THAN AN**
14 **INDIVIDUAL.**

15 **(26) “PARTY”, AS DISTINGUISHED FROM “THIRD PARTY”, MEANS A**
16 **PERSON THAT HAS ENGAGED IN A TRANSACTION OR MADE AN AGREEMENT**
17 **SUBJECT TO THE MARYLAND UNIFORM COMMERCIAL CODE.**

18 **(27) “PERSON” MEANS AN INDIVIDUAL, CORPORATION, BUSINESS**
19 **TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,**
20 **ASSOCIATION, JOINT VENTURE, GOVERNMENT, GOVERNMENTAL SUBDIVISION,**
21 **AGENCY, OR INSTRUMENTALITY, PUBLIC CORPORATION, OR ANY OTHER LEGAL**
22 **OR COMMERCIAL ENTITY.**

23 **(28) “PRESENT VALUE” MEANS THE AMOUNT AS OF A DATE**
24 **CERTAIN OF ONE OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO**
25 **THE DATE CERTAIN BY USE OF EITHER AN INTEREST RATE SPECIFIED BY THE**
26 **PARTIES IF THAT RATE IS NOT MANIFESTLY UNREASONABLE AT THE TIME THE**
27 **TRANSACTION IS ENTERED INTO OR, IF AN INTEREST RATE IS NOT SO**
28 **SPECIFIED, A COMMERCIALY REASONABLE RATE THAT TAKES INTO ACCOUNT**
29 **THE FACTS AND CIRCUMSTANCES AT THE TIME THE TRANSACTION IS ENTERED**
30 **INTO.**

31 **(29) “PURCHASE” MEANS TAKING BY SALE, LEASE, DISCOUNT,**
32 **NEGOTIATION, MORTGAGE, PLEDGE, LIEN, SECURITY INTEREST, ISSUE OR**
33 **REISSUE, GIFT, OR ANY OTHER VOLUNTARY TRANSACTION CREATING AN**
34 **INTEREST IN PROPERTY.**

35 **(30) “PURCHASER” MEANS A PERSON THAT TAKES BY PURCHASE.**

1 (31) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A
2 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
3 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

4 (32) “REMEDY” MEANS ANY REMEDIAL RIGHT TO WHICH AN
5 AGGRIEVED PARTY IS ENTITLED WITH OR WITHOUT RESORT TO A TRIBUNAL.

6 (33) “REPRESENTATIVE” MEANS A PERSON EMPOWERED TO ACT
7 FOR ANOTHER, INCLUDING AN AGENT, AN OFFICER OF A CORPORATION OR
8 ASSOCIATION, AND A TRUSTEE, EXECUTOR, OR ADMINISTRATOR OF AN ESTATE.

9 (34) “RIGHT” INCLUDES REMEDY.

10 (35) “SECURITY INTEREST” MEANS AN INTEREST IN PERSONAL
11 PROPERTY OR FIXTURES THAT SECURES PAYMENT OR PERFORMANCE OF AN
12 OBLIGATION. “SECURITY INTEREST” INCLUDES ANY INTEREST OF A CONSIGNOR
13 AND A BUYER OF ACCOUNTS, CHATTEL PAPER, A PAYMENT INTANGIBLE, OR A
14 PROMISSORY NOTE IN A TRANSACTION THAT IS SUBJECT TO TITLE 9 OF THIS
15 ARTICLE. “SECURITY INTEREST” DOES NOT INCLUDE THE SPECIAL PROPERTY
16 INTEREST OF A BUYER OF GOODS ON IDENTIFICATION OF THOSE GOODS TO A
17 CONTRACT FOR SALE UNDER § 2-401 OF THIS ARTICLE, BUT A BUYER MAY ALSO
18 ACQUIRE A “SECURITY INTEREST” BY COMPLYING WITH TITLE 9 OF THIS
19 ARTICLE. EXCEPT AS OTHERWISE PROVIDED IN § 2-505 OF THIS ARTICLE, THE
20 RIGHT OF A SELLER OR LESSOR OF GOODS UNDER TITLE 2 OR TITLE 2A OF THIS
21 ARTICLE TO RETAIN OR ACQUIRE POSSESSION OF THE GOODS IS NOT A
22 “SECURITY INTEREST”, BUT A SELLER OR LESSOR MAY ALSO ACQUIRE A
23 “SECURITY INTEREST” BY COMPLYING WITH TITLE 9 OF THIS ARTICLE. THE
24 RETENTION OR RESERVATION OF TITLE BY A SELLER OF GOODS
25 NOTWITHSTANDING SHIPMENT OR DELIVERY TO THE BUYER UNDER § 2-401 OF
26 THIS ARTICLE IS LIMITED IN EFFECT TO A RESERVATION OF A “SECURITY
27 INTEREST”. WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A
28 “SECURITY INTEREST” IS DETERMINED PURSUANT TO § 1-203 OF THIS
29 SUBTITLE.

30 (36) “SEND” IN CONNECTION WITH A WRITING, RECORD, OR
31 NOTICE MEANS:

32 (I) TO DEPOSIT IN THE MAIL OR DELIVER FOR
33 TRANSMISSION BY ANY OTHER USUAL MEANS OF COMMUNICATION WITH
34 POSTAGE OR COST OF TRANSMISSION PROVIDED FOR AND PROPERLY
35 ADDRESSED AND, IN THE CASE OF AN INSTRUMENT, TO AN ADDRESS SPECIFIED
36 THEREON OR OTHERWISE AGREED OR, IF THERE BE NONE, TO ANY ADDRESS
37 REASONABLE UNDER THE CIRCUMSTANCES; OR

1 **(II) IN ANY OTHER WAY TO CAUSE TO BE RECEIVED ANY**
2 **RECORD OR NOTICE WITHIN THE TIME IT WOULD HAVE ARRIVED IF PROPERLY**
3 **SENT.**

4 **(37) “SIGNED” INCLUDES USING ANY SYMBOL EXECUTED OR**
5 **ADOPTED WITH PRESENT INTENTION TO ADOPT OR ACCEPT A WRITING.**

6 **(38) “STATE” MEANS A STATE OF THE UNITED STATES, THE**
7 **DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS,**
8 **OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION**
9 **OF THE UNITED STATES.**

10 **(39) “SURETY” INCLUDES A GUARANTOR OR OTHER SECONDARY**
11 **OBLIGOR.**

12 **(40) “TERM” MEANS A PORTION OF AN AGREEMENT THAT RELATES**
13 **TO A PARTICULAR MATTER.**

14 **(41) “UNAUTHORIZED SIGNATURE” MEANS A SIGNATURE MADE**
15 **WITHOUT ACTUAL, IMPLIED, OR APPARENT AUTHORITY. THE TERM INCLUDES A**
16 **FORGERY.**

17 **(42) “WAREHOUSE RECEIPT” MEANS A RECEIPT ISSUED BY A**
18 **PERSON ENGAGED IN THE BUSINESS OF STORING GOODS FOR HIRE.**

19 **(43) “WRITING” INCLUDES PRINTING, TYPEWRITING, OR ANY**
20 **OTHER INTENTIONAL REDUCTION TO TANGIBLE FORM. “WRITTEN” HAS A**
21 **CORRESPONDING MEANING.**

22 **1-202. NOTICE; KNOWLEDGE.**

23 **(A) SUBJECT TO SUBSECTION (F) OF THIS SECTION, A PERSON HAS**
24 **“NOTICE” OF A FACT IF THE PERSON:**

25 **(1) HAS ACTUAL KNOWLEDGE OF IT;**

26 **(2) HAS RECEIVED A NOTICE OR NOTIFICATION OF IT; OR**

27 **(3) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE**
28 **PERSON AT THE TIME IN QUESTION, HAS REASON TO KNOW THAT IT EXISTS.**

29 **(B) “KNOWLEDGE” MEANS ACTUAL KNOWLEDGE. “KNOWS” HAS A**
30 **CORRESPONDING MEANING.**

1 (C) “DISCOVER”, “LEARN”, OR WORDS OF SIMILAR IMPORT REFER TO
2 KNOWLEDGE RATHER THAN TO REASON TO KNOW.

3 (D) A PERSON “NOTIFIES” OR “GIVES” A NOTICE OR NOTIFICATION TO
4 ANOTHER PERSON BY TAKING SUCH STEPS AS MAY BE REASONABLY REQUIRED
5 TO INFORM THE OTHER PERSON IN ORDINARY COURSE, WHETHER OR NOT THE
6 OTHER PERSON ACTUALLY COMES TO KNOW OF IT.

7 (E) SUBJECT TO SUBSECTION (F) OF THIS SECTION, A PERSON
8 “RECEIVES” A NOTICE OR NOTIFICATION WHEN:

9 (1) IT COMES TO THAT PERSON’S ATTENTION; OR

10 (2) IT IS DULY DELIVERED IN A FORM REASONABLE UNDER THE
11 CIRCUMSTANCES AT THE PLACE OF BUSINESS THROUGH WHICH THE CONTRACT
12 WAS MADE OR AT ANOTHER LOCATION HELD OUT BY THAT PERSON AS THE
13 PLACE FOR RECEIPT OF SUCH COMMUNICATIONS.

14 (F) NOTICE, KNOWLEDGE, OR A NOTICE OR NOTIFICATION RECEIVED
15 BY AN ORGANIZATION IS EFFECTIVE FOR A PARTICULAR TRANSACTION FROM
16 THE TIME THE TRANSACTION IS BROUGHT TO THE ATTENTION OF THE
17 INDIVIDUAL CONDUCTING THAT TRANSACTION AND, IN ANY EVENT, FROM THE
18 TIME THE TRANSACTION WOULD HAVE BEEN BROUGHT TO THE INDIVIDUAL’S
19 ATTENTION IF THE ORGANIZATION HAD EXERCISED DUE DILIGENCE. AN
20 ORGANIZATION EXERCISES DUE DILIGENCE IF THE ORGANIZATION MAINTAINS
21 REASONABLE ROUTINES FOR COMMUNICATING SIGNIFICANT INFORMATION TO
22 THE PERSON CONDUCTING THE TRANSACTION AND THERE IS REASONABLE
23 COMPLIANCE WITH THE ROUTINES. DUE DILIGENCE DOES NOT REQUIRE AN
24 INDIVIDUAL ACTING FOR THE ORGANIZATION TO COMMUNICATE INFORMATION
25 UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL’S REGULAR DUTIES
26 OR THE INDIVIDUAL HAS REASON TO KNOW OF THE TRANSACTION AND THAT
27 THE TRANSACTION WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.

28 **1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST.**

29 (A) WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A
30 LEASE OR SECURITY INTEREST IS DETERMINED BY THE FACTS OF EACH CASE.

31 (B) A TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY
32 INTEREST IF THE CONSIDERATION THAT THE LESSEE IS TO PAY THE LESSOR
33 FOR THE RIGHT TO POSSESSION AND USE OF THE GOODS IS AN OBLIGATION FOR
34 THE TERM OF THE LEASE AND IS NOT SUBJECT TO TERMINATION BY THE
35 LESSEE; AND

1 **(1) THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER**
2 **THAN THE REMAINING ECONOMIC LIFE OF THE GOODS;**

3 **(2) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE**
4 **REMAINING ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE**
5 **OWNER OF THE GOODS;**

6 **(3) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE**
7 **REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL**
8 **CONSIDERATION OR FOR NOMINAL ADDITIONAL CONSIDERATION UPON**
9 **COMPLIANCE WITH THE LEASE AGREEMENT; OR**

10 **(4) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE**
11 **GOODS FOR NO ADDITIONAL CONSIDERATION OR FOR NOMINAL ADDITIONAL**
12 **CONSIDERATION UPON COMPLIANCE WITH THE LEASE AGREEMENT.**

13 **(C) A TRANSACTION IN THE FORM OF A LEASE DOES NOT CREATE A**
14 **SECURITY INTEREST MERELY BECAUSE:**

15 **(1) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS**
16 **OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE OF**
17 **THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE FAIR**
18 **MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED INTO;**

19 **(2) THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS;**

20 **(3) THE LESSEE AGREES TO PAY, WITH RESPECT TO THE GOODS,**
21 **TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES, OR SERVICE**
22 **OR MAINTENANCE COSTS;**

23 **(4) THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO**
24 **BECOME THE OWNER OF THE GOODS;**

25 **(5) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A**
26 **FIXED RENT THAT IS EQUAL TO OR GREATER THAN THE REASONABLY**
27 **PREDICTABLE FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM**
28 **OF THE RENEWAL AT THE TIME THE OPTION IS TO BE PERFORMED; OR**

29 **(6) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE**
30 **GOODS FOR A FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE**
31 **REASONABLY PREDICTABLE FAIR MARKET VALUE OF THE GOODS AT THE TIME**
32 **THE OPTION IS TO BE PERFORMED.**

1 **(D) ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS THAN THE**
2 **LESSEE’S REASONABLY PREDICTABLE COST OF PERFORMING UNDER THE LEASE**
3 **AGREEMENT IF THE OPTION IS NOT EXERCISED. ADDITIONAL CONSIDERATION**
4 **IS NOT NOMINAL IF:**

5 **(1) WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO THE**
6 **LESSEE, THE RENT IS STATED TO BE THE FAIR MARKET RENT FOR THE USE OF**
7 **THE GOODS FOR THE TERM OF THE RENEWAL DETERMINED AT THE TIME THE**
8 **OPTION IS TO BE PERFORMED; OR**

9 **(2) WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS IS**
10 **GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR MARKET**
11 **VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO BE**
12 **PERFORMED.**

13 **(E) THE “REMAINING ECONOMIC LIFE OF THE GOODS” AND**
14 **“REASONABLY PREDICTABLE” FAIR MARKET RENT, FAIR MARKET VALUE, OR**
15 **COST OF PERFORMING UNDER THE LEASE AGREEMENT MUST BE DETERMINED**
16 **WITH REFERENCE TO THE FACTS AND CIRCUMSTANCES AT THE TIME THE**
17 **TRANSACTION IS ENTERED INTO.**

18 **1-204. VALUE.**

19 **EXCEPT AS OTHERWISE PROVIDED IN §§ 3-303, 4-208, AND 4-209 OF THIS**
20 **ARTICLE, A PERSON GIVES VALUE FOR RIGHTS IF THE PERSON ACQUIRES THEM:**

21 **(1) IN RETURN FOR A BINDING COMMITMENT TO EXTEND CREDIT**
22 **OR FOR THE EXTENSION OF IMMEDIATELY AVAILABLE CREDIT, WHETHER OR**
23 **NOT DRAWN UPON AND WHETHER OR NOT A CHARGE-BACK IS PROVIDED FOR IN**
24 **THE EVENT OF DIFFICULTIES IN COLLECTION;**

25 **(2) AS SECURITY FOR, OR IN TOTAL OR PARTIAL SATISFACTION**
26 **OF, A PREEXISTING CLAIM;**

27 **(3) BY ACCEPTING DELIVERY UNDER A PREEXISTING CONTRACT**
28 **FOR PURCHASE; OR**

29 **(4) IN RETURN FOR ANY CONSIDERATION SUFFICIENT TO**
30 **SUPPORT A SIMPLE CONTRACT.**

31 **1-205. REASONABLE TIME; SEASONABLENESS.**

1 **(A) WHETHER A TIME FOR TAKING AN ACTION REQUIRED BY THE**
2 **MARYLAND UNIFORM COMMERCIAL CODE IS REASONABLE DEPENDS ON THE**
3 **NATURE, PURPOSE, AND CIRCUMSTANCES OF THE ACTION.**

4 **(B) AN ACTION IS TAKEN SEASONABLY IF IT IS TAKEN AT OR WITHIN**
5 **THE TIME AGREED OR, IF NO TIME IS AGREED, AT OR WITHIN A REASONABLE**
6 **TIME.**

7 **1-206. PRESUMPTIONS.**

8 **WHENEVER THE MARYLAND UNIFORM COMMERCIAL CODE CREATES A**
9 **“PRESUMPTION” WITH RESPECT TO A FACT OR PROVIDES THAT A FACT IS**
10 **“PRESUMED” THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT**
11 **UNLESS AND UNTIL EVIDENCE IS INTRODUCED THAT SUPPORTS A FINDING OF**
12 **ITS NONEXISTENCE.**

13 **SUBTITLE 3. TERRITORIAL APPLICABILITY AND APPLICABLE LAW.**

14 **1-301. TERRITORIAL APPLICABILITY; PARTIES’ POWER TO CHOOSE**
15 **APPLICABLE LAW.**

16 **(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, WHEN A**
17 **TRANSACTION BEARS A REASONABLE RELATION TO THIS STATE AND ALSO TO**
18 **ANOTHER STATE OR NATION, THE PARTIES MAY AGREE THAT THE LAW EITHER**
19 **OF THIS STATE OR OF SUCH OTHER STATE OR NATION SHALL GOVERN THEIR**
20 **RIGHTS AND DUTIES.**

21 **(B) IN THE ABSENCE OF AN AGREEMENT EFFECTIVE UNDER**
22 **SUBSECTION (A) OF THIS SECTION, AND EXCEPT AS PROVIDED IN SUBSECTION**
23 **(C) OF THIS SECTION, THE MARYLAND UNIFORM COMMERCIAL CODE APPLIES**
24 **TO TRANSACTIONS BEARING AN APPROPRIATE RELATION TO THIS STATE.**

25 **(C) IF ONE OF THE FOLLOWING PROVISIONS OF THE MARYLAND**
26 **UNIFORM COMMERCIAL CODE SPECIFIES THE APPLICABLE LAW, THAT**
27 **PROVISION GOVERNS AND A CONTRARY AGREEMENT IS EFFECTIVE ONLY TO**
28 **THE EXTENT PERMITTED BY THE LAW (INCLUDING THE CONFLICT OF LAWS**
29 **RULES) SO SPECIFIED:**

30 **(1) SECTION 2-402;**

31 **(2) SECTIONS 2A-105 AND 2A-106;**

32 **(3) SECTION 4-102;**

- 1 (4) SECTION 4A-507;
- 2 (5) SECTION 5-116;
- 3 (6) SECTION 6-103;
- 4 (7) SECTION 8-110; OR
- 5 (8) SECTIONS 9-301 THROUGH 9-307.

6 **1-302. VARIATION BY AGREEMENT.**

7 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS
8 SECTION OR ELSEWHERE IN THE MARYLAND UNIFORM COMMERCIAL CODE,
9 THE EFFECT OF PROVISIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE
10 MAY BE VARIED BY AGREEMENT.

11 (B) THE OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS,
12 AND CARE PRESCRIBED BY THE MARYLAND UNIFORM COMMERCIAL CODE MAY
13 NOT BE DISCLAIMED BY AGREEMENT. THE PARTIES, BY AGREEMENT, MAY
14 DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THOSE
15 OBLIGATIONS IS TO BE MEASURED IF THOSE STANDARDS ARE NOT MANIFESTLY
16 UNREASONABLE. WHENEVER THE MARYLAND UNIFORM COMMERCIAL CODE
17 REQUIRES AN ACTION TO BE TAKEN WITHIN A REASONABLE TIME, A TIME THAT
18 IS NOT MANIFESTLY UNREASONABLE MAY BE FIXED BY AGREEMENT.

19 (C) THE PRESENCE IN CERTAIN PROVISIONS OF THE MARYLAND
20 UNIFORM COMMERCIAL CODE OF THE PHRASE "UNLESS OTHERWISE AGREED",
21 OR WORDS OF SIMILAR IMPORT, DOES NOT IMPLY THAT THE EFFECT OF OTHER
22 PROVISIONS MAY NOT BE VARIED BY AGREEMENT UNDER THIS SECTION.

23 **1-303. COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF**
24 **TRADE.**

25 (A) A "COURSE OF PERFORMANCE" IS A SEQUENCE OF CONDUCT
26 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION THAT EXISTS IF:

27 (1) THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE
28 TRANSACTION INVOLVES REPEATED OCCASIONS FOR PERFORMANCE BY A
29 PARTY; AND

30 (2) THE OTHER PARTY, WITH KNOWLEDGE OF THE NATURE OF
31 THE PERFORMANCE AND OPPORTUNITY FOR OBJECTION TO IT, ACCEPTS THE
32 PERFORMANCE OR ACQUIESCES IN IT WITHOUT OBJECTION.

1 **(B) A “COURSE OF DEALING” IS A SEQUENCE OF CONDUCT**
2 **CONCERNING PREVIOUS TRANSACTIONS BETWEEN THE PARTIES TO A**
3 **PARTICULAR TRANSACTION THAT IS FAIRLY TO BE REGARDED AS ESTABLISHING**
4 **A COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS**
5 **AND OTHER CONDUCT.**

6 **(C) A “USAGE OF TRADE” IS ANY PRACTICE OR METHOD OF DEALING**
7 **HAVING SUCH REGULARITY OF OBSERVANCE IN A PLACE, VOCATION, OR TRADE**
8 **AS TO JUSTIFY AN EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT TO**
9 **THE TRANSACTION IN QUESTION. THE EXISTENCE AND SCOPE OF SUCH A USAGE**
10 **MUST BE PROVED AS FACTS. IF IT IS ESTABLISHED THAT SUCH A USAGE IS**
11 **EMBODIED IN A TRADE CODE OR SIMILAR RECORD, THE INTERPRETATION OF**
12 **THE RECORD IS A QUESTION OF LAW.**

13 **(D) A COURSE OF PERFORMANCE OR COURSE OF DEALING BETWEEN**
14 **THE PARTIES OR USAGE OF TRADE IN THE VOCATION OR TRADE IN WHICH THEY**
15 **ARE ENGAGED OR OF WHICH THEY ARE OR SHOULD BE AWARE IS RELEVANT IN**
16 **ASCERTAINING THE MEANING OF THE PARTIES’ AGREEMENT, MAY GIVE**
17 **PARTICULAR MEANING TO SPECIFIC TERMS OF THE AGREEMENT, AND MAY**
18 **SUPPLEMENT OR QUALIFY THE TERMS OF THE AGREEMENT. A USAGE OF TRADE**
19 **APPLICABLE IN THE PLACE IN WHICH PART OF THE PERFORMANCE UNDER THE**
20 **AGREEMENT IS TO OCCUR MAY BE SO UTILIZED AS TO THAT PART OF THE**
21 **PERFORMANCE.**

22 **(E) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F) OF THIS**
23 **SECTION, THE EXPRESS TERMS OF AN AGREEMENT AND ANY APPLICABLE**
24 **COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE SHALL**
25 **BE CONSTRUED WHENEVER REASONABLE AS CONSISTENT WITH EACH OTHER. IF**
26 **SUCH A CONSTRUCTION IS UNREASONABLE:**

27 **(1) EXPRESS TERMS PREVAIL OVER COURSE OF PERFORMANCE,**
28 **COURSE OF DEALING, AND USAGE OF TRADE;**

29 **(2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF**
30 **DEALING AND USAGE OF TRADE; AND**

31 **(3) COURSE OF DEALING PREVAILS OVER USAGE OF TRADE.**

32 **(F) SUBJECT TO § 2-209 OF THIS ARTICLE, A COURSE OF**
33 **PERFORMANCE IS RELEVANT TO SHOW A WAIVER OR MODIFICATION OF ANY**
34 **TERM INCONSISTENT WITH THE COURSE OF PERFORMANCE.**

1 **(G) EVIDENCE OF A RELEVANT USAGE OF TRADE OFFERED BY ONE**
2 **PARTY IS NOT ADMISSIBLE UNLESS THAT PARTY HAS GIVEN THE OTHER PARTY**
3 **NOTICE THAT THE COURT FINDS SUFFICIENT TO PREVENT UNFAIR SURPRISE TO**
4 **THE OTHER PARTY.**

5 **1-304. OBLIGATION OF GOOD FAITH.**

6 **EVERY CONTRACT OR DUTY WITHIN THE MARYLAND UNIFORM**
7 **COMMERCIAL CODE IMPOSES AN OBLIGATION OF GOOD FAITH IN ITS**
8 **PERFORMANCE AND ENFORCEMENT.**

9 **1-305. REMEDIES TO BE LIBERALLY ADMINISTERED.**

10 **(A) THE REMEDIES PROVIDED BY THE MARYLAND UNIFORM**
11 **COMMERCIAL CODE SHALL BE LIBERALLY ADMINISTERED TO THE END THAT**
12 **THE AGGRIEVED PARTY MAY BE PUT IN AS GOOD A POSITION AS IF THE OTHER**
13 **PARTY HAD FULLY PERFORMED, BUT NEITHER CONSEQUENTIAL OR SPECIAL**
14 **DAMAGES NOR PENAL DAMAGES MAY BE HAD EXCEPT AS SPECIFICALLY**
15 **PROVIDED IN THE MARYLAND UNIFORM COMMERCIAL CODE OR BY OTHER**
16 **RULE OF LAW.**

17 **(B) ANY RIGHT OR OBLIGATION DECLARED BY THE MARYLAND**
18 **UNIFORM COMMERCIAL CODE IS ENFORCEABLE BY ACTION UNLESS THE**
19 **PROVISION DECLARING THE RIGHT OR OBLIGATION SPECIFIES A DIFFERENT**
20 **AND LIMITED EFFECT.**

21 **1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.**

22 **A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED BREACH MAY BE**
23 **DISCHARGED IN WHOLE OR IN PART WITHOUT CONSIDERATION BY AGREEMENT**
24 **OF THE AGGRIEVED PARTY IN AN AUTHENTICATED RECORD.**

25 **1-307. PRIMA FACIE EVIDENCE BY THIRD PARTY.**

26 **A DOCUMENT IN DUE FORM PURPORTING TO BE A BILL OF LADING,**
27 **POLICY OR CERTIFICATE OF INSURANCE, OFFICIAL WEIGHER'S OR INSPECTOR'S**
28 **CERTIFICATE, CONSULAR INVOICE, OR ANY OTHER DOCUMENT AUTHORIZED OR**
29 **REQUIRED BY THE CONTRACT TO BE ISSUED BY A THIRD PARTY IS PRIMA FACIE**
30 **EVIDENCE OF ITS OWN AUTHENTICITY AND GENUINENESS AND OF THE FACTS**
31 **STATED IN THE DOCUMENT BY THE THIRD PARTY.**

32 **1-308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.**

1 (A) A PARTY THAT WITH EXPLICIT RESERVATION OF RIGHTS PERFORMS
2 OR PROMISES PERFORMANCE OR ASSENTS TO PERFORMANCE IN A MANNER
3 DEMANDED OR OFFERED BY THE OTHER PARTY DOES NOT THEREBY PREJUDICE
4 THE RIGHTS RESERVED. SUCH WORDS AS “WITHOUT PREJUDICE”, “UNDER
5 PROTEST”, OR THE LIKE ARE SUFFICIENT.

6 (B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO AN ACCORD
7 AND SATISFACTION.

8 **1-309. OPTION TO ACCELERATE AT WILL.**

9 (A) A TERM PROVIDING THAT ONE PARTY OR THAT PARTY’S SUCCESSOR
10 IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR REQUIRE
11 COLLATERAL OR ADDITIONAL COLLATERAL “AT WILL” OR WHEN THE PARTY
12 “DEEMS ITSELF INSECURE”, OR WORDS OF SIMILAR IMPORT, MEANS THAT THE
13 PARTY HAS POWER TO DO SO ONLY IF THAT PARTY IN GOOD FAITH BELIEVES
14 THAT THE PROSPECT OF PAYMENT OR PERFORMANCE IS IMPAIRED.

15 (B) THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH IS ON THE
16 PARTY AGAINST WHICH THE POWER HAS BEEN EXERCISED.

17 **1-310. SUBORDINATED OBLIGATIONS.**

18 (A) AN OBLIGATION MAY BE ISSUED AS SUBORDINATED TO
19 PERFORMANCE OF ANOTHER OBLIGATION OF THE PERSON OBLIGATED, OR A
20 CREDITOR MAY SUBORDINATE ITS RIGHT TO PERFORMANCE OF AN OBLIGATION
21 BY AGREEMENT WITH EITHER THE PERSON OBLIGATED OR ANOTHER CREDITOR
22 OF THE PERSON OBLIGATED.

23 (B) SUBORDINATION DOES NOT CREATE A SECURITY INTEREST AS
24 AGAINST EITHER THE COMMON DEBTOR OR A SUBORDINATED CREDITOR.

25 **2-103.**

26 (1) In this title unless the context otherwise requires

27 (a) “Buyer” means a person who buys or contracts to buy goods.

28 (b) [“Good faith” in the case of a merchant means honesty in fact and
29 the observance of reasonable commercial standards of fair dealing in the trade.]
30 **RESERVED.**

31 (c) “Receipt” of goods means taking physical possession of them.

32 (d) “Seller” means a person who sells or contracts to sell goods.

1 2-202.

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

7 (a) By **COURSE OF PERFORMANCE**, course of dealing, or usage of
8 trade [(§ 1-205)] (**§ 1-303**) [or by course of performance (§ 2-208)]; and

9 (b) By evidence of consistent additional terms unless the court finds
10 the writing to have been intended also as a complete and exclusive statement of the
11 terms of the agreement.

12 [2-208.

13 (1) Where the contract for sale involves repeated occasions for performance
14 by either party with knowledge of the nature of the performance and opportunity for
15 objection to it by the other, any course of performance accepted or acquiesced in
16 without objection shall be relevant to determine the meaning of the agreement.

17 (2) The express terms of the agreement and any such course of performance,
18 as well as any course of dealing and usage of trade, shall be construed whenever
19 reasonable as consistent with each other; but when such construction is unreasonable,
20 express terms shall control course of performance and course of performance shall
21 control both course of dealing and usage of trade (§ 1-205).

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

25 2A-103.

26 (3) The following definitions in other titles apply to this title:

27 "Between merchants." § 2-104(3).

28 "Buyer." § 2-103(1)(a).

29 "Consumer goods." § 9-102(a)(23).

30 "Entrusting." § 2-403(3).

31 ["Good faith." § 2-103(1)(b).]

1 “Merchant.” § 2–104(1).

2 “Receipt.” § 2–103(1)(c).

3 “Sale.” § 2–106(1).

4 “Sale on approval.” § 2–326.

5 “Sale or return.” § 2–326.

6 “Seller.” § 2–103(1)(d).

7 [2A–207.

8 (1) If a lease contract involves repeated occasions for performance by either
9 party with knowledge of the nature of the performance and opportunity for objection to
10 it by the other, any course of performance accepted or acquiesced in without objection
11 is relevant to determine the meaning of the lease agreement.

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

17 (3) Subject to the provisions of § 2A–208 on modification and waiver, course
18 of performance is relevant to show a waiver or modification of any term inconsistent
19 with the course of performance.]

20 2A–501.

21 (4) Except as otherwise provided in [§ 1–106(1)] **§ 1–305(A)** of this [title]
22 **ARTICLE** or the lease agreement, the rights and remedies referred to in subsections
23 (2) and (3) are cumulative.

24 2A–518.

25 (2) Except as otherwise provided with respect to damages liquidated in the
26 lease agreement (§ 2A–504) or otherwise determined pursuant to agreement of the
27 parties [(§ 1–102(3) and § 2A–503)] (**§§ 1–302 AND 2A–503**), if a lessee’s cover is by a
28 lease agreement substantially similar to the original lease agreement and the new
29 lease agreement is made in good faith and in a commercially reasonable manner, the
30 lessee may recover from the lessor as damages (i) the present value, as of the date of
31 the commencement of the term of the new lease agreement, of the rent under the new
32 lease agreement and applicable to that period of the new lease term which is
33 comparable to the original lease agreement minus the present value as of the same
34 date of the total rent for the then remaining lease term of the original lease

1 agreement, and (ii) any incidental or consequential damages, less expenses saved in
2 consequence of the lessor's default.

3 2A-519.

4 (1) Except as otherwise provided with respect to damages liquidated in the
5 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
6 parties [(§ 1-102(3) and § 2A-503)] (**§§ 1-302 AND 2A-503**), if a lessee elects not to
7 cover or a lessee elects to cover and the cover is by lease agreement that for any reason
8 does not qualify for treatment under § 2A-518(2), or is by purchase or otherwise the
9 measure of damages for nondelivery or repudiation by the lessor or for rejection or
10 revocation of acceptance by the lessee is the present value as of the date of the default
11 of the then market rent minus the present value as of the same date of the original
12 rent, computed for the remaining lease term of the original lease agreement, together
13 with incidental and consequential damages, less expenses saved in consequence of the
14 lessor's default.

15 2A-527.

16 (2) Except as otherwise provided with respect to damages liquidated in the
17 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
18 parties [(§ 1-102(3) and § 2A-503)] (**§§ 1-302 AND 2A-503**), if the disposition is by
19 lease agreement substantially similar to the original lease agreement and the new
20 lease agreement is made in good faith and in a commercially reasonable manner, the
21 lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the
22 date of the commencement of the term of the new lease agreement, (ii) the present
23 value, as of the same date, of the total rent for the then remaining lease term of the
24 original lease agreement minus the present value, as of the same date, of the rent
25 under the new lease agreement applicable to that period of the new lease term which
26 is comparable to the then remaining term of the original lease agreement, and (iii) any
27 incidental damages allowed under § 2A-530, less expenses saved in consequence of the
28 lessee's default.

29 2A-528.

30 (1) Except as otherwise provided with respect to damages liquidated in the
31 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
32 parties [(§§ 1-102(3)] (**§§ 1-302 and 2A-503**), if a lessor elects to retain the goods or a
33 lessor elects to dispose of the goods and the disposition is by lease agreement that for
34 any reason does not qualify for treatment under § 2A-527(2), or is by sale or
35 otherwise, the lessor may recover from the lessee as damages for a default of the type
36 described in § 2A-523(1) or § 2A-523(3)(a), or, if agreed, for other default of the lessee
37 (i) accrued and unpaid rent as of the date of default if the lessee has never taken
38 possession of the goods, or, if the lessee has taken possession of the goods, as of the
39 date the lessor repossesses the goods or an earlier date on which the lessee makes a
40 tender of the goods to the lessor, (ii) the present value as of the date determined under
41 clause (i) of the total rent for the then remaining lease term of the original lease

1 agreement minus the present value as of the same date of the market rent at the place
2 where the goods are located computed for the same lease term, and (iii) any incidental
3 damages allowed under § 2A-530, less expenses saved in consequence of the lessee's
4 default.

5 3-103.

6 (a) In this title:

7 (4) ["Good faith" means honesty in fact and the observance of
8 reasonable commercial standards of fair dealing.] **RESERVED.**

9 (10) "Prove" with respect to a fact means to meet the burden of
10 establishing the fact [(§ 1-201(8))] **(§ 1-201(B)(8)).**

11 4-104.

12 (c) ["Control" as provided in § 7-106 and the] **THE** following definitions in
13 other titles apply to this title:

14 "Acceptance." § 3-409.

15 "Alteration." § 3-407.

16 "Cashier's check." § 3-104.

17 "Certificate of deposit." § 3-104.

18 "Certified check." § 3-409.

19 "Check." § 3-104.

20 **"CONTROL." § 7-106.**

21 "Draft." § 3-104.

22 ["Good faith." § 3-103.]

23 "Holder in due course." § 3-302.

24 "Instrument." § 3-104.

25 "Notice of dishonor." § 3-503.

26 "Order." § 3-103.

1 “Ordinary care.” § 3–103.

2 “Person entitled to enforce.” § 3–301.

3 “Presentment.” § 3–501.

4 “Promise.” § 3–103.

5 “Prove.” § 3–103.

6 “Teller’s check.” § 3–104.

7 “Unauthorized signature.” § 3–403.

8 4A–105.

9 (a) In this title:

10 (6) [“Good faith” means honesty in fact and the observance of
11 reasonable commercial standards of fair dealing.] **RESERVED.**

12 (7) “Prove” with respect to a fact means to meet the burden of
13 establishing the fact [under § 1–201(8) of this article] (**§ 1–208(B)(8)**).

14 4A–106.

15 (a) (1) The time of receipt of a payment order or communication
16 cancelling or amending a payment order is determined by the rules applicable to
17 receipt of a notice stated in [§ 1–201(27)] **§ 1–202** of this article.

18 4A–204.

19 (b) Reasonable time under subsection (a) of this section may be fixed by
20 agreement as stated in [§ 1–204(1)] **§ 1–302(B)** of this article, but the obligation of a
21 receiving bank to refund payment as stated in subsection (a) of this section may not
22 otherwise be varied by agreement.

23 5–103.

24 (c) With the exception of this subsection, subsections (a) and (d) of this
25 section, §§ 5–102(a)(9) and (10), 5–106(d), and 5–114(d) of this title, and except to the
26 extent prohibited in [§§ 1–102(3)] **§§ 1–302** and 5–117(d) of this article, the effect of
27 this title may be varied by agreement or by a provision stated or incorporated by
28 reference in an undertaking. A term in an agreement or undertaking generally
29 excusing liability or generally limiting remedies for failure to perform obligations is
30 not sufficient to vary obligations prescribed by this title.

1 8–102.

2 (a) In this title:

3 (10) [“Good faith”, for purposes of the obligation of good faith in the
4 performance or enforcement of contracts or duties within this title, means honesty in
5 fact and the observance of reasonable commercial standards of fair dealing.]
6 **RESERVED.**

7 9–102.

8 (a) In this title:

9 (43) [“Good faith” means honesty in fact and the observance of
10 reasonable commercial standards of fair dealing.] **RESERVED.**

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2012.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.