Article - Commercial Law

§1–101.

(a) Titles 1 through 10 of this article may be cited as the Maryland Uniform Commercial Code.

(b) This title may be cited as Maryland Uniform Commercial Code – General Provisions.

§1–102.

This title applies to a transaction to the extent that it is governed by another title of the Maryland Uniform Commercial Code.

§1–103.

(a) The Maryland Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of the Maryland Uniform Commercial Code are:

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

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

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

(c) Unless displaced by the particular provisions of the Maryland Uniform Commercial Code, 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, except that:

(1) The age of majority as it pertains to the capacity to contract is 18 years of age; and

(2) No person who is at least 18 years old shall be considered to be without capacity by reason of age.

§1–104.

The Maryland Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§1–105.

If any provision or clause of the Maryland Uniform Commercial Code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Maryland Uniform Commercial Code that can be given effect without the invalid provision or application, and to this end the provisions of the Maryland Uniform Commercial Code are severable.

§1–106.

In the Maryland Uniform Commercial Code, unless the context otherwise requires:

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

(2) Words of any gender also refer to any other gender.

§1–107.

Section captions are part of the Maryland Uniform Commercial Code.

§1–108.

This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this title modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

§1–201.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other titles of the Maryland Uniform Commercial Code that apply to particular titles or parts of titles of the Maryland Uniform Commercial Code, have the meanings stated.

(b) Subject to definitions contained in other articles of the Maryland Uniform Commercial Code that apply to particular titles or parts of titles of the Maryland Uniform Commercial Code:

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

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

(3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances,

including course of performance, course of dealing, or usage of trade as provided in § 1–303 of this title.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Title 2 of this article may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(i) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(ii) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Maryland Uniform Commercial Code as supplemented by any other applicable laws.

(13) "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.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross–claim, or third–party claim.

(15) "Delivery", with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" includes a 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 the document 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.

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

(18) "Fungible goods" means:

(i) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(ii) Goods that by agreement are treated as equivalent.

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

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

(21) "Holder" means:

(i) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(ii) The person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

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

(23) "Insolvent" means:

(i) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(ii) Being unable to pay debts as they become due; or

(iii) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to the Maryland Uniform Commercial Code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

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

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Title 9 of this article. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 2–401 of this article, but a buyer may also acquire a "security interest" by complying with Title 9 of this article. Except as otherwise provided in § 2–505 of this article, the right of a seller or lessor of goods under Title 2 or Title 2A of this article to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Title 9 of this article. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 2–401 of this article is limited in effect to a reservation of a "security interest". Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 1–203 of this subtitle.

(36) "Send" in connection with a writing, record, or notice means:

(i) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed or, if there be none, to any address reasonable under the circumstances; or

(ii) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

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

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

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

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

§1–202.

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

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

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time the transaction is brought to the attention of the individual conducting that transaction and, in any event, from the time the transaction would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if the organization 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 the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§1–203.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that 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 and is not subject to termination by the lessee; and

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) 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;

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

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

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) 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;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;

(5) 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

(6) 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.

(d) 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. Additional consideration is not nominal if:

(1) 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

(2) 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.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

§1–204.

Except as otherwise provided in §§ 3–303, 4–208, and 4–209 of this article, a person gives value for rights if the person acquires them:

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

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

§1–205.

(a) Whether a time for taking an action required by the Maryland Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§1–206.

Whenever the Maryland Uniform Commercial Code creates a "presumption" with respect to a fact or provides that a fact is "presumed" the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

§1–301.

(a) Except as otherwise provided 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.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, the Maryland Uniform Commercial Code applies to transactions bearing an appropriate relation to this State.

(c) If one of the following provisions of the Maryland Uniform Commercial Code 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:

(1) Section 2–402;

(2) Sections 2A–105 and 2A–106;

(3) Section 4–102;

(4) Section 4A–507;

(5) Section 5–116;

(6) Section 6–103;

(7) Section 8–110; or

(8) Sections 9–301 through 9–307.

§1–302.

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in the Maryland Uniform Commercial Code, the effect of provisions of the Maryland Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Maryland Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Maryland Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Maryland Uniform Commercial Code of the phrase "unless otherwise agreed", or words of similar import, does not imply

that the effect of other provisions may not be varied by agreement under this section.

§1–303.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

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

(c) 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 must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade shall be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to § 2–209 of this article, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

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

§1–304.

Every contract or duty within the Maryland Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

§1–305.

(a) The remedies provided by the Maryland Uniform Commercial Code 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 damages nor penal damages may be had except as specifically provided in the Maryland Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Maryland Uniform Commercial Code is enforceable by action unless the provision declaring the right or obligation specifies a different and limited effect.

§1–306.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

§1–307.

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 is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§1–308.

(a) A party that 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.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

§1–309.

(a) A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will"

or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired.

(b) The burden of establishing lack of good faith is on the party against which the power has been exercised.

§1–310.

(a) An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated.

(b) Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

§2–101.

This title shall be known and may be cited as Maryland Uniform Commercial Code -- Sales.

§2–102.

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

§2–103.

(1) In this title unless the context otherwise requires

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

(b) Reserved.

(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 title or to specified subtitles thereof, and the sections in which they appear are:

"Acceptance." § 2-606.

"Banker's credit." § 2-325.

"Between merchants." § 2-104.

"Cancellation." § 2-106(4).

"Commercial unit." § 2-105.

"Confirmed credit." § 2-325.

"Conforming to contract." § 2-106.

"Contract for sale." § 2-106.

"Cover." § 2-712.

"Entrusting." § 2-403.

"Financing agency." § 2-104.

"Future goods." § 2-105.

"Goods." § 2-105.

"Identification." § 2-501.

"Installment contract." § 2-612.

"Letter of credit." § 2-325.

"Lot." § 2-105.

"Merchant." § 2-104.

"Overseas." § 2-323.

"Person in position of seller." § 2-707.

"Present sale." § 2-106.

"Sale." § 2-106.

"Sale on approval." § 2-326.

"Sale or return." § 2-326.

"Termination." § 2-106.

(3) "Control" as provided in § 7-106 and the following definitions in other titles apply to this title:

"Check." § 3-104.

"Consignee." § 7-102.

"Consignor." § 7-102.

"Consumer goods." § 9-102.

"Dishonor." § 3-502.

"Draft." § 3-104.

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

§2–104.

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

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (§ 2-707).

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

§2–105.

(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 (Title 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 (§ 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.

§2–106.

(1) In this title 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 (§ 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 cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

§2–107.

(1) A contract for the sale of minerals or the like (including oil or gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this title 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 title 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 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.

§2–201.

(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 his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(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 his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (§ 2-606).

§2–202.

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 performance, course of dealing, or usage of trade (§ 1–303); 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.

§2–203.

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.

§2–204.

(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.

§2–205.

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.

§2–206.

(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.

§2–207.

(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 Titles 1 through 10 of this article.

§2–209.

(1) An agreement modifying a contract within this title 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 title (§ 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.

§2–210.

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(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 him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) 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.

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

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (§ 2-609).

§2–301.

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.

§2–302.

(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.

§2–303.

Where this title 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.

§2–304.

(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 he 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 title, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

§2–305.

(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 him 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 at his option treat the contract as cancelled or himself 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.

§2–306.

(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.

§2–307.

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.

§2–308.

Unless otherwise agreed

(a) The place for delivery of goods is the seller's place of business or if he has none his 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.

§2–309.

(1) The time for shipment or delivery or any other action under a contract if not provided in this title 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.

§2–310.

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 he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (§ 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 regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; 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.

§2–311.

(1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of § 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 § 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 his own performance; and

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

§2–312.

(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 title in himself or that he is purporting to sell only such right or title as he 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.

§2–313.

(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 "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

§2–314.

(1) Unless excluded or modified (§ 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. Notwithstanding any other provisions of this title

(a) In §§ 2-314 through 2-318 of this title, "seller" includes the manufacturer, distributor, dealer, wholesaler or other middleman or the retailer; and

(b) Any previous requirement of privity is abolished as between the buyer and the seller in any action brought by the buyer.

(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 (§ 2-316) other implied warranties may arise from course of dealing or usage of trade.

(4) Subsections (1) and (2) of this section apply to a lease of goods and a bailment for hire of goods that pass through the physical possession of and are maintained by the lessor, sublessor, or bailor.

§2–315.

(1) 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.

(2) The provisions of subsection (1) apply to a lease of goods and a bailment for hire of goods which pass through the physical possession of and are maintained by the lessor, sublessor, or bailor.

§2–316.

(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 title on parol or extrinsic evidence (§ 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 he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(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 title on liquidation or limitation of damages and on contractual modification of remedy (§§ 2-718 and 2-719).

§2–316.1.

(1) The provisions of § 2–316 do not apply to sales of consumer goods, as defined by § 9–102, services, or both.

(2) Any oral or written language used by a seller of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and

fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, the seller may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(3) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties, is unenforceable, unless the manufacturer provides reasonable and expeditious means of performing the warranty obligations.

(4) (a) The provisions of this section do not apply to a motor vehicle:

(i) Required to be titled under the Transportation Article;

(ii) That is over 6 model years old and that has been driven more than 60,000 miles; and

(iii) If, at the time of the sale of the motor vehicle, the seller gives the purchaser notice of the inapplicability of this section on the form prescribed under § 13-119 of the Transportation Article.

(b) (i) An exclusion or modification of an implied warranty of merchantability, or any part of a warranty under this subsection shall be in writing, mention merchantability, and be conspicuous.

(ii) An exclusion or modification of the implied warranty of fitness shall be in writing and conspicuous.

(iii) Any exclusion or modification of either warranty shall be separately acknowledged by the signature of the buyer.

§2–317.

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.

§2–318.

A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home or any other ultimate consumer or user of the goods or person affected thereby if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

§2–319.

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

(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 title (§ 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 at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this title (§ 2-503);

(c) When under either (a) or (b) the term is also F. O. B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F. O. B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this title on the form of bill of lading (§ 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) At his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(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 title (§ 2-311). He may also at his option 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.

§2–320.

(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 at his own expense and risk to

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

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

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

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

(e) Forward and tender with commercial promptness all the documents in due form and with any indorsement 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.

§2–321.

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.

§2–322.

(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.

§2–323.

(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) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) Due tender of a single part is acceptable within the provisions of this title on cure of improper delivery (subsection (1) of § 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.

§2–324.

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 he must tender them on arrival but he assumes no obligation that the goods will arrive unless he 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 (§ 2-613).

§2–325.

(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 seasonable notification to the buyer require payment directly from him.

(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.

§2–326.

(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) 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) 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 title (§ 2-201) and as contradicting the sale aspect of the contract within the provisions of this title on parole or extrinsic evidence (§ 2-202).

§2–327.

(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 failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(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.

§2–328.

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

(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 at his option avoid the sale or take the goods at the price

of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

§2–401.

Each provision of this title 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 title 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 (§ 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by Titles 1 through 10 of this article. 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 title on secured transactions (Title 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 his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of 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 him 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 tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

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

(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 revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale."

§2–402.

(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 title (§§ 2-502 and 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 him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

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

(a) Under the provisions of the title on secured transactions (Title 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 title constitute the transaction a fraudulent transfer or voidable preference.

§2–403.

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

(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 him 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 title on secured transactions (Title 9), bulk transfers (Title 6) and documents of title (Title 7).

§2–501.

(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 he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

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

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

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

§2–502.

(1) Subject to subsections (2) and (3) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portions of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after a receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

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

§2–503.

(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 him to take delivery. The manner, time and place for tender are determined by the agreement and this title, 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 he 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 record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Title 9 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) He must tender all such documents in correct form, except as provided in this title with respect to bills of lading in a set (subsection (2) of § 2-323); and

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

§2–504.

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

(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.

§2–505.

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

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

(b) A nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security, but except in a case of conditional delivery (subsection (2) of § 2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

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

§2–506.

(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.

§2–507.

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

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

§2–508.

(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 his 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 if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

§2–509.

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

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (§ 2-505); but

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

(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 his receipt of possession or control 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 his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of § 2-503.

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

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this title on sale on approval (§ 2-327) and on effect of breach on risk of loss (§ 2-510).

§2–510.

(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 he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

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

§2–511.

(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 Titles 1 through 10 of this article on the effect of an instrument on an obligation (§ 3-310), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

§2–512.

(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 Titles 1 through 10 of this article (§ 5-109(b)).

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

§2–513.

(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 title on C. I. F. contracts (subsection (3) of § 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.

§2–514.

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.

§2–515.

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.

§2–601.

Subject to the provisions of this title on breach in installment contracts (§ 2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (§§ 2-718 and 2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) Reject the whole; or

(b) Accept the whole; or

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

§2–602.

(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 (§§ 2-603 and 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 he does not have a security interest under the provisions of this title (subsection (3) of § 2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(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 title on seller's remedies in general (§ 2-703).

§2–603.

(1) Subject to any security interest in the buyer (subsection (3) of § 2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent of 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.

§2–604.

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

§2–605.

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

(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 in the documents.

§2–606.

(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 he will take or retain them in spite of their nonconformity; or

(b) Fails to make an effective rejection (subsection (1) of § 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 him.

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

§2–607.

(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 title for nonconformity.

(3) Where a tender has been accepted

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

(b) If the claim is one for infringement or the like (subsection (3) of § 2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(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 his seller is answerable over

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

(b) If the claim is one for infringement or the like (subsection (3) of § 2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also

agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after 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 § 2-312.)

§2–608.

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

(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 his 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 he had rejected them.

§2–609.

(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 he receives such assurance may if commercially reasonable suspend any performance for which he 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 thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

§2–610.

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 (§ 2-703 or § 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) In either case suspend his own performance or proceed in accordance with the provisions of this title on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (§ 2-704).

§2–611.

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

(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 title (§ 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.

§2–612.

(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 if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only

to past installments or demands performance as to future installments.

§2–613.

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 (§ 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 at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

§2–614.

(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.

§2–615.

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 his 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, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any

manner which is fair and reasonable.

(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.

§2–616.

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

§2–701.

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

§2–702.

(1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this title (§ 2-705).

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

(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 title (§ 2-403). Successful reclamation of goods excludes all other remedies with respect to them.

§2–703.

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (§ 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 (§ 2-705);

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

(d) Resell and recover damages as hereafter provided (§ 2-706);

(e) Recover damages for nonacceptance (§ 2-708) or in a proper case the price (§ 2-709);

(f) Cancel.

§2–704.

(1) An aggrieved seller under the preceding section may

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

(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.

§2–705.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (§ 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 a warehouse; or

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

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

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

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

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

§2–706.

(1) Under the conditions stated in § 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 title (§ 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 his 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 (§ 2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of § 2-711).

§2–707.

(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 his 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 title withhold or stop delivery (§ 2-705) and resell (§ 2-706) and recover incidental damages (§ 2-710).

§2–708.

(1) Subject to subsection (2) and to the provisions of this title with respect to proof of market price (§ 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 title (§ 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 title (§ 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

§2–709.

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

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (§ 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.

§2–710.

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.

§2–711.

(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 (§ 2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(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 title (§ 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 title (§ 2-502); or

(b) In a proper case obtain specific performance or replevy the goods as provided in this title (§ 2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (§ 2-706).

§2–712.

(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 (§ 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 him from any other remedy.

§2–713.

(1) Subject to the provisions of this title with respect to proof of market price (§ 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 title (§ 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.

§2–714.

(1) Where the buyer has accepted goods and given notification (subsection (3) of § 2-607) he 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.

§2–715.

(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.

§2–716.

(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 he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing, or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

§2–717.

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

§2–718.

(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 his payment 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, twenty 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 title 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, his resale is subject to the conditions laid down in this title on resale by an aggrieved seller (§ 2-706).

§2–719.

(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 title and may limit or alter the measure of damages recoverable under this title, 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 Titles 1 through 10 of this article.

(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.

§2–720.

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.

§2–721.

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

§2–722.

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, his suit or settlement is, subject to his 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.

§2–723.

(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 (§ 2-708 or § 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 title 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 title offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

§2–724.

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 circulations 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.

§2–725.

(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 Titles 1 through 10 of this article becomes effective.

§2A–101.

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

§2A–102.

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

§2A–103.

(1) In this title 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 to him 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 acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

(c) "Commercial unit" means such a unit of goods as 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 who is an individual and takes under the lease primarily for a personal, family, or household purpose.

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

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this title to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 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 title. 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 title 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 to him 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 acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(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 title and the sections in which they appear are:

"Accessions." § 2A-310(1).

"Construction mortgage." § 2A-309(1)(d).

"Encumbrance." § 2A-309(1)(e).

"Fixtures." § 2A-309(1)(a).

"Fixture filing." § 2A-309(1)(b).

"Purchase money lease." § 2A-309(1)(c).

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

"Between merchants." § 2–104(3).

"Buyer." § 2–103(1)(a).

"Consumer goods." § 9–102(a)(23).

"Entrusting." § 2–403(3).

"Merchant." § 2–104(1).

"Receipt." § 2–103(1)(c).

"Sale." § 2–106(1).

"Sale on approval." § 2–326.

"Sale or return." § 2–326.

"Seller." § 2–103(1)(d).

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

§2A–104.

(1) Except as provided in subsection (4) of this section, a lease, although subject to this title, is also subject to any applicable:

(a) Statute of the United States;

(b) Certificate of title statute of this State;

(c) Certificate of title statute of another jurisdiction (§ 2A-105); or

(d) Consumer protection statute of this State.

(2) In case of conflict between the provisions of this title, other than §§ 2A-105, 2A-304(3), and 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 therein.

(4) This title does not apply to consumer motor vehicle leasing contracts subject to Title 14, Subtitle 20 of this article or leases for consumer goods subject to Title 12, Subtitle 6 of this article.

§2A–105.

Subject to the provisions of §§ 2A-304(3) and 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) 4 months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

§2A–106.

(1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction: (a) in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter; (b) in which the goods are to be used; or (c) if the goods are to be used in more than one jurisdiction, none of which is the residence of the lessee, in which the lease is executed by the lessee, 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.

§2A–107.

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.

§2A–108.

(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 thereof, 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 shall award reasonable attorney's fees to the lessee.

(b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he (or she) knew to be groundless, the court shall award reasonable attorney's fees 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 subsection (1) and (2) is not controlling.

§2A–109.

(1) A term providing that one party or his (or her) successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he (or she) deems himself (or herself) insecure" or in words of similar import must be construed to mean that he (or she) has power to do so only if he (or she) in good faith believes that the prospect of payment or performance is impaired.

(2) With respect to a consumer lease, the burden of establishing good faith under subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

§2A–201.

(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;

(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):

(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, is 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, is the term so admitted;

(c) Is a reasonable lease term.

§2A–202.

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 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.

§2A–203.

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.

§2A–204.

(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.

§2A–205.

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 3 months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

§2A–206.

(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 vote of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

§2A–208.

(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, in a consumer lease such a requirement on a form supplied by a lessor must be conspicuous.

(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 and reliance on the waiver.

§2A–209.

(1) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of 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 is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(2) The extension of the benefit of a supplier's promises and of warranties to the lessee (§ 2A-209(1)) does not: (i) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or (ii) 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 between the supplier and the lessee unless, before 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 modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.

(4) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (1), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

§2A–210.

(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.

§2A–211.

(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.

§2A–212.

(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 such as

(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 purpose 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.

§2A–213.

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.

§2A–214.

(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 § 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, 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 (§ 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.

§2A–214.1.

(1) The provisions of § 2A-214 do not apply to leases of consumer goods, as

defined by § 9-109, services, or both.

(2) Any oral or written language used by a lessor of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer's remedies for breach of those warranties, is unenforceable. However, the lessor may recover from the manufacturer any damages resulting from breach of the implied warranty of merchantability or fitness for a particular purpose.

(3) Any oral or written language used by a manufacturer of consumer goods, which attempts to limit or modify a consumer's remedies for breach of the manufacturer's express warranties, is unenforceable, unless the manufacturer provides reasonable and expeditious means of performing the warranty obligations.

(4) (a) The provisions of this section do not apply to a motor vehicle:

(i) Required to be titled under the Transportation Article;

(ii) That is over 6 model years old and that has been driven more than 60,000 miles; and

(iii) If, at any time of the lease of the motor vehicle, the lessor gives the lessee notice of the inapplicability of this section on the form prescribed under § 13-119 of the Transportation Article.

(b) (i) An exclusion or modification of an implied warranty of merchantability, or any part of a warranty under this subsection shall be in writing, mention merchantability, and be conspicuous.

(ii) An exclusion or modification of the implied warranty of fitness shall be in writing and conspicuous.

(iii) Any exclusion or modification of either warranty shall be separately acknowledged by the signature of the lessee.

§2A–215.

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.

§2A–216.

A warranty to or for the benefit of a lessee under this title, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home or any other ultimate consumer or user of the goods or person affected thereby if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons. 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 any beneficiary designated under this section.

§2A–217.

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.

§2A–218.

(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.

§2A–219.

(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 title on the effect of default on risk of loss (§ 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 a 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.

§2A–220.

(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, he (or she) to the extent of any deficiency of his (or her) 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 his (or her) effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

§2A–221.

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 § 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 his (or her) 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.

§2A–301.

Except as otherwise provided in this title, 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.

§2A–302.

Except as otherwise provided in this title, each provision of this title 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.

§2A–303.

(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 9, Secured Transactions, by reason of § 9-109(a)(3).

(2) Except as provided in subsection (3) and § 9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4).

(4) Subject to subsection (3) and § 9-407:

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in § 2A-501(2);

(b) If paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transferor.

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

§2A–304.

(1) Subject to § 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 § 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. If 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 under the criminal law.

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

(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.

§2A–305.

(1) Subject to the provisions of § 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 § 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 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.

§2A–306.

If a person in the ordinary course of his 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 is enforceable and takes priority over any interest of the lessor or lessee under the lease contract or this title 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.

§2A–307.

(1) Except as otherwise provided in § 2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in §§ 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in §§ 9-317, 9-321, and 9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

§2A–308.

(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 or voids the lease contract 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 and does not void the lease contract.

(2) Nothing in this title 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 title 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.

§2A–309.

(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 record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of § 9-502(a) and (b);

(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 title a lease may be of goods that are fixtures or may continue in goods that become fixtures but no lease exists under this title of ordinary building materials incorporated into an improvement on land.

(3) This title 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 10 days thereafter, 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 or 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 including the lessor's residual interest 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 including the lessor's residual interest 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 of fixtures including the lessor's residual interest 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 title, or (b) if necessary to enforce the other rights and remedies under this title, including the lessor's residual interest, 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 the 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, including the lessor's residual interest, 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 title on secured transactions (Title 9).

§2A–310.

(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 such 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 title, or (b) if necessary to enforce his (or her) other rights and remedies under this title, remove the goods from the whole, free and clear of all interests in the whole, but he (or she) 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.

§2A–311.

Nothing in this title prevents subordination by agreement by any person entitled

to priority.

§2A–401.

(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 he (or she) 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.

§2A–402.

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 § 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 title, 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 foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this title on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (§ 2A-524).

§2A–403.

(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 cancelled 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 § 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.

§2A–404.

(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.

§2A–405.

Subject to § 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, he or she shall allocate production and deliveries

among his or her customers but at his or her option may include regular customers not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she 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 thus made available for the lessee.

§2A–406.

(1) If the lessee receives notification of a material or indefinite delay or an allocation justified under § 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 installment lease contract the value of the whole lease contract is substantially impaired (§ 2A-510):

(a) Terminate the lease contract (§ 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 § 2A-405, the lessee fails to so modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

§2A–407.

(1) In the case of a finance lease that is not a consumer 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.

(3) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

§2A–501.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this title.

(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 title and, except as limited by this title, 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 title.

(4) Except as otherwise provided in § 1–305(a) of 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 that party's rights and remedies in respect of the real property, in which case this part does not apply.

§2A–502.

Except as otherwise provided in this title 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.

§2A–503.

(1) Except as otherwise provided in this title, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this title and may limit or alter the measure of damages recoverable under this title.

(2) Resort to a remedy provided under this title 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 title.

(3) Consequential damages may be liquidated under § 2A-504, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(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 title.

§2A–504.

(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 the 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 such provision does not comply with subsection (1), or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this title.

(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (§ 2A-525 or § 2A-526), the lessee is entitled to restitution of any amount by which the sum of his (or her) 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 title 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.

§2A–505.

(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 cancelling 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 title 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.

§2A–506.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within 4 years after the cause of action accrued.

(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, whichever is later.

(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 6 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 title becomes effective.

§2A–507.

(1) Damages based on market rent (§ 2A-519 or § 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 times specified in §§ 2A-519 and 2A-528.

(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 title 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 title offered by one party is not admissible unless and until he (or she) 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.

§2A–508.

(1) If a lessor fails to deliver the goods in conformity to the lease contract (§ 2A-509) or repudiates the lease contract (§ 2A-402), or a lessee rightfully rejects the goods (§ 2A-509) or justifiably revokes acceptance of the goods (§ 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 (§ 2A-510), the lessor is in default under the lease contract and the lessee may:

(a) Cancel the lease contract (§ 2A-505(1));

(b) Recover so much of the rent and security as has been paid and 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 (§§ 2A-518 and 2A-520), or recover damages for nondelivery (§§ 2A-519 and 2A-520);

(d) Exercise any other rights or pursue any other remedies provided in the lease contract.

(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 (§ 2A-522); or

(b) In a proper case, obtain specific performance or replevy the goods (§ 2A-521).

(3) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in § 2A-519(3).

(4) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (§ 2A-519(4)).

(5) Subject to the provisions of § 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.

§2A–509.

(1) Subject to the provisions of § 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.

§2A–510.

(1) Under an installment lease agreement, 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 seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

§2A–511.

(1) 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 his (or her) 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 (§ 2A-512 of this subtitle) disposes of goods, he (or she) 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 such commission as is usual in the trade or, if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(3) In complying with this section or § 2A-512, the lessee is held only to good faith. Good faith conduct hereunder 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 § 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 title.

§2A–512.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (§ 2A-511):

(a) The lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or supplier's disposition for a reasonable time after the lessee's seasonable 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 § 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.

§2A–513.

(1) If any tender or delivery by the lessor or the supplier is rejected because it is 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 he (or she) seasonably notifies the lessee.

§2A–514.

(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 (§ 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 in the documents.

§2A–515.

(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 (§ 2A-509(2)).

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

§2A–516.

(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, other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, 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 title 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, if any, or be barred from any remedy against the party not notified;

(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 (§ 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, the following apply:

(a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then, unless the person notified after seasonable receipt of the notice does come in and defend, that person 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 (§ 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 seasonable receipt of the demand does turn over control, the lessee is so barred.

(5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (§ 2A-211).

(6) Subsection (3) shall not apply to a consumer lease.

§2A–517.

(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) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor commits a default under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit for other defaults by the lessor.

(4) 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.

(5) A lessee who so revokes has the same rights and duties with regard to the

goods involved as if the lessee had rejected them.

§2A–518.

(1) After a default by a lessor under the lease contract of the type described in § 2A-508(1), or, if agreed, after other default by the lessor, 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 (§ 2A–504) or otherwise determined pursuant to agreement of the parties (§§ 1–302 and 2A–503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement and applicable to that period of the new lease term which is comparable to the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) 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 § 2A-519 governs.

§2A–519.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 2A–504) or otherwise determined pursuant to agreement of the parties (§§ 1–302 and 2A–503), 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 § 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 then market rent minus the present value as of the same date of 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) Except as otherwise agreed, if the lessee has accepted goods and given notification (§ 2A-516(3)), the measure of damages for nonconforming tender or delivery or other default 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) Except as otherwise agreed, 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.

§2A–520.

(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.

§2A–521.

(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.

§2A–522.

(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 (§ 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 10 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.

§2A–523.

(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 (§ 2A-510), the lessee is in default under the lease contract and the lessor may:

(a) Cancel the lease contract (§ 2A-505(1));

(b) Proceed respecting goods not identified to the lease contract (§ 2A-524);

(c) Withhold delivery of the goods and take possession of goods previously delivered (§ 2A-525);

(d) Stop delivery of the goods by any bailee (§ 2A-526);

(e) Dispose of the goods and recover damages (§ 2A-527), or retain the goods and recover damages (§ 2A-528), or in a proper case recover rent (§ 2A-529);

(f) Exercise any other rights or pursue any other remedy provided in the lease contract.

(2) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's breach.

(3) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(a) If the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (1) or (2); or

(b) If the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (2).

§2A–524.

(1) A lessor aggrieved under § 2A-523 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 (§ 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 purpose 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.

§2A–525.

(1) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(2) After a default by the lessee under the lease contract of the type described in § 2A-523(1) or § 2A-523(3)(a), or, if agreed, on other default by the lessee, the lessor has 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 (§ 2A-527).

(3) The lessor may proceed under subsection (2) without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

§2A–526.

(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, truckload, 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) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(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.

§2A–527.

(1) After a default by a lessee under the lease contract of the type described in § 2A-523(1) or § 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (§ 2A-525 or § 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof in good faith and without unreasonable delay by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 2A–504) or otherwise determined pursuant to agreement of the parties (§§ 1–302 and 2A–503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 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 under § 2A-528 as if the lessor had elected not to dispose of the goods and § 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 title.

(5) The lessor is not accountable to the lessee for any profit made on any disposition.

§2A–528.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 2A–504) or otherwise determined pursuant to agreement of the parties (§§ 1–302 and 2A–503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under § 2A–527(2), or is by sale or otherwise, the lessor may

recover from the lessee as damages for a default of the type described in § 2A–523(1) or § 2A–523(3)(a), or, if agreed, for other default of the lessee (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under § 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 present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§2A–529.

(1) After default by the lessee under the lease contract of the type described in § 2A-523(1) or § 2A-523(3)(a) or, if agreed, after other default by the lessee, if the lessor complies with subsection (2), the lessor may recover from the lessee as damages:

(a) For goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged after risk of loss passes to the lessee (§ 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 same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under § 2A-530, less expenses saved in consequence of the lessee's default; and

(b) For goods identified to the lease contract where the lessor has never delivered the goods or has taken possession of them or the lessee has effectively tendered them back to the lessor if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that such an 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 same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under § 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 is governed by §§ 2A-527 and 2A-528, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to § 2A-527 or § 2A-528.

(4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term and in accordance with 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 (§ 2A-402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under § 2A-527 or § 2A-528.

§2A–530.

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.

§2A–531.

(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, his (or her) suit or settlement, subject to his (or her) 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.

§2A–532.

In addition to any other recovery permitted by this title or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of

the lessee.

§3–101.

This title may be cited as Maryland Uniform Commercial Code -- Negotiable Instruments.

§3–102.

(a) This title applies to negotiable instruments. It does not apply to money, to payment orders governed by Title 4A, or to securities governed by Title 8.

(b) If there is conflict between this title and Title 4 or 9, Titles 4 and 9 govern.

(c) 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 title to the extent of the inconsistency.

§3–103.

(a) In this title:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) Reserved.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this title or Title 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 1–201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

"Acceptance"	§ 3–409
"Accommodated party"	§ 3–419
"Accommodation party"	§ 3–419
"Alteration"	§ 3–407
"Anomalous indorsement"	§ 3–205
"Blank indorsement"	§ 3–205
"Cashier's check"	§ 3–104
"Certificate of deposit"	§ 3–104
"Certified check"	§ 3–409
"Check"	§ 3–104
"Consideration"	§ 3–303
"Draft"	§ 3–104
"Holder in due course"	§ 3–302
"Incomplete instrument"	§ 3–115
"Indorsement"	§ 3–204
"Indorser"	§ 3–204
"Instrument"	§ 3–104
"Issue"	§ 3–105
"Issuer"	§ 3–105
"Negotiable instrument"	§ 3–104
"Negotiation"	§ 3–201
"Note"	§ 3–104

"Payable at a definite time"	§ 3–108
"Payable on demand"	§ 3–108
"Payable to bearer"	§ 3–109
"Payable to order"	§ 3–109
"Payment"	§ 3–602
"Person entitled to enforce"	§ 3–301
"Presentment"	§ 3–501
"Reacquisition"	§ 3–207
"Special indorsement"	§ 3–205
"Teller's check"	§ 3–104
"Transfer of instrument"	§ 3–203
"Traveler's check"	§ 3–104
"Value"	§ 3–303

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

"Bank"	§ 4–105
"Banking day"	§ 4–104
"Clearing house"	§ 4–104
"Collecting bank"	§ 4–105
"Depositary bank"	§ 4–105
"Documentary draft"	§ 4–104
"Intermediary bank"	§ 4–105
"Item"	§ 4–104
"Payor bank"	§ 4–105
"Suspends payments"	§ 4–104

(d) In addition, Title 1 contains general definitions and principles of construction and interpretation applicable throughout this title.

§3–104.

(a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this title.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order".

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

§3–105.

(a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

§3–106.

(a) Except as provided in this section, for the purposes of § 3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of § 3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of § 3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

§3–107.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§3–108.

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

§3–109.

(a) A promise or order is payable to bearer if it:

(1) States that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) Does not state a payee; or

(3) States that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to § 3-205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to § 3-205(b).

§3–110.

(a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(i) A trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(ii) A person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(iii) A fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(iv) An office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

§3–111.

Except as otherwise provided for items in Title 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment

is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§3–112.

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

§3–113.

(a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in § 4-401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§3–114.

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

§3–115.

(a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to subsection (c), if an incomplete instrument is an instrument under § 3-104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under § 3-104, but, after completion, the requirements of § 3-104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under §

3-407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

§3–116.

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in § 3-419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (b) of a party having the same joint and several liability to receive contribution from the party discharged.

§3–117.

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

§3–118.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within 6 years after the due date or dates stated in the note or, if a due date is accelerated, within 6 years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within 3 years after

dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within 3 years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) Subject to § 1-210 of the Financial Institutions Article, an action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within 6 years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the 6-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within 6 years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within 6 years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within 3 years after the cause of action accrues.

§3–119.

In an action for breach of an obligation for which a third person is answerable over pursuant to this title or Title 4, 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. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

§3–201.

(a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

§3–202.

(a) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

§3–203.

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this title and has only the rights of a partial assignee.

§3–204.

(a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a

holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

§3–205.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement". When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in § 3-110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement". When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§3–206.

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in § 4-201(b), or (ii) in blank or to a particular bank using the words "for deposit", "for collection", or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) A person, other than a bank, who purchases the instrument when so

indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement.

(2) A depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement.

(3) A payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement.

(4) Except as otherwise provided in paragraph (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) Unless there is notice of breach of fiduciary duty as provided in § 3-307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser.

(2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

§3–207.

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the

cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

§3–301.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 3-309 or § 3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

§3–302.

(a) Subject to subsection (c) and § 3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in § 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in § 3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under § 3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

§3–303.

(a) An instrument is issued or transferred for value if:

(1) The instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) The transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) The instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) The instrument is issued or transferred in exchange for a negotiable instrument; or

(5) The instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (a), the instrument is also issued for consideration.

§3–304.

(a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) On the day after the day demand for payment is duly made;

(2) If the instrument is a check, 90 days after its date; or

(3) If the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured.

(2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date.

(3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

§3–305.

(a) Except as stated in subsection (b), the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this title or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1), but is not subject to defenses of the obligor stated in subsection (a)(2) or claims in recoupment stated in subsection (a)(3) against a person other than the holder.

(c) Except as stated in subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (§ 3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

§3–306.

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

§3–307.

(a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person.

(2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the

fiduciary, as such, or an account of the represented person.

(3) If an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty.

(4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

§3–308.

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under § 3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under § 3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

§3–309.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, § 3-308 applies to the case as if the person seeking enforcement

had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

§3–310.

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in paragraph (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

§3–311.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1)(i).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

§3–312.

(a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer

cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to § 4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or § 3-309.

§3–401.

(a) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under § 3-402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

§3–402.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to subsection (c), if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

§3–403.

(a) Unless otherwise provided in this title or Title 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature

may be ratified for all purposes of this title.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this title which makes the unauthorized signature effective for the purposes of this title.

§3–404.

(a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (§ 3-110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under subsection (a) or (b), an indorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

§3–405.

(a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means (i) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

§3–406.

(a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

§3–407.

(a) "Alteration" means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

§3–408.

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

§3–409.

(a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in subsection (a) or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

§3–410.

(a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

§3–411.

(a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

§3–412.

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in §§ 3-115 and 3-407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under § 3-415.

§3–413.

(a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the

draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in §§ 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under § 3-414 or § 3-415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

§3–414.

(a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in §§ 3-115 and 3-407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under § 3-415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under § 3-415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

§3–415.

(a) Subject to subsections (b), (c), (d), and (e) and to § 3-419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i)

according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in §§ 3-115 and 3-407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by § 3-503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under subsection (a) is discharged.

(e) If an indorser of a check is liable under subsection (a) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under subsection (a) is discharged.

§3–416.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) The warrantor is a person entitled to enforce the instrument;

(2) All signatures on the instrument are authentic and authorized;

(3) The instrument has not been altered;

(4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor

within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§3–417.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under § 3-404 or § 3-405 or the drawer is precluded under § 3-406 or § 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the

instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§3–418.

(a) Except as provided in subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to § 4-403 or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by subsection (a), the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.

(c) The remedies provided by subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by § 3-417 or § 4-407.

(d) Notwithstanding § 4-215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

§3–419.

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on

the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in § 3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

§3–420.

(a) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

§3–501.

(a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.

(b) The following rules are subject to Title 4, agreement of the parties, and clearing–house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary indorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

§3–502.

(a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if

presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and paragraph (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under § 4-301 or § 4-302, or becomes accountable for the amount of the check under § 4-302.

(2) If a draft is payable on demand and paragraph (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in subsection (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under § 3-504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

§3–503.

(a) The obligation of an indorser stated in § 3-415(a) and the obligation of a drawer stated in § 3-414(d) may not be enforced unless (i) the indorser or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under § 3-504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to § 3-504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

§3–504.

(a) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer, (iv) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

§3–505.

(a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) A document regular in form as provided in subsection (b) which purports to be a protest;

(2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

§3–601.

(a) The obligation of a party to pay the instrument is discharged as stated in this title or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

§3–602.

(a) Subject to subsection (b), an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under § 3-306 by another person.

(b) The obligation of a party to pay the instrument is not discharged under subsection (a) if:

(1) A claim to the instrument under § 3-306 is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor

that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

§3–603.

(a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

§3–604.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

§3–605.

(a) In this section, the term "indorser" includes a drawer having the obligation described in § 3-414(d).

(b) Discharge, under § 3-604, of the obligation of a party to pay an instrument does not discharge the obligation of an indorser or accommodation party having a right of recourse against the discharged party.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an indorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the indorser or accommodation party proves that the extension caused loss to the indorser or accommodation party with respect to the right of recourse.

(d) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an indorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the indorser or accommodation party with respect to the right of recourse. The loss suffered by the indorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.

(e) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an indorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.

(f) If the obligation of a party is secured by an interest in collateral not provided by an accommodation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (e), the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

(g) Under subsection (e) or (f), impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Title 9 of this article or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.

(h) An accommodation party is not discharged under subsection (c), (d), or (e)

unless the person entitled to enforce the instrument knows of the accommodation or has notice under § 3-419(c) that the instrument was signed for accommodation.

(i) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

§4–101.

This title may be cited as Uniform Commercial Code -- Bank Deposits and Collections.

§4–102.

(a) To the extent that items within this title are also within Titles 3 and 8, they are subject to those titles. If there is conflict, this title governs Title 3, but Title 8 governs this title.

(b) The liability of a bank for action or nonaction with respect to an 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.

§4–103.

(a) The effect of the provisions of this title may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or nonaction approved by this title or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearing-house rules and the like or with a general banking usage not disapproved by this title, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this title is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

§4–104.

(a) In this title, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day, excluding Saturday, Sunday, or a legal holiday, on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (§ 8–102) or instructions for uncertificated securities (§ 8–102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in § 3–104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Title 4A or a credit or debit card slip;

(10) "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;

(11) "Settle" means to pay in cash, by clearing–house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over; or that it ceases or refuses to make payments in the ordinary course of business.

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

"Agreement for electronic presentment." § 4-110.

"Bank." § 4-105.

"Collecting bank." § 4-105.

"Depositary bank." § 4-105.

"Intermediary bank." § 4-105.

"Payor bank." § 4-105.

"Presenting bank." § 4-105.

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

"Acceptance." § 3–409.

"Alteration." § 3–407.

"Cashier's check." § 3–104.

"Certificate of deposit." § 3–104.

"Certified check." § 3–409.

"Check." § 3–104.

"Control." § 7–106.

"Draft." § 3–104.

"Holder in due course." § 3–302.

"Instrument." § 3–104.

"Notice of dishonor." § 3–503.

"Order." § 3–103.

"Ordinary care." § 3–103.

"Person entitled to enforce." § 3–301.

"Presentment." § 3–501.

"Promise." § 3–103.

"Prove." § 3–103.

"Teller's check." § 3–104.

"Unauthorized signature." § 3–403.

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

§4–105.

In this title:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank unless the item is presented for immediate payment over the counter;

(3) "Payor bank" means a bank that is the drawee of a draft;

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank;

(5) "Collecting bank" means a bank handling an item for collection except the payor bank; and

(6) "Presenting bank" means a bank presenting an item except a payor bank.

§4–106.

(a) If an item states that it is "payable through" a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item:

(1) The item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(2) The item may be presented for payment only by or through the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a codrawee or a collecting bank, the bank is a collecting bank.

§4–107.

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 must be given under this title and under Title 3.

§4–108.

(a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two p.m. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An 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.

§4–109.

(a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by Titles 1 through 10 of this article for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this article, or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

§4–110.

(a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or federal reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item pursuant to an agreement for presentment is made

when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this title means the presentment notice unless the context otherwise indicates.

§4–111.

An action to enforce an obligation, duty, or right arising under this title must be commenced within 3 years after the cause of action accrues.

§4–201.

(a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, 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 indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this title apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) Returned to the customer initiating collection; or

(2) Specially indorsed by a bank to a person who is not a bank.

§4–202.

(a) A collecting bank must exercise ordinary care in:

(1) Presenting an item or sending it for presentment;

(2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) Settling for an item when the bank receives final settlement; and

(4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

§4–203.

Subject to Title 3 concerning conversion of instruments (§ 3-420) and restrictive indorsements (§ 3-206) only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

§4–204.

(a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) An item directly to the payor bank;

(2) An item to a nonbank payor if authorized by its transferor; and

(3) An item other than documentary drafts to any nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

§4–205.

If a customer delivers an item to a depositary bank for collection:

(1) The depositary bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of § 3-302, it is a holder in due course; and

(2) The depositary bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or

deposited to the customer's account.

§4–206.

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

§4–207.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) The warrantor is a person entitled to enforce the item;

(2) All signatures on the item are authentic and authorized;

(3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (§ 3-305(a)) of any party that can be asserted against the warrantor; and

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in §§ 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the

claimant has reason to know of the breach.

§4–208.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered; and

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under § 3-404 or § 3-405 or the drawer is precluded under § 3-406 or § 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the

identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

§4–209.

(a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

§4–210.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Title 9, but:

(1) No security agreement is necessary to make the security interest enforceable (§ 9-203(b)(3)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

§4–211.

For purposes of determining its status as a holder in due course, a bank has given value to the extent that it has a security interest in an item, if the bank otherwise complies with the requirements of § 3-302 on what constitutes a holder in due course.

§4–212.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under § 3-501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under § 3-501 is not 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 drawer or indorser by sending it notice of the facts.

§4–213.

(a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

(1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) The time of settlement, is:

(i) With respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;

(ii) With respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;

(iii) With respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement

by authority to charge an account, when the authority is sent or delivered; or

(iv) With respect to tender of settlement by a funds transfer, when payment is made pursuant to § 4A-406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by subsection (a) or the time of settlement is not fixed by subsection (a), no settlement occurs until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

§4–214.

(a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive 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 item, 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. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge-back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. 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.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that 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 (§ 4-301).

(d) The right to charge-back is not affected by:

(1) Prior use of the credit given for the item; or

(2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

§4–215.

(a) An item is finally paid by a payor bank when the bank has done any of the following:

(1) Paid the item in cash;

(2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item which is or becomes final, 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.

(e) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:

(1) If the bank has received a provisional settlement for the item, - when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time;

(2) If the bank is both the depositary bank and the payor bank, and the item is finally paid, - at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

§4–216.

(a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

§4–301.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the item if, before it has made final payment and before its midnight deadline, it

(1) Returns the item; or

(2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books it may return the 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 subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at

the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

§4–302.

(a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) A demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) Any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to subsection (a) is subject to defenses based on breach of presentment warranty (§ 4-208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

§4–303.

(a) If any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank, comes too late 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, if the knowledge, notice, stop-payment 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 earliest of the following:

(1) The bank accepts or certifies the item;

(2) The bank pays the item in cash;

(3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) The bank becomes accountable for the amount of the item under § 4-302 dealing with the payor bank's responsibility for late return of items; or

(5) With respect to checks, a cutoff hour no earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to subsection (a), items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

§4–401.

(a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. Any item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in § 4-403(b) for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in § 4-303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under § 4-402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) The original terms of the altered item; or

(2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

§4–402.

(a) Except as otherwise provided in this title, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the

wrongful dishonor of an item. Liability is limited to actual damages proved and 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.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

§4–403.

(a) Any person authorized to draw on the account, if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in § 4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional 6-month periods by a writing given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under § 4-402.

§4–404.

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.

§4–405.

(a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay,

collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for ten days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

§4–406.

(a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of 7 years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.

(c) If a bank sends or makes available a statement of account or items pursuant to subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (c) the customer is precluded from asserting against the bank:

(1) The customer's unauthorized signature of the customer or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed

to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (d) does not apply.

(f) Without regard to care or lack of care of either the customer or the bank, a customer who does not within 12 months after the statement or items are made available to the customer (subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under § 4-208 with respect to the unauthorized signature or alteration to which the preclusion applies.

§4–407.

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights:

(1) Of any holder in due course on the item against the drawer or maker;

(2) Of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

§4–501.

A bank that takes a documentary draft for collection shall 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, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

§4–502.

If 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 the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

§4–503.

Unless otherwise instructed and except as provided in Title 5, a bank presenting a documentary draft:

(1) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reasons 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.

However 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 those expenses.

§4–504.

(a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

§4A–101.

This title may be cited as Maryland Uniform Commercial Code - Funds Transfers.

§4A–102.

Except as otherwise provided in § 4A-108 of this subtitle, this title applies to funds transfers defined in § 4A-104 of this subtitle.

§4A–103.

(a) In this title:

(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) of this section is to make more than 1 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.

§4A–104.

In this title:

(1) "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 by 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.

(2) "Intermediary bank" means a receiving bank other than:

(i) The originator's bank; or

(ii) The beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "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.

§4A–105.

(a) In this title:

(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 title.

(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) Reserved.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (§ 1–208(b)(8)).

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

"Acceptance"	§ 4A-209
"Beneficiary"	§ 4A-103
"Beneficiary's bank"	§ 4A-103
"Executed"	§ 4A-301
"Execution date"	§ 4A-301

"Funds transfer"	§ 4A-104
"Funds-transfer system rule"	§ 4A-501
"Intermediary bank"	§ 4A-104
"Originator"	§ 4A-104
"Originator's bank"	§ 4A-104
"Payment by beneficiary's bank to beneficiary"	§ 4A-405
"Payment by originator to beneficiary"	§ 4A-406
"Payment by sender to receiving bank"	§ 4A-403
"Payment date"	§ 4A-401
"Payment order"	§ 4A-103
"Receiving bank"	§ 4A-103
"Security procedure"	§ 4A-201
"Sender"	§ 4A-103

(c) The following definitions in Title 4 of this article apply to this title:

"Clearing house"	§ 4-104
"Item"	§ 4-104
"Suspends payments"	§ 4-104

(d) In addition, Title 1 of this article contains general definitions and principles of construction and interpretation applicable throughout this title.

§4A–106.

(a) (1) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in § 1–202 of this article.

(2) A receiving bank may fix a cutoff time or times on a funds–transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders.

(3) Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments.

(4) A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders.

(5) If a payment order or communication cancelling or amending a payment order is received after the close of a funds–transfer business day or after the appropriate cutoff 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 title 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 title.

§4A–107.

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 title to the extent of the inconsistency.

§4A–108.

(a) Except as provided in subsection (b) of this section, this title 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 95–630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.

(b) This title applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693o–1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. § 1693a) as amended from time to time.

(c) In a funds transfer to which this title applies, in the event of an inconsistency between an applicable provision of this title and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

§4A–201.

(a) "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of:

(1) Verifying that a payment order or communication amending or cancelling a payment order is that of the customer; or

(2) Detecting error in the transmission or the content of the payment order or communication.

(b) A "security procedure" may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices.

(c) 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".

§4A–202.

(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) (1) 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.

(2) 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) (1) 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.

(2) 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 title includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a) of this section, or it is effective as the order of the customer under subsection (b) of this section.

(e) This section applies to amendments and cancellations of payment orders to the same extent that it applies to payment orders.

(f) Except as provided in this section and in § 4A-203(a)(1) of this subtitle, rights and obligations arising under this section or § 4A-203 of this subtitle may not be varied by agreement.

§4A–203.

(a) If an accepted payment order is not an authorized order of a customer identified as sender under § 4A-202(a) of this subtitle, but is effective as an order of the customer pursuant to § 4A-202(b) of this subtitle, 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 that it applies to payment orders.

§4A–204.

(a) (1) 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 § 4A-202 of this subtitle or (ii) not enforceable, in whole or in part, against the customer under § 4A-203 of this subtitle, the receiving bank shall refund any payment of the payment order received from the customer to the extent that the receiving 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.

(2) Notwithstanding paragraph (1) of this subsection, 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.

(3) A receiving 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) of this section may be fixed by agreement as stated in § 1–302(b) of this article, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

§4A–205.

(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 § 4A-206 of this subtitle 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) of this subsection.

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of subsection (a) of this section, 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) of this section, 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) of this section 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 receiving bank proves that the sender failed to perform that duty, the sender is liable to the bank for the loss which the bank proves that 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 that it applies to payment orders.

§4A–206.

(a) (1) If a payment order addressed to a receiving bank is transmitted to a funds-transfer system for transmittal to the bank, the funds-transfer system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank.

(2) If there is a discrepancy between the terms of the payment order transmitted to the funds-transfer system and the terms of the payment order transmitted by the funds-transfer system to the bank, the terms of the payment order of the sender are those transmitted by the funds-transfer system.

(3) 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 that it applies to payment orders.

§4A–207.

(a) Subject to subsection (b) of this section, 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) of this section, 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) of this section 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) of this section, 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) of this section, 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) of this section, 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.

§4A–208.

(a) In the case where a payment order identifies 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; and

(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:

(i) The receiving bank:

1. 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; and

2. Need not determine whether the name and number refer to the same person or whether the number refers to a bank; and

(ii) 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 paragraph (1) of this subsection, 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 § 4A-302(a)(1) of this title.

§4A–209.

(a) Subject to subsection (d) of this section, 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) of this section, 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 § 4A-405(a) or (b) of this title; 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 § 4A-403(a)(1) or (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) 1 hour after that time; or

(ii) 1 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 (3) of this section 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) (1) 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.

(2) 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 cancelled pursuant to § 4A-211(b) of this subtitle, the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

§4A–210.

(a) (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing.

(2) 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.

(3) Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances.

(4) If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received.

(5) 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 cancelled pursuant to § 4A-211(d) of this subtitle 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.

§4A–211.

(a) A communication of the sender of a payment order cancelling 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) of this section, a communication by the sender cancelling 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 cancelled 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 cancelled by operation of law at the close of the 5th funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A cancelled payment order cannot be accepted. If an accepted payment order is cancelled, 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) of this section.

§4A–212.

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 title, 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 title or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in § 4A-209 of this subtitle, and liability is limited to that provided in this title. A receiving bank is not the agent of the sender or of the beneficiary of the payment order that 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 title or by express agreement.

§4A–301.

(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.

§4A–302.

(a) Except as provided in subsections (b) through (d) of this section, if the receiving bank accepts a payment order pursuant to § 4A-209(a) of this title, 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:

(1) Use any funds-transfer system if use of that system is reasonable in the circumstances; and

(2) 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) of this section 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:

(1) 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

(2) May not instruct a subsequent receiving bank to obtain payment of its charges in the same manner.

§4A–303.

(a) A receiving bank that:

(1) 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

(2) 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 § 4A-402(c) of this title 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) (1) 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 § 4A-402(c) of this title 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.

(2) 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.

(3) 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.

§4A–304.

(a) If the sender of a payment order that is erroneously executed as stated in § 4A-303 of this subtitle 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.

(b) If the sender fails to perform the duty imposed under subsection (a) of this section, the bank is not obliged to pay interest on any amount refundable to the sender under § 4A-402(d) of this title for the period before the bank learns of the execution error.

(c) The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty imposed under subsection (a) of this section.

§4A–305.

(a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of § 4A-302 of this subtitle 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) of this section, additional damages are not recoverable.

(b) (1) If execution of a payment order by a receiving bank in breach of § 4A-302 of this subtitle 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) of this section, resulting from the improper execution.

(2) Except as provided in subsection (c) of this section, additional damages are not recoverable.

(c) In addition to the amounts payable under subsections (a) and (b) of this section, damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) (1) 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.

(2) 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) (1) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) of this section is made and refused before an action is brought on the claim.

(2) If a claim is made for breach of an agreement under subsection (d) of this section and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) of this section 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) of this section may not be varied by agreement.

§4A–401.

"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.

§4A–402.

(a) This section is subject to §§ 4A-205 and 4A-207 of this title.

(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) (1) This subsection is subject to subsection (e) of this section and to § 4A-303 of this title.

(2) (i) 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.

(ii) Payment by the sender is not due until the execution date of the sender's order.

(iii) The obligation of the 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) (1) 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.

(2) Except as provided in §§ 4A-204 and 4A-304 of this title, interest is payable on the refundable amount from the date of payment.

(e) (1) If a funds transfer is not completed as stated in subsection (c) of this section and an intermediary bank is obliged to refund payment as stated in subsection (d) of this section 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 § 4A-302(a)(1) of this title, 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.

(2) 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) of this section.

(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) of this section or to receive refund under subsection (d) of this section may not be varied by agreement.

§4A–403.

(a) Payment of the sender's obligation under § 4A-402 of this subtitle 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) (1) 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.

(2) 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.

(3) 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.

(4) The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If 2 banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under § 4A-402 of this subtitle will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by 1 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) of this section, the time when payment of the sender's obligation under § 4A-402(b) or (c) of this subtitle occurs is governed by applicable principles of law that determine when an obligation is satisfied.

§4A–404.

(a) Subject to §§ 4A-211(e) and 4A-405(d) and (e) of this title, 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) of this section 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) of this section 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.

§4A–405.

(a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under § 4A-404(a) of this subtitle 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 § 4A-404(a) of this subtitle occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as stated in subsections (d) and (e) of this section, 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 § 4A-406 of this subtitle.

(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 1 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 § 4A-406 of this subtitle; and (iv) subject to § 4A-402(e) of this subtitle, each sender in the funds transfer is excused from its obligation to pay its payment order under § 4A-402(c) of this subtitle because the funds transfer has not been completed.

§4A–406.

(a) Subject to §§ 4A-211(e) and 4A-405(d) and (e) of this title, 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) of this section 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) of this section 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 the 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 § 4A-404(a) of this subtitle.

(c) For the purpose of determining whether discharge of an obligation occurs under subsection (b) of this section, 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 1 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.

§4A–501.

(a) Except as otherwise provided in this title, 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 title, 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 title 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 §§ 4A-404(c), 4A-405(d), and 4A-507(c) of this title.

§4A–502.

(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.

§4A–503.

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.

§4A–504.

(a) If a receiving bank has received more than 1 payment order of the sender or 1 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.

§4A–505.

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 1 year after the notification was received by the customer.

§4A–506.

(a) If, under this title, 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) of this section, 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.

§4A–507.

(a) The following rules apply unless the affected parties otherwise agree or subsection (c) of this section 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) of this section 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) of this subsection is binding on participating banks. A choice of law made pursuant to clause (ii) of this subsection 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) of this section and a choice-of-law rule under subsection (c) of this section, the agreement under subsection (b) of this section prevails.

(e) If a funds transfer is made by use of more than 1 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.

§5–101.

This title may be cited as the Maryland Uniform Commercial Code - Letters of Credit.

§5–102.

(a) In this title:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer,

or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

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

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in § 5-108(e) of this title and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

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

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

(i) Upon payment;

(ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the

requirements of § 5-104 of this title by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(b) Definitions in other titles of this article applying to this title and the sections in which they appear are:

"Accept" or "Acceptance." § 3-409.

"Value." §§ 3-303 and 4-211.

(c) Title 1 of this article contains certain additional general definitions and principles of construction and interpretation applicable throughout this article.

§5–103.

(a) This title applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this title does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this title.

(c) With the exception of this subsection, subsections (a) and (d) of this section, §§ 5–102(a)(9) and (10), 5–106(d), and 5–114(d) of this title, and except to the extent prohibited in §§ 1–302 and 5–117(d) of this article, the effect of this title may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally

limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this title.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

§5–104.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in § 5-108(e) of this title.

§5–105.

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

§5–106.

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires 1 year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance, or if none is stated, after the date on which it is issued.

§5–107.

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

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

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

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

§5–108.

(a) Except as otherwise provided in § 5-109 of this title, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in § 5-113 of this title and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the 7th business day of the issuer after the day of its receipt of documents:

(1) To honor;

(2) If the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation; or

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

(c) Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in § 5-109(a) of this title or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the

standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

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

(2) An act or omission of others; or

(3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.

(g) If an undertaking constituting a letter of credit under § 5-102(a)(10) of this title contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

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

(3) Is precluded from asserting a right of recourse on a draft under §§ 3-414 and 3-415 of this article;

(4) Except as otherwise provided in §§ 5-110 and 5-117 of this title, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

§5–109.

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) The issuer shall honor the presentation, if honor is demanded by (i) a

nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

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

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

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

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

(3) All of the conditions to entitle a person to the relief under the law of this State have been met; and

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

§5–110.

(a) If its presentation is honored, the beneficiary warrants:

(1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in § 5-109(a) of this title; and

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

(b) The warranties in subsection (a) of this section are in addition to warranties arising under Titles 3, 4, 7, and 8 of this article because of the presentation or transfer of documents covered by any of those titles.

§5–111.

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this title.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this title may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

§5–112.

(a) Except as otherwise provided in § 5-113 of this title, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) The transfer would violate applicable law; or

(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in § 5-108(e) of this title or is otherwise reasonable under the circumstances.

§5–113.

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

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in § 5-108(e) of this title or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in § 5-108(i) of this title even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of § 5-109 of this title.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b) of this section.

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

§5–114.

(a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

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

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

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

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Title 9 of this article or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Title 9 of this article or other law.

§5–115.

An action to enforce a right or obligation arising under this article must be commenced within 1 year after the expiration date of the relevant letter of credit or 1 year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

§5–116.

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in § 5-104 of this title or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located

at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this title would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this title and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 5-103(c) of this title.

(d) If there is conflict between this title and Title 3, 4, 4A, or 9, this title governs.

(e) The forum for settling disputes arising out of an undertaking within this title may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section.

§5–117.

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

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

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

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

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

§5–118.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Title 9 of this article, but:

(1) A security agreement is not necessary to make the security interest enforceable under § 9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

§6–101.

This title shall be known and may be cited as Maryland Uniform Commercial Code -- Bulk Transfers.

§6–102.

(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 (§ 9-102) of an enterprise subject to this title.

(2) A transfer of a substantial part of the equipment (§ 9-102) 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 title are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, restaurants, and all vendors and sellers of alcoholic beverages, regardless of the form in

which such beverages are sold, and regardless of whether sold on a wholesale or retail basis.

(4) Except as limited by the following section all bulk transfers of goods located within this State are subject to this title.

§6–103.

The following transfers are not subject to this title:

(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) Sale by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this State who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which 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.

§6–104.

(1) Except as provided with respect to auction sales (§ 6-108), a bulk transfer subject to this title is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his 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 clerk of the circuit court in the county in which the property was located at the time of transfer.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(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.

§6–105.

In addition to the requirements of the preceding section any bulk transfer subject to this title except one made by auction sale (§ 6-108) is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (§ 6-107).

§6–106.

In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this title for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (§ 6-104) or filed in writing in the place stated in the notice (§ 6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full,

distribution shall be made pro rata.

(4) The transferee may within ten days after he takes possession of the goods file a petition in the circuit court for the county in which the place of business of the transferor is situated and pay the consideration into such court asking that a receiver or receivers be appointed by said court to take charge of the distribution of the agreed purchase price and the transferee may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. If said receivership is granted then said receiver or receivers, upon qualification by filing an approved bond in the amount fixed by the court, shall be entitled to the custody and distribution of the agreed purchase price under orders of the court as in other receiverships.

§6–107.

(1) The notice to creditors (§ 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 (§ 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; and

(e) If 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:

(a) The Comptroller;

(b) All the persons shown on the list of creditors furnished by the transferor (§ 6-104); and

(c) All other persons who are known to the transferee to hold or assert claims against the transferor.

§6–108.

(1) A bulk transfer is subject to this title 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 his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (§ 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 title (§ 6-104);

(b) Give notice of the auction personally or by registered or certified mail at least ten days before it occurs to:

(i) The Comptroller;

(ii) All persons shown on the list of creditors; and

(iii) All other persons who are known to the auctioneer to hold or assert claims against the transferor; and

(c) Assure that the net proceeds of the auction are applied as provided in this title (§ 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.

§6–109.

The creditors of the transferor mentioned in this title 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 (§§ 6-105 and 6-107) are not entitled to

notice.

§6–110.

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this title, 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.

§6–111.

No action under this title 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.

§7–101.

This title may be cited as the Maryland Uniform Commercial Code - Documents of Title.

§7–102.

(a) In this title, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) Reserved.

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) Reserved.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other titles applying to this title and the sections in which they appear are:

(1) "Contract for sale", § 2-106.

(2) "Lessee in ordinary course", § 2A-103.

(3) "Receipt" of goods, § 2-103.

(c) In addition, Title 1 contains general definitions and principles of construction and interpretation applicable throughout this title.

§7–103.

(a) This title is subject to any treaty or statute of the United States or regulatory statute of this State to the extent the treaty, statute, or regulatory statute is applicable.

(b) This title does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this title. However, violation of such a law does not affect the status of a document of title that otherwise

is within the definition of a document of title.

(c) This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that Act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between Title 21 of this article and this title, this title governs.

§7–104.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

§7–105.

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

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute

for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

§7–106.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as

authorized or unauthorized.

§7–201.

(a) A warehouse receipt may be issued by any warehouse.

(b) If 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 is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

§7–202.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Maryland Uniform Commercial Code and do not impair its obligation of delivery under

§ 7-403 or its duty of care under § 7-204. Any contrary provision is ineffective.

§7–203.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

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

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

§7–204.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any statute that imposes a higher responsibility upon the warehouse or invalidates a contractual limitation that would be permissible under this title.

§7–205.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

§7–206.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to § 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and § 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this title upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

§7–207.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

§7–208.

If a blank in a negotiable tangible warehouse receipt has been filled in without

authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

§7–209.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by Title 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 7-403; or

(C) Power of disposition under § 2-403, § 2A-304(2), § 2A-305(2), § 9-320, or § 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§7–210.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) 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 10 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.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 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 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this title.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

§7–301.

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

(b) If goods are loaded by the issuer of a bill of lading:

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except

as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

§7–302.

(a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover

on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

§7–303.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

§7–304.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Subtitle 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

§7–305.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to § 7-105, may procure a substitute bill to be issued at any place designated in the request.

§7–306.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§7–307.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§7–308.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price

could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this title.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in § 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

§7–309.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to

the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

§7–401.

The obligations imposed by this title on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this title or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

§7–402.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to § 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

§7–403.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to § 2-705

or by a lessor of its right to stop delivery pursuant to § 2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to § 7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under § 7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

§7–404.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this title is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

§7–501.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person

and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§7–502.

(a) Subject to §§ 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according

to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this title, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to § 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

§7–503.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 7-403; or

(C) Power of disposition under § 2-403, § 2A-304(2), § 2A-305(2), § 9-320, or § 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under § 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Subtitle 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

§7–504.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under § 2-402 or § 2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 2-705 or a lessor under § 2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

§7–505.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§7–506.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§7–507.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under § 7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§7–508.

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

§7–509.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Title 2, Title 2A, or Title 5.

§7–601.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within 1 year after the delivery.

§7–602.

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

§7–603.

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

§8–101.

This title shall be known and may be cited as Maryland Uniform Commercial Code - Investment Securities.

§8–102.

(a) In this title:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form", as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A Federal Reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 8–501(b)(2) or (3) of this title, that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) (i) "Financial asset", except as otherwise provided in § 8–103 of this subtitle, means:

1. A security;

2. An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

3. Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this title.

(ii) As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) Reserved.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form", as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security", except as otherwise provided in § 8–103 of this subtitle, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

1. Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

2. Is a medium for investment and by its terms expressly provides that it is a security governed by this title.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Subtitle 5 of this title.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this title and the sections in this title in which

they appear are:

Appropriate person .....§ 8–107
Control .....§ 8–106
Delivery .....§ 8–301
Investment company security .....§ 8–103
Issuer .....§ 8–201
Overissue .....§ 8–210
Protected purchaser .....§ 8–303
Securities account .....§ 8–501

(c) In addition, Title 1 contains general definitions and principles of construction and interpretation applicable throughout this title.

(d) The characterization of a person, business, or transaction for purposes of this title does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

§8–103.

(a) A share or similar equity interest issued by a corporation, business trust, statutory trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this title, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this title and not by Title 3 of this article, even though it also meets the requirements of that title. However, a negotiable instrument governed by Title 3 of this article is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in § 9-102(a)(15) of this article, is not a security or a financial asset.

(g) A document of title is not a financial asset unless § 8-102(a)(9)(iii) applies.

§8–104.

(a) A person acquires a security or an interest in a security, under this title, if:

(1) The person is a purchaser to whom a security is delivered in accordance with § 8-301 of this title; or

(2) The person acquires a security entitlement to the security in accordance with § 8-501 of this title.

(b) A person acquires a financial asset, other than a security, or an interest in a financial asset, under this title, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Subtitle 5 of this title, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in § 8-503 of this title.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset in accordance with subsection (a) or (b) of this section.

§8–105.

(a) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest in a financial asset is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person

who knows that a representative has transferred a financial asset or interest in a financial asset in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) 1 year after a date set for presentment or surrender for redemption or exchange; or

(2) 6 months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Title 9 of this article is not notice of an adverse claim to a financial asset.

§8–106.

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder;

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) of this section has control even if the registered owner in the case of subsection (c) of this section or the entitlement holder in the case of subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) (1) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs.

(2) An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

§8–107.

(a) "Appropriate person" means:

(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) With respect to an instruction, the registered owner of an uncertificated security;

(3) With respect to an entitlement order, the entitlement holder;

(4) If the person designated in paragraph (1), (2), or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) If the person designated in paragraph (1), (2), or (3) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) It is made by the appropriate person;

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under § 8-106(c)(2) or (d)(2) of this subtitle; or

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

§8–108.

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) The certificate is genuine and has not been materially altered;

(2) The transferor or indorser does not know of any fact that might impair the validity of the security;

(3) There is no adverse claim to the security;

(4) The transfer does not violate any restriction on transfer;

(5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) The transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) The security is valid;

(3) There is no adverse claim to the security; and

(4) At the time the instruction is presented to the issuer:

(i) The purchaser will be entitled to the registration of transfer;

(ii) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(iii) The transfer will not violate any restriction on transfer; and

(iv) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;

(3) The transfer does not violate any restriction on transfer; and

(4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) There is no adverse claim to the security; and

(2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) The instruction is effective; and

(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) (1) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section.

(2) A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of this section, and has the rights and privileges of a purchaser under this section.

(3) 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 customer.

§8–109.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the

entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in § 8-108(a) or (b) of this subtitle.

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in § 8-108(a) or (b) of this subtitle.

§8–110.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who

purchases a security entitlement or interest in a security entitlement from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) (1) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer.

(2) An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5) of this section.

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this subtitle or this title, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

§8–111.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this title and affects another party who does not consent to the rule.

§8–112.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at the issuer's chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

§8–113.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within 1 year of its making.

§8–114.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If 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 cannot be asserted.

§8–115.

A securities intermediary that has transferred a financial asset in accordance with an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim.

§8–116.

(a) A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset.

(b) A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

§8–201.

(a) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(1) Places or authorizes the placing of its name on a security certificate,

other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained.

§8–202.

(a) (1) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate.

(2) A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice.

(3) The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, in accordance with which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or

the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in § 8-205 of this subtitle, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" 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 in accordance with which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

§8–203.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting 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 the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than 1 year after that date; or

(2) Is not covered by paragraph (1) of this section and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

§8–204.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified of the restriction.

§8–205.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in paragraph (1) of this section, entrusted with responsible handling of the security certificate.

§8–206.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§8–207.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This title does not affect the liability of the registered owner of a security for a call, assessment, or the like.

§8–208.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

(2) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

§8–209.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

§8–210.

(a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this title which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a 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 the person's demand.

§8–301.

(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is

(i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

§8–302.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

§8–303.

(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest in a certificated or uncertificated security, who:

(1) Gives value;

(2) Does not have notice of any adverse claim to the security; and

(3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim.

§8–304.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in § 8-108 of this title and not an obligation that the security will be honored by the issuer.

§8–305.

(a) 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.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by § 8-108 of this title and not an obligation that the security will be honored by the issuer.

§8–306.

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the

appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) (1) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach.

(2) An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

§8–307.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser

may reject or rescind the transfer.

§8–401.

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (§ 8-402 of this subtitle);

(4) Any applicable law relating to the collection of taxes has been complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with § 8-204 of this title;

(6) A demand that the issuer not register transfer has not become effective under § 8-403 of this subtitle, or the issuer has complied with § 8-403(b) of this subtitle but no legal process or indemnity bond is obtained as provided in § 8-403(d) of this subtitle; and

(7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

§8–402.

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) If the indorsement is made or the instruction is originated by a fiduciary in accordance with § 8-107(a)(4) or (5) of this title, appropriate evidence of appointment or incumbency;

(4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) "Appropriate evidence of appointment or incumbency" means:

(i) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(ii) 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 an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate.

§8–403.

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) The certificated security has been presented for registration of transfer or instruction for registration of transfer of uncertificated security has been received;

(2) A demand that the issuer not register transfer had previously been received; and

(3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subsection (b)(3) of this section may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer in accordance with an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File 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 refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

§8–404.

(a) Except as otherwise provided in § 8-406 of this subtitle, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) In accordance with an ineffective indorsement or instruction;

(2) After a demand that the issuer not register transfer became effective under § 8-403(a) of this subtitle and the issuer did not comply with § 8-403(b) of this subtitle;

(3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) By an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by § 8-210 of this title.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made in accordance with an effective indorsement or instruction.

§8–405.

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) Files with the issuer a sufficient indemnity bond; and

(3) Satisfies other reasonable requirements imposed by the issuer.

(b) (1) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by § 8-210 of this title.

(2) In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

§8–406.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under § 8-404 of this subtitle or a claim to a new security certificate under § 8-405 of this subtitle.

§8–407.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered

security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

§8–501.

(a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account;

(2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

§8–502.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under § 8-501 of this subtitle for value and without notice of the adverse claim.

§8–503.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the

entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in § 8-511 of this subtitle.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under §§ 8-505 through 8-508 of this subtitle.

(d) (1) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest in the financial asset only if:

(i) Insolvency proceedings have been initiated by or against the securities intermediary;

(ii) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(iii) The securities intermediary violated its obligations under § 8-504 of this subtitle by transferring the financial asset or interest in the financial asset to the purchaser; and

(iv) The purchaser is not protected under subsection (e) of this section.

(2) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest in the financial asset, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest in a financial asset who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under § 8-504 of this subtitle.

§8–504.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements the securities intermediary has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain in accordance with subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

§8–505.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

§8–506.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§8–507.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset in accordance with an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

§8–508.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§8–509.

(a) If the substance of a duty imposed upon a securities intermediary by §§

8-504 through 8-508 of this subtitle is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by §§ 8-504 through 8-508 of this subtitle is subject to:

(1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 of this subtitle do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule.

§8–510.

(a) In a case not covered by the priority rules in Title 9 of this article or the rules stated in subsection (c) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under § 8-502 of this subtitle, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest in a security entitlement, from the entitlement holder.

(c) (1) In a case not covered by the priority rules in Title 9 of this article, a purchaser for value of a security entitlement, or an interest in a security entitlement, who obtains control has priority over a purchaser of a security entitlement, or an interest in a security entitlement, who does not obtain control.

(2) Except as otherwise provided in subsection (d) of this section, purchasers who have control rank according to priority in time of:

(i) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser

obtained control under § 8-106(d)(1);

(ii) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under § 8-106(d)(2); or

(iii) If the purchaser obtained control through another person under § 8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

§8–511.

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

§9–101.

This title may be cited as the Maryland Uniform Commercial Code - Secured Transactions.

§9–102.

(a) In this title:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that

has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health–care–insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter–of–credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As–extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing–office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer–goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer–goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 7–201(b) of this article.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with

respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to § 9–519(a).

(37) "Filing office" means an office designated in § 9–501 as the place to file a financing statement.

(38) "Filing–office rule" means a rule adopted pursuant to § 9–526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 9–502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter–of–credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) Reserved.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines,

or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter–of–credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health–care–insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health–care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter–of–credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Land records" means the office designated for the filing or recording of a record of a mortgage on real property.

(53) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(54) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air–conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(55) "Manufactured–home transaction" means a secured transaction:

(A) That creates a purchase–money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(56) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(57) "New debtor" means a person that becomes bound as debtor under § 9–203(d) by a security agreement previously entered into by another person.

(58) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously

transferred to the transferee. The term does not include an obligation substituted for another obligation.

(59) "Noncash proceeds" means proceeds other than cash proceeds.

(60) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(61) "Original debtor", except as used in § 9–310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 9–203(d).

(62) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(63) "Person related to", with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother–in–law, sister, or sister–in–law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(64) "Person related to", with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the

individual.

(65) "Proceeds", except as used in § 9–609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(66) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(67) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 9–620, 9–621, and 9–622 of this article.

(68) "Public–finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(69) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(70) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, 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 its obligation.

(71) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(72) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(73) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(74) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other

representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under § 2–401, § 2–505, § 2–711(3), § 2A–508(5), § 4–210, or § 5–118 of this article.

(75) "Security agreement" means an agreement that creates or provides for a security interest.

(76) "Send", in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(77) (A) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program.

(B) The term does not include a computer program that is included in the definition of goods.

(78) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(79) "Supporting obligation" means a letter–of–credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(80) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(81) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(82) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) "Control" as provided in § 7–106 and the following definitions in other titles apply to this title:

"Applicant" ..... § 5–102.

"Beneficiary" ..... § 5–102.

"Broker" ..... § 8–102.

"Certificated security" ..... § 8–102.

"Check" ..... § 3–104.

"Clearing corporation" ..... § 8–102.

"Contract for sale" ..... § 2–106.

"Customer" ..... § 4–104.

"Entitlement holder" ..... § 8–102.

"Financial asset" ..... § 8–102.

"Holder in due course" ..... § 3–302.

"Issuer" (with respect to a letter of credit or

letter–of–credit right) ..... § 5–102.

"Issuer" (with respect to a security) ..... § 8–201.

"Issuer" (with respect to documents of title) ..... § 7–102.

"Lease" ..... § 2A–103.

"Lease agreement" ..... § 2A–103.

"Lease contract" ..... § 2A–103.

"Leasehold interest" ..... § 2A–103.

"Lessee" ..... § 2A–103.

"Lessee in ordinary course of business" ..... § 2A–103.

"Lessor" ..... § 2A–103.

"Lessor's residual interest" ..... § 2A–103.

"Letter of credit" ..... § 5–102.

"Merchant" ..... § 2–104.

"Negotiable instrument" ..... § 3–104.

"Nominated person" ..... § 5–102.

"Note" ..... § 3–104.

"Proceeds of a letter of credit" ..... § 5–114.

"Prove" ..... § 3–103.

"Sale" ..... § 2–106.

"Securities account" ..... § 8–501.

"Securities intermediary" ..... § 8–102.

"Security" ..... § 8–102.

"Security certificate" ..... § 8–102.

"Security entitlement" ..... § 8–102.

"Uncertificated security" ..... § 8–102.

(c) Title 1 contains general definitions and principles of construction and interpretation applicable to Titles 1 through 10 of this article.

§9–103.

(a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) If the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) A purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) A secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

§9–104.

(a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

§9–105.

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6) of this section, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the

secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

§9–106.

(a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in § 8-106 of this article.

(b) A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

§9–107.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under § 5-114(c) of this article or otherwise applicable law or practice.

§9–108.

(a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e), a type of collateral defined in Titles 1 through 10 of this article;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in Titles 1 through 10 of this article is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

§9–109.

(a) Except as otherwise provided in subsections (c) and (d), this title applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under § 2–401, § 2–505, § 2–711(3), or § 2A–508(5) of this article, as provided in § 9–110; and

(6) A security interest arising under § 4–210 or § 5–118 of this article.

(b) The application of this title 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 title does not apply.

(c) This title does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this title;

(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under § 5–114 of this article.

(d) This title does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but § 9–333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health–care provider of a health–care–insurance receivable and any subsequent assignment of the right to payment, but §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a

judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set–off, but:

(A) § 9–340 applies with respect to the effectiveness of rights of recoupment or set–off against deposit accounts; and

(B) § 9–404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in §§ 9–203 and 9–308;

(B) Fixtures in § 9–334;

(C) Fixture filings in §§ 9–501, 9–502, 9–512, 9–516, and 9–519; and

(D) Security agreements covering personal and real property in § 9–604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds; or

(13) An assignment of a deposit account in a consumer transaction, but §§ 9–315 and 9–322 apply with respect to proceeds and priorities in proceeds.

§9–110.

A security interest arising under § 2-401, § 2-505, § 2-711(3), or § 2A-508(5) of this article is subject to this title. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if § 9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Title 2 or 2A of this article; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

§9–201.

(a) Except as otherwise provided by Titles 1 through 10 of this article, a security agreement is effective according to its terms between the parties, against purchasers

of the collateral, and against creditors.

(b) A transaction subject to this title may also be subject to other statutes or regulations which establish different rules for consumers, including other statutes or regulations that regulate the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and consumer protection statutes or regulations.

(c) (1) In case of conflict between this title and a statute or regulation described in subsection (b), the statute or regulation controls.

(2) Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute specifies and no recovery for such a failure is permitted under this title.

(3) Without limiting the generality of paragraph (1) or (2) of this subsection, Subtitle 6 of this title does not impose additional duties, obligations, or responsibilities on secured parties subject to § 12-115, §§ 12-624 through 12-627, § 12-921, or § 12-1021 of this article and no recovery under § 9-625 of this title is permitted for any failure to comply with those statutes.

(d) This title does not:

(1) Validate any rate, charge, agreement, or practice that violates a statute identified or described in subsection (b);

(2) Extend the application of any rule of law, statute, or regulation to a transaction not otherwise subject to it; or

(3) Authorize or permit the application of any provision of this title which is applicable to a consumer transaction, or to any other transaction with a consumer obligor, to any transaction other than a consumer transaction.

§9–202.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this title with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

§9–203.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under § 9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 8-301 of this article pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under § 7-106, § 9-104, § 9-105, § 9-106, or § 9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to § 4-210 of this article on the security interest of a collecting bank, § 5-118 of this article on the security interest of a letter-of-credit issuer or nominated person, § 9-110 on a security interest arising under Title 2 or Title 2A of this article, and § 9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this title or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

§9–204.

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

§9–205.

(a) A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

§9–206.

(a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) The security interest described in subsection (c) secures the obligation to make payment for the delivery.

§9–207.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has

possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under § 7-106, § 9-104, § 9-105, § 9-106, or § 9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

§9–208.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under § 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under § 9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under § 9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

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

(4) A secured party having control of investment property under § 8-106(d)(2) of this article or § 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under § 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds

of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

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

§9–209.

(a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under § 9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

§9–210.

(a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this

section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

§9–301.

Except as otherwise provided in §§ 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§9–302.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

§9–303.

(a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time

the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

§9–304.

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this subtitle:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this subtitle, this title, or Titles 1 through 10 of this article, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

§9–305.

(a) Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in § 8-110(d) of this article governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in § 8-110(e) of this article governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this subtitle:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this subtitle, this title, or Titles 1 through 10 of this article, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or

commodity account created by a commodity intermediary.

§9–306.

(a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in § 5-116 of this article.

(c) This section does not apply to a security interest that is perfected only under § 9-308(d).

§9–307.

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this subtitle.

§9–308.

(a) Except as otherwise provided in this section and § 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in §§ 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in § 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

§9–309.

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in § 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in § 9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under § 2-401, § 2-505, § 2-711(3), or § 2A-508(5) of this article, until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under § 4-210 of this article;

(8) A security interest of an issuer or nominated person arising under § 5-118 of this article;

(9) A security interest arising in the delivery of a financial asset under § 9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

§9–310.

(a) Except as otherwise provided in subsection (b) and § 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under § 9-308(d), (e), (f), or (g);

(2) That is perfected under § 9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in § 9-311(a);

(4) In goods in possession of a bailee which is perfected under § 9-312(d)(1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under § 9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under § 9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under § 9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under § 9-314;

(9) In proceeds which is perfected under § 9-315; or

(10) That is perfected under § 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§9–311.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt § 9–310(a);

(2) Any statute of this State which provides for a security interest to be indicated on a certificate of title as a condition or result of perfection; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this title, provided that the time for perfection will be governed by that statute, regulation, or treaty. Except as otherwise provided in subsection (d) and §§ 9–313 and 9–316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and § 9–316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

§9–312.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in § 9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under § 9-314;

(2) Except as otherwise provided in § 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under § 9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under § 9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subsection (e), subsection (f), or subsection (g) expires, perfection depends upon compliance with this title.

§9–313.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 8-301 of this article.

(b) With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under § 8-301 of this article and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or § 8-301(a) of

this article, even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

§9–314.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under § 7-106, § 9-104, § 9-105, § 9-106, or § 9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under § 7-106, § 9-104, § 9-105, or § 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under § 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes

the entitlement holder.

§9–315.

(a) Except as otherwise provided in this title and in § 2-403(2) of this article:

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by § 9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under § 9-515 or is terminated under § 9-513; or

(2) The 21st day after the security interest attaches to the proceeds.

§9–316.

(a) A security interest perfected pursuant to the law of the jurisdiction designated in § 9–301(1) or § 9–305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as–extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 9–311(b) or § 9–313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of

title from this State; or

(2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter–of–credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in § 9–301(1) or § 9–305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location;

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 9–301(1) or § 9–305(c) or the expiration of the four–month period, it remains perfected thereafter; and

(3) If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in § 9–301(1) or § 9–305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under § 9–203(d), if the financing statement would have been

effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor;

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 9–301(1) or § 9–305(c) or the expiration of the four–month period remains perfected thereafter; and

(3) A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

§9–317.

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under § 9–322; and

(2) Except as provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in § 9–203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in §§ 9–320 and 9–321, if a person files a financing statement with respect to a purchase–money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between

the time the security interest attaches and the time of filing.

§9–318.

(a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§9–319.

(a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this title determines the rights and title of a consignee while goods are in the consignee's possession if, under this subtitle, a perfected security interest held by the consignor would have priority over the rights of the creditor.

§9–320.

(a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by § 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under § 9-313.

§9–321.

(a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

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

§9–322.

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is

also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under § 9-327, § 9-328, § 9-329, § 9-330, or § 9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:

(1) Subsection (g) and the other provisions of this subtitle;

(2) § 4-210 of this article with respect to a security interest of a collecting bank;

(3) § 5-118 of this article with respect to a security interest of an issuer or nominated person; and

(4) § 9-110 with respect to a security interest arising under Title 2 or Title 2A of this article.

(g) A perfected agricultural lien on collateral has priority over a conflicting

security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§9–323.

(a) Except as otherwise provided in subsection (b), for purposes of determining the priority of a perfected security interest under § 9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under § 9-309 when it attaches; or

(B) Temporarily under § 9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under § 9-309 or § 9-312(e), (f), or (g).

(b) Subsection (a) does not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(c) Except as otherwise provided in subsection (d), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(d) Subsection (c) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(e) Except as otherwise provided in subsection (f), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(f) Subsection (e) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

§9–324.

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in § 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in § 9-330, and, except as otherwise provided in § 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsection (b)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under § 9-312(f), before the beginning of the 20-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in § 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor

receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsection (d)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under § 9-312(f), before the beginning of the 20-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in § 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), subsection (b), subsection (d), or subsection (f):

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, § 9-322(a) applies to the qualifying security interests.

§9–325.

(a) Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under § 9-322(a) or § 9-324; or

(2) Arose solely under § 2-711(3) or § 2A-508(5) of this article.

§9–326.

(a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of § 9–316(i)(1) or § 9–508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this subtitle determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

§9–327.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under § 9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under § 9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under § 9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

§9–328.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under § 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under § 9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under § 8-106(d)(1) of this article, the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under § 8-106(d)(2) of this article, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under § 8-106(d)(3) of this article, the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in § 9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under § 9-313(a) and not by control under § 9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under § 9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by §§ 9-322 and 9-323.

§9–329.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under § 9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under § 9-314 rank according to priority in time of obtaining control.

§9–330.

(a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under § 9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under § 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in § 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) § 9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in § 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

§9–331.

(a) This title does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Titles 3, 7, and 8 of this article.

(b) This title does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Title 8 of this article.

(c) Filing under this title does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

§9–332.

(a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

§9–333.

(a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

§9–334.

(a) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this title in ordinary building materials incorporated into an improvement on land.

(b) This title does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this title and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in § 9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under subsection (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) 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 a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails over any inconsistent statutes of this State.

§9–335.

(a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under § 9-311(b).

(e) After default, subject to Subtitle 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§9–336.

(a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

§9–337.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under § 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

§9–338.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in § 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

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

§9–339.

This title does not preclude subordination by agreement by a person entitled to

priority.

§9–340.

(a) Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under § 9-104(a)(3), if the set-off is based on a claim against the debtor.

§9–341.

Except as otherwise provided in § 9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

§9–342.

This title does not require a bank to enter into an agreement of the kind described in § 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

§9–401.

(a) Except as otherwise provided in subsection (b) and §§ 9-406, 9-407, 9-408, and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this title.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

§9–402.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

§9–403.

(a) In this section, "value" has the meaning provided in § 3-303(a) of this article.

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under § 3-305(a) of this article.

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under § 3-305(b) of this article.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this title requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this title which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

§9–404.

(a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this title requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

§9–405.

(a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Subsection (a) applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment

under § 9-406(a).

(c) This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable.

§9–406.

(a) Subject to subsections (b) through (j), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and §§ 2A–303 of this article and 9–407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under § 9–610 or an acceptance of collateral under § 9–620.

(f) Except as otherwise provided in §§ 2A–303 of this article and 9–407, and subject to subsections (h) and (i) of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation of a security interest in, the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of a security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this title which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health–care–insurance receivable.

(j) (1) Except as provided in paragraph (2), this section prevails over any inconsistent statute of this State, unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(2) Subsections (d) and (f) do not apply to:

(A) A claim or right to receive amounts under a workers'

compensation act as compensation for an accidental injury or an occupational disease;

(B) A claim or right to receive amounts, whether by suit or agreement and whether as lump sums or as periodic payments, for damages arising from personal injuries; and

(C) A claim or right to receive benefits from a special needs trust described in 42 U.S.C. § 1396p(d)(4), as amended from time to time.

§9–407.

(a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in § 2A-303(7) of this article, a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of § 2A-303(4) of this article unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

§9–408.

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health–care–insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the

consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health–care–insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health–care–insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under § 9–610 or an acceptance of collateral under § 9–620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health–care–insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health–care–insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health–care–insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this title but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health–care–insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the

account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health–care–insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health–care–insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health–care–insurance receivable, or general intangible.

(e) (1) This section prevails over any inconsistent statute of this State except as provided in paragraph (2).

(2) Subsections (a) and (c) do not apply to:

(A) A claim or right to receive amounts under a workers' compensation act as compensation for an accidental injury or an occupational disease;

(B) A claim or right to receive amounts, whether by suit or agreement and whether as lump sums or as periodic payments, for damages arising from personal injuries; and

(C) A claim or right to receive benefits from a special needs trust described in 42 U.S.C. § 1396p(d)(4), as amended from time to time.

§9–409.

(a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection

(a) but would be effective under law other than this title or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

§9–501.

(a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as–extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The Maryland State Department of Assessments and Taxation ("Department"), in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the Department. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

(c) (1) This subsection does not apply to a financing statement that is a mortgage or deed of trust.

(2) If the Department or other office receives a financing statement under subsection (a) or (b) for filing and the secured party and the debtor identified on the financing statement are individuals, the Department or other office shall provide written notice of the filing of the financing statement to the debtor.

(3) Subject to paragraph (4), the Department or other office required to

provide written notice under paragraph (2) shall determine the form of the notice.

(4) The written notice shall contain at least the following information:

(A) The debtor's name and address as shown on the financing statement;

(B) The secured party's name and address as shown on the financing statement; and

(C) The remedies available to the debtor if the debtor believes that the financing statement is erroneously or fraudulently filed.

§9–501.1.

(a) (1) In this section, "filing office" means an office described in § 9–501(a).

(2) "Filing office" includes the State Department of Assessments and Taxation.

(b) This section does not apply to a financing statement that is a mortgage or deed of trust.

(c) A person may not cause to be filed or recorded under this title a financing statement that the person knows is:

(1) False;

(2) Not authorized to be filed or recorded under this title; or

(3) Not related to a valid existing or potential commercial or financial transaction.

(d) (1) If a filing office receives for filing a financing statement that the filing office has reason to believe is being filed by a person in violation of subsection (c), the filing office shall:

(A) Accept for filing the financing statement if it otherwise meets all filing requirements; and

(B) Send a notice to the persons specified in paragraph (2) that:

(i) Identifies the persons named in the financing statement;

(ii) Indicates the date of filing and filing number of the financing statement;

(iii) States the prohibition under subsection (c);

(iv) States that the filing office has reason to believe that the financing statement has been filed in violation of subsection (c) and describes the factual basis for that belief; and

(v) Advises that the financing statement may be terminated by the filing office unless, within 45 days after the notice is sent by the filing office, a person who receives the notice sent by the filing office under paragraph (2) submits to the filing office an affidavit that states the person's belief that the financing statement does not violate subsection (c) and provides the factual basis for that belief.

(2) The notice required under this subsection shall be sent by certified mail, return receipt requested, and by first–class mail, to:

(A) The person identified as the secured party, at the address provided for the person in the financing statement;

(B) The person identified as the debtor, at the address provided for the person in the financing statement; and

(C) If different from the person identified as the secured party, the person who submitted the financing statement for filing, provided that the person's identity and address are known to the filing office.

(e) (1) A person identified as a debtor in a financing statement filed with the filing office who believes that the financing statement was filed in violation of subsection (c) may submit to the filing office an affidavit stating the factual basis for the person's belief.

(2) If the filing office receives an affidavit from a person under paragraph (1) and has reason to believe that the financing statement referenced in the affidavit was filed in violation of subsection (c), the filing office shall send the notice required under subsection (d).

(f) (1) The State Department of Assessments and Taxation shall adopt by regulation and make available a form of affidavit that shall be used for the purposes described in subsections (d) and (e).

(2) The form shall require that the affidavit be sworn under the penalties of perjury.

(g) (1) A filing office may terminate a financing statement after the expiration of the 45–day period specified in the notice required under subsection (d) if the filing office:

(A) Does not receive from a person who received the notice sent by the filing office under subsection (d) an affidavit that states the person's belief that the financing statement does not violate subsection (c) and provides the factual basis for that belief; and

(B) Reasonably believes that the financing statement was filed in violation of subsection (c).

(2) A filing office that terminates a financing statement under this subsection shall promptly send notice of the termination in the same manner and to the same persons required for the notice sent under subsection (d)(2).

(h) (1) If a filing office receives an affidavit in response to the notice sent by the filing office under subsection (d), the filing office shall review the affidavit to consider whether the financing statement was filed in violation of subsection (c).

(2) If, after reviewing the affidavit, a filing office reasonably believes that a financing statement was filed in violation of subsection (c), the filing office shall send to the persons specified in paragraph (3) a final notice that:

(A) Includes a copy of the notice sent by the filing office under subsection (d);

(B) States that the filing office reasonably believes that the financing statement has been filed in violation of subsection (c); and

(C) States that the filing office may terminate the financing statement 45 days after the final notice is sent by the filing office unless a person identified in the financing statement files a petition for judicial determination of the validity of the financing statement under subsection (i).

(3) The final notice shall be sent in the same manner required for the notice sent under subsection (d)(2) to:

(A) The same persons required for the notice sent under subsection (d)(2); and

(B) Any other person who responded in writing to the notice sent under subsection (d).

(i) (1) A person who is identified in a financing statement and disagrees with a determination made by a filing office under subsection (h)(2) may file a petition in the circuit court for the county where the debtor is located or, if the debtor is not located in Maryland, where any affected property is located, seeking a determination of the validity of the financing statement.

(2) A petition filed under this subsection shall be filed within the 45–day period described in the final notice required under subsection (h).

(3) (A) The parties to a proceeding under this subsection shall include all persons named in the financing statement.

(B) A filing office may not be joined as a party to a proceeding under

this subsection.

(4) (A) Service of process of a proceeding under this subsection may be sent by certified mail, return receipt requested, to the last known addresses of the parties to be served.

(B) A copy of a petition filed under this subsection shall be mailed to the filing office after the petition has been filed and within the 45–day period described in the final notice required under subsection (h).

(5) If the filing office does not receive a copy of the petition within the 45–day period described in the final notice required under subsection (h), the filing office may terminate the financing statement.

(6) (A) If the court determines that the financing statement was filed in violation of subsection (c):

(i) The court shall order that the filed financing statement be terminated; and

(ii) The prevailing party shall provide a copy of the order to the filing office.

(B) On receipt of a court order requiring termination of a filed financing statement, the filing office shall:

(i) Terminate the financing statement; and

(ii) File a record indicating that the financing statement was terminated in accordance with a court order.

(7) The court may award to the prevailing party:

(A) Damages sustained by the prevailing party; and

(B) Reasonable attorney's fees and costs.

(j) A filing office may not:

(1) Charge a fee to carry out its obligations under this section, including for the sending of any notices required under this section; or

(2) Refund any fee paid for filing a financing statement terminated under this section.

(k) The State Department of Assessments and Taxation may adopt regulations to carry out this section.

§9–502.

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in § 9–501(b), to be sufficient, a financing statement that covers as–extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be recorded in the land records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as–extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as–extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(i) The record need not indicate that it is to be recorded in the land records; and

(ii) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom § 9–503(a)(4) applies; and

(4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(e) A financing statement filed as a fixture filing, or addendum filed with a financing statement filed as a fixture filing, shall state whether the secured transaction to be perfected by the filing is or is not subject to recordation tax. If recordation tax is payable, the financing statement shall also disclose the principal amount of debt initially incurred.

§9–503.

(a) A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name so specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g), if the debtor is an individual to whom this

State has issued a driver's license or an identification card that has not expired, only if it provides the name of the individual which is indicated on the driver's license or identification card;

(5) If the debtor is an individual to whom paragraph (4) does not apply, only if it provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if it provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) If this State has issued to an individual more than one driver's license or identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or

restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

§9–504.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to § 9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

§9–505.

(a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in § 9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) This subtitle applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under § 9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

§9–506.

(a) A financing statement substantially satisfying the requirements of this subtitle is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of § 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

§9–507.

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and § 9–508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under § 9–506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under § 9–503(a) so that the financing statement becomes seriously misleading under § 9–506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

§9–508.

(a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under § 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under § 9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under § 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under § 9-507(a).

§9–509.

(a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c); or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as a debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under § 9–315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under § 9–315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under § 9–315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by § 9–513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

(f) A person who files a financing statement or an amendment to a financing statement that the person knows contains false information is subject to the penalty provided in § 9–508 of the Criminal Law Article.

§9–510.

(a) A filed record is effective only to the extent that it was filed by a person that may file it under § 9-509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by § 9-515(d) is ineffective.

§9–511.

(a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under § 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under § 9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

§9–512.

(a) Subject to § 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in § 9-501(a)(1), provides the information specified in § 9-502(b).

(b) Except as otherwise provided in § 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

§9–513.

(a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in § 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in § 9-510, for purposes of §§ 9-519(f), 9-522(a), and 9-523(b), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

§9–514.

(a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under § 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the Commercial Law Article.

§9–515.

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public–finance transaction or manufactured–home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public–finance transaction or manufactured–home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five–year period specified in subsection (a), the 30–year period specified in subsection (b), or the date the financing statement ceases to be effective under § 9–705(c) of this title, whichever is applicable.

(e) Except as otherwise provided in § 9–510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five–year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under § 9–502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

§9–516.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not

provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by § 9–512 or § 9–518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under § 9–515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) In the case of a record filed or recorded in the filing office described in § 9–501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) In the case of an assignment reflected in an initial financing statement under § 9–514(a) or an amendment filed under § 9–514(b), the record does not provide a name and mailing address for the assignee;

(7) In the case of a continuation statement, the record is not filed within the six–month period prescribed by § 9–515(d); or

(8) The information required by § 9–502(e) is not provided or recordation tax payable is not tendered with the financing statement.

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by § 9–512, § 9–514, or § 9–518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§9–517.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

§9–518.

(a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record recorded in a filing office described in § 9–501(a)(1), the date and time that the initial financing statement was recorded and the information specified in § 9–502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under § 9–509(d).

(d) An information statement under subsection (c) shall:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to

which the record relates; and

(B) If the information statement relates to a record recorded in a filing office described in § 9–501(a)(1), the date and time that the initial financing statement was recorded and the information specified in § 9–502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under § 9–509(d).

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

§9–519.

(a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (b), (c), and (d).

(b) Except as otherwise provided in subsections (c) and (d), the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(c) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be recorded in the land records and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this State provides for indexing of records 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, if indexing is by description, as

if the financing statement were a record of a mortgage of the real property described.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under § 9-514(a) or an amendment filed under § 9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(e) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(f) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under § 9-515 with respect to all secured parties of record.

(g) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule.

(h) Subsections (b) and (g) do not apply to a filing office described in § 9-501(a)(1).

§9–520.

(a) A filing office shall refuse to accept a record for filing for a reason set forth in § 9-516(b) and may refuse to accept a record for filing only for a reason set forth in § 9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule.

(c) A filed financing statement satisfying § 9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, § 9-338 applies to a filed financing statement providing information described in § 9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates

to more than one debtor, this part applies as to each debtor separately.

§9–521.

A filing office that accepts written records may not refuse to accept a written initial financing statement, addendum, or amendment in the form and format set forth in the official text of the 2010 amendments to Article 9 of the Uniform Commercial Code promulgated by the American Law Institute and the Uniform Law Commission, except for a reason set forth in § 9–516(b).

§9–522.

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under § 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

§9–523.

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to § 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to § 9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) The filing office shall make available to the general public records indexed both in the names of debtors and by unique file numbers, based upon which copies of filed records may be obtained.

(c) In complying with its duty under subsection (b), the filing office may communicate information in any medium.

§9–525.

(a) Except as otherwise provided in subsection (c), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described

in § 9-502(c), is:

(1) $25 if the record is communicated in writing and consists of eight or fewer pages;

(2) $75 if the record is communicated in writing and consists of more than eight pages; and

(3) $25 if the record is communicated by another medium authorized by filing-office rule.

(b) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under § 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

§9–526.

(a) The Department shall adopt and publish rules to implement this subtitle. The filing-office rules must be:

(1) Consistent with this subtitle; and

(2) Adopted and published in accordance with Title 10, Subtitle 1 of the State Government Article.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this subtitle, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this subtitle, the Department, so far as is consistent with the purposes, policies, and provisions of this title, in adopting, amending, and repealing filing-office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this subtitle;

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this subtitle.

§9–601.

(a) After default, a secured party has the rights provided in this subtitle and, except as otherwise provided in § 9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under § 7-106, § 9-104, § 9-105, § 9-106, or § 9-107 has the rights and duties provided in § 9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and § 9-605, after default, a debtor and an obligor have the rights provided in this subtitle and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this title.

(g) Except as otherwise provided in § 9-607(c), this subtitle imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§9–602.

Except as otherwise provided in § 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) § 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) § 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) § 9-607(c), which deals with collection and enforcement of collateral;

(4) §§ 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) §§ 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) § 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) §§ 9-610(b), 9-611, 9-613, and 9-614, which deal with disposition of collateral;

(8) § 9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) § 9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) §§ 9-620, 9-621, and 9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) § 9-623, which deals with redemption of collateral;

(12) § 9-624, which deals with permissible waivers; and

(13) §§ 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this article.

§9–603.

(a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in § 9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under § 9-609 to refrain from breaching the peace.

§9–604.

(a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this subtitle as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this subtitle do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this subtitle; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this subtitle do not apply.

(c) Subject to the other provisions of this subtitle, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§9–605.

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

§9–606.

For purposes of this subtitle, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§9–607.

(a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under § 9–315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under § 9–104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under § 9–104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

§9–608.

(a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under § 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and

the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

§9–609.

(a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under § 9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a 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.

§9–610.

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

§9–611.

(a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response whose financing statement covered the collateral.

§9–612.

(a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) A notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

§9–613.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in § 9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) is not an addressee)

(For a public disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) (to the highest qualified bidder) in public as follows:

Day and Date:

Time:

Place:

(For a private disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) privately some time after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of $). You may request an accounting by calling us at (telephone number).

§9–614.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in § 9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under § 9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identification of Transaction)

We have your (describe collateral), because you broke promises in our agreement.

(For a public disposition:)

We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

(For a private disposition:)

We will sell (describe collateral) at private sale some time after (date). A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at (telephone number).

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at (telephone number) or write us at (secured party's address) and request a written explanation. (We will charge you $ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.)

If you need more information about the sale call us at (telephone number) or

write us at (secured party's address).

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any).

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

(7) Secured parties subject to §§ 12-115, 12-624 through 12-627, § 12-921, or § 12-1021 of this article are not subject to the provisions of this section.

§9–615.

(a) A secured party shall apply or pay over for application the cash proceeds of disposition under § 9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable

time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under § 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest

or other lien for any surplus.

§9–616.

(a) In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under § 9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under § 9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within 14 days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned

interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding $25 for each additional response.

§9–617.

(a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this title or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

§9–618.

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

(1) Is not a disposition of collateral under § 9-610; and

(2) Relieves the secured party of further duties under this title.

§9–619.

(a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this title and does not of itself relieve the secured party of its duties under this title.

§9–620.

(a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under § 9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to § 9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) are met.

(c) For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to § 9-621, within 20 days after notification was sent to that person; and

(2) In other cases:

(A) Within 20 days after the last notification was sent pursuant to § 9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to § 9-610 within the time specified in subsection (f) if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) To comply with subsection (e), the secured party shall dispose of the collateral:

(1) Within 90 days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§9–621.

(a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

§9–622.

(a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this title.

§9–623.

(a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in § 9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under § 9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under § 9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under § 9-622.

§9–624.

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under § 9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 9-623 only by an agreement to that effect entered into and authenticated after default.

§9–625.

(a) If it is established that a secured party is not proceeding in accordance with this title, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c) and (d), a person is liable for damages in the amount of any loss caused by a failure to comply with this title. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in § 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor,

or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) A debtor whose deficiency is eliminated under § 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under § 9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under § 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

§9–626.

In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this subtitle relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this subtitle.

(3) Except as otherwise provided in § 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this subtitle relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this subtitle relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would

have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under § 9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

§9–627.

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

§9–628.

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or

lienholder that has filed a financing statement against the person, for failure to comply with this title; and

(2) The secured party's failure to comply with this title does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under § 9-625(c)(2) for its failure to comply with § 9-616.

(e) A secured party is not liable under § 9-625(c)(2) more than once with respect to any one secured obligation.

§9–701.

(a) This title takes effect at 12:01 a.m. on July 1, 2001.

(b) In this subtitle the following words have the meanings indicated.

(1) "Original Code" means Chapter 538 of the Acts of 1963, as the provisions of that chapter were amended prior to 12:01 a.m. on January 1, 1981.

(2) "Prior Code" means Chapter 824 of the Acts of 1980, as the provisions of that chapter were amended prior to the effective date of this title.

§9–702.

(a) Except as otherwise provided in this subtitle, this title applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this title takes effect.

(b) Except as otherwise provided in subsection (c) and §§ 9-703 through 9-709:

(1) Transactions and liens that were not governed by the original Code or the prior Code, were validly entered into or created before this title takes effect, and would be subject to this title if they had been entered into or created after this title takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after this title takes effect; and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this title or by the law that otherwise would apply if this title had not taken effect.

(c) This title does not affect an action, case, or proceeding commenced before this title takes effect.

§9–703.

(a) A security interest that is enforceable immediately before this title takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this title if, when this title takes effect, the applicable requirements for enforceability and perfection under this title are satisfied without further action.

(b) Except as otherwise provided in § 9-705, if, immediately before this title takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this title are not satisfied when this title takes effect, the security interest:

(1) Is a perfected security interest for one year after this title takes effect;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under § 9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this title are satisfied before the year expires.

§9–704.

A security interest that is enforceable immediately before this title takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after this title takes effect;

(2) Remains enforceable thereafter if the security interest becomes enforceable under § 9-203 when this title takes effect or within one year thereafter; and

(3) Becomes perfected:

(A) Without further action, when this title takes effect if the applicable requirements for perfection under this title are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§9–705.

(a) If action, other than the filing of a financing statement, is taken before this title takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this title takes effect, the action is effective to perfect a security interest that attaches under this title within one year after this title takes effect. An attached security interest becomes unperfected one year after this title takes effect unless the security interest becomes a perfected security interest under this title before the expiration of that period.

(b) The filing of a financing statement before this title takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this title.

(c) This title does not render ineffective an effective financing statement that, before this title takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the prior Code. However, except as otherwise provided in subsections (e) and (f) and § 9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Subsection (c) applies to all financing statements filed in this State before this title takes effect, including those filed with respect to security interests in collateral governed as to perfection by the local law of this State under the prior Code and this title.

(e) The filing of a continuation statement after this title takes effect does not continue the effectiveness of the financing statement filed before this title takes effect. However, upon the timely filing of a continuation statement after this title takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Subtitle 3 of this title, the effectiveness of a financing statement filed in the same office in that jurisdiction before this title takes effect continues for the period provided by the law of that jurisdiction.

(f) Subsection (c)(2) applies to a financing statement that, before this title takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in prior Code § 9-103, only to the extent that Subtitle 3 of this title provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(g) A financing statement that includes a financing statement filed before this title takes effect and a continuation statement filed after this title takes effect is effective only to the extent that it satisfies the requirements of Subtitle 5 of this title for an initial financing statement.

§9–706.

(a) The filing of an initial financing statement in the office specified in § 9-501 continues the effectiveness of a financing statement filed before this title takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this title;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this State; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement for the period in § 9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Subtitle 5 of this title for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

§9–707.

(a) In this section, "pre-effective-date financing statement" means a financing statement filed before this title takes effect.

(b) After this title takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Subtitle 3 of this title. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this title takes effect only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in § 9-501;

(2) An amendment is filed in the office specified in § 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies § 9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies § 9-706(c) is filed in the office specified in § 9-501.

(d) If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under § 9-705(e) and (g) or § 9-706.

(e) Whether or not the law of this State governs the perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this title takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies § 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Subtitle 3 of this title as the office in which to file a financing statement.

§9–708.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this subtitle:

(A) To continue the effectiveness of a financing statement filed before this title takes effect; or

(B) To perfect or continue the perfection of a security interest.

§9–709.

(a) This title determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this title takes effect, the prior Code determines priority.

(b) For purposes of § 9-322(a), the priority of a security interest that becomes enforceable under § 9-203 of this title dates from the time this title takes effect if the security interest is perfected under this title by the filing of a financing statement before this title takes effect which would not have been effective to perfect the security interest under the prior Code. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

§9–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Act" means Chapter 674 of the Acts of the General Assembly of 2012.

(c) "Pre–effective–date financing statement" means a financing statement filed before the effective date of the Act.

§9–802.

The Act takes effect on July 1, 2013.

§9–803.

(a) Except as otherwise provided in this subtitle, the Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the Act takes effect.

(b) The Act does not affect an action, case, or proceeding commenced before the Act takes effect.

§9–804.

(a) A security interest that is a perfected security interest immediately before the Act takes effect is a perfected security interest under this title, as amended by the Act, if, when the Act takes effect, the applicable requirements for attachment and perfection under this title, as amended by the Act, are satisfied without further action.

(b) Except as otherwise provided in § 9–806, if, immediately before the Act takes effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this title, as amended by the Act, are not satisfied when the Act takes effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this title, as amended by the Act, are satisfied within one year after the Act takes effect.

§9–805.

A security interest that is an unperfected security interest immediately before the Act takes effect becomes a perfected security interest:

(1) Without further action, when the Act takes effect if the applicable requirements for perfection under this title, as amended by the Act, are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

§9–806.

(a) The filing of a financing statement before the Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this title, as amended by the Act.

(b) The Act does not render ineffective an effective financing statement that, before the Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this title as it existed before the effective date of the Act. However, except as otherwise provided in subsections (c) and (d) and § 9–807, the financing statement ceases to be effective:

(1) If the financing statement is filed in this State, at the time the financing statement would have ceased to be effective had the Act not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after the Act takes effect does not continue the effectiveness of a financing statement filed before the Act takes effect. However, on the timely filing of a continuation statement after the Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in this title, as amended by the Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before the Act takes effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before the Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this title as it existed before the effective date of the Act, only to the extent that this title, as amended by the Act, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before the Act takes effect and a continuation statement filed after the Act takes effect is effective only to the extent that it satisfies the requirements of Subtitle 5, as amended by the Act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of § 9–503(a)(2), as amended by the Act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of § 9–503(a)(3), as amended by the Act.

§9–807.

(a) The filing of an initial financing statement in the office specified in § 9–501 continues the effectiveness of a pre–effective–date financing statement if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this title, as amended by the Act;

(2) The pre–effective–date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre–effective–date financing statement:

(1) If the initial financing statement is filed before the Act takes effect, for the period provided in § 9–515, as it existed before the Act takes effect, with respect to an initial financing statement; and

(2) If the initial financing statement is filed after the Act takes effect, for the period provided in § 9–515, as amended by the Act, with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Subtitle 5, as amended by the Act, for an initial financing statement;

(2) Identify the pre–effective–date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre–effective–date financing statement remains effective.

§9–808.

(a) After the Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre–effective–date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this title, as amended by the Act. However, the effectiveness of a pre–effective–date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(b) Except as otherwise provided in subsection (c), if the law of this State governs perfection of a security interest, the information in a pre–effective–date financing statement may be amended after the Act takes effect only if:

(1) The pre–effective–date financing statement and an amendment are filed in the office specified in § 9–501;

(2) An amendment is filed in the office specified in § 9–501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies § 9–807(c); or

(3) An initial financing statement that provides the information as amended and satisfies § 9–807(c) is filed in the office specified in § 9–501.

(c) If the law of this State governs perfection of a security interest, the effectiveness of a pre–effective–date financing statement may be continued only under § 9–806(c) and (e) or § 9–807.

(d) Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre–effective–date financing statement filed in this State may be

terminated after the Act takes effect by filing a termination statement in the office in which the pre–effective–date financing statement is filed, unless an initial financing statement that satisfies § 9–807(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this title, as amended by the Act, as the office in which to file a financing statement.

§9–809.

A person may file an initial financing statement or a continuation statement under this subtitle if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this subtitle:

(A) To continue the effectiveness of a financing statement filed before the Act takes effect; or

(B) To perfect or continue the perfection of a security interest.

§9–810.

The Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the Act takes effect, this title, as it existed before the Act takes effect, determines priority.

§10–101.

As used in this title:

(1) "Original Code" means Chapter 538 of the Acts of 1963, as the provisions of that chapter were amended prior to 12:01 a.m. on January 1, 1981.

(2) "This Act" means Chapter 824 of the Acts of 1980.

§10–102.

(1) Transactions validly entered into before the effective date of the original Code, 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 amended or repealed by the original Code as though such repeal or amendment had not occurred.

(2) Record books, indices, dockets, and any other papers or records permitted or required to be recorded, filed or maintained in the office of the clerk of the circuit court for any county under the provisions of any article, section, or other portion of the Maryland Code repealed by the original Code may be destroyed or otherwise disposed of by said clerk at any time after the expiration of five (5) years and sixty (60) days

from the date of the last pertinent date thereon or record entry therein, provided that the requirements of Title 10, Subtitle 6, Part III of the State Government Article have been complied with.

§10–103.

Except as provided in the following section, all laws and parts of laws inconsistent with the original Code on its effective date are hereby repealed.

§10–104.

Title 7 on documents of title 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 (§ 1-201).

§10–106.

The provisions of § 10-102 as amended shall continue to apply to this act and for this purpose the original Code and this act shall be considered one continuous statute.

§10–107.

Transactions validly entered after 12:01 a.m. on February 1, 1964, and before the effective date of this act, and which were subject to the provisions of the original Code and which would be subject to this act as amended if they had been entered into after the effective date of this act 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 this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided in this act and may be continued as permitted by this act except as stated in § 10-109 of the prior Code.

§10–108.

A security interest for the perfection of which filing or the taking of possession was required under the original Code and which attached prior to the effective date of this act but was not perfected shall be deemed perfected on the effective date of this act if this act permits perfection without such filing or possession or authorizes filing in the office or offices where a prior ineffective filing was made.

§10–109.

(1) A financing statement or continuation statement filed prior to the effective date of this act, which shall not have lapsed prior to said effective date shall remain effective for the period provided in the original Code, but not less than that period of

time for which the filing was effective pursuant to the original Code in effect upon the date of such prior filing.

(2) With respect to any financing statement filed prior to the effective date of this act, any continuation or other statement filed on and after the effective date of this act in relation to such original financing statement shall be filed (i.e., the "transitional filing") in accordance with this act and if this act requires filing in a place where the original financing statement was not filed, then a new financing statement conforming to § 10-110 or the original or photographic or photostatic copy of the original financing statement and a copy of any prior continuation or other statement shall all be filed in the place where filing is required by this act.

(3) Nothing in this act shall be deemed to invalidate any action otherwise complying with applicable law taken in good faith until the effective date of this act pursuant to Chapter 240 of the Acts of 1972; provided, however, that transitional filings made on and after January 1, 1981, but before 12:01 a.m. on July 1, 2001, shall be made pursuant to this act with regard to original filings made pursuant to § 9-401 as it existed prior to July 1, 1971 and as said section was amended effective July 1, 1971 by Chapter 457 of the Acts of 1971.

(4) The names and addresses of the debtor and secured party at the time transitional filings are made shall govern the date to be reflected upon statements filed under this act and shall govern place of filing and indexing in the filing records.

§10–110.

(1) If a security interest is perfected or has priority when this act 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 this act, the perfection and priority rights of the security interest continue until 3 years after the effective date of this act. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected in accordance with the provisions of this act otherwise than by filing.

(2) If a security interest is perfected when this act takes effect under a law other than this act which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse 3 years after this act takes effect, 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 § 9-302 of the prior Code 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 this act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected in

accordance with the provisions of this act otherwise than by filing.

(4) Under the prior Code, a financing statement may be filed within 6 months before the perfection of a security interest would otherwise lapse. Any such financing statement is sufficient if signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the original Code or under any statute or other law repealed or modified by this act is still effective. Section 9-401 and § 9-103 of the prior Code determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of § 9-403(3) of the prior Code for continuation statements apply to such a financing statement.

§10–111.

Except as otherwise provided in this subtitle, the original Code shall apply to any questions of priorities if the positions of the parties were fixed prior to the effective date of this act. In other cases, questions of priorities shall be determined by this act for priorities fixed prior to 12:01 a.m. on July 1, 2001.

§10–112.

Unless a change in law has clearly been made, the provisions of this act shall be deemed declaratory of the meaning of the original Code.

§11–101.

It is the policy of the State of Maryland to oppose restraints of trade and unfair trade practices in the form of foreign discriminatory boycotts not specifically authorized by the law of the United States which are fostered or imposed by foreign persons, foreign governments or international organizations against any domestic individual on the basis of race, color, creed, religion, sex or national origin. It is also the policy of the State of Maryland to oppose those actions, including the formation of agreements, understandings or contractual arrangements, expressed or implied, which have the effect of furthering or supporting these discriminatory boycotts, in order that the peace, health, safety, prosperity and general welfare of all the inhabitants of the State may be protected and ensured. It is the further policy of the State of Maryland not to impede domestic or foreign commerce, the free flow of goods in commerce, or actions reasonably necessary to protect goods moving in commerce. The State of Maryland recognizes the right of Maryland firms to decide whether to enter into commercial agreements with foreign firms, provided the agreement does not contravene U.S. foreign policy or any federal or Maryland laws and the agreement does not discriminate against domestic individuals entitled to the benefit of the laws of Maryland on the basis of race, color, creed, religion, sex or national origin, and the

right of Maryland firms to decide whether to enter into a commercial agreement with a foreign firm that would advance the political and economic interests of a foreign country provided that agreement does not contravene U.S. foreign policy or federal or Maryland laws and does not discriminate against domestic individuals entitled to the benefits of the laws of Maryland on the basis of race, color, creed, religion, sex, or national origin. This subtitle shall be deemed an exercise of the police power of the State of Maryland for the protection of the people of this State, and shall be administered and principally enforced by the Attorney General of the State of Maryland. The provisions of this subtitle shall be construed liberally so as to effectuate this declaration of policy and the laws and Constitution of the United States, but nothing in this subtitle shall be construed to infringe upon the right of the United States government to regulate interstate and foreign commerce.

§11–102.

(a) In this subtitle the following words have the meanings indicated.

(b) "Attorney General" means the Attorney General of the State of Maryland.

(c) "Business relationship" means any aspect of business:

(1) Dealing with the sale, purchase, licensing or provision of goods, services or information; or

(2) Affecting the ownership, management, employees, hiring practices, customers, clients, suppliers, contractors, subcontractors or other business associates of any person engaged in commerce.

(d) "Control" means the power to exercise a controlling influence over the management policies of an entity, to influence that management or policies or play a significant role in the implementation of them.

(e) "Discriminatory boycott" means the entering into or carrying out of any provision, express or implied, of any agreement, understanding or contractual arrangement for economic benefit between any person and any foreign government, foreign person, or international organization, which is not specifically authorized by the law of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by the foreign government, foreign person, or international organization in order to restrict, condition, prohibit, or interfere with any business relationship on the basis of a domestic individual's race, color, creed, religion, sex or national origin. Except, that entering into an agreement, understanding or contractual arrangement with respect to the handling or shipping of goods while in international and not intrastate transit or executing and delivering any other document with respect to the handling or shipping of goods while in international and not intrastate transit or carrying out or complying with any provision with respect to the choice of carrier in international and not intrastate transit or the international routing of goods while in international and not intrastate transit contained in any

such agreement, understanding, contractual arrangement or other document may not constitute a discriminatory boycott within the meaning of this subtitle.

(f) "Domestic individual" means any individual whose residence, domicile, or principal place of business is in the United States and who is subject to the protection of the laws of the State of Maryland.

(g) "Foreign government" includes all governments and political subdivisions and the instrumentalities thereof, excepting the governments, political subdivisions, and instrumentalities of the United States and the states, commonwealths, territories and possessions of the United States, and the District of Columbia.

(h) "Foreign persons" means any person whose principal place of residence, business or domicile is outside the United States, or any person controlled directly or indirectly by any other person whose principal place of residence, business or domicile is outside the United States.

(i) "International organization" means any association or organization, of which a substantial portion of the membership includes foreign persons or foreign governments, but does not include an international labor organization.

(j) "Person" includes one or more of the following and their agents, employees, servants, representatives, directors, officers, partners, members, managers and superintendents: individuals, the State of Maryland, corporations, partnerships, joint ventures, associations, labor organizations, but not including international labor organizations, educational institutions, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and all other entities recognized at law or in equity by this State.

(k) "State of Maryland" means the State and its political subdivisions and each of the instrumentalities of the State and the political subdivision.

§11–103.

It is unlawful for a person to:

(a) Knowingly participate in a discriminatory boycott; or

(b) Knowingly aid or assist any other person in participating in a discriminatory boycott. However, nothing in this subtitle shall make it unlawful for any person who does not otherwise participate or agree to participate in a "discriminatory boycott" merely to handle or ship the goods of a person who may be in violation of this subtitle.

§11–104.

If any violation or possible violation of this subtitle comes to the attention of any officer or any department, board, commission, bureau, division, office or other

agency of the Executive Branch of the State government or of any political subdivision of the State, that officer or the chief administrative officer of the department, board, commission, bureau, division, office or other agency, as the case may be, shall submit promptly a written report of the violation or possible violation to the Attorney General. The report shall contain a full statement of the facts and circumstances regarding the violation or possible violation, including the names and addresses of all persons who have or may have knowledge or information with respect to it, and shall be accompanied by copies of any documents pertinent to the violation or possible violation that are in the possession or control of the person making the report.

§11–105.

Except for purposes of a criminal prosecution, if the Attorney General believes that a person is in possession, custody or control of any documents relevant to the subject matter of an investigation of a possible violation of this subtitle, he may demand and obtain the production of these documents in the manner provided for by § 11–205 of this title.

§11–106.

(a) In enforcing this subtitle, the Attorney General may accept an assurance of discontinuance of an act or practice considered in violation of this subtitle from any person engaged in the act or practice.

(b) The assurance of discontinuance shall be in writing and filed with and subject to the approval of the court of the county where the alleged violator resides or has his principal place of business.

(c) The assurance of discontinuance may not be considered for any purpose as an admission of a violation. However, proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this subtitle.

§11–107.

(a) The Attorney General shall investigate suspected criminal violations of this subtitle and may require assistance from any State's Attorney for that purpose.

(b) The Attorney General shall commence and try all prosecutions under this subtitle with the State's Attorney for the county where the prosecution is brought.

(c) With respect to the commencement and trial of the prosecution, the Attorney General has all the powers and duties vested by law in State's Attorneys with respect to criminal prosecutions.

(d) A prosecution for any offense in violation of this subtitle shall be commenced within four years after the offense is committed.

§11–108.

The Attorney General may cooperate with the federal government and other states in enforcement of this subtitle.

§11–109.

(a) (1) The Attorney General shall institute proceedings in equity to prevent or restrain violations of § 11-103 of this subtitle and may require assistance from any State's Attorney for that purpose.

(2) In a proceeding under this section, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to:

(i) Remove the effects of any violation it finds; and

(ii) Prevent continuation or renewal of the violation in the future.

(b) (1) The United States, the State, and any political subdivision organized under the authority of the State is a person having standing to bring an action under this subsection.

(2) A person injured by a violation of § 11-103 of this subtitle may maintain an action for damages or for an injunction or both against any person who has committed the violation.

(3) If an injunction is issued, the complainant shall be awarded costs and reasonable attorney's fees.

(4) In an action for damages, if an injury due to a violation of § 11-103 of this subtitle is found, the person injured shall be awarded three times the amount of actual damages which results from the violation, with costs and reasonable attorney's fees.

(5) The Attorney General may bring an action on behalf of the State or any of its political subdivisions to recover the damages provided for by this subsection or any comparable provision of federal law.

(c) (1) An action brought to enforce this subtitle shall be commenced within four years after the cause of action accrues.

(2) For the purposes of this subsection, a cause of action for a continuing violation accrues at the time of the latest violation.

§11–110.

The remedies provided in this subtitle are cumulative.

§11–111.

Any person who willfully violates any of the provisions of § 11-103 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding six months or both.

§11–112.

Any provision of any contract or other document or other agreement which violates, or which, if observed by the person intended to be bound by the provision, would cause a violation of § 11-103 of this subtitle shall be null and void as being against the public policy of the State of Maryland.

§11–113.

The Attorney General may promulgate rules and regulations for the purpose of implementing and enforcing the provisions of this subtitle with respect to the persons subject to their respective jurisdictions and have the duty, and all powers necessary, to enforce any rules and regulations so promulgated.

§11–114.

This subtitle may not be deemed to supersede, restrict or otherwise limit the continuing applicability of the antitrust laws of the State of Maryland.

§11–115.

This subtitle may be cited as the Maryland Foreign Discriminatory Boycotts Act.

§11–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Attorney General" means the Attorney General of Maryland or his designee.

(c) "Commodity" means goods, wares, merchandise, machinery, supplies, or any other articles in trade or commerce.

(d) "County" includes Baltimore City.

(e) "Court" means the circuit court of a county.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) "Service" means any activity performed in whole or in part for the purpose of financial gain, and includes any sale, rental, leasing, or licensing for use.

(h) "Trade or commerce" includes all economic activity within the State which involves or relates to any commodity or service.

§11–202.

(a) (1) The General Assembly of Maryland declares that the purpose of this subtitle is to complement the body of federal law governing restraints of trade, unfair competition, and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest intrastate competition.

(2) It is the intent of the General Assembly that, in construing this subtitle, the courts be guided by the interpretation given by the federal courts to the various federal statutes dealing with the same or similar matters, including:

(i) Act of July 2, 1890, ch. 647, 26 U.S. Stat. 209, 15 U.S.C. §§ 1 through 7;

(ii) Act of Oct. 15, 1914, ch. 323, 38 U.S. Stat. 730, 15 U.S.C. §§ 12 through 27, 44;

(iii) Act of August 17, 1937, ch. 690, Title VIII, 50 U.S. Stat. 693, 15 U.S.C. § 1;

(iv) Act of July 7, 1955, ch. 281, 69 U.S. Stat. 282, 15 U.S.C. §§ 1 through 3;

(v) Act of May 26, 1938, ch. 283, 52 U.S. Stat. 446, 15 U.S.C. § 13c; and

(vi) Any similar act passed in the future.

(3) It is also the intent of the General Assembly that, in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition within the State, determination of the relevant market or effective area of competition may not be limited by the boundaries of the State.

(b) (1) For the purpose and intent stated in subsection (a) of this section, this subtitle shall be liberally construed to serve its beneficial purposes.

(2) It is also the intent of the General Assembly that this subtitle may not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest.

§11–203.

(a) This subtitle does not make illegal the activity of:

(1) A labor organization or its individual members directed solely to lawful labor objectives, or a collective bargaining agreement between a labor organization, as defined in 29 U.S.C. § 152(5), and an employer or group of employers, which contains those labor objectives;

(2) Any incorporated or unincorporated agricultural or horticultural cooperative organization or its individual members directed solely to their lawful objectives;

(3) A public service company, as defined in § 1–101 of the Public Utilities Article, or a rating organization or bureau representing the company, to the extent that the activity is subject to the jurisdiction of the Public Service Commission or authorized by federal law governing interstate commerce;

(4) An insurer, insurance producer, public adjuster, insurance advisor, or rating organization, to the extent that the activity is:

(i) Regulated by the Maryland Insurance Commissioner; or

(ii) Authorized by the Insurance Article or any other law of the State;

(5) A nonprofit corporation, trust, or organization established exclusively for religious or charitable purposes, or for both purposes, to the extent that the activity is a religious or charitable activity;

(6) A security dealer who is licensed by the State or who is a member of the National Association of Securities Dealers or a member of a National Securities Exchange registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, in the course of his business of offering, selling, buying and selling, or otherwise trading in or underwriting securities as an agent, broker, or principal, or the activity of a registered National Securities Exchange, including the establishment of commission rates and schedules of charges;

(7) A board of trade designated as a "contract market" by the Secretary of Agriculture of the United States under 9 U.S.C. § 5;

(8) Any person to the extent that the activity is subject to the jurisdiction of the Maryland Transit Administration or the Washington Metropolitan Area Transit Authority;

(9) A state or national bank to the extent that the activity is regulated or supervised under the banking laws of the State or the United States;

(10) A state or federal savings and loan association to the extent that the activity is regulated or supervised under the savings and loan laws of the State or the United States;

(11) A bona fide nonprofit association, society, or board of attorneys,

practitioners of medicine, architects, engineers, land surveyors, or real estate brokers licensed and regulated by an agency of the State, in recommending schedules of suggested fees, rates, or commissions for use solely as guidelines in determining charges for professional or technical services;

(12) A political subdivision of the State in furnishing services or commodities; or

(13) A hospital, as defined in § 19–301 of the Health – General Article, in the course of a merger or consolidation or the joint ownership and operation of major medical equipment, to the extent that the activity is approved by the Maryland Health Care Commission under § 19–129 of the Health – General Article.

(b) Unless authorized under the Insurance Article, subsection (a)(4) of this section may not be construed to prevent the application of this subtitle to a person who:

(1) Agrees to:

(i) Rig bids;

(ii) Allocate customers or territories;

(iii) Boycott;

(iv) Coerce; or

(v) Intimidate; or

(2) Engages in an act of:

(i) Bid rigging;

(ii) Customer or territorial allocation;

(iii) Boycott;

(iv) Coercion; or

(v) Intimidation.

§11–204.

(a) A person may not:

(1) By contract, combination, or conspiracy with one or more other persons, unreasonably restrain trade or commerce;

(2) Monopolize, attempt to monopolize, or combine or conspire with one or more other persons to monopolize any part of the trade or commerce within the State,

for the purpose of excluding competition or of controlling, fixing, or maintaining prices in trade or commerce;

(3) Directly or indirectly discriminate in price among purchasers of commodities or services of like grade and quality, if the effects of the discrimination may:

(i) Substantially lessen competition;

(ii) Tend to create a monopoly in any line of trade or commerce; or

(iii) Injure, destroy, or prevent competition with any person who grants or knowingly receives the benefit of the discrimination or with customers of either of them;

(4) In the course of commerce, pay or contract for the payment of anything of value to or for the benefit of a customer of the person as compensation for or in consideration of any service or facility furnished by or through the customer in connection with the processing, handling, sale, or offering for sale of any service or commodity manufactured, sold, or offered for sale by the person, unless the payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of the service or commodity;

(5) Discriminate in favor of one purchaser against another purchaser of a commodity bought for resale, with or without processing, by contracting to furnish, furnishing, or contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of the commodity on terms not accorded to all purchasers on proportionally equal terms; or

(6) Lease or make a sale or contract for the sale of a patented or unpatented commodity or service for use, consumption, enjoyment, or resale, or set a price charged for the commodity or service or discount from or rebate on the price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the commodity or service of a competitor of the lessor or seller, if the effect of the lease, sale, or contract for sale or the condition, agreement, or understanding may:

(i) Substantially lessen competition; or

(ii) Tend to create a monopoly in any line of trade or commerce.

(b) For purposes of subsection (a)(1) of this section, a contract, combination, or conspiracy that establishes a minimum price below which a retailer, wholesaler, or distributor may not sell a commodity or service is an unreasonable restraint of trade or commerce.

(c) Subsection (a)(3) through (6) of this section does not prevent:

(1) Differentials which make only due allowance for differences in the cost

of manufacture, sale, or delivery resulting from the differing methods or quantities in which the commodity or service is sold or delivered to a purchaser;

(2) A person engaged in selling a commodity or service from selecting his own customers in bona fide transactions and not in restraint of trade;

(3) A person engaged in selling a commodity or service from granting employee discounts to his own bona fide employees;

(4) A seller from introducing evidence to rebut a case brought under subsection (a)(3) through (6) of this section to show that his lower price or the furnishing of services or facilities to a purchaser was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor; or

(5) Price changes, from time to time, in response to changing conditions affecting the market for or the marketability of a commodity, which changing conditions include an actual or imminent deterioration of a perishable commodity, obsolescence of a seasonal commodity, distress sales under court process, or sales in good faith in discontinuance of business in the commodity.

§11–205.

(a) Except as provided in subsection (i) of this section, if the Attorney General believes that a person may be in possession, custody, or control of any documentary material, wherever situated, or may have any information which the Attorney General believes is relevant to the subject matter of an investigation of a possible violation of this subtitle, the Attorney General may serve on the person before institution of a civil proceeding for the violation a written civil investigative demand which requires that person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

(b) (1) The demand of the Attorney General shall state the statute and section of the statute the alleged violation of which is under investigation, and the general subject matter of the investigation.

(2) If the demand requests production of documentary material, the demand shall:

(i) Describe the class of documentary material to be produced under the demand with reasonable specificity to indicate fairly the material demanded;

(ii) Prescribe a return date of not less than 3 days after the demand is served by which the documentary material is to be produced; and

(iii) Identify the member of the Office of the Attorney General to

whom the documentary material is to be made available for inspection and copying.

(3) If the demand requests answers to written interrogatories, the demand shall:

(i) Propound the written interrogatories to be answered;

(ii) Prescribe a return date of not less than 3 days after the demand is served by which the answers to written interrogatories are to be submitted; and

(iii) Identify the member of the Office of the Attorney General to whom such answers are to be submitted.

(4) If the demand requests oral testimony, the demand shall:

(i) Prescribe a date, time, and place at which oral testimony is to be given;

(ii) Identify the member of the Office of the Attorney General who will conduct the examination; and

(iii) Identify the member of the Office of the Attorney General to whom the transcript of the examination is to be submitted.

(c) The demand of the Attorney General may not:

(1) Contain any requirement which would be unreasonable or improper if contained in a summons or summons duces tecum issued by a court of the State; or

(2) Require the disclosure of any documentary material, answers to written interrogatories, or oral testimony which could not be required by a summons or summons duces tecum issued by a court of the State.

(d) Service of the demand of the Attorney General shall be made by:

(1) Delivering an executed copy of the demand to the person to be served;

(2) Delivering an executed copy of the demand to an officer, agent, or employee of the person to be served at the person's principal place of business in the State if the person is not a natural person or is not available; or

(3) Mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in the State or, if the person has no place of business in the State, at the person's principal office or place of business out of State.

(e) The documentary material demanded under this section shall be produced for inspection and copying and oral testimony shall be given during normal business hours at the principal office or place of business of the person served, or at any other

time or place agreed to by the person served and the Attorney General.

(f) (1) Unless otherwise ordered by the court for good cause shown, the documentary material, written answers to interrogatories, transcripts of oral testimony, or copies of any product of discovery produced under the demand may not be presented for inspection or copying by or their contents disclosed to any person other than an authorized employee of the Attorney General without the consent of the person who produced the material.

(2) Copies of the material produced shall be available for inspection and copying by the person who produced the material or the person's authorized representative under any reasonable terms and conditions prescribed by the Attorney General.

(3) The Attorney General may use the material produced in the enforcement of this subtitle, including presentation before any court. Material which contains trade secrets may not be presented except with the approval of the court in which the action is pending and after adequate notice is given to the person furnishing the material.

(g) (1) A petition to extend the return date or to modify or set aside a demand issued under subsection (a) of this section may be filed at any time before the return date specified in the demand or within 20 days after the demand is served, whichever period is shorter.

(2) A petition to require the Attorney General or any other person to perform a duty imposed by this section and any other petitions in connection with the demand may be filed by the person on whom the demand is served.

(3) A petition filed under this subsection shall state good cause and be filed in the court of the county where the petitioner resides or where the petitioner's principal place of business is located.

(h) (1) If a person fails to comply with a written civil investigative demand served on the person under this section, the Attorney General may file in the court of the county where the person resides, transacts business, or is found, and serve on the person a petition for an order of the court for the enforcement of this section.

(2) If the person transacts business in more than one county the petition shall be filed in the county where the person's principal place of business is located, or in any other county agreed to by the parties to the petition.

(3) The court in which the petition is filed has jurisdiction to hear and determine the matter presented and enter any order required under this section.

(i) This section is not applicable to a criminal prosecution.

§11–206.

(a) In enforcing this subtitle, the Attorney General may accept an assurance of discontinuance of an act or practice considered in violation of this subtitle from any person engaged in the act or practice.

(b) The assurance of discontinuance shall be in writing and filed with and subject to the approval of the court of the county where the alleged violator resides or has his principal place of business.

(c) The assurance of discontinuance may not be considered for any purpose as an admission of a violation. However, proof of failure to comply with the assurance of discontinuance is prima facie evidence of a violation of this subtitle.

§11–207.

(a) The Attorney General shall investigate suspected criminal violations of this subtitle and may require assistance from any State's Attorney for that purpose.

(b) The Attorney General shall commence and try all prosecutions under this subtitle with the State's Attorney for the county where the prosecution is brought.

(c) With respect to the commencement and trial of the prosecution, the Attorney General has all the powers and duties vested by law in State's Attorneys with respect to criminal prosecutions.

(d) A prosecution for any offense in violation of this subtitle shall be commenced within four years after the offense is committed.

(e) The Attorney General may not commence prosecution under this subtitle against any person while the person is a defendant with regard to a pending complaint, information, or indictment which:

(1) Involves substantially the same subject matter; and

(2) Is filed by the United States for violation or alleged violation of the federal antitrust statutes, including the statutes enumerated in § 11-202 and any similar act passed in the future.

§11–208.

The Attorney General may cooperate with the federal government and other states in the enforcement of this subtitle.

§11–209.

(a) (1) The Attorney General shall institute proceedings in equity to prevent or restrain violations of § 11-204 of this subtitle and may require assistance from any

State's Attorney for that purpose.

(2) In a proceeding under this section, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to:

(i) Remove the effects of any violation it finds; and

(ii) Prevent continuation or renewal of the violation in the future.

(3) The court may exercise all equitable powers necessary for this purpose, including but not limited to injunction, restitution to any person of any money or real or personal property acquired from that person by means of any violation, divestiture of property or business units, and suspension or termination of the right of a foreign corporation or association to do business in the State.

(4) In addition to the equitable remedies or other relief authorized by this section, the court may assess against any person who violates § 11-204 of this subtitle a civil penalty not exceeding $100,000 for each violation, to be paid to the General Fund of the State.

(b) (1) The United States, the State, and any political subdivision organized under the authority of the State is a person having standing to bring an action under this subsection.

(2) (i) A person whose business or property has been injured or threatened with injury by a violation of § 11-204 of this subtitle may maintain an action for damages or for an injunction or both against any person who has committed the violation.

(ii) The United States, the State, or any political subdivision organized under the authority of this State may maintain an action under subparagraph (i) of this paragraph for damages or for an injunction or both regardless of whether it dealt directly or indirectly with the person who has committed the violation. In any action under this subsection, any defendant, as a partial or complete defense against a damage claim, may, in order to avoid duplicative liability, prove that all or any part of an alleged overcharge was ultimately passed on to the United States, the State, or any political subdivision organized under the authority of this State, by a purchaser or seller in the chain of manufacture, production, or distribution who paid an alleged overcharge.

(3) If an injunction is issued, the complainant shall be awarded costs and reasonable attorney's fees.

(4) In an action for damages, if an injury due to a violation of § 11-204 of this subtitle is found, the person injured shall be awarded three times the amount of actual damages which results from the violation, with costs and reasonable attorney's fees.

(5) The Attorney General may bring an action on behalf of the State or any of its political subdivisions or as parens patriae on behalf of persons residing in the State to recover the damages provided for by this subsection or any comparable provision of federal law.

(c) An action brought by the Attorney General as parens patriae under subsection (b)(5) of this section is presumed superior to any class action brought on behalf of the same person.

(d) (1) An action brought to enforce this subtitle shall be commenced within 4 years after the cause of action accrues.

(2) For the purposes of this subsection, a cause of action for a continuing violation accrues at the time of the latest violation.

(3) Whenever the State commences a criminal proceeding under this subtitle or the United States commences a criminal antitrust proceeding under the federal antitrust laws, any civil action under this section related to the subject matter of the criminal proceeding shall be commenced within 1 year after the conclusion of the proceeding or within 4 years after the cause of action accrued, whichever is later.

§11–210.

(a) Except as provided in subsection (b) of this section, a final judgment or decree rendered in a criminal proceeding or civil action brought by the Attorney General under this subtitle to the effect that a defendant has violated this subtitle is prima facie evidence against the defendant in an action for damages brought by another party against him under § 11-209(b) of this subtitle with respect to all matters where the judgment or decree would be an estoppel between the parties to it.

(b) This section does not apply to a civil consent judgment or decree entered before any testimony is taken.

§11–211.

The remedies provided in this subtitle are cumulative.

§11–212.

Any person who willfully violates any of the provisions of § 11-204(a)(1) or (2) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500,000 or imprisonment not exceeding six months or both.

§11–213.

This subtitle may be cited as the Maryland Antitrust Act.

§11–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Controlled outlet" means an outlet which is operated by a distributor or operated by company employees, a subsidiary company, commissioned agent, or by any person who manages the outlet on a fee arrangement with the distributor.

(c) The distributor may not:

(1) Require the dealer to refuse credit card purchases of gasohol; or

(2) Provide that any credit card it issues may not be used for the purchase of gasohol.

(d) (1) "Dealer" means a person engaged in the retail sale of gasohol or gasoline products under a marketing agreement, at least 30 percent of whose gross revenue is derived from the retail sale of gasoline products.

(2) "Dealer" does not include an employee of a distributor.

(e) (1) "Distributor" means a person who:

(i) Engages in the sale, consignment, or distribution of gasohol or gasoline products through retail outlets which he owns or leases; and

(ii) Maintains an oral or written contractual relationship with a dealer for the sale of the products.

(2) "Distributor" includes any subsidiary or affiliated corporation in which a distributor holds at least 30 percent voting control.

(f) "Farm cooperative" means a cooperative organized under Subtitle 5 of Title 5 of the Corporations and Associations Article.

(g) "Gasoline products" includes gasohol.

(h) "Independent jobber" means an individual or corporation who purchases gasohol or gasoline products from a wholesaler for resale to a dealer.

(i) "Marketing agreement" means an oral or written agreement between a distributor and a dealer under which the dealer is granted the right, for the purpose of engaging in the retail sale of gasohol or gasoline products supplied by the distributor, to:

(1) Use a trademark, trade name, service mark, or other identifying symbol or name owned by the distributor; or

(2) Occupy premises owned, leased, or controlled by the distributor.

(j) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(k) "Retail sale" means the sale of a product for purposes other than resale.

§11–302.

(a) The General Assembly finds and declares that since the distribution and sale through marketing arrangements of petroleum products in the State vitally affect the economy of the State, and its public interest, welfare, and transportation, it is necessary to define the relationships and responsibilities of the parties to certain agreements pertaining to these marketing arrangements.

(b) This subtitle constitutes a statement of the public policy of the State.

§11–303.

Before any marketing agreement is concluded, a distributor shall disclose fully to a prospective dealer the following information:

(1) Any gallonage history of the location under negotiation for the shorter of:

(i) The three-year period immediately past; or

(ii) The entire period during which the location has been supplied by the distributor;

(2) The name, last known address, and reason for the termination of the marketing agreement of each person who was a dealer at the location during:

(i) The five-year period immediately past; or

(ii) The entire period during which the location has been supplied by the distributor;

(3) Any commitment for the sale, demolition, or other disposition of the location;

(4) Any training program and any specific goods and services which the distributor will provide for and to the dealer;

(5) Any obligation which will be required of the dealer;

(6) Any restriction on the sale, transfer, and termination of the agreement; and

(7) The total amount of any cash deposit required, any amount of interest

to be paid on the deposit, and the conditions for the return of the deposit.

§11–304.

(a) Every marketing agreement is subject to the provisions of this section, whether or not expressly set forth in the agreement.

(b) (1) Until midnight of the seventh business day after the day a marketing agreement is signed or entered into, the dealer may cancel it by giving written notice of cancellation to the distributor in person or by registered or certified mail.

(2) Within 10 days after delivery of the notice of cancellation, the dealer shall return to the distributor full possession of any service station, location, money, equipment, or merchandise loaned, sold, or delivered under the marketing agreement to the dealer by the distributor.

(3) The distributor shall give the dealer full credit or its cash equivalent for all money, equipment, and merchandise returned.

(c) The distributor may not set or maintain or attempt to set or maintain the price at which the dealer sells any product, and the price of any product may not be subject to enforcement or coercion by the distributor in any way. However, the distributor may counsel with the dealer concerning prices and may suggest prices to him.

(d) A distributor may only require a dealer to keep his retail outlet open for business for a specified number of hours per day or days per week when this requirement is negotiated in good faith by both parties and arrived at in mutual agreement and it is on the basis of a bona fide business need.

(e) The distributor may not require the dealer to use any promotion, premium, coupon, give–away, or rebate in the operation of the business. However, if not otherwise prohibited by law, the dealer may participate in a promotional, premium, coupon, give–away, or rebate program sponsored by the distributor.

(f) A distributor who intends not to renew a marketing agreement shall give notice of his intent to the retail service station dealer at least 90 days before the expiration of the term of the marketing agreement, whether or not the marketing agreement contains a provision for automatic renewal or, by its terms, expires at a fixed time. Failure to give notice constitutes a renewal of the marketing agreement for a term of one year from its stated expiration date. This notice requirement supersedes the notice provisions of § 8–402(b) of the Real Property Article as well as any notice provision set forth in the marketing agreement.

(g) The distributor may not unreasonably withhold his consent to any assignment, transfer, sale, or renewal of a marketing agreement, whether or not the marketing agreement contains a provision for automatic renewal or, by its terms, expires at a fixed time. Notice of intent not to renew a marketing agreement shall set

forth, in specific detail, the reasons relied upon by the distributor for the nonrenewal.

(h) (1) Except with respect to a cancellation to which subsection (b) of this section applies, within 30 days after the date a marketing agreement is terminated or canceled, whether by mutual agreement or otherwise, the distributor shall repurchase from the dealer at the then current wholesale price all merchantable products purchased by the dealer from the distributor.

(2) The distributor may apply the proceeds of any repurchased product against any existing debt owed by the dealer to the distributor.

(3) The obligation to repurchase under this subsection is enforceable only to the extent that there are no other valid claims or liens against the products by or on behalf of other creditors of the dealer.

(i) (1) In addition to the provisions of subsection (h) of this section, if, without the written consent of the dealer, the distributor terminates, cancels, or unreasonably refuses to renew the marketing agreement, the distributor shall pay to the dealer the full value of any business goodwill which the dealer enjoys at the time he is notified of the termination, cancellation, or refusal to renew.

(2) The distributor shall make the payment required by this subsection within 30 days from the effective date of the termination, cancellation, or refusal to renew.

(3) This subsection does not apply if the dealer materially breaches the marketing agreement.

(j) The marketing agreement may not waive the right of either party to trial by jury or interposition of counter–claims or cross–claims.

(k) A clause in any lease or contract from a producer or refiner to a dealer for the use of a retail service station providing for a minimum monthly rental based on a certain volume of sales is not enforceable to the extent the minimum rent exceeds a sum equal to the minimum rent provided for in the lease or contract times a fraction, the denominator of which is the number of gallons of gasoline on which the minimum rent is based and the numerator of which is the number of gallons of gasoline made available by the producer or refiner to the dealer for that month.

(l) (1) A distributor who sets the retail price of gasoline through controlled outlets shall provide those noncontrolled outlets that it supplies with gasoline products at a wholesale price of at least 4 cents per gallon under the lowest price posted for each grade of gasoline at any controlled outlet. Violation of this subsection constitutes price discrimination as prohibited by § 11–204(a)(3) of this title.

(2) The provisions of this act do not apply to independent jobbers and farm cooperatives.

(m) (1) A franchise created by a marketing agreement under this subtitle is personal property and shall devolve on death or retirement of a service station dealer to a designated successor in interest of the dealer, limited to the dealer's spouse, adult child, or adult stepchild.

(2) (i) Subject to the distributor's approval which may not be unreasonably withheld, the successor dealer shall be granted a 1 year trial marketing agreement by the distributor, in the name of the successor dealer, under the same terms and conditions as were contained in the original agreement.

(ii) In accordance with subsection (g) of this section, during the period of the trial marketing agreement, and with the consent of the distributor, the successor dealer may:

1. Sell the business assets;

2. Assign the marketing agreement; or

3. Renew the marketing agreement under terms and conditions agreeable to the distributor and the successor dealer.

§11–305.

Subject to the notice requirements of § 11-306 of this subtitle, in any action filed under this subtitle which is based on a termination or cancellation of a marketing agreement, it is a defense that the marketing agreement was terminated or canceled:

(1) By mutual agreement of the parties, provided however, that the mutual agreement is void and unenforceable unless it clearly states that it is not effective until the seventh business day after the date of its execution during which time either the dealer or the distributor have the absolute right to rescind such mutual agreement by written notice to the other;

(2) Because of the bankruptcy or insolvency of the dealer;

(3) Because the dealer failed to comply with an express requirement of the marketing agreement; or

(4) Because the dealer failed to act in good faith in carrying out the terms of the marketing agreement.

§11–306.

(a) A party to a marketing agreement may not raise any defense set out in § 11-305 of this subtitle unless he gives written notice to the other party of his intent to terminate or cancel the agreement. This notice shall be given in person or by registered or certified mail at least 60 days before the date on which he intends to terminate or cancel it.

(b) The 60-day notice is not required if at the time of termination or cancellation of the marketing agreement any of the following is proven:

(1) Criminal misconduct;

(2) Fraud;

(3) Abandonment;

(4) Bankruptcy or insolvency of the dealer;

(5) Adulteration of product; or

(6) Giving a check which is dishonored for insufficient funds.

(c) If notice is given by registered or certified mail, it shall be effective on the date of mailing.

§11–307.

Any person who violates any provision of this subtitle is liable for damages caused by the violation and is subject to the other legal or equitable remedies available to the party injured by the violation.

§11–308.

This subtitle may be cited as the Maryland Gasohol and Gasoline Products Marketing Act.

§11–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Cost to the retailer" means the lesser of the invoice cost or the replacement cost of the merchandise to the retailer, minus any trade discount other than a customary discount for cash, plus:

(1) A freight charge otherwise not included in the invoice cost or the replacement cost of the merchandise;

(2) A cartage cost to the retail outlet if performed or paid for by the retailer, which, in the absence of proof of a lesser cost, is 0.75 percent of the cost to the retailer, after adding the freight charge but before adding the cartage cost and any markup;

(3) A markup to cover in part the cost of doing business, which, in the absence of proof of a lesser cost, is 5 percent of the cost to the retailer, after adding the freight charge and the cartage cost but before adding any markup; and

(4) An additional markup to cover in part the cost of doing business, which,

in the absence of proof of a lesser cost, is 2 percent of the cost to the retailer, after adding the freight charge and the cartage cost but before adding any markup, if the retailer:

(i) Buys at wholesale or buys directly from the manufacturer or the agent or broker of the manufacturer; and

(ii) Receives a wholesale price or discount on merchandise for retail sale.

(c) "Cost to the wholesaler" means the lesser of the invoice cost or the replacement cost of the merchandise to the wholesaler, minus any discount other than a customary discount for cash, plus:

(1) A freight charge otherwise not included in the invoice cost or the replacement cost of the merchandise;

(2) A cartage cost to the retail outlet if performed or paid for by the wholesaler, which, in the absence of proof of a lesser cost, is 0.75 percent of the cost to the wholesaler, after adding the freight charge but before adding the cartage cost and any markup; and

(3) A markup to cover in part the cost of doing business, which, in the absence of proof of a lesser cost, is 2 percent of the cost to the wholesaler, after adding the freight charge and the cartage cost but before adding any markup.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Replacement cost" means the cost per unit for which the merchandise sold or offered for sale could have been bought by the wholesaler or retailer at any time within 30 days before the date of sale or the date on which it is offered for sale by him if bought in the same quantity as his last purchase of the merchandise.

(f) (1) "Retail sale" means any transfer of title to tangible personal property for valuable consideration and in the ordinary course of trade or in the usual conduct of the seller's business, to a purchaser for consumption or use other than resale, further processing, or manufacturing.

(2) "Retail sale" includes any such transfer of the property whereby title is retained by the seller as security for the payment of the purchase price.

(g) (1) "Retailer" means a person engaged in the business of making retail sales within the State.

(2) If the person is engaged in the business of making both retail sales and wholesale sales, the word applies only to the retail sales portion of the business.

(h) (1) "Wholesale sale" means any transfer of title to tangible personal property for valuable consideration and in the ordinary course of trade or the usual conduct of the seller's business, to a purchaser for the purpose of resale, further processing, or manufacturing.

(2) "Wholesale sale" includes any such transfer of the property whereby title is retained by the seller as security for the payment of the purchase price.

(i) (1) "Wholesaler" means a person engaged in the business of making wholesale sales within the State.

(2) If a person is engaged in the business of making both wholesale sales and retail sales, the word applies only to the wholesale sales portion of the business.

§11–402.

This subtitle does not apply to an advertisement, offer to sell, retail sale, or wholesale sale, if the merchandise:

(1) Is sold in a bona fide clearance sale and is so advertised and marked;

(2) Must be sold promptly in order to prevent loss;

(3) Is imperfect, damaged, or being discontinued and is so advertised and marked;

(4) Is sold on the final liquidation of a business;

(5) Is sold for charitable purposes or to relief agencies;

(6) Is sold on contract to a department of a government or governmental institution;

(7) Is sold by an officer acting under the order or direction of a court;

(8) Is sold at a price set in good faith to meet competition; or

(9) Is motor fuel sold by a retail service station dealer.

§11–403.

For the purposes of this subtitle, if an item of merchandise is advertised, offered for sale, or sold with any other item at a combined price, or is advertised, offered as a gift, or given with the sale of any other item, all of the items are considered to be advertised, offered for sale, or sold. The cost to the retailer or the cost to the wholesaler, as the case may be, of each item is governed by § 11-401(b) and (c), respectively, of this subtitle.

§11–404.

(a) A retailer or wholesaler with intent to injure a competitor or to destroy competition may not advertise, offer to sell, or sell at retail sale or wholesale sale any item of merchandise at less than its cost to the retailer or its cost to the wholesaler, respectively.

(b) Proof of an advertisement, offer to sell, or sale of an item of merchandise by a retailer or wholesaler at less than its cost to the retailer or its cost to the wholesaler, respectively, is prima facie evidence of intent to injure a competitor or to destroy competition.

§11–405.

On complaint of a person who claims to be injured, a circuit court has jurisdiction to enjoin a retailer or wholesaler from the commission of an act prohibited by this subtitle.

§11–406.

This subtitle may be cited as the Maryland Sales Below Cost Act.

§11–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Basic cost of cigarettes" means the lesser of the invoice cost or the replacement cost of cigarettes to the retailer or wholesaler; plus any in–freight charge to the wholesaler otherwise not included in the invoice cost or the replacement cost; plus, for the wholesaler, the full face value of any applicable Maryland cigarette tax payable by the wholesaler; minus any trade discount or discount for cash.

(c) (1) "Cigarettes" means any size or shaped roll for smoking that is made of tobacco or tobacco mixed with another ingredient and wrapped in paper or in any other material except tobacco.

(2) "Cigarettes" does not include cigars.

(d) (1) "Cost to the retailer", subject to the special cost provisions of § 11–503 of this subtitle, means the basic cost of cigarettes to a retailer, which includes the cost to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business, in the absence of satisfactory proof of a lesser cost, is presumed to be 8 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one–tenth of a cent or more in the cost to the retailer shall be rounded off to the next higher cent.

(e) (1) "Cost to the wholesaler", subject to the special cost provisions of § 11–503 of this subtitle, means the basic cost of cigarettes to a wholesaler, plus a markup to cover his cost of doing business, which cost of doing business:

(i) Includes the cartage cost to a retailer; and

(ii) In the absence of satisfactory proof of a lesser cost, is presumed to be 5 percent of the basic cost of cigarettes to him.

(2) As to each carton of 200 cigarettes, a fractional part of a cent equal to one–tenth of a cent or more in the cost to the wholesaler shall be rounded off to the next higher cent.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) "Replacement cost" means the cost per unit for which the cigarettes could have been bought by the wholesaler or retailer at any time within 30 days before the date of sale by him if bought in the same quantity as his last purchase of the cigarettes.

(h) "Retail sale of cigarettes" includes any sale whereby cigarettes are sold for a valuable consideration, including an exchange or barter and a sale through a vending machine, made in the ordinary course of trade or the usual conduct of the seller's business to a purchaser for consumption or use other than resale.

(i) (1) "Retailer" includes any person engaged in the business of making retail sales of cigarettes within the State at a store, stand, booth, or concession, through vending machines, or otherwise.

(2) If the person is engaged in the business of making both retail sales of cigarettes and wholesale sales of cigarettes, the word only applies to the retail sales of cigarettes portion of the business.

(j) "Sell" includes advertise, offer to sell, or offer for sale.

(k) "Vending machine operator" means a person who:

(1) Makes retail sales of cigarettes or has cigarettes in his possession with the intent to sell them exclusively at retail through the medium of a vending machine or any other mechanical device used for dispensing cigarettes;

(2) Owns, operates, and services vending machines or other mechanical devices used to dispense cigarettes on 40 or more premises; and

(3) Services the machines or devices by maintaining an established place of business for the purchase of cigarettes, including warehousing facilities for the storage and distribution of cigarettes.

(l) (1) "Wholesale sale of cigarettes" includes any sale whereby cigarettes are sold for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the seller's business to a retailer, other than to a vending machine operator or to a sub–wholesaler described in subsection (m)(2) of this section, for the bona fide purpose of resale.

(2) "Wholesale sale of cigarettes" includes any transfer of cigarettes on consignment or otherwise, whereby title is retained by the seller as security for the payment of the purchase price.

(m) (1) "Wholesaler" means a person who purchases cigarettes directly from a manufacturer.

(2) "Wholesaler" includes a person, who, as a sub–wholesaler:

(i) Purchases cigarettes from another wholesaler solely for the purpose of bona fide resale to retailers other than those directly or indirectly owned, affiliated, or controlled by him; and

(ii) Services the retailers by maintaining an established place of business for the sale of cigarettes, including warehouse facilities, adequate inventory, proper accounting records, and necessary equipment and vehicles for the storage and distribution of cigarettes.

(3) If the person is engaged in the business of making both wholesale sales of cigarettes and retail sales of cigarettes, the word only applies to the wholesale sales of cigarettes portion of the business.

§11–502.

(a) This subtitle does not apply to a retail sale of cigarettes or a wholesale sale of cigarettes, if they are sold:

(1) At a bona fide clearance sale, are so advertised and marked, and the quantity is accurately, clearly, and conspicuously stated in all advertising of the sale and on signs conspicuously posted where the sale takes place;

(2) As imperfect, damaged, or being discontinued, are so advertised and marked, and the quantity is accurately, clearly, and conspicuously stated in all advertising of the sale and on signs conspicuously posted where the sale takes place;

(3) On the complete and final liquidation of the business of the seller;

(4) Under an order, direction, or supervision of a court; or

(5) Subject to subsection (b) of this section, by a retailer or wholesaler at a price set in good faith to meet the competition of another retailer or wholesaler who is rendering the same type of service as the seller, if the price of the competitor which

the seller desires to meet is lawful.

(b) For purposes of subsection (a)(5) of this section, the price of cigarettes sold under subsection (a)(1) through (4) of this section is not the lawful price of a competitor.

(c) In calculating the basic cost of cigarettes purchased at a sale under subsection (a)(1) through (4) of this section or at any other sale outside the ordinary channels of trade, a retailer or wholesaler shall use, instead of invoice costs, the replacement cost of the cigarettes based on the quantity last purchased by him through the ordinary channels of trade.

§11–503.

(a) In a wholesale sale of cigarettes, the presumptive wholesale markup of 5 percent provided for in § 11-501(e) of this subtitle may be reduced by 2 cents for each carton of 200 cigarettes, if:

(1) The cigarettes are not delivered unless their full price is received by the wholesaler at or before delivery; and

(2) The purchaser performs or pays for the cartage cost of the cigarettes to the place of business of the purchaser.

(b) (1) In the absence of satisfactory proof of a lesser aggregate cost of doing business, a vending machine operator or retailer who purchases cigarettes at prices ordinarily invoiced to a wholesaler and who receives the wholesaler's discounts on them shall:

(i) First, add to his basic cost of cigarettes the wholesale markup of 5 percent provided for in § 11-501(e) of this subtitle to cover the cost of doing business as a wholesaler; and

(ii) Then, on the resultant sum, add the retail markup of 8 percent provided for in § 11-501(d) of this subtitle.

(2) If the discount received by the vending machine operator or retailer is less than that ordinarily allowed to wholesalers, the wholesale markup of 5 percent may be reduced by the difference between the discount ordinarily allowed to wholesalers and the discount received by the retailer or vending machine operator.

(c) (1) A wholesaler who sells cigarettes to another wholesaler or to a vending machine operator is not required to include in his selling price the cost to the wholesaler. However, in the absence of satisfactory proof of a lesser cost for the service rendered, the wholesaler shall include in the selling price his basic cost of cigarettes, plus a charge of 1 percent of his basic cost of cigarettes.

(2) If a wholesaler purchases cigarettes from another wholesaler, then, on resale of the cigarettes to a retailer, he is the wholesaler for the purposes of this subtitle.

§11–504.

(a) A retailer or wholesaler with intent to injure a competitor or to destroy or substantially lessen competition may not make a retail sale of cigarettes or a wholesale sale of cigarettes at less than the cost to the retailer or the cost to the wholesaler, respectively.

(b) A retailer may not purchase cigarettes from a wholesaler at a cost which directly or indirectly is less than the cost to the wholesaler by any means, including offering, accepting, inducing, or attempting to induce a rebate in price or a concession of any kind in connection with the sale or purchase of cigarettes.

§11–505.

(a) Except as provided in subsection (b) of this section, a retailer or wholesaler with intent to injure a competitor or to destroy or substantially lessen competition may not:

(1) Sell cigarettes in combination with any other item of merchandise if the other item is given free of charge or sold at a price below its cost to the retailer or its cost to the wholesaler, respectively, as defined in Subtitle 4 of this title;

(2) Sell cigarettes in combination with any other item of merchandise if the total sale price for the cigarettes and all other items included in the sale is less than the sum of:

(i) The cost to the retailer or the cost to the wholesaler, respectively, of the cigarettes; and

(ii) The cost to the retailer or the cost to the wholesaler, respectively, as defined in Subtitle 4 of this title, of all other items included in the sale, including items given free of charge in connection with the sale;

(3) Give cigarettes free of charge, except in the case of specially packaged manufacturers' samples which are designated on the package as not to be sold; or

(4) Make any rebate, advertising allowance, or any other concession by any means or device in connection with the sale of cigarettes whereby the cigarettes are in effect sold below their cost to the retailer or their cost to the wholesaler, respectively.

(b) A retailer or wholesaler may pass on to a purchaser any reduction in cost which results from:

(1) Payment or compensation given by a manufacturer of cigarettes on a uniform and nondiscriminatory basis for promotional services; or

(2) Any coupon issued and ultimately redeemed by a cigarette manufacturer.

§11–506.

(a) In any proceeding under this subtitle, including a proceeding relating to licenses before the State Comptroller, proof of a sale by a retailer or a wholesaler of cigarettes or of any other item in combination or in connection with cigarettes at less than their cost to the retailer or their cost to the wholesaler, respectively, is prima facie evidence of intent to injure a competitor or to destroy or substantially lessen competition.

(b) In determining cost to the retailer or cost to the wholesaler, the State Comptroller or the court shall receive and consider evidence:

(1) That the person complained against purchased cigarettes at a fictitious price or on terms, in a manner, or under invoices which conceal the true costs, discounts, or terms of purchase; and

(2) Of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the trade area.

§11–507.

(a) It is the duty of the State Comptroller to enforce this subtitle.

(b) The State Comptroller shall:

(1) Employ and determine the duties and compensation of the inspectors and other personnel necessary to enforce this subtitle; and

(2) Adopt reasonable rules and regulations necessary to effectuate and enforce the policies of this subtitle.

§11–508.

(a) (1) On complaint of the State Comptroller or any person affected, a circuit court has jurisdiction to:

(i) Enjoin a retailer or wholesaler from the commission of any act prohibited by this subtitle; and

(ii) Award damages and costs.

(2) In an action for injunctive relief, it is not necessary for the complainant to allege or prove that an adequate remedy at law does not exist or that the complainant has suffered actual damages.

(b) If injunctive relief is not sought or required, an injured person may institute an action for damages in any court of competent jurisdiction.

(c) On violation of this subtitle, the State Comptroller shall suspend or revoke

the cigarette license of the offender required by § 16-210 of the Business Regulation Article.

§11–509.

Except as specifically provided by § 11-505 of this subtitle with respect to combination sales and concessions, the Maryland Sales Below Cost Act does not apply to the sale of cigarettes.

§11–510.

This subtitle may be cited as the Maryland Cigarette Sales Below Cost Act.

§11–5A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Retailer" has the meaning stated in § 11–501(i) of this title.

(c) "Sell" has the meaning stated in § 11–501(j) of this title.

(d) "Unpackaged cigarette" means any cigarette not contained in a sealed package of 20 or more cigarettes.

(e) "Vending machine operator" has the meaning stated in § 11–501(k) of this title.

(f) "Wholesaler" has the meaning stated in § 11–501(m) of this title.

§11–5A–02.

(a) This section does not apply to an individual who produces unpackaged cigarettes for the individual's consumption by using:

(1) A mechanical rolling machine; or

(2) A hand rolling device or procedure.

(b) Notwithstanding any other provision of law, a retailer or vending machine operator may not purchase from a tobacco product manufacturer or sell, resell, distribute, dispense, or give away to any person an unpackaged cigarette.

(c) Notwithstanding any other provision of law, a wholesaler may not sell, resell, distribute, dispense, or give away to any person in this State an unpackaged cigarette.

(d) In addition to any other penalties provided by law, a person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 3 months or both.

§11–5A–03.

(a) The State Comptroller shall enforce this subtitle.

(b) The State Comptroller shall:

(1) Employ and determine the duties and compensation of the inspectors and other personnel necessary to enforce this subtitle; and

(2) Adopt reasonable regulations necessary to effectuate and enforce the provisions of this subtitle.

§11–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Container" means a liquefied petroleum gas container.

(c) "Liquefied petroleum gas" means any material which is composed predominately of any of the following hydrocarbons or mixtures of them:

(1) Propane;

(2) Propylene;

(3) Normal butane;

(4) Isobutane; or

(5) Butylenes.

(d) "Mark" includes any name, initial, or other device.

(e) "Marked container" means a container which bears on its surface in plainly legible characters the mark of its owner.

(f) "Owner" means:

(1) Any person who holds a written bill of sale under which title or ownership to a container was transferred to him; or

(2) Any manufacturer of a container who has not transferred ownership of the container under a written bill of sale.

(g) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§11–602.

This subtitle does not apply to any container which has a total capacity of five gallons or less.

§11–603.

Unless he is authorized by the owner in writing, a person other than the owner of a container may not:

(1) Fill or refill a marked container with liquefied petroleum gas or any other gas or compound;

(2) Buy, sell, offer for sale, give, take, loan, deliver, permit to be delivered, or otherwise use, dispose of, or traffic in a marked container; or

(3) Deface, erase, obliterate, cover up, or otherwise remove or conceal any mark on a container.

§11–604.

Unless taken with the written consent of the owner, each of the following actions by any person, other than the person whose mark is on the container, is presumptive evidence of a violation of this subtitle:

(1) Use of a marked container;

(2) Possession of a marked container; or

(3) Purchase of a marked container for:

(i) The sale of liquefied petroleum gas; or

(ii) The filling or refilling of the container with liquefied petroleum gas.

§11–605.

(a) If the owner of a marked container, his officer, or authorized agent who has personal knowledge of the facts makes oath in writing before any court of competent jurisdiction that he believes that a person has violated any provision of this subtitle with respect to the container, the court, if satisfied that there is reasonable cause, may issue a warrant and cause the alleged violator to be brought into court for the purpose of discovering and obtaining the container.

(b) If the court finds that a person violated any provision of this subtitle, it shall award an unlawfully taken container to its true owner.

§11–606.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $300 or imprisonment not exceeding 90 days or both.

§11–701.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Advertise falsely" means to use any advertisement, including a label, which is misleading in a material respect.

(2) "Advertise falsely" includes the use of an advertisement that contains an affirmative representation that the Maryland sales and use tax will not be collected by the retailer on a particular transaction without notifying the purchaser of the purchaser's duty to pay the sales and use tax directly to the Comptroller of this State.

(c) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(d) "Telephone company" has the meaning stated in § 1–101 of the Public Utilities Article.

§11–702.

This subtitle does not apply to any:

(1) Television or radio broadcasting station which broadcasts an advertisement;

(2) Publisher or printer of a newspaper, magazine, or other form of printed advertisement who publishes or prints an advertisement; or

(3) Publisher, printer, or distributor, including a telephone company or directory provider, of an advertisement or telephone listing in a telephone directory.

§11–703.

A person may not advertise falsely in the conduct of any business, trade, or commerce or in the provision of any service.

§11–704.

To determine if an advertisement is misleading, the following, in addition to any other appropriate considerations, shall be considered:

(1) Any representation made by statement, word, design, device, or sound,

whether alone or together; and

(2) The extent to which the advertisement fails to reveal a fact which, in light of any representation made, is material with respect to the advertised commodity or service under conditions which are:

(i) Customary or usual; or

(ii) Described in the advertisement.

§11–704.1.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Local telephone classified advertising directory" means a telephone directory that:

1. Contains classified advertisements; and

2. Is distributed free of charge to residents in the State.

(ii) "Local telephone classified advertising directory" includes a directory distributed by a person other than a telephone company.

(3) (i) "Local telephone directory" means a telephone directory that is:

1. Available free of charge to telephone subscribers in an area of the State; and

2. Does not contain classified advertisements.

(ii) "Local telephone directory" includes a directory distributed by a person other than a telephone company.

(4) "Location" means any part of the address of a person, including the street, the city, or the state.

(b) (1) This section applies only to business telephone listings and advertisements.

(2) This section does not apply to any bank, trust company, savings bank, savings and loan association, or credit union incorporated or chartered under the laws of this State or the United States or any other state bank having a branch in this State.

(c) (1) A person is in violation of § 11–703 of this subtitle if the person:

(i) Causes to be published in a local telephone classified advertising directory an advertisement that misrepresents the location of the person; or

(ii) Causes to be listed in a local telephone directory a telephone listing that misrepresents the location of the person.

(2) For purposes of this subsection, a person commits a separate violation for each edition of a local telephone directory or local telephone advertising directory in which the advertisement or telephone listing is published.

§11–705.

(a) Any person who violates any provision of this subtitle is subject to a penalty not exceeding $500 for each violation, which penalty the Attorney General may recover for the State in a civil action.

(b) Before the Attorney General commences any action under this section, he shall give to the person against whom the action is proposed:

(1) Notice by registered or certified mail of the proposed action; and

(2) An opportunity to show cause orally or in writing why the action should not be commenced.

§11–706.

In any action brought under this subtitle, it is a defense that the advertisement concerning which the action is brought is subject to and complies with the rules and regulations of and the statutes administered by the Federal Trade Commission or any unit of the State government.

§11–707.

This subtitle does not modify any right of a person in private litigation.

§11–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consignee" means a commercial agent who is:

(1) Entrusted with the possession of goods or agricultural products, by or for the owner, to be sold for compensation in the ordinary course of the agent's trade or business; and

(2) Generally known by those dealing with him to be substantially engaged in selling the goods or agricultural products of others.

(c) "Goods" includes wares or merchandise, but does not include agricultural products.

(d) "Person" includes an individual, corporation, business trust, statutory trust,

estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Possessory document" means a bill of lading, warehouse receipt, order for delivery of goods, or other document which evidences possession.

§11–802.

A consignee is entitled to a lien on goods shipped or consigned to him for any money or negotiable instrument advanced or given to or for the use of the person in whose name the goods were shipped or consigned, unless the consignee has notice that the person is not the true owner of the goods.

§11–803.

(a) Except as provided by subsection (b) of this section, a consignee entrusted with and in possession of a possessory document is considered the true owner of the goods described in the document for the purpose of any contract with a third person for:

(1) The sale or disposal of the goods; or

(2) The pledge or deposit of them as security for any money or negotiable instrument advanced or given on the faith of the possessory document.

(b) A contract, pledge, or deposit described in subsection (a) of this section is not valid if the third person has notice that the consignee is not the true owner of the goods.

§11–804.

(a) Except as provided in subsection (b) of this section, if in the ordinary course of business a contract for sale of goods is made between a consignee and a third person, the contract and any payment made in the ordinary course of business for the goods under the contract is valid against the owner of the goods, even if the third person has notice that the seller of the goods is a consignee.

(b) A contract or payment described in subsection (a) of this section is not valid against the owner of the goods if the third person has notice that the seller is not authorized to sell the goods or to receive payments for them, as the case may be.

§11–805.

(a) Except as provided in subsection (c) of this section, if a third person takes goods or a possessory document in deposit or pledge as security for a preexisting debt or demand from any other person entrusted with them or to whom they are consigned or who is entrusted with and in possession of a possessory document, he acquires only the right, title, or interest as was possessed and might have been enforced by the person

from whom he received the goods or possessory document.

(b) Except as provided in subsection (c) of this section, if a third person knows that he is dealing with a consignee, he may take goods or a possessory document in deposit or pledge as security for a preexisting debt or demand, but he acquires only the right or interest in the goods or possessory document that was possessed by the consignee at the time of the deposit or pledge.

(c) If a third person has notice that the consignee is not authorized to pledge, deposit, or part with possession of the goods or possessory document, he acquires no right, title, or interest in the goods.

§11–806.

Unless a third person contracts for or receives goods on deposit or pledge without knowledge that a consignee is not authorized to sell, deposit, or pledge the goods, a claim or demand of setoff of a debt due by the consignee is not allowed against his principal in favor of the third person.

§11–807.

Nothing in this subtitle deprives an owner of goods of any remedy which he might have against a consignee on any matter or contract between them or for the violation of any engagement, duty, or debt for which the consignee is liable, subject, however, to the right of the consignee to have the benefit of any payment of any debt or damages paid on the contract by a third person.

§11–808.

(a) A consignment of agricultural products by the grower, producer, or owner to a consignee for sale for the use and benefit of the consignor does not vest in the consignee any other title or right to the products except to sell and deliver them to a bona fide purchaser for a valuable consideration.

(b) If, without the express consent of the grower, producer, or owner, a consignee mortgages, pledges, deposits, or otherwise disposes of agricultural products consigned only for sale for the use and benefit of the grower, producer, or owner, the disposition is void and title to the products does not pass but remains in the grower, producer, or owner as if no disposition were made.

(c) Nothing in this section impairs any right of any lien which a consignee acquires or is entitled to for bona fide advances made in money or goods to the grower, producer, or owner on the faith and the security of the consignment.

§11–809.

(a) Any consignee, his agent, or employee who converts to his own use goods or agricultural products entrusted to the consignee for sale or the proceeds from the sale

of them is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding six months or both.

(b) The failure of a consignee who sells goods or agricultural products on commission to pay the proceeds from the sale, less his charges, to the person entitled to receive the proceeds within five days after receiving the proceeds from the purchaser and after demand for payment is prima facie evidence of conversion of the goods or agricultural products.

§11–810.

(a) After a sale of goods consigned for sale by a person in this State to a person engaged in the business of selling goods on consignment, the consignee shall transmit to the consignor within 24 hours after the sale a full account of the sale, including:

(1) The amount and price of the goods sold; and

(2) The name and address of the purchaser, including the house or business number, street, and city.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of $5 for each violation, and court costs.

§11–8A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Art dealer" means an individual, partnership, firm, association, or corporation, other than a public auctioneer, that undertakes to sell a work of fine art created by someone else.

(c) "Artist" means the creator of a work of fine art.

(d) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(e) "Work of fine art" means an original art work which is:

(1) A visual rendition including a painting, drawing, sculpture, mosaic, or photograph;

(2) A work of calligraphy;

(3) A work of graphic art including an etching, lithograph, offset print, or silk screen;

(4) A craft work in materials including clay, textile, fiber, wood, metal, plastic, or glass; or

(5) A work in mixed media including a collage or a work consisting of any combination of works included in this subsection.

§11–8A–02.

If an art dealer accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist:

(1) The art dealer is, with respect to that work of fine art, the bailee of the artist;

(2) The work of fine art is bailment property in which the art dealer has no legal or equitable interest until the work is sold to a bona fide third party; and

(3) The proceeds of the sale of the work of fine art are bailment property in which the art dealer has no legal or equitable interest until the amount due the artist from the sale, minus the agreed commission, is paid.

§11–8A–03.

Notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account, a work of fine art that is bailment property when initially accepted by the art dealer remains bailment property until the purchase price, minus the agreed upon commission, is paid in full to the artist.

§11–8A–04.

Property that is bailment property under this subtitle is not subject to the claims, liens, or security interests of the creditors of an art dealer.

§11–901.

In this subtitle, "person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§11–902.

(a) (1) In this section the following words have the meanings indicated.

(2) "Attached" means printed, painted, stamped, burned, or otherwise placed on or attached to.

(3) "Battery" means an electric storage battery which has an identification mark attached to it.

(4) "Identification mark" means:

(i) The word "rental"; or

(ii) Any other word, mark, device, or character which is attached to a battery to identify its ownership.

(b) A person may not remove, deface, alter, or destroy or cause to be removed, defaced, altered, or destroyed any identification mark attached to a battery which he does not own.

(c) A person other than the owner may not dispose of, sell, deliver, or give or attempt to dispose of, sell, deliver, or give any battery to any person except its owner.

(d) Except in an emergency, a person may not recharge any battery without the consent of its owner or his authorized agent or employee.

(e) A person may not retain possession of a battery for more than 30 days after the owner demands the return of the battery by registered or certified mail.

(f) Any person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25.

§11–903.

(a) In this section, "goods" includes wares or merchandise.

(b) The provisions of this section do not apply to goods which are:

(1) Produced, manufactured, or mined by convicts and prisoners on parole or probation; or

(2) Shipped into the State for sale to or exchange with:

(i) The State or any of its political subdivisions; or

(ii) A State aided, owned, controlled, or managed public or quasi–public institution or agency.

(c) Except as provided in subsection (b) of this section, goods manufactured or produced, wholly or in part, or mined by convicts or prisoners of the United States or of a territory, district, or other state of the United States may not be shipped into the State for sale on the open market.

(d) Any person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 60 days or both.

§11–905.

(a) In this section, "premises" means the land and the structures erected on it which are used for the commercial boarding of animals.

(b) A veterinarian, as defined in § 2-301(h) of the Agriculture Article, or a commercial boarding kennel operator who does not provide 24-hour supervision by a person physically on the premises to an animal under the care or custody of the veterinarian or the commercial boarding kennel operator shall provide written notification to the owner of the animal advising the owner of the lack of 24-hour supervision.

(c) Any person who violates the provisions of this section, or any regulation adopted to implement the provisions of this section, is subject to a fine not exceeding $50, in an action in the District Court in the State of Maryland.

§11–1001.

(a) (1) In this section the following words have the meanings indicated.

(2) "Direct molding process" means any process by which a hull of a vessel or component of the hull of a vessel is used as a plug for the making of a mold from which a duplication of the hull or component of the hull is made.

(3) "Mold" means any pattern, hollow form, matrix, or other device for giving shape or form to material in a plastic or molten state.

(4) "Plug" means a manufactured item used to make a mold.

(5) (i) "Vessel" means every description of watercraft that is used or capable of being used as a means of transportation on water or ice.

(ii) "Vessel" includes:

1. An iceboat; and

2. The motor, spars, sails, and accessories of a vessel.

(iii) "Vessel" does not include a seaplane.

(b) A person may not duplicate or misappropriate for commercial purposes by copying or using the direct molding process the design of a hull of a vessel or any component of the hull of a vessel manufactured by another person without the prior written consent of the other person.

(c) If a person knew or should have known that a hull of a vessel or any component of the hull of a vessel was duplicated or misappropriated for commercial purposes in violation of subsection (b) of this section, the person may not sell in this State the vessel that was manufactured in violation of subsection (b) of this section.

(d) Any person who is injured in the person's business by virtue of any violation of subsection (b) or subsection (c) of this section:

(1) May sue and recover three times the amount of damages incurred by virtue of the violation, the costs of the suit, and reasonable attorney's fees; and

(2) May sue for injunctive relief and a court of competent jurisdiction may grant the injunctive relief regardless of whether the person proves irreparable injury because of the violation.

§11–1101.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Advertise" means to publish, circulate, disseminate, or place before the public through any print or broadcast medium for the purpose of the sale of goods or services.

(2) "Advertise" includes to advertise by outside or inside signs, handbills, or price tags.

(c) (1) "Distress sale" means a sale that is conducted and represented through advertising that the sale is being held or required for reasons of:

(i) Economic or business distress;

(ii) Inability to continue business at the same location; or

(iii) Any expression that conveys to the public the information or belief that on disposal of the goods, the business will cease, be discontinued, vacated, transferred, or surrendered to a successor in business or a different principal owner and conducted under a new name.

(2) "Distress sale" includes:

(i) A "going out of business sale", "closing out sale", "liquidation sale", "lost our lease sale", or "must vacate sale"; or

(ii) A sale of goods damaged by fire, smoke, or water.

(d) (1) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(2) "Person" includes a liquidation service.

§11–1102.

A person shall advertise and conduct a distress sale only under the provisions of this subtitle.

§11–1103.

A person who advertises and conducts a distress sale may not:

(1) Conduct the distress sale for more than 60 days from the first day of the sale;

(2) Order and receive any goods for the purpose of selling the goods at the distress sale; and

(3) Sell goods at the distress sale that are not listed in the record of inventory required under § 11-1104 of this subtitle.

§11–1104.

(a) Before a distress sale, a person shall compile a complete and detailed record of the inventory that is to be sold at the distress sale, including:

(1) A description of each item;

(2) The approximate quantity of each item; and

(3) The regular price and the proposed sale price of each item.

(b) The record of inventory required under subsection (a) of this section shall be open for inspection by the Division of Consumer Protection in the Office of the Attorney General at any time during normal business hours.

§11–1105.

(a) This subtitle provides minimum standards to protect consumers in the State.

(b) A county, a municipality, or an agency of a county or municipality may adopt standards concerning distress sales, within the scope of its authority, only if the standards:

(1) Are at least as stringent as the provisions of this subtitle; and

(2) Are not inconsistent with the provisions of this subtitle.

(c) This subtitle is enforceable under Title 13 of this article or by any appropriate local jurisdiction.

§11–1106.

A violation of any provision of this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty provisions contained in Title 13 of this article.

§11–1201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(c) "Misappropriation" means the:

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that the person's knowledge of the trade secret was:

1. Derived from or through a person who had utilized improper means to acquire it;

2. Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

3. Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of the person's position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(d) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(e) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

§11–1202.

(a) Actual or threatened misappropriation may be enjoined.

(b) Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(c) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited.

(d) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

(e) In this section, "exceptional circumstances" includes a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

§11–1203.

(a) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation.

(b) Damages under this subtitle may include:

(1) The actual loss caused by misappropriation; and

(2) The unjust enrichment caused by misappropriation that is not taken into account in computing actual loss.

(c) In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(d) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (a) of this section.

§11–1204.

The court may award reasonable attorney's fees to the prevailing party if:

(1) A claim of misappropriation is made in bad faith;

(2) A motion to terminate an injunction is made or resisted in bad faith; or

(3) Willful and malicious misappropriation exists.

§11–1205.

In an action under this subtitle, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

§11–1206.

(a) An action for misappropriation must be brought within 3 years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.

(b) For the purposes of this section, a continuing misappropriation constitutes a single claim.

§11–1207.

(a) Except as provided in subsection (b) of this section, this subtitle displaces conflicting tort, restitutionary, and other law of this State providing civil remedies for misappropriation of a trade secret.

(b) (1) This subtitle does not affect:

(i) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(ii) Other civil remedies that are not based upon misappropriation of a trade secret; or

(iii) Criminal remedies, whether or not based upon misappropriation of a trade secret.

(2) Nothing contained in this act may be applied or construed to waive or limit any common law or statutory defense or immunity possessed by State personnel as defined under § 12-101 of the State Government Article.

§11–1208.

This subtitle shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subtitle among states enacting it.

§11–1209.

This subtitle may be cited as the "Maryland Uniform Trade Secrets Act".

§11–1301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agreement" means a contract or other agreement between a grantor and a distributor.

(c) (1) "Cancel" means to terminate an agreement prior to the natural expiration date of its term.

(2) "Cancel" includes a de facto cancellation.

(d) "Commercial goods" means, as those terms are defined in the wholesale trade section of the 1987 edition of the federal Office of Management and Budget's Standard Industrial Classification Manual, durable goods, except for:

(1) Motor vehicles and motor vehicle parts and supplies;

(2) Furniture;

(3) Office equipment, computers, computer peripheral equipment, and software; and

(4) Prerecorded tapes, cassettes, film, and videos and books or other similar items for which copyright protection might be available.

(e) "De facto cancellation" means actions taken by the grantor that:

(1) Materially alter the competitive business and economic conditions of a distributor;

(2) Are not applicable to similarly situated distributors of that grantor's products; and

(3) Are intended to be discriminatory and detrimental to the distributor.

(f) "Deficiency" means the failure of a distributor to comply substantially with the fair, reasonable, and material requirements imposed or sought to be imposed on the distributor by the grantor.

(g) (1) "Distributor" means a person:

(i) Whose primary business is the wholesale distribution of commercial goods for resale;

(ii) Who maintains an inventory of commercial goods for resale;

(iii) Who has been granted either expressly or implicitly the right to sell or distribute a grantor's commercial goods in Maryland for resale to retailers or

other resellers or to an industrial or commercial manufacturer; and

(iv) Who conducts a substantial business in Maryland.

(2) "Distributor" does not include:

(i) A sales representative that does not maintain an inventory of commercial goods; or

(ii) A direct seller whose work is exempt from covered employment under § 8-206(b) of the Labor and Employment Article.

(h) "Grantor" means a person, including a manufacturer, that grants distribution and sales rights to a distributor.

§11–1302.

(a) This subtitle applies to any agreement under which a grantor's commercial goods are distributed or sold in this State.

(b) Notwithstanding any other provision of this subtitle, this subtitle does not apply to:

(1) A seller of business opportunities regulated under the Maryland Business Opportunity Sales Act, Title 14, Subtitle 1 of the Business Regulation Article;

(2) A franchisor regulated under the Maryland Franchise Registration and Disclosure Law, Title 14, Subtitle 2 of the Business Regulation Article;

(3) A supplier regulated under the Equipment Dealer Contract Act, Title 19 of this article;

(4) A manufacturer, producer, or refiner of petroleum products that are motor fuels regulated under Title 10 of the Business Regulation Article;

(5) A franchisor regulated under the Beer Franchise Fair Dealing Act; or

(6) A manufacturer, producer, or supplier of wine or distilled spirits.

§11–1302.1.

In addition to any other provision of this subtitle, when notifying a distributor of a proposed cancellation or nonrenewal of any agreement, a grantor shall provide a notice of the distributor's failure to comply with a reasonable requirement of the agreement and an opportunity to cure or dispute the asserted deficiency.

§11–1303.

(a) Except as provided in subsections (d) and (e) of this section, a grantor shall

notify a distributor not less than 60 days before:

(1) The proposed date of cancellation of an agreement that has not expired according to its terms; or

(2) For agreements that contemplate renewal options exercisable by either party, the expiration date of an agreement that the grantor does not intend to renew.

(b) The notice required under subsection (a) of this section shall:

(1) Be in writing and be sent by certified mail, return receipt requested; and

(2) Contain:

(i) A statement that the grantor intends to cancel or not renew the agreement;

(ii) A list of reasons for the proposed cancellation or nonrenewal, including any deficiencies on the part of the distributor;

(iii) A statement of the effective date of the proposed cancellation or nonrenewal; and

(iv) If deficiencies are identified by the grantor under subparagraph (ii) of this paragraph, a statement that the distributor may attempt to cure deficiencies that are identified as a basis for the cancellation or nonrenewal, as provided in § 11-1305 of this subtitle.

(c) Unless the parties agree to the contrary, neither a distributor nor a grantor may alter payment, credit, or delivery terms affecting the distributor during the period between the notice required under subsection (a) of this section and the proposed date of cancellation or nonrenewal, or during the period of cure described in § 11-1305 of this subtitle.

(d) A grantor is not required to comply with the provisions of this section if the reason for the cancellation or nonrenewal includes any of the following:

(1) For any items that are not in dispute, the failure of the distributor to pay the grantor for commercial goods received;

(2) The actual or pending insolvency, the occurrence of an assignment for the benefit of creditors, or the bankruptcy of the distributor or of its parent entity or of any affiliated entity that has financial control over it;

(3) A danger to the public health or safety caused by the distributor or any affiliated entity over which it has control;

(4) Abandonment of the agreement by the distributor or any other matter which a court finds to be justification for a premature cancellation or nonrenewal;

(5) Conduct by the distributor expressly prohibited under a written agreement that materially affects the relationship between the distributor and grantor;

(6) Conduct by the distributor that materially alters the commercial viability of the grantor's commercial goods in the marketplace; or

(7) Affirmative bad faith, dishonest, fraudulent, or illegal acts by the distributor.

(e) Notwithstanding any other provision of this section, the notice and cure provisions of this subtitle do not apply to a termination of a distributorship at the natural expiration of the specified term of a written contract that does not contemplate renewal options exercisable by either party.

§11–1304.

(a) Except as provided in subsection (c) of this section, on cancellation or nonrenewal of an agreement by a grantor for any reason, including a distributor's failure to cure under § 11-1305 of this subtitle, the grantor shall have the right to, and must at the option of the distributor, repurchase all merchandise sold by the grantor to the distributor, and the distributor must sell the merchandise to the grantor, at a price equal to:

(1) An amount agreed on by the parties; or

(2) (i) With respect to merchandise that is still in its original condition, is part of the grantor's current product line, and was shipped within 6 months of the cancellation or nonrenewal, the purchase price paid by the distributor;

(ii) With respect to all other merchandise, including samples, display models, and damaged merchandise, the wholesale fair market value of the merchandise less depreciation, or the purchase price paid by the distributor, whichever is less; and

(iii) With respect to special tools, accessories, display equipment, and other similar items, the purchase price paid by the distributor, less depreciation, or an amount agreed upon by the parties.

(b) The repurchase requirements under subsection (a) of this section shall be completed within 30 days after the effective date of cancellation or nonrenewal, unless the parties agree otherwise.

(c) The distributor's option to repurchase under subsection (a) of this section does not apply if the reason for cancellation or nonrenewal includes any of the reasons listed in § 11-1303(d) of this subtitle.

(d) Repurchase of inventory under this section is not subject to the bulk transfers provisions of Title 6 of this article.

§11–1305.

(a) If the grantor identified deficiencies on the part of the distributor in the notice under § 11-1303(b)(2)(ii) of this subtitle and if a distributor opposes the cancellation or nonrenewal of an agreement, the distributor shall be permitted to attempt to resolve its differences with the grantor by:

(1) Within 30 days after the receipt of the notice of cancellation or nonrenewal, filing with the grantor a notice of intention to oppose the cancellation or nonrenewal; and

(2) Implementing a plan, as approved by the grantor, for the correction of the deficiencies described by the grantor as constituting the reasons for the cancellation or nonrenewal.

(b) The grantor and distributor must make good faith efforts to mutually adopt the plan described in subsection (a)(2) of this section.

(c) Unless otherwise mutually agreed by the parties, the plan described in subsection (a)(2) of this section must be implemented within 60 days of its acceptance by the grantor.

(d) A notice of cancellation or nonrenewal shall be ineffective if the distributor implements the plan described in subsection (a)(2) of this section.

(e) A cancellation or nonrenewal shall be effective immediately upon the expiration of the period provided in subsection (c) of this section if the distributor fails to implement the plan described in subsection (a)(2) of this section.

(f) Nothing in this section shall permit a distributor to attempt to cure if the only reasons identified by the grantor in the notice required under § 11-1303(b)(2)(ii) of this subtitle are reasons that are not curable by the distributor.

§11–1306.

If a dispute arises between the grantor and the distributor relating to the application of this subtitle, the requirements of § 11-1302.1 of this subtitle, the notice of cancellation or nonrenewal, the plan for the correction of the deficiencies described by the grantor as the reasons for cancellation or nonrenewal, whether or not the distributor has complied with the plan and corrected the deficiencies described by the grantor as the reasons for cancellation or nonrenewal, or the purchase price or fair market value of any merchandise subject to repurchase under § 11-1304 of this subtitle, the grantor and distributor on the request of either party shall submit the dispute to arbitration in the State under the Maryland Uniform Arbitration Act.

§11–1307.

(a) The laws of the State shall apply to agreements under this subtitle to which a distributor with a principal place of business in the State is a party. This subtitle shall be construed to provide the minimum terms and conditions applicable to grantors and distributors covered by this subtitle.

(b) This subtitle does not limit or restrict the rights of a grantor or distributor at any time to seek in the State all legal and equitable remedies for any violation of this subtitle or any material breach of an agreement.

§11–1401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Area" means a circular geographic region having a 25-mile radius surrounding each business location of a proprietor.

(c) "Copyright owner" means the owner of a copyright of a nondramatic musical or similar work recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code.

(d) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

(e) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, or any other similar place of business or professional office located in this State, in which the public may assemble and in which nondramatic musical works or similar copyrighted works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled.

(f) "Royalty" or "royalties" means the fees payable by a proprietor to a performing rights society for the public performance of nondramatic musical or other similar works.

§11–1402.

(a) (1) A performing rights society may not enter into or execute a contract for the payment of royalties by a proprietor unless, no later than 72 hours prior to the execution of the contract, the performing rights society provides to the proprietor, in writing, the following:

(i) A schedule of the rates and terms of royalties under the contract;

(ii) A schedule of the rates and terms of royalties under agreements

executed by the performing rights society and proprietors of comparable businesses in the area;

(iii) The toll free telephone number required under paragraph (2) of this subsection;

(iv) In the case of a performing rights society which offers discounts to proprietors in the area on any basis, the amounts and terms of those discounts; and

(v) Notice that the proprietor is entitled to the information required by this section, and that the failure of the performing rights society to provide that information is a violation of this subtitle and may render a contract unenforceable under this subtitle.

(2) The performing rights society shall establish a toll free telephone number which can be used to answer inquiries of a proprietor regarding specific musical works and the copyright owners represented by that performing rights society.

(b) Every contract between a performing rights society and a proprietor for the payment of royalties executed or renewed in this State shall:

(1) Be in writing;

(2) Be signed by the parties to the contract; and

(3) Include at least the following information:

(i) The proprietor's name and business address and the name and location of each place of business to which the contract applies;

(ii) The name and business address of the performing rights society;

(iii) The duration of the contract; and

(iv) The schedule of rates and terms of the royalties to be collected under the contract, including any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

(c) (1) Subject to paragraph (2) of this subsection, the performing rights society shall offer to the proprietor a 1-year contract.

(2) The performing rights society and the proprietor may agree to a contract for other than 1 year.

§11–1403.

(a) Before discussing a contract for the payment of royalties or the use of copyrighted works by a proprietor and before collecting or attempting to collect a royalty or fee under the contract, an agent or an employee of a performing rights

society shall:

(1) Disclose that the agent or employee is acting on behalf of a performing rights society;

(2) Identify the performing rights society for which the agent or the employee acts; and

(3) Disclose the purpose of the discussion.

(b) A performing rights society or the agent or employee of the performing rights society may collect a royalty or any other fee only as provided in a contract executed in accordance with the provisions of this subtitle.

(c) A performing rights society or the agent or employee of a performing rights society may not:

(1) Use or attempt to use an unfair or deceptive act or practice in dealing or negotiating with a proprietor or the employee of a proprietor; or

(2) Charge or collect a royalty which is unreasonable in comparison to the royalties for similar licenses in the same area.

§11–1404.

(a) This subtitle applies only to performing rights societies.

(b) This subtitle does not apply to:

(1) Copyright owners of motion pictures or other audiovisual works distributed on any medium;

(2) A contract between a performing rights society and a broadcaster licensed by the Federal Communications Commission;

(3) A contract between a performing rights society and a cable operator or programmer; or

(4) Any conduct undertaken for the purpose of enforcing § 7-308 of the Criminal Law Article.

§11–1405.

(a) A person who violates any provision of this subtitle is liable to the person affected by the violation for actual damages caused by the violation and for reasonable attorney's fees.

(b) In addition to the remedies provided under subsection (a) of this section, a person affected by a violation of this subtitle may:

(1) Bring an action for an injunction against any person who violates any provision of this subtitle; and

(2) Seek any other remedy available at law.

(c) The rights, remedies, and prohibitions provided under this subtitle shall be in addition to and cumulative of any other right, remedy, or prohibition provided under common law, federal law, or any other laws of this State, and nothing contained in this subtitle may be construed to deny, abrogate, or impair any such federal or State common-law or statutory right, remedy, or prohibition.

§11–1501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Performing group" means a vocal or instrumental group seeking to use the name of a recording group.

(c) "Recording group" means a vocal or instrumental group with at least one member who has:

(1) Previously released a commercial sound recording under that group's name; and

(2) A legal right to use the group's name due to the member's use of or operation under the group's name without having abandoned the name or affiliation with the group.

(d) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

§11–1502.

(a) Except as provided in subsection (b) of this section, a person may not advertise or conduct a live musical performance or production in the State through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group.

(b) Subsection (a) of this section does not apply if:

(1) The performing group is the authorized registrant and owner of a service mark for that group that is registered with the United States Patent and Trademark Office;

(2) At least one member of the performing group was a member of the recording group and the member has a legal right to the recording group name due to

the member's use of or operation under the group name without having abandoned the recording group name or affiliation with the recording group;

(3) The live musical performance or production is identified in all advertising and promotion as a salute, tribute, parody, or satire and the performing group name is not so closely related or similar to that used by the recording group that it would tend to confuse or mislead the public;

(4) The advertising does not relate to a live musical performance or production in the State; or

(5) The performance or production is expressly authorized by the recording group.

§11–1503.

(a) If the Attorney General believes that a person has engaged in or will engage in a violation of § 11–1502 of this subtitle, and an injunction would be in the public interest, the Attorney General may seek an injunction to prohibit a person from continuing or engaging in the violation.

(b) If a court issues a permanent injunction under subsection (a) of this section, the court may enter a judgment to restore to a person any money or real or personal property acquired from the person by means of any prohibited practice.

(c) (1) In addition to any relief granted under subsection (b) of this section, a person who violates § 11–1502 of this subtitle is subject to a civil penalty of not less than $5,000 or more than $15,000 for each violation.

(2) Each performance or production in violation of § 11–1502 of this subtitle is considered a separate violation.

§11–1504.

This subtitle may be cited as the "Truth in Music Advertising Act".

§11–1601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Claim" means the scope of the patent owner's exclusive rights to the use and control of the patent owner's invention.

(c) "Demand letter" means a letter, an electronic mail, or any other written communication asserting that a person has engaged in patent infringement.

(d) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(e) "Target" means a person:

(1) Who has received a demand letter or against whom an assertion of patent infringement has been made;

(2) Who has been threatened with litigation or against whom a lawsuit has been filed alleging patent infringement; or

(3) Who has at least one customer who has received a demand letter asserting that the person's product, service, or technology has infringed a patent.

§11–1602.

This subtitle does not apply to an assertion of patent infringement that includes a claim for relief arising under 35 U.S.C. § 271(e)(2) or 42 U.S.C. § 262.

§11–1603.

(a) A person may not make an assertion of patent infringement against another in bad faith.

(b) (1) A court may consider the following factors as evidence that a person has made an assertion of patent infringement in bad faith:

(i) The demand letter sent by the person does not contain:

1. The alleged patent number;

2. The name and address of the patent owner or assignee, if any; or

3. Facts relating to the specific areas in which the target's product, service, or technology infringes the patent or is covered by the claims in the patent;

(ii) The target requested the information described in item (i) of this paragraph, and the person failed to provide the information within a reasonable period of time;

(iii) Before sending the demand letter, the person did not conduct an analysis comparing the claims in the patent to the target's product, service, or technology, or the analysis was conducted but does not identify specific areas in which the product, service, or technology is covered by the claims in the patent;

(iv) The demand letter demanded a response or payment of a licensing fee within an unreasonably short period of time;

(v) The person offered to license the patent for an amount that is not based on a reasonable estimate of the value of the license;

(vi) The assertion of patent infringement is without merit, and the person knew, or should have known, that the assertion is without merit;

(vii) The assertion of patent infringement is deceptive;

(viii) 1. The person, or a subsidiary or an affiliate of the person, previously has filed or threatened to file one or more lawsuits based on the same or a similar assertion of patent infringement; and

2. A. The threats or lawsuits did not provide the information described in item (i) of this paragraph; and

B. A court found the person's assertion to be without merit; and

(ix) Any other factor the court determines to be relevant.

(2) The court may consider the following factors as evidence that a person has made an assertion of patent infringement in good faith:

(i) If the demand letter sent by the person does not contain the information described in paragraph (1)(i) of this subsection, the person provides the information to the target within a reasonable period of time;

(ii) The person has:

1. Engaged in a good faith effort to establish that the target has infringed the patent; and

2. Attempted to negotiate an appropriate remedy;

(iii) The person has:

1. Demonstrated good faith business practices in previous efforts to enforce a patent; or

2. Successfully enforced a patent through litigation;

(iv) The person has made a substantial investment in the use of the patent or in the production or sale of a product covered by the patent;

(v) The person is:

1. An inventor of the patent or an original assignee; or

2. A representative of an institution of higher education or a technology transfer organization affiliated with an institution of higher education; and

(vi) Any other factor the court determines to be relevant.

§11–1604.

The Attorney General and the Division shall have the same authority under this subtitle to adopt regulations, conduct investigations, and bring civil and criminal actions as provided in Title 13 of this article.

§11–1605.

(a) In addition to any action by the Division or Attorney General authorized by Title 13 of this article, a target may bring an action in an appropriate court to recover for injury or loss sustained as a result of a violation of this subtitle.

(b) If a target prevails in an action brought under this subtitle and is awarded damages, the court also may award:

(1) Court costs and fees, including reasonable attorney's fees;

(2) Exemplary damages in an amount not to exceed the greater of:

(i) $50,000; or

(ii) Three times the total of damages, costs, and fees; and

(3) Any equitable relief that the court considers appropriate.

§12–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Borrower" means a person who borrows money under this subtitle.

(c) "Commercial loan" means a loan which is made:

(1) Solely to acquire or carry on a business or commercial enterprise; or

(2) To any business or commercial organization.

(d) "Effective rate of simple interest" means the yield to maturity rate of interest received or to be received by a lender on the face amount of a loan, computed in accordance with § 12–107 of this subtitle.

(e) "Interest" means, except as specifically provided in § 12–105 of this subtitle, any compensation directly or indirectly imposed by a lender for the extension of credit for the use or forebearance of money, including any loan fee, origination fee, service and carrying charge, investigator's fee, time–price differential, and any amount payable as a discount or point or otherwise payable for services.

(f) "Lender" means a person who makes a loan under this subtitle.

(g) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Point" means a fee, premium, bonus, loan origination fee, service charge, or any other charge equal to 1 percent of the principal amount of a loan which is charged by the lender at or before the time the loan is made as additional compensation for the loan.

(i) "Simple interest" means interest charged on the principal amount loaned to the borrower.

(j) "Stated rate of interest" means the annual rate of interest stated in percentage which appears on the face of the bond, draft, mortgage, deed of trust, security agreement, promissory note, or other instrument which evidences the indebtedness.

(k) "Usury" means the charging of interest by a lender in an amount which is greater than that allowed by this subtitle.

(l) "Wages" means all remuneration paid to any employee for his employment, including the cash value of all remuneration paid in any medium other than cash.

§12–102.

Except as otherwise provided by law, a person may not charge interest in excess of an effective rate of simple interest of 6 percent per annum on the unpaid principal balance of a loan.

§12–103.

(a) (1) Except as provided in subsections (b), (c), (d), (e), and (f) of this section, a lender may charge interest at an effective rate of simple interest not in excess of 8 percent per year on the unpaid principal balance of a loan if there is a written agreement signed by the borrower which sets forth the stated rate of interest charged by the lender.

(2) If a loan made under paragraph (1) of this subsection is secured by the pledge of collateral which is a certificate of deposit held by the borrower, the lender may charge interest at a rate not to exceed 2 percent in excess of the rate of interest payable on the certificate of deposit.

(3) If a loan made under paragraph (1) of this subsection is secured by the pledge of collateral which is other than a savings account or if such loan is unsecured, the lender may charge a rate of interest not in excess of 18 percent. However, on a loan made on or after July 1, 1982, a lender may charge an effective rate of simple interest not in excess of 24 percent per year on the unpaid principal balance, provided that:

(i) If the loan is a renewal or refinancing of a loan made prior to July

1, 1982, the lender complies with § 12-116 of this subtitle;

(ii) If the loan includes a provision for a rate of interest which may be adjusted by the lender during the term of the loan, the lender complies with § 12-118 of this subtitle;

(iii) Upon the borrower's default, if the loan is secured by personal property, the lender complies with § 12-115 of this subtitle concerning repossession and redemption of the goods securing the loan;

(iv) If the loan is for the purchase of consumer goods, the loan contract complies with § 12-117 of this subtitle; and

(v) The loan does not include a balloon payment, unless payment in full is due on demand or in one year or less.

(b) (1) A lender may charge interest at any effective rate of simple interest on the unpaid principal balance of a loan if:

(i) There is a written agreement signed by the borrower which sets forth the stated rate of interest charged by the lender;

(ii) The loan is secured by a first mortgage or first deed of trust on any interest in residential real property;

(iii) There is no prepayment penalty in connection with the loan;

(iv) The loan is made and the mortgage or deed of trust is executed after the effective date of this section;

(v) The loan is not a refinancing of a loan secured by a first mortgage or first deed of trust on any interest in residential real property unless:

1. The lender is a banking institution, a national banking association, a federal savings bank, a federal or State savings and loan association, or a federal or State credit union; or

2. The loan is subject to the provisions of § 501(a)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, 94 Stat. 161; and

(vi) The lender does not require payment of any interest in advance except any points permitted under this subtitle.

(2) For purposes of this subsection, "refinancing" means increasing or altering the balance due, the term, or the interest rate of an existing loan or paying off an existing loan whether or not the lender also made the existing loan.

(3) (i) If the loan is a refinancing, the lender is limited as to the interest, fees and other charges made in connection with the refinanced loan to those provided in Subtitle 4 of this title.

(ii) The provisions of subparagraph (i) of this paragraph do not apply to:

1. A purchase money loan;

2. A lender refinancing an existing loan if the lender is a banking institution, a national banking association, a federal savings bank, a federal or State savings and loan association, a federal or State credit union, or a credit grantor refinancing the loan pursuant to Subtitle 9 or Subtitle 10 of this title; or

3. A loan that is subject to the provisions of § 501(a)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, 94 Stat. 161.

(4) A lender making a mortgage loan as defined under § 11-501 of the Financial Institutions Article shall be subject to the licensing provisions of Title 11, Subtitle 5 of the Financial Institutions Article.

(c) (1) Subject to paragraph (2) of this subsection, a lender may charge interest at an effective rate of simple interest not in excess of 18 percent per year on the unpaid principal balance of the loan. However, on a loan made on or after July 1, 1982, a lender may charge an effective rate of simple interest not in excess of 24 percent per year on the unpaid principal balance of the loan provided that:

(i) If the loan is a renewal or refinancing of a loan made prior to July 1, 1982, the lender complies with § 12-116 of this subtitle;

(ii) If the loan includes a provision for a rate of interest which may be adjusted by the lender during the term of the loan, the lender complies with § 12-118 of this subtitle;

(iii) Upon the borrower's default, if the loan is secured by personal property, the lender complies with § 12-115 of this subtitle concerning repossession and redemption of the goods securing the loan;

(iv) If the loan is for the purchase of consumer goods, the loan contract complies with § 12-117 of this subtitle; and

(v) The loan does not include a balloon payment, unless payment in full is due on demand or in 1 year or less.

(2) The rates permitted by this subsection may be charged only if:

(i) There is a written agreement signed by the borrower which sets

forth the stated rate of interest charged by the lender;

(ii) The loan is not secured by a first mortgage or first deed of trust on real property;

(iii) The borrower is required to repay the loan in periodic installments, which may be regular, irregular, equal or unequal installments;

(iv) The loan is not secured by a confession of judgment or power of attorney to the lender or to a third person to confess judgment or appear for the borrower in a judicial proceeding;

(v) The loan is not secured by an instrument in which blanks are left to be filled after execution;

(vi) The loan is not secured by a note, promise to pay, or security instrument which does not state:

1. The principal amount of the loan;

2. A schedule of payments or a description of the schedule; and

3. The agreed amount or rate of interest, charges, and fees to be charged;

(vii) The loan is not secured by real property;

(viii) The loan is not secured by personal property for any loan under $700 in value or amount; and

(ix) The loan is not fully secured by investment securities or savings accounts.

(3) If interest on a loan made under this subsection is precomputed, and if the effective rate of simple interest required to be disclosed under § 12-106 of this subtitle is exceeded by reason of a prepayment of the loan, the lender shall refund the excess to the borrower or credit it to any unpaid principal balance owed by him.

(4) A lender who makes a loan under this subsection is subject to the licensing provisions of Title 11, Subtitle 3 of the Financial Institutions Article.

(d) A lender may charge interest at any rate not in excess of that permitted by federal law if the loan is:

(1) Secured by a mortgage or deed of trust;

(2) Insured or guaranteed in full or in part by the Federal Housing Administration, Veterans Administration, or any other federal agency or instrumentality; and

(3) Made in full compliance with applicable federal law.

(e) (1) A lender may charge interest at any rate if the loan is:

(i) A loan made to a corporation;

(ii) A commercial loan in excess of $15,000 not secured by residential real property; or

(iii) A commercial loan in excess of $75,000 secured by residential real property.

(2) Commercial loans to individuals secured by residential real property shall comply with the provisions of § 12-407.1 of this article.

(3) As used in this subsection, residential real property is owner-occupied property having a dwelling on it designated principally as a residence with accommodations for not more than 4 families.

(f) A broker or dealer, who is registered under the Securities Exchange Act of 1934, as amended, and under Title 11 of the Corporations and Associations Article, and who extends credit to a customer on pledged securities, may charge the customer on his debit balance interest at any rate if:

(1) The debit balance is payable on demand; and

(2) The debit balance is secured by securities as defined in § 11-101(r) of the Corporations and Associations Article.

§12–104.

Interest at a rate otherwise allowed by this subtitle is not usurious solely because of any one or more of the following:

(1) For a period of less than one year, interest is calculated on the premise that there are 360 days in the year and 30 days in each month, which may include the date of the loan and the date due or paid;

(2) Interest on a periodic payment of principal is computed to the due date; or

(3) Except for installment loans made under § 12-103(c) of this subtitle:

(i) Interest-drop calculations are made on sums not in excess of multiples of $100, without regard to interim partial payments; or

(ii) Interest-drop calculations are made on periods not in excess of one year, without regard to interim partial payments.

§12–105.

(a) In this section, "mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(b) Fees and charges collected at the direction of and actually paid to a government or governmental agency may be collected and are not interest under this subtitle.

(c) Except as provided in subsection (d) of this section, if the loan contract provides for them, the following fees and charges also may be collected and are not interest under this subtitle:

(1) A service charge for investigation and the continued servicing of collateral for a commercial loan secured by inventory or accounts receivable;

(2) A service charge made by a broker or dealer dealing in investment securities if:

(i) Money is advanced on the security of pledged investment securities; and

(ii) Services are rendered in the collection, crediting, and disbursement of income on the investment securities and in the furnishing of income tax and other information in connection with that income;

(3) A delinquent or late charge of the greater of $2 or 5 percent of the total amount of any delinquent or late periodic installment of principal and interest, if:

(i) The delinquency has continued for at least 15 calendar days; and

(ii) A delinquent or late charge has not already been charged for the same delinquency; and

(4) A prepayment charge or penalty on a prepayment of the unpaid principal balance of the loan, if the loan is secured by a home, by a combination of home and business property, or by agricultural property, or if the loan is a commercial loan not in excess of $15,000, provided that the charge or penalty:

(i) May be imposed only on prepayments made within 3 years from the date the loan is made; and

(ii) May not exceed an amount equal to 2 months' advance interest on the aggregate amount of all prepayments made in any 12–month period in excess of one–third of the amount of the original loan.

(d) In connection with a mortgage loan, a lender may not require or authorize the imposition of a penalty, fee, premium, or other charge in the event the mortgage

loan is prepaid in whole or in part.

(e) The following charges, if actual expenses of the lender, also may be collected and, if not retained by him, are not interest under this subtitle:

(1) Charges by the lender's attorney for service rendered in connection with the preparation, closing, or disbursement of the loan;

(2) Charges for the payment of any property expense, tax, or governmental charge; and

(3) Charges for the payment of any premium and cost for insuring:

(i) The lender against loss or liability on or in connection with the loan; or

(ii) The life or health of the borrower.

(f) Fees and charges otherwise includable as interest under this subtitle paid by a developer to the lender for the purpose of making permanent loans available to home purchasers are not interest under this subtitle. These fees and charges may not be charged to the home purchaser unless they are charged as interest and do not violate § 12–108 of this subtitle.

§12–106.

(a) This section does not apply to any loan:

(1) Described in § 12-103(e) of this subtitle; or

(2) Made under Title 18, Subtitle 10 of the Education Article.

(b) (1) Before the execution of a loan contract under this title, the lender shall furnish to the borrower a written statement which sets forth:

(i) The total principal amount of the loan and the total amount of finance charge as defined in the federal Truth in Lending Act to be paid, stated in dollars, except that on loans payable on demand, the total amount of finance charge to be paid shall be stated on a per diem basis;

(ii) The annual effective rate of simple interest charged, stated in percentage calculated to the nearest 0.2 percent; and

(iii) The itemized amount of payments in addition to interest payable to the lender in connection with the loan at the time the loan is made, stated in dollars.

(2) If the loan is made to two or more borrowers, delivery of the statement to one borrower is sufficient, but a copy of the statement shall be furnished to each other borrower.

(3) Paragraphs (1)(i), (ii), and (iii) of this subsection do not apply to any loan subject to the disclosure provisions of the federal Truth in Lending Act, if the lender complies with the applicable disclosure provisions of the federal act and its regulations.

(4) A statement that complies with the applicable disclosure provisions of the federal Truth in Lending Act is sufficient to meet the requirements of this title.

(c) At least annually and, on request of the borrower, at any other reasonable time or interval, a lender who receives scheduled monthly periodic payments on more than five loans secured by an interest in real property shall furnish to the borrower a written statement informing the borrower of the amount of:

(1) Payments credited to reducing the principal;

(2) Payments credited to interest as defined in this subtitle; and

(3) The remaining unpaid principal balance.

§12–106.1.

(a) A person may not require a borrower, as a condition to receiving a loan, to make any false or misleading statement or characterization that a loan is a commercial loan under § 12–101(c), § 12–103(e), or § 12–105 of this subtitle or § 12–401(i)(3) of this title if the loan is not a commercial loan.

(b) (1) Except as provided in paragraph (2) of this subsection, any person who willfully requires a borrower to make a false or misleading statement in violation of subsection (a) of this section, or who willfully procures such statement, knowing that it is false or misleading, shall forfeit to the borrower three times the amount of interest and charges contracted for or collected in excess of that permitted by law, in addition to any other penalty otherwise provided in this title.

(2) When a loan obtained by a borrower is not subject to restrictions imposed by law on the maximum amount of a finance charge and interest, any person who willfully requires a borrower to make a false or misleading statement in violation of subsection (a) of this section, or who willfully procures such statement, knowing that it is false or misleading, shall forfeit the finance charge or interest, brokerage fees, points, or any other charges or fees in addition to any other penalty otherwise provided in this title.

(3) This section may not affect the rebuttable presumption that the loan was made for commercial purposes.

(c) If a written complaint for violation of this section is filed with the Consumer Protection Division of the Office of the Attorney General, the Office may investigate the complaint and hold a hearing in accordance with Title 13 of this article.

§12–107.

If a charge or fee considered interest under this subtitle is charged at or before the inception of a loan contract, the effective rate of simple interest permitted to be charged by §§ 12-102 and 12-103 of this subtitle, and required to be disclosed by § 12-106 of this subtitle shall be determined in the same manner as if the fee or charge had not been charged, except that the principal of the loan used in determining the rate of interest is the face amount of the loan less the fee or charge.

§12–108.

(a) Except for a loan described in § 12–103(d) or (e) of this subtitle, a lender may not charge a borrower or any other person any point or fraction of a point.

(b) Notwithstanding the provisions of subsection (a) of this section, a lender may charge points on a mortgage loan which is not insured or guaranteed by an agency or instrumentality of the United States government if:

(1) The loan is eligible for purchase by an agency or instrumentality of the United States government, or a subsidiary thereof, pursuant to the Emergency Home Purchase Assistance Act of 1974 (PL93–449) or any amendment to it, and is tendered in good faith for purchase pursuant to a commitment obtained by the lender from such an agency, instrumentality, or subsidiary; and

(2) The federal law, rules, or regulations under which the agency, instrumentality, or subsidiary is authorized to purchase the loan allows the payment of points, and the points charged and the interest rate on the loan are not in excess of those allowed under the federal program.

(c) Notwithstanding the provisions of subsection (a) of this section, a lender may impose and collect, as a condition of making a loan, all fees, discounts, points, or other charges that lenders are permitted or required to impose, collect, or pay pursuant to a federal or Maryland law providing for a program of mortgage purchases or loans originated pursuant to a State or local governmental program of direct lending or mortgage purchase, or by any federal agency or instrumentality or subsidiary thereof, including, but not limited to, Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Reserve Bank, Federal Home Loan Bank, and the Farmers Home Administration, provided that all of the following conditions are met:

(1) The loan is eligible for purchase by, and is tendered in good faith, for purchase, pursuant to a commitment or offer to purchase by the federal, State, or local governmental agency, instrumentality, or subsidiary;

(2) The fees, discounts, points, or other charges imposed, and the interest rate on the loan, do not exceed those allowed by the applicable federal or Maryland law providing for the mortgage purchase program; and

(3) Not more than one point is charged to the borrower, unless the federal law specifies a higher limit on points which may be charged to the borrower.

§12–109.

(a) (1) In this section the following words have the meanings indicated.

(2) "Escrow account" means an expense or escrow account which tends to protect the security of a loan by the accumulation of funds for the payment of taxes, insurance premiums, or other expenses.

(3) "Lending institution" means a bank, savings bank, or savings and loan association doing business in Maryland.

(b) (1) A lending institution which lends money secured by a first mortgage or first deed of trust on any interest in residential real property and creates or is the assignee of an escrow account in connection with that loan shall pay interest to the borrower on the funds in the escrow account at an annual rate not less than the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year, as published by the Federal Reserve in "Selected Interest Rates (Daily) – H.15", as of the first business day of the calendar year.

(2) Interest on these funds shall be:

(i) Adjusted, if applicable, as of the first day of each calendar year to reflect the rate to be paid during that year, as determined under paragraph (1) of this subsection;

(ii) Computed on the average monthly balance in the escrow account; and

(iii) Paid annually to the borrower by crediting the escrow account with the amount of interest due.

(3) The lending institution shall annually provide the borrower with a statement of the escrow balance.

(c) The provisions of this section do not apply to a lending institution which provides for the payment of taxes, insurance, or other expenses under the direct reduction method by which these expenses, when paid by the lender, are added to the outstanding principal balance of the loan.

(d) This section does not apply if the loan is purchased by an out–of–state lender through the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation and the out–of–state lender as a condition of purchase elects to service the loan. However, this section shall apply if the out–of–state lender sells the loan to a Maryland lender or places the loan with a Maryland lender for servicing.

§12–109.1.

(a) The provisions of this section do not apply to escrow accounts maintained in connection with loans described in § 12–103(e)(1) of this subtitle.

(b) Except in a foreclosure, release, or as provided in subsection (c) of this section, funds in any escrow account for use in paying taxes, insurance premiums and ground rents may not be used to:

(1) Reduce the principal; or

(2) Pay interest or other loan charges.

(c) If there is periodically a balance in the escrow account that exceeds the amount provided for in the note, loan agreement, or security instrument, the borrower shall be given at least annually the option of:

(1) Receiving a refund of the excess amount;

(2) Applying the excess amount to the payment of principal and interest; or

(3) Leaving the excess amount in the escrow account.

(d) A refund of any excess amount shall be made:

(1) Within 60 days after the receipt by the lender of the borrower's request for a refund; or

(2) If the borrower has not notified the lender of the option chosen by the borrower under subsection (c) of this section, within 60 days after the date the lender mailed notice of the excess amount to the borrower.

(e) (1) Subject to paragraph (3) of this subsection, if, after recalculating the amount that is required to be maintained in escrow under a first mortgage or first deed of trust on residential real property, a lender or a servicer of a loan determines that the amount that a borrower is required to pay must increase, the lender or servicer may not include, for a 1–year period after the determination is made, the amount of the increase in escrow payments in any calculation of the amount of interest or any fee due under the loan.

(2) This subsection may not be construed to limit the ability of a lender or a servicer of a loan to impose a late fee for any escrow payment that is due and not timely paid.

(3) (i) In this paragraph, "other expenses" does not include money required by a lender or a servicer of a loan for an escrow account cushion as permitted by the federal Real Estate Settlement Procedures Act.

(ii) A lender or a servicer of a loan may charge interest to a borrower on the amount of funds the lender or servicer advances to pay taxes, insurance premiums, or other expenses owed by the borrower in order to protect the security of the loan.

(iii) Interest may be charged by a lender or a servicer of a loan under subparagraph (ii) of this paragraph only if:

1. The lender or servicer advances its own funds because funds of the borrower were not available to pay the taxes, insurance premiums, or other expenses owed by the borrower;

2. The need for the advance was not caused by an error of the lender or servicer in servicing the loan;

3. The lender or servicer provides notice to the borrower that the advance was made and that interest will be charged on the advance;

4. Interest does not begin to accrue until 60 days after notice has been provided to the borrower in accordance with item 3 of this subparagraph;

5. Interest is charged only on the amount of funds actually advanced by the lender or servicer after the lender or servicer has used all available funds of the borrower to pay taxes, insurance premiums, or other expenses owed by the borrower; and

6. The borrower is permitted to repay the advance as permitted by the federal Real Estate Settlement Procedures Act.

§12–109.2.

(a) (1) In this section the following terms have the meanings indicated.

(2) "Escrow account" has the meaning stated in § 12-109 of this subtitle.

(3) "Lender" includes a lender and assignee of a lender.

(4) "Mortgage" includes a mortgage and a deed of trust.

(b) (1) Funds in any escrow account shall be kept separate from and may not be commingled with the funds of the lender.

(2) A lender may place escrow funds received in connection with more than one mortgage into a single escrow account.

(3) In the event of the bankruptcy of the lender, any escrow funds placed in any escrow account under this section may not be considered to be part of the bankrupt estate of the lender.

(c) A lender may not impose a collection fee or service charge on the maintenance of an escrow account on a first mortgage.

§12–110.

An assignment of wages is void if given as security for the payment or fulfillment of a usurious contract or the payment of the principal or interest on a usurious loan.

§12–111.

An action for usury under this subtitle may not be brought more than six months after the loan is satisfied.

§12–112.

A claim or plea of usury is not available against a legal or equitable assignee, endorsee, or transferee of any bond, draft, mortgage, deed of trust, security agreement, promissory note, or other instrument or evidence of indebtedness, if he receives it for a bona fide and legal consideration without notice of any usury in its creation or subsequent assignment.

§12–113.

(a) Except as provided in subsection (b) of this section, a lender may not refuse to lend money to any person solely because of:

(1) Geographic area or neighborhood; or

(2) Race, creed, color, age, sex, marital status, handicap, or national origin.

(b) A lender may refuse to make a loan:

(1) On property outside a geographic area of the State in which the lender normally does business;

(2) To be used in a type of business or activity other than a type in connection with which the lender normally makes loans; or

(3) Because of a greater than normal risk, including one due to:

(i) The presence of an airport;

(ii) An unusual drainage condition; or

(iii) Any other situation which causes a greater than normal risk of loss in a particular area.

§12–114.

(a) (1) Any person who violates the usury provisions of this subtitle shall forfeit to the borrower the greater of:

(i) Three times the amount of interest and charges collected in excess of the interest and charges authorized by this subtitle; or

(ii) The sum of $500.

(2) A claim or plea of usury is not valid if, within 30 days from the date the loan contract was executed, the lender:

(i) Notifies the borrower and any other party to the loan contract that the loan was usurious; and

(ii) Agrees to modify it by substituting for the usurious rate of interest a legal rate of interest not exceeding the stated rate of interest.

(b) Any person who violates the disclosure provisions of § 12-106 (b) and (c) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding one year or both.

(c) Even if a loan document is executed outside of the State, this section is applicable if the loan is made to a resident of Maryland and is secured by property located within the State.

§12–115.

(a) With respect to any loan made at a rate of interest pursuant to § 12–103(a) and (c) of this subtitle or § 12–306 of this title:

(1) A lender may repossess goods securing a loan under an agreement if the borrower is in default in:

(i) The payment of any sum due under the agreement;

(ii) The performance of any other condition which the agreement lawfully requires him to perform in order to obtain unencumbered title to the goods; or

(iii) The performance of any promise the breach of which is expressly made a ground for repossessing the goods; and

(2) The lender may repossess goods only by:

(i) Legal process; or

(ii) Self–help, without use of force.

(b) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before he repossesses any goods, a lender may serve a written notice on the borrower of his intention to repossess the goods.

(2) The notice shall:

(i) State the default and any period at the end of which the goods will be repossessed; and

(ii) Briefly state the rights of the borrower in case the goods are repossessed.

(d) The notice may be delivered to the borrower personally or sent to him at his last known address by registered or certified mail.

(e) Within 5 days after he repossesses the goods, the lender shall deliver to the borrower personally or send to him at his last known address by registered or certified mail, a written notice which briefly states:

(1) The right of the borrower to redeem the goods, and the amount payable for them;

(2) The rights of the borrower as to a resale, and his liability for a deficiency; and

(3) The exact location where the goods are stored and the address where any payment is to be made or notice delivered.

(f) For 15 days after the lender gives the notice required by subsection (e) of this section, the lender shall retain any repossessed goods.

(g) During the period provided for in subsection (f) of this section, the borrower may:

(1) Redeem and take possession of the goods; and

(2) Resume the performance of the agreement.

(h) To redeem the goods, the borrower shall:

(1) Tender the amount due under the agreement at the time of redemption, without giving effect to any provision which allows acceleration of any installment otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the goods were repossessed; and

(3) If the discretionary notice provided for in subsection (c) of this section

was given, pay the actual and reasonable expenses of retaking and storing the goods.

(i) This section does not apply if the borrower was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the goods, or attempted to do so, and the goods were repossessed because of that conduct.

(j) (1) The lender shall sell the repossessed goods at private sale (subject to the provisions of paragraph (2) of this subsection) or at public auction. At least 10 days before the sale, the lender shall notify the borrower in writing sent by certified mail, return receipt requested, sent to the borrower's last known address of the time and place of sale. Any sale of repossessed property must be accomplished in a commercially reasonable manner.

(2) In all cases of a private sale of repossessed goods under this section, a full accounting shall be made to the borrower in writing and the seller shall retain a copy of this accounting for at least 24 months. This accounting shall contain the following information:

(i) The unpaid balance at the time the goods were repossessed;

(ii) The refund credit of unearned finance charges and insurance premiums, if any;

(iii) The remaining net balance;

(iv) The proceeds of the sale of the goods;

(v) The remaining deficiency balance, if any, or the amount due the buyer;

(vi) All expenses incurred as a result of the sale;

(vii) The purchaser's name, address, and business;

(viii) The number of bids sought and received; and

(ix) Any statement as to the condition of the goods at the time of repossession which would cause their value to be increased or decreased above or below the market value for goods of like kind and quality.

(3) The Commissioner of Financial Regulation may make a determination concerning any private sale that the sale was not accomplished in a commercially reasonable manner. Upon that determination, the Commissioner may enter an order disallowing any claim for a deficiency balance.

(k) (1) The provisions of this subsection apply to a public sale of goods which secured a loan in excess of $2,000 at the time the loan was made.

(2) The proceeds of a sale to which this subsection applies shall be applied, in the following order, to:

(i) The actual and reasonable cost of the sale;

(ii) The actual and reasonable cost of retaking and storing the goods; and

(iii) The unpaid balance owing under the agreement at the time the goods are repossessed.

(3) The lender shall furnish to the buyer a written statement which shows the distribution of the proceeds.

(4) If the provisions of this section, including the requirement of furnishing a notice following repossession, are not followed, the lender shall not be entitled to any deficiency judgment to which he would be entitled under the loan agreement.

(l) If there is no resale of repossessed goods, all obligations of the borrower under the agreement shall be discharged, and the holder may retain the goods as his own property without obligation to account to the buyer.

§12–116.

Any loan made before July 1, 1982, which is refinanced at a higher rate pursuant to § 12–103(a) and (c) of this subtitle or § 12–306 or § 12–404 of this title must comply with the following requirements:

(1) The lender must give the following disclosures in writing to the borrower prior to the execution by the borrower of the new loan agreement:

If you do agree to consolidate your existing loan, you will be paying an annual percentage rate of . . . . .% on the existing net balance of $. . . ., instead of the rate of . . . . . .% which you are now paying.

Schedule of Monthly Payments

Separate loan agreements	Consolidated loan agreement
$ . . . . per month for	$ . . . . per month for
the next . . . .months	the next . . . .months
then	
$ . . . . per month for	
. . . . months after that	

Total of Payments

Separate loan agreements	Consolidated loan agreement
$ . . . . total of payments	$ . . . . total of payments
for your existing loan	for your consolidated
. . . . for your new loan	loan
total of payments	

(2) The lender must allow the borrower the choice of repaying his existing loan balance at the originally agreed upon rate and obtaining any additional extension of credit as a separate loan, notwithstanding any law which limits the lender's ability to make more than 1 loan to the same borrower;

(3) The lender must refund or credit to the borrower's account any unearned interest and any returned insurance premiums upon the cancellation of insurance sold in connection with the loan;

(4) Except in the case of a demand loan, a loan may be refinanced only upon the borrower's request;

(5) The lender must allow the borrower the right to cancel the consolidated loan agreement within 3 business days. The lender shall provide to the borrower conspicuous notice of the provisions of this subsection; and

(6) Nothing in this subsection shall prohibit the receipt of the loan proceeds by the borrower at the time the consolidated loan agreement is made. The borrower must return any loan proceeds received pursuant to the consolidated loan agreement if he elects to cancel the consolidated loan agreement pursuant to subsection (5) of this section. The borrower may retain the loan proceeds if he elects the separate loan option pursuant to subsection (2) of this section.

§12–117.

With respect to any loan made at a rate pursuant to § 12–103(a) and (c) of this subtitle or § 12–404 of this title, the lender must comply with § 14–1302 of this article except that subsection (c) of § 14–1302 is not applicable.

§12–118.

A lender may not enter into a loan agreement, providing for an initial interest rate pursuant to § 12–103(a) and (c) of this subtitle or § 12–306 or § 12–404 of this title, which contains a provision that permits the lender to increase or decrease the applicable rate of interest or finance charges from time to time during the term of the obligation, unless:

(1) The loan is secured by an interest in real property;

(2) Any such provision limits adjustments in the rate on an obligation as follows:

(i) The increase and decrease in the rate is determined by an objective index which is not directly controlled by the lender and which is agreed upon by the parties to the agreement.

(ii) The rate may not be adjusted more frequently than once in a 6 month period.

1. The amount of increase in any 6 month period may not be more than the equivalent of 1 percentage point above the rate in effect prior to the rate change.

2. Notwithstanding subparagraph (i) of this paragraph, if the rate of change in any index so allows, the rate may be increased to not more than the originally contracted for rate if authorized by the loan agreement. The agreed upon additional increases must comply with subparagraph (i).

3. Notwithstanding subparagraph (i) of this paragraph, the lender may decrease the rate at any time and by any amount;

(3) Interest rate decreases warranted by decreases in the agreed upon index shall be mandatory except to the extent that past increases in the index have not been implemented by the lender, either at his option or because the lender was subject to the rate change limitation of paragraph (2) of this section;

(4) The loan instrument shall specify the circumstances under which the rate may increase or decrease, any limitations on an increase or decrease, and the effects of an increase or decrease;

(5) A lender must allow the borrower the choice of implementing the variable rate feature of the loan either by changes in the amount of periodic payments or by extending or reducing the length of the term of the obligation;

(6) Through a periodic billing statement or other written notice, the borrower is notified of the basis and effect of a change in rate, including any change in the required periodic payment amount, at least 15 days prior to the due date of the first payment that reflects the changed rate; and

(7) No new closing costs, processing fees or similar fees are imposed on the borrower as a result of adjustments in rate.

§12–119.

(a) This section applies to any application for a loan, other than a commercial

loan, to be secured by a first mortgage or first deed of trust on a borrower's primary residence.

(b) Any lender that imposes fees on borrowers for settlement services, or document review services, performed by a lender-designated attorney, or who conditions settlement on the employment of a particular attorney or title insurance company under § 12-120(c) of this subtitle, shall provide a prospective borrower with a written notice stating:

(1) The lender's requirements concerning selection of an attorney, title insurance company, or other person to perform settlement services relating to the purchase of the real property;

(2) The borrower's ability to choose an attorney or title insurance company under § 12-120(c) of this subtitle; and

(3) A good faith estimate of the fee or fees to be charged to the borrower.

(c) If notice is required by this section:

(1) The notice shall be provided at the time of or within 3 days after the application for a loan, or earlier upon request; and

(2) A copy of the notice, signed by the applicant, shall accompany any executed application for a loan.

§12–120.

(a) This section applies to any loan, other than a commercial loan, to be secured by a mortgage or deed of trust on a borrower's primary residence.

(b) A lender may require the borrower to pay for services rendered by the lender's attorney in connection with a loan described in subsection (a) of this section only if:

(1) The attorney's fee is limited to legal services attributable to processing and closing the loan and not to unrelated services performed by the attorney for the lender;

(2) The amount of the attorney's fee, if in excess of $100, is supported by a statement, provided to the borrower at or prior to settlement, that:

(i) Describes the services performed;

(ii) Sets forth the time spent by the attorney and the hourly rate or other basis for determining the fee;

(iii) States that the legal services are being performed on behalf of the

lender and not on behalf of the borrower; and

(iv) States that the services are being paid for by the borrower;

(3) The amount of the attorney's fee is reasonable on the basis of the legal services performed; and

(4) The attorney's fee is separately itemized on the loan settlement sheet and identified as a fee to the lender's attorney.

(c) (1) A lender may not require as a condition of settlement that a borrower employ a particular attorney or title insurance company to perform a title search, examination of title, or closing if:

(i) The borrower notifies the lender, within 7 days after application for the loan, of the name and business address of the borrower's choice of attorney or title insurance company to perform the title search, examination of title, or closing; and

(ii) The lender does not reject the borrower's choice of attorney or title insurance company for good cause within 7 days after the receipt of the notice under item (i) of this paragraph.

(2) Subject to the requirements of subsection (b) of this section, this subsection may not be construed to prohibit a lender from requiring a borrower to pay for:

(i) Preparation of loan closing documents;

(ii) Title insurance;

(iii) Review of documents prepared by the borrower's attorney; or

(iv) Attendance at settlement by the lender's attorney.

§12–121.

(a) In this section, the term "lender's inspection fee" means a fee imposed by a lender to pay for a visual inspection of real property.

(b) Except as provided in subsection (c) of this section, a lender may not impose a lender's inspection fee in connection with a loan secured by residential real property.

(c) A lender's inspection fee may be charged if the inspection is needed to ascertain completion of:

(1) Construction of a new home; or

(2) Repairs, alterations, or other work required by the lender.

(d) This section does not apply to an appraisal of the value of real property by a lender or to fees imposed in connection with an appraisal.

§12–122.

Any lender who knowingly and willfully violates any provision of § 12-103, § 12-109.2, § 12-119, § 12-120, or § 12-121 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500, or imprisonment not exceeding 6 months, or both.

§12–123.

(a) In this section, "binder" means a binder or other temporary contract of insurance as provided under § 12-106 of the Insurance Article.

(b) A lender shall comply with this section if the lender:

(1) Makes any loan secured by a first mortgage or a first deed of trust on any interest in owner-occupied residential real property; and

(2) As a condition of making the loan, requires the borrower to purchase property insurance or credit loss insurance.

(c) A lender who makes a loan subject to this section shall accept as evidence of insurance a written binder issued by any authorized insurer or its insurance producer if the binder includes or is accompanied by:

(1) The name and address of the insured borrower;

(2) The name and address of the lender;

(3) A description of the insured residential real property;

(4) A provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least 10 days prior to the cancellation;

(5) Except in the case of the renewal of a policy subsequent to the closing of the loan, a paid receipt for the full amount of the applicable premium; and

(6) The amount of coverage.

(d) This section does not prohibit a lender from refusing to honor a binder in cases where:

(1) The lender receives notice of the cancellation of the binder by the insurer; or

(2) At the expiration of 30 days of the date the binder was given, the

insurer has failed to issue the policy of insurance.

§12–124.

(a) (1) (i) In this section the following words have the meanings indicated.

(ii) "Flood insurance coverage" means flood insurance against losses caused by flooding that are covered under a policy issued by:

1. The federal government; or

2. An insurer.

(iii) "Improvements" means buildings or structures erected upon or affixed to real property that enhance the value of the real property.

(iv) "Property insurance coverage" means property insurance against losses caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage".

(v) 1. "Replacement cost" means the amount needed to repair damage to or rebuild improvements on real property to restore the improvements to their pre-loss condition.

2. "Replacement cost" does not include the value of land.

(2) A lender may not require a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement cost of the improvements on the real property.

(3) A lender may not require a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase flood insurance coverage in an amount exceeding the replacement cost of the improvements on the real property.

(4) In determining the replacement cost of the improvements on any real property, the lender may:

(i) Accept the value placed on the improvements by the insurer; or

(ii) Use the value placed on the improvements by the lender's appraisal of the improvements.

(5) A lender may not require that the insurance be purchased through a particular insurance producer or insurance company.

(b) (1) A violation of this section shall entitle the borrower to:

(i) Seek an injunction to prohibit the lender who has engaged or is engaging in the violation from continuing or engaging in the violation;

(ii) Reasonable attorney's fees; and

(iii) Damages directly resulting from the violation.

(2) A violation of this section does not affect the validity of the first mortgage or first deed of trust securing the loan.

§12–124.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act set forth in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026.

(3) "Credit health insurance" has the meaning stated in § 13–101 of the Insurance Article.

(4) "Credit involuntary unemployment benefit insurance" has the meaning stated in § 13–101 of the Insurance Article.

(5) (i) "Credit life insurance" means insurance on the life of a borrower that provides indemnity for repayment of a specific loan or credit transaction on the death of the borrower.

(ii) "Credit life insurance" does not include life insurance payable to a beneficiary designated by the borrower other than the obligee of a specific loan or credit transaction.

(6) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(7) "Premium" has the meaning stated in § 1–101 of the Insurance Article.

(8) "Single premium coverage" means insurance for which the total premium is payable in one lump sum at or before the time coverage commences.

(b) (1) Except as provided in this subsection, a lender making a covered loan may not finance as a part of the covered loan transaction single premium coverage for:

(i) Credit health insurance;

(ii) Credit involuntary unemployment benefit insurance; or

(iii) Credit life insurance.

(2) Nothing in this subsection shall prohibit the financing of any insurance coverage in connection with a mobile home or its premises, as those terms are defined in § 8A–101 of the Real Property Article.

§12–125.

(a) (1) In this section the following words have the meanings indicated.

(2) "Borrower" means a person who makes an application for a loan secured by a first mortgage or first deed of trust on a 1- to 4-family home to be occupied by the borrower as the borrower's primary residence.

(3) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.

(4) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(i) Results in or is secured by a first mortgage or a first deed of trust on a 1- to 4-family home to be occupied by the borrower; and

(ii) Is offered or extended to the borrower.

(5) (i) "Lender" means a person subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

(ii) "Lender" does not include a person exempt from licensure under § 11-502 of the Financial Institutions Article.

(6) (i) "Loan application" means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.

(ii) "Loan application" does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on a 1- to 4-family home to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

(2) The financing agreement shall provide:

(i) The term and principal amount of the loan;

(ii) An explanation of the type of mortgage loan being offered;

(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(iv) The points, if any, to be paid by the borrower or the seller, or both; and

(v) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.

(c) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:

(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(ii) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(d) If a lender fails to comply with the requirements of this section, the lender shall be subject to the penalties set forth in § 11-523 of the Financial Institutions Article.

(e) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(f) This section may not be construed to exempt a lender from the provisions of §§ 12-119 through 12-122 of this subtitle.

§12–126.

(a) This section applies only to a loan that:

(1) Is secured by a mortgage or deed of trust on the borrower's primary

residence; and

(2) Is not a commercial loan.

(b) Except to the extent expressly provided otherwise in the loan contract, a borrower may prepay all or part of outstanding unpaid indebtedness under a loan at any time.

(c) In the event of prepayment of the entire loan, the lender shall refund or credit to the borrower the unearned portion of the precomputed interest charge. This refund or credit shall be in an amount not less than the amount which would be refunded or credited if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower may not be entitled to a refund or credit of less than $5. The unearned portion of the precomputed interest charge is, at the option of the lender, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions of payment periods, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each period, or portion of a period, had the loan not been prepaid, by applying to the unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The lender, at its option, may round this annual percentage rate to the nearest 1/4 of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(d) As used in subsection (c) of this section, the following terms have the meanings indicated.

(1) "Actuarial method" means the method of allocating payments made on a loan between the outstanding principal balance of the loan and interest, by which a payment is applied first to the accumulated interest, and any remainder is subtracted from the outstanding principal balance of the loan.

(2) "Payment period" means the time period within which scheduled payments on a loan are due as provided in the agreement, note, or other evidence of the loan.

(3) "Precomputed interest charge" means interest as computed by an add on, discount, or other similar method.

§12–127.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fully indexed rate" means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the lender, plus the margin that will apply after the expiration of an introductory interest rate.

(3) (i) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(ii) "Mortgage loan" does not include a reverse mortgage loan.

(b) A lender may not make a mortgage loan without giving due regard to the borrower's ability to repay the mortgage loan in accordance with its terms, including the fully indexed rate of the mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

(c) (1) Due regard to a borrower's ability to repay a mortgage loan must include:

(i) Consideration of the borrower's debt to income ratio, including existing debts and other obligations; and

(ii) Verification of the borrower's gross monthly income and assets by review of third–party written documentation reasonably believed by the lender to be accurate and complete.

(2) Acceptable third–party written documentation includes:

(i) The borrower's Internal Revenue Service form W–2;

(ii) A copy of the borrower's income tax return;

(iii) Payroll receipts;

(iv) The records of a financial institution; or

(v) Other third–party documents that provide reasonably reliable evidence of the borrower's income or assets.

(3) This subsection does not apply to a mortgage loan:

(i) Approved for government guaranty by the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration; or

(ii) That refinances an existing mortgage loan if the refinance mortgage loan is:

1. Offered under the federal Homeowner Affordability and Stability Plan; and

2. Made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

§12–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Commissioner" means the Commissioner of Financial Regulation.

(c) "Lender" means a person who makes a loan under this subtitle.

(d) "Licensee" means a person who is licensed under Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law -- Licensing Provisions.

(e) "Loan" means any loan or advance of money or credit made under this subtitle.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) "Wages" means all remuneration paid to any employee for his employment, including the cash value of all remuneration paid in any medium other than cash.

§12–302.

A person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, the Maryland Consumer Loan Law -- Licensing Provisions.

§12–303.

(a) A lender may not make a loan under this subtitle unless the loan is in an original amount or value which does not exceed $6,000.

(b) (1) The purpose of this subsection is to prevent evasion of the provisions of this subtitle by means of a purchase or assignment of wages.

(2) For the purposes of this subtitle:

(i) The payment of $6,000 or less in money, credit, goods, or things

in action as consideration for any sale, assignment, or order for the payment of wages, whether earned or to be earned, is considered a loan of money secured by the sale, assignment, or order for payment of wages; and

(ii) The amount by which the wages exceed the consideration paid for them is considered interest or charges on the loan from the date of the payment to the date the wages are payable.

(3) The transaction described in this subsection is governed by and subject to the provisions of this subtitle.

(c) This subtitle applies but is not limited to a lender who:

(1) As security for a loan, use, or forbearance of money, goods, or things in action or for any loan, use, or sale of credit, whether or not the transaction is or purports to be made under this subtitle, makes a pretended purchase of property from any person and permits the owner or pledgor to retain possession of the property; or

(2) By any device or pretense of charging for his services or otherwise, seeks to obtain any interest, charges, discount, or like consideration.

(d) (1) A lender who lends or contracts to lend an amount which exceeds $6,000 may not directly or indirectly contract for, charge, or receive any interest, fee, or other charge in excess of that which he would be permitted to charge if he were not authorized to make loans under this subtitle.

(2) The provisions of this subsection apply to any debt in excess of $6,000 which is directly or contingently owed or contracted to be so owed by any person jointly or severally:

(i) Whether as a borrower, an endorser, guarantor, or surety for a borrower, or otherwise; and

(ii) Whether the debt is part of a single transaction or the aggregate of more than one transaction.

§12–304.

(a) A lender may not directly or indirectly print, publish, distribute, or broadcast any false, misleading, or deceptive statement regarding the rates, terms, or conditions of a loan.

(b) (1) If charges or rates of charges are advertised by a licensee, the Commissioner may require him to state them fully and clearly in any manner the Commissioner considers necessary to prevent misunderstanding by a prospective borrower.

(2) Subject to any condition which the Commissioner may impose to

prevent a false impression regarding the scope or degree of protection provided by this subtitle, the Commissioner may permit or require a licensee to refer in his advertising to the fact that his business is under State supervision.

§12–305.

(a) In granting or denying an application for a loan, a licensee may not discriminate against any loan applicant only on the basis of race, color, creed, national origin, sex, marital status, or age.

(b) (1) A licensee is not in violation of this section if the licensee is in compliance with the federal Equal Credit Opportunity Act and the regulations adopted under that act.

(2) Denying an application for a loan by an applicant who is a minor is not discrimination on the basis of age.

§12–306.

(a) (1) Except as provided in subsections (b) and (c) of this section, a lender may charge interest on a loan at a rate not more than the rates specified in this subsection.

(2) For any loan with an original principal balance of $2,000 or less, the maximum interest rate is:

(i) 2.75 percent interest per month on that part of the unpaid principal balance not more than $500;

(ii) 2 percent interest per month on that part of the unpaid principal balance that is more than $500 but not more than $700; and

(iii) 1.25 percent interest per month on that part of the unpaid principal balance that is more than $700.

(3) For any loan with an original principal balance of more than $2,000 and not more than $3,500, the maximum interest rate is 1.75 percent interest per month on the unpaid principal balance of the loan.

(4) For any loan with an original principal balance of more than $3,500 and not more than $5,000, the maximum interest rate is 1.5 percent interest per month on the unpaid principal balance of the loan.

(5) For any loan with an original principal balance of more than $5,000, the maximum interest rate is 1.35 percent interest per month on the unpaid principal balance of the loan.

(6) Notwithstanding the provisions of paragraphs (2) through (5) of this

subsection on any loan made on or after July 1, 1982, a lender under this subtitle may charge interest not exceeding the following rates:

(i) For any loan with an original principal balance of $2,000 or less, 2.75 percent interest per month on that part of the unpaid principal balance not more than $1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than $1,000;

(ii) For any loan with an original principal balance of more than $2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.

(7) A loan may be made pursuant to paragraph (6) of this subsection provided that:

(i) If the loan is a renewal or refinancing of a loan made prior to July 1, 1982, the lender complies with § 12-116 of this title;

(ii) If the loan includes a provision for a rate of interest which may be adjusted by the lender during the term of the loan, the lender complies with § 12-118 of this title;

(iii) Upon the borrower's default, if the loan is secured by personal property, the lender complies with § 12-115 of this title concerning repossession and redemption of the goods securing the loan; and

(iv) The loan does not include a balloon payment, unless payment in full is due on demand or in 1 year or less.

(b) If any principal balance remains unpaid 6 months after the loan matures as originally scheduled or deferred, the lender may not contract for, charge, or receive interest at a rate exceeding 6 percent simple interest per annum on the actual unpaid principal balances from time to time.

(c) If the lender refinances a loan in the ordinary course of business, he may not add to the principal balance or deduct from the proceeds of the new loan more than 60 days' interest then due.

(d) (1) The lender shall compute interest on the actual unpaid principal balances outstanding from time to time, and he may not contract for, charge, or receive interest in advance or compounded interest.

(2) For each day on which an unpaid principal balance is outstanding, the lender may charge on that unpaid balance 1/30th of the interest permitted under this subtitle to be charged for 1 month.

(3) For purposes of this section, each of the 12 calendar months in the year shall be treated as having 30 days, as follows:

(i) The last day of each month which has 31 days shall be omitted; and

(ii) The necessary number of days shall be added at the end of February to make 30 days.

(e) The maximum term of any loan made under this subtitle may not exceed:

(1) For any loan with an original principal balance of $700 or less, 30 months and 15 days;

(2) For any loan with an original principal balance of more than $700 but less than $2,000, 36 months and 15 days; and

(3) For any loan with an original principal balance of $2,000 or more, 72 months and 15 days.

§12–307.

(a) At the time a loan is made, a lender may collect from the borrower:

(1) As to any item of the total property that secures a loan:

(i) The fees paid to a public official or governmental agency for recording or satisfying a mortgage, encumbrance, or lien on any property securing the loan; or

(ii) An equal or lesser amount for nonfiling insurance premium on any property, or portion of the property, that is not recorded if:

1. The Insurance Commissioner approves the rates; and

2. A commission is not paid on the policy; and

(2) The title insurance premiums or reasonable attorney's fees paid for searching and insuring the title to any real property securing the loan.

(b) A lender may collect from the borrower a fee not exceeding $15 if payment is made with a check that is dishonored on the second presentment.

§12–307.1.

(a) On any loan with an original principal balance of more than $2,000, if a borrower defaults under the terms of a loan and the lender refers the borrower's account for collection to an attorney who is not a salaried employee of the lender, and if the note, contract, or other evidence of the loan permits, the lender may charge and collect from the borrower court costs and attorney's fees not exceeding 15 percent of the amount due and payable under the terms of the loan.

(b) On any loan with an original principal balance of $2,000 or less, if a borrower defaults under the terms of a loan and the lender refers the borrower's account for collection to an attorney who is not a salaried employee of the lender, and if the note, contract, or other evidence of the loan permits, the lender may recover from the borrower court costs and attorney's fees not exceeding 15 percent of the amount due and payable under the terms of the loan, to be set by the court in the event of the filing of suit.

§12–308.

(a) (1) At the time a loan is made, the lender shall deliver to the borrower a statement in the English language which:

(i) Quotes §§ 12-306, 12-307, 12-312, and 12-313 of this subtitle, in their entireties; and

(ii) Complies with § 12-106(b) of this title.

(2) If there are two or more borrowers, the lender:

(i) May deliver the statement to any one of the borrowers; and

(ii) At the request of any other borrower, shall deliver a copy of the statement to that borrower within 10 days after the request.

(b) (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall deliver to the person making the payment a receipt which specifies:

(i) The amount applied to principal;

(ii) The amount applied to interest and other charges; and

(iii) The unpaid principal balance of the loan.

(2) The lender may deliver an unitemized receipt at the time of payment if he delivers the required itemized receipt within 10 days after the payment.

(3) The lender is not required to issue a receipt if, before the due date of each payment, he regularly delivers to the borrower a billing statement which specifies:

(i) The previous unpaid principal balance of the loan;

(ii) The amount and date of each payment made during the billing period;

(iii) The amount of each of these payments applied to interest;

(iv) The amount of each of these payments applied to principal;

(v) The current unpaid principal balance; and

(vi) The amount and due date of the next maturing installment.

(4) The lender is not required to issue a receipt if the lender issues to the borrower a payment book or coupon book and payment is made by check or money order.

(c) (1) A lender shall permit a borrower to prepay a loan in full or in part at any time, without penalty.

(2) Each partial prepayment shall be applied:

(i) First, to any interest accrued on the unpaid principal balance to the date of the payment; and

(ii) Then, to the unpaid principal balance.

(d) After full repayment of a loan, the lender shall:

(1) (i) Indelibly mark with the word "paid" or "canceled" and return each note, contract, or other evidence of obligation of the borrower in the possession of the lender; or

(ii) Furnish the borrower with a written statement that identifies the loan transaction and states that the loan has been paid in full;

(2) Release any mortgage, security agreement, or other form of security instrument which no longer secures any indebtedness to the lender; and

(3) Restore any pledge or certificate of title.

(e) At the request of the borrower, the lender shall furnish the borrower with a written statement of the account. However, the lender is not required to do so more than once in any 30-day period.

(f) A lender making or offering to make a loan secured by residential real property shall comply with § 12-125 of this title, as applicable.

§12–309.

(a) If a lender makes a loan for the purpose of enabling a borrower to buy goods or services used primarily for personal, family, or household purposes, then, in addition to any other claim or defense which the borrower has under this subtitle, the lender is subject to the claims and defenses of the borrower against the seller arising from the sale of the goods or services, if:

(1) The lender knows that the seller arranged for the extension of credit by the lender; or

(2) The lender otherwise knowingly participated in the sale.

(b) In determining that a lender knowingly participated in a sale transaction, the following factors, among others, may be considered:

(1) The lender was a person related to the seller, unless the relationship was remote or was not a factor in the sale or loan;

(2) The proceeds of the loan were made payable in whole or in part to the seller;

(3) The lender took a purchase-money security interest in the goods which were the subject of the sale;

(4) The seller guaranteed the loan or otherwise assumed the risk of loss by the lender on the loan;

(5) The lender directly supplied to the seller a form used by the borrower to evidence or secure the loan; or

(6) The loan was conditioned on purchase by the borrower of the goods or services from the particular seller, but the payment by the lender of any proceeds of the loan to the seller does not establish in itself that the loan was so conditioned.

(c) (1) The liability of a lender under this section may not exceed the amount owed to the lender with respect to the sale at the time the lender has notice of a claim or defense of the buyer against the seller.

(2) If two or more loans are consolidated, the maximum amount owed to the lender under paragraph (1) of this subsection is determined as follows:

(i) If the consolidated loans arose from sales made on the same day, the payments received after the consolidation are considered to be applied first to the smallest loan; and

(ii) In any other case, the payments received after the consolidation are considered to be applied first to payment of the loan first made.

(d) The lender is subrogated to each right and remedy which the borrower has against the seller.

§12–310.

(a) For purposes of this subtitle, any profit or advantage which a person contracts for, collects, receives, or obtains by a collateral sale, purchase, or agreement in connection with negotiating, arranging, or making a loan is considered a charge for the loan.

(b) This section does not apply to any commission, dividend, retrospective rating credit, or other consideration received by a licensee or a licensed insurance producer who is an officer, director, agent, employee, or affiliate of a licensee on insurance sold under this subtitle in accordance with the applicable provisions of the Insurance Article.

§12–311.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fully indexed rate" means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the lender, plus the margin that will apply after the expiration of an introductory interest rate.

(3) (i) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(ii) "Mortgage loan" does not include a reverse mortgage loan.

(b) A lender may not take as security for a loan any:

(1) Confession of judgment or power of attorney to him or to a third person to confess judgment or appear for the borrower in a judicial proceeding;

(2) Assignment or order for payment of wages;

(3) Instrument in which blanks are left to be filled after execution; or

(4) Note, promise to pay, or security instrument which does not state:

(i) The principal amount of the loan;

(ii) A schedule of payments or a description of the schedule; and

(iii) The agreed amount and rate of interest, charges, and fees.

(c) (1) A lender may not take any security interest in:

(i) Real property for any loan under $2,000 in value or amount; or

(ii) Personal property for any loan under $700 in value or amount.

(2) Any lien taken in violation of this subsection is void.

(3) This subsection does not apply to or affect a lien on an interest in real property which results from a judgment obtained by the lender based on a loan otherwise secured or unsecured.

(d) A lender may not make a mortgage loan without giving due regard to the borrower's ability to repay the mortgage loan in accordance with its terms, including

the fully indexed rate of the mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

(e) (1) Due regard to a borrower's ability to repay a mortgage loan must include:

(i) Consideration of the borrower's debt to income ratio, including existing debts and other obligations; and

(ii) Verification of the borrower's gross monthly income and assets by review of third–party written documentation reasonably believed by the lender to be accurate and complete.

(2) Acceptable third–party written documentation includes:

(i) The borrower's Internal Revenue Service form W–2;

(ii) A copy of the borrower's income tax return;

(iii) Payroll receipts;

(iv) The records of a financial institution; or

(v) Other third–party documents that provide reasonably reliable evidence of the borrower's income or assets.

(3) This subsection does not apply to a mortgage loan:

(i) Approved for government guaranty by the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration; or

(ii) That refinances an existing mortgage loan if the refinance mortgage loan is:

1. Offered under the federal Homeowner Affordability and Stability Plan; and

2. Made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

§12–312.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection

Act set forth in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026.

(3) "Credit health insurance" has the meaning stated in § 13–101 of the Insurance Article.

(4) "Credit involuntary unemployment benefit insurance" has the meaning stated in § 13–101 of the Insurance Article.

(5) (i) "Credit life insurance" means insurance on the life of a borrower that provides indemnity for repayment of a specific loan or credit transaction on the death of the borrower.

(ii) "Credit life insurance" does not include life insurance payable to a beneficiary designated by the borrower other than the obligee of a specific loan or credit transaction.

(6) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(7) "Premium" has the meaning stated in § 1–101 of the Insurance Article.

(8) "Single premium coverage" means insurance for which the total premium is payable in one lump sum at or before the time coverage commences.

(b) Subject to the provisions of this section, a lender may collect from the borrower, at the option of the borrower, the premiums paid for:

(1) Insurance covering any real or personal property pledged as security for the loan;

(2) Credit health insurance covering any one or more borrowers, if the insurance does not provide for benefits exceeding the actual period of disability;

(3) Credit life insurance:

(i) Covering any one borrower for any loan under $700 in value or amount; or

(ii) Covering any one or more borrowers for any loan of $700 or more in value or amount; and

(4) Credit involuntary unemployment benefit insurance covering any one borrower, if the insurance:

(i) Does not provide for benefits exceeding the actual period of

unemployment; and

(ii) Is not contingent upon the purchase of any other type of insurance permitted under this subtitle.

(c) (1) A lender may not require that the insurance be purchased through a particular insurance producer or insurance company.

(2) The lender may:

(i) Assist an applicant or act with the applicant in forwarding an application to an insurance producer; and

(ii) Receive and transmit premiums or other identifiable charges for the insurance.

(3) Subject to subsection (e) of this section, at the option of the borrower, a lender may be coinsured or protected to the extent of his interest by a mortgagee clause.

(d) (1) (i) Subject to subsection (e) of this section, the amount of property insurance may not exceed either the reasonable value of the property insured or the originally scheduled total of payments under the loan contract.

(ii) The terms and conditions of the property insurance policy shall be filed with and approved by the Insurance Commissioner.

(iii) Property insurance may be provided by the lender if the borrower, at the time the loan is made, fails to furnish a loss payable endorsement for the protection of the lender in an amount sufficient to cover the amount of the loan or the value of the property securing the loan, whichever is less.

(iv) If, however, within 30 days of the inception date of the loan, the borrower does provide a loss payable endorsement for the protection of the lender, and no claim has been filed under the coverage purchased, the lender shall cancel the property insurance on the loan and shall refund the entire original property insurance premium to the borrower.

(v) A lender providing property insurance under this section shall give the borrower, at the time the loan is made, a written notice of the borrower's right to provide a loss payable endorsement for the protection of the lender and the borrower's right to a refund of the entire property insurance premium.

(2) Credit health insurance shall provide for:

(i) Benefits not exceeding the then scheduled unpaid total of payments of the loan;

(ii) A waiting period of at least 14 days; and

(iii) Periodic benefits, the amount of each of which may not exceed the originally scheduled total of payments under the loan contract, divided by the number of installments.

(3) The amount of credit life insurance in force may not exceed the unpaid principal but shall include all accrued interest under the loan contract.

(4) Credit involuntary unemployment benefit insurance shall provide that, in the event of involuntary loss of employment, the aggregate amount of periodic benefits payable in the event of involuntary loss of employment, as defined in the policy, may not exceed the then scheduled unpaid total of payments of the loan.

(5) (i) Except as provided in this paragraph, a person making a covered loan may not finance as a part of the covered loan transaction single premium coverage for:

1. Credit health insurance;

2. Credit involuntary unemployment benefit insurance; or

3. Credit life insurance.

(ii) Nothing in this paragraph shall prohibit the financing of any insurance coverage in connection with a mobile home or its premises, as those terms are defined in § 8A-101 of the Real Property Article.

(e) (1) In this subsection, "property insurance coverage" means property insurance against losses caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage".

(2) (i) A lender may not require a borrower, as a condition to receiving or maintaining a loan secured by a first mortgage or first deed of trust, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement value of improvements on the real property.

(ii) In determining the replacement value of the improvements on any real property, the lender may:

1. Accept the value placed on the improvements by the insurer; or

2. Use the value placed on the improvements that is determined by the lender's appraisal of the real property.

(3) A violation of this subsection or of subsection (c)(1) of this section shall entitle the borrower to seek:

(i) An injunction to prohibit the lender who has engaged or is engaging in the violation from continuing or engaging in the violation;

(ii) Reasonable attorney's fees; and

(iii) Damages directly resulting from the violation.

(4) A violation of this subsection or of subsection (c)(1) of this section does not affect the validity of the first mortgage or first deed of trust securing the loan.

(f) Under this subtitle, insurance may be obtained only:

(1) From an insurance company qualified to do business in the State; and

(2) At rates not exceeding those approved by the Insurance Administration.

(g) Within 25 days after a lender has charged for any insurance in connection with a loan, he shall deliver a copy of the appropriate policy or certificate to the borrower.

§12–313.

(a) With respect to any loan, a lender may not:

(1) Directly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle;

(2) Divide into separate parts any contract made for the purpose or with the effect of obtaining charges in excess of those permitted by this subtitle; or

(3) Enforce a contract of surety or guarantee unless the loan contract with the borrower is executed also by the surety or guarantor.

(b) If any amount in excess of the charges permitted by this subtitle is directly or indirectly contracted for, charged, or received by a licensee or a person who is exempt from licensing, and (1) if the excess charge was made willfully for the benefit of the lender, then the lender may not receive or retain any interest or compensation with respect to the loan; or (2) if the excess charge was not made willfully for the benefit of the lender, and if the lender does not correct the error before the borrower makes the next payment on the loan, then the lender is liable to the borrower for an amount equal to three times the excess amount, but the lender may continue to receive principal, interest, or compensation with respect to the loan.

§12–314.

(a) A person may not lend $6,000 or less if the person directly or indirectly

contracts for, charges, or receives a greater rate of interest, charge, discount, or other consideration than that authorized by the laws of this State.

(b) (1) A loan made in the amount of $6,000 or less, whether or not the loan is or purports to be made under this subtitle, is unenforceable if a rate of interest, charge, discount, or other consideration greater than that authorized by the laws of this State is contracted for by any person unless the excess rate contracted for is the result of a clerical error or mistake and the person corrects the error or mistake before any payment is received under the loan.

(2) The person who is neither a licensee nor exempt from licensing may not receive or retain any principal, interest, or other compensation with respect to any loan that is unenforceable under this subsection.

(3) This subsection does not apply to a person who is a licensee or who is exempt from licensing under this subtitle.

(c) This section does not apply to a loan transaction validly made in another state in compliance with a similar loan law of that state. However, a lender may not collect an amount that is more than the total amount that would be permitted if this subtitle were applicable. This section applies to all loans made by a lender domiciled in another state to a borrower who is a resident of this State if the application for the loan originated in this State.

§12–315.

This subtitle shall be interpreted and construed to effectuate its general remedial purpose.

§12–316.

Any licensee or his officer or employee who knowingly violates any provision of §§ 12-303 through 12-306, § 12-308, § 12-311, § 12-313, or § 12-314 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 6 months or both.

§12–316.1.

(a) A licensee or a person exempt from licensing under this subtitle is not subject to a penalty involving the forfeiture of interest or principal for a violation that arises because the licensee or person exempt from licensing in good faith:

(1) Performed or omitted to perform an act in conformity with or in reliance upon:

(i) A written opinion of the Attorney General of Maryland or a regulation adopted by the Commissioner;

(ii) A written opinion by the Commissioner given on request of the licensee or person exempt from licensing; or

(iii) An interpretation by the Commissioner in a written notice or examination report; or

(2) Used a form or procedure that has been approved in writing by the Commissioner and the Attorney General.

(b) The provisions of subsection (a) of this section do not apply to an act or omission to act that occurs after:

(1) The opinion, regulation, or interpretation relied on is amended, repealed, or determined to be invalid for any reason by any judicial or other authority; or

(2) Approval for a form or procedure is amended, rescinded, or determined to be invalid for any reason by any judicial or other authority.

(c) This section may not be construed to:

(1) Limit the imposition of any civil or criminal penalty for a knowing or willful violation of this subtitle; or

(2) Limit the power of the Commissioner or the courts to order a refund to a borrower of moneys collected in violation of this subtitle.

§12–317.

(a) This subtitle may be cited as the Maryland Consumer Loan Law -- Credit Provisions.

(b) This subtitle and the Maryland Consumer Loan Law -- Licensing Provisions may be cited jointly as the Maryland Consumer Loan Law.

§12–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Lender" means:

(1) A licensee; or

(2) A person who makes a secondary mortgage loan but is exempt expressly from the licensing requirements of the Maryland Mortgage Lender Law.

(c) "Licensee" means a person who is licensed under the Maryland Mortgage Lender Law.

(d) "Lien on real property" includes:

(1) A confessed judgment note or consent judgment required by a person who ordinarily requires such an instrument for the purpose of acquiring a lien on property described in subsection (i) of this section; and

(2) A sale and leaseback required by a person for that purpose.

(e) "Loan" means a secondary mortgage loan.

(f) "Net proceeds" means the difference between:

(1) The full amount of a secondary mortgage loan; and

(2) The amount of interest taken in advance on the loan plus the amount of the loan origination fee.

(g) "Payment period" means the period scheduled by the terms of a loan to elapse between the days on which installment payments are required to be made on the loan.

(h) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(i) (1) "Secondary mortgage loan" means a loan or deferred purchase price secured in whole or in part by a mortgage, deed of trust, security agreement, or other lien on real property located in the State, which property:

(i) Is subject to the lien of one or more prior encumbrances, except a ground rent or other leasehold interest; and

(ii) Has a dwelling on it designed principally as a residence with accommodations for not more than four families.

(2) "Secondary mortgage loan" does not include:

(i) A loan to any corporation unless the lender required the borrower to incorporate as a condition for obtaining the loan; or

(ii) A commercial loan of more than $75,000, as defined in § 12–101(c) of this title.

(3) If a commercial loan of $75,000 or less is made in the name of an individual, secured by owner–occupied residential real property and not to a business or commercial organization, the mortgage lender, as defined by the provisions of § 11–501 of the Financial Institutions Article, shall document independent evidence that the borrower is seeking funds for a legitimate commercial enterprise before the

lender grants any loan for that purpose. An affidavit is not by itself evidence of a commercial loan. However, if the borrower is seeking funds to start a business and has not yet incorporated or prepared documentation of proof of ownership of a commercial enterprise, an affidavit by itself is sufficient if it states the purpose for which the proceeds are to be used and the nature of the business conducted by the borrower.

(j) "Wages" means all remuneration paid to any employee for his employment, including the cash value of all remuneration paid in any medium other than cash.

§12–402.

A person may not make a loan under this subtitle unless he is licensed under or exempt from the licensing requirements of the Maryland Mortgage Lender Law.

§12–403.

(a) A person may not advertise directly or indirectly in the State any false or misleading statement regarding secondary mortgage loans or their availability.

(b) This section does not apply to the owner, publisher, operator, or employee of any publication or radio or television station which disseminates the statement without knowledge of its false or misleading character.

§12–403.1.

In granting or denying any application for a loan, a lender may not discriminate against any loan applicant solely on the basis of age. Refusal to grant a loan to an applicant who is under the age of 18 is not discrimination solely on the basis of age.

§12–404.

(a) A lender may:

(1) Make a loan in such an amount that the net proceeds of the loan equal a predetermined sum; and

(2) Take interest in advance on the full amount of the loan for the period from the date the loan is made to the date of maturity of the final installment.

(b) A lender may charge interest at any effective rate of simple interest not to exceed 16 percent per annum on the principal balance of a loan, except as provided in subsection (d) of this section.

(c) A loan shall be amortized in equal or substantially equal monthly installments without a balloon payment at maturity, except that:

(1) Payment on the loan may be reduced or suspended until all prior liens or encumbrances are wholly or partially satisfied;

(2) A lender, including a seller who takes a mortgage or deed of trust to secure payment of all or a portion of the purchase price of a residence sold to a borrower, may make a loan for the purpose of aiding the borrower in the sale of the borrower's residence or the purchase of a new residence, and may create a balloon payment at maturity of this loan if the balloon payment is:

(i) Expressly disclosed to the borrower;

(ii) Agreed to by both the borrower and the lender/seller in writing; and

(iii) Required to be postponed one time, upon becoming due, at the borrower's request, for a period not to exceed 6 months, provided that the borrower continues to make the monthly installments provided for in the original loan agreement, and no new closing costs, processing fees or similar fees are imposed on the borrower as a result of the extension; and

(3) (i) A commercial loan of $75,000 or less made under this subtitle need not be amortized in equal or substantially equal payments and may contain a balloon payment at maturity if the borrower is authorized to postpone the maturity date one time and continue to make installment payments as provided in the original loan agreement and the postponed maturity date does not exceed:

1. 24 months if the original maturity date is more than 12 months after the loan is made; or

2. 6 months if the original maturity date is 12 months or less after the loan is made.

(ii) No new closing costs, processing fees, or similar fees may be imposed on a borrower who elects to postpone the maturity date in accordance with this subsection.

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, on any loan made on or after July 1, 1982, a lender under this subtitle may charge interest not exceeding 24 percent per annum simple interest on the loan provided that:

(1) The interest is computed on the unpaid principal balances outstanding from time to time;

(2) The lender does not contract for, charge, or receive any interest in advance or any compounded interest;

(3) If the loan is a renewal or refinancing of a loan made prior to July 1, 1982, the lender complies with § 12-116 of this title;

(4) If the loan includes a provision for a rate of interest which may be adjusted by the lender during the term of the loan, the lender complies with § 12-118

of this title; and

(5) If the loan is for the purchase of consumer goods, the loan contract complies with § 12-117 of this title.

§12–404.1.

Notwithstanding the provisions of §§ 12-404, 12-405(a), and 12-411 of this subtitle, a lender may impose and collect, as a condition of making a loan, all fees, discounts, points, or other charges that lenders are permitted or required to impose, collect, or pay pursuant to a federal law providing for a program of mortgage purchases or loans originated pursuant to a State or local governmental program of direct lending or mortgage purchase, or by any federal agency or instrumentality or subsidiary thereof, including but not limited to the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Reserve Bank, the Federal Home Loan Bank, and the Farmers Home Administration, if the following conditions are met:

(1) The loan is eligible for purchase pursuant to a commitment or offer to purchase by the federal, State, or local government agency, instrumentality, or subsidiary; and

(2) (i) The sum of the fees, discounts, points, or other charges imposed plus the interest rate on the loan does not exceed 24 percent; and

(ii) The fees, discounts, points, or other charges imposed and the interest rate on the loan do not exceed those allowed by the applicable federal law providing for the mortgage purchase program.

§12–405.

(a) (1) A lender may collect a loan origination fee for making a loan under this subtitle only as provided in this section.

(2) The aggregate amount of the loan origination fee imposed by a lender under this section when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this title may not exceed the greater of:

(i) $500 or 10 percent of the net proceeds of a commercial loan of $75,000 or less made under this subtitle; or

(ii) $250 or 10 percent of the net proceeds of any other loan made under this subtitle.

(3) A lender may not collect from the borrower any other commission, finder's fee, or point for obtaining, procuring, or placing a loan under this subtitle.

(4) A lender who utilizes the provisions of § 12-404.1 of this subtitle,

relating to federal second mortgage purchase programs, is not entitled to the origination fee provided for in paragraph (2) of this subsection in addition to the fees, discounts, points, or charges allowed under § 12-404.1(2) of this subtitle. All other second mortgage programs in this State are limited to the charges and fees provided in paragraph (2) of this subsection.

(b) A lender may collect the fees paid to a public official or governmental agency for recording or satisfying the instrument securing the loan.

(c) (1) A lender may collect from the borrower a delinquent or late charge of the greater of $2 or 5 percent of the amount of any delinquent or late periodic installment, if:

(i) The delinquency has continued for at least 10 days; and

(ii) A delinquent or late charge has not already been charged for the same delinquency.

(2) The lender shall deduct the charge from the next payment made by the borrower.

§12–406.

(a) Except as permitted by § 12-405(a) of this subtitle, any commission, finder's fee, or point shall be paid by the lender, and may be paid only to:

(1) A licensed real estate broker;

(2) A lawyer licensed to practice law in the State; or

(3) A licensee.

(b) An agreement to pay a commission, finder's fee, or point may not be enforced unless it is in writing and signed by the lender.

§12–407.

(a) (1) In this section the following words have the meanings indicated.

(2) "Commissioner" has the meaning stated in § 12–301(b) of this article.

(3) "Cost of the loan" means the total amount of:

(i) As nearly as the same can be determined, the charges payable by the borrower for the loan under §§ 12–405(a) and (b) and 12–410 of this subtitle; and

(ii) The interest which will be charged if the loan is carried to maturity.

(b) At the time a loan is made, the lender shall deliver to the borrower a statement in a form required by the Commissioner that complies with § 12–106(b) of this title.

(c) (1) Except as provided in paragraph (2) of this subsection, at the time a lender receives a payment on account of a loan, the lender shall give to the borrower a plain and complete receipt for the payment.

(2) If the payment is made by personal check, money order, cashier's check, or treasurer's check, the lender need give a receipt to the borrower only on the request of the borrower.

(d) (1) A lender shall permit a borrower to prepay a loan in full or in part at any time, without penalty.

(2) If a borrower prepays a loan in full, he shall receive a refund credit for the interest taken in advance. The amount of the refund shall be calculated in accordance with subsection (f) of this section.

(e) (1) After full repayment of a loan, the lender shall:

(i) Indelibly mark with the word "paid" or "canceled" and return each note or other paper signed by the borrower; and

(ii) Release the mortgage, deed of trust, security agreement, or other lien.

(2) The lender shall prepare the release of the mortgage, deed of trust, security agreement, or other lien at his own expense.

(f) If interest charged pursuant to this subtitle in respect of a loan to a borrower has been precomputed, then, in the event of prepayment of the entire loan, the lender shall refund or credit to the borrower the unearned portion of the precomputed interest charge. This refund or credit shall be in an amount not less than the amount which would be refunded or credited if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower may not be entitled to a refund or credit of less than $5. The unearned portion of the precomputed interest charge is, at the option of the lender, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled, or, if deferred, all deferred payment periods, or portions of payment periods, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each period, or portion of a period, had the loan not been precomputed, by applying to the unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The lender, at its option, may round this annual percentage rate to the nearest 1/4 of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

§12–407.1.

(a) The Commissioner shall develop and prepare a form that each lender shall furnish to an applicant for a secondary mortgage loan. The form shall state the following:

(1) The purpose for which the loan is to be used;

(2) A disclosure that, if the loan is for a commercial purpose, the borrower shall forfeit certain rights.

(b) The form shall state that the forfeiture of rights includes:

(1) The borrower's right to pay a loan origination fee that, when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this title, does not exceed the greater of:

(i) $500 or 10 percent of the net proceeds of a commercial loan of $75,000 or less made under this subtitle; or

(ii) $250 or 10 percent of the net proceeds of any other loan made under this subtitle;

(2) The borrower's right not to pay any other commission, finder's fees, or points for obtaining, procuring, or placing a loan; and

(3) The borrower's right not to pay an interest rate greater than 24 percent.

(c) This section does not prevent a lender from imposing fees, discounts, points, or other charges whenever permitted under § 12-404.1 of this subtitle concerning mortgage loan programs of state and federal agencies.

(d) Compliance with the provisions of this section does not relieve the lender or mortgage broker from the provisions of § 12-401(i)(3) of this subtitle.

§12–408.

A lender may not refinance a loan more often than:

(1) Once during any twelve-month period of the loan; and

(2) Twice during any five-year period of the loan.

§12–409.

An instrument which evidences or secures a loan may not contain any:

(1) Acceleration clause under which any part or all of the unpaid balance of the loan not yet matured may be declared due and payable for any reason other than default by the debtor in the payment or in another required term of the instrument;

(2) Provision by which the debtor waives any right accruing to him under the provisions of this subtitle; or

(3) Assignment or order for the payment of wages, whether earned or to be earned.

§12–409.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership Equity Protection Act set forth in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026.

(3) "Fully indexed rate" means the index rate, as defined in the secondary mortgage loan documents, prevailing at the time the secondary mortgage loan is approved by the lender, plus the margin that will apply after the expiration of an introductory interest rate.

(4) "Home buyer education or housing counseling" means instruction on preparing for home ownership, shopping for a home, obtaining a mortgage, loan closing, and life as a homeowner.

(b) A lender may not make a secondary mortgage loan without giving due regard to the borrower's ability to repay the secondary mortgage loan in accordance with its terms, including the fully indexed rate of the secondary mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

(c) (1) Due regard to a borrower's ability to repay a secondary mortgage loan must include:

(i) Consideration of the borrower's debt to income ratio, including existing debts and other obligations; and

(ii) Verification of the borrower's gross monthly income and assets by review of third–party written documentation reasonably believed by the lender to

be accurate and complete.

(2) Acceptable third–party written documentation includes:

(i) The borrower's Internal Revenue Service form W–2;

(ii) A copy of the borrower's income tax return;

(iii) Payroll receipts;

(iv) The records of a financial institution; or

(v) Other third–party documents that provide reasonably reliable evidence of the borrower's income or assets.

(3) This subsection does not apply to a secondary mortgage loan:

(i) Approved for government guaranty by the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration; or

(ii) That refinances an existing mortgage loan if the refinance mortgage loan is:

1. Offered under the federal Homeowner Affordability and Stability Plan; and

2. Made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(d) (1) In this subsection, "loan application" has the meaning stated in § 12–125 of this title.

(2) At the time a borrower completes a loan application for a covered loan, the lender shall provide the borrower with:

(i) A written recommendation that the borrower seek home buyer education or housing counseling; and

(ii) A list of agencies and organizations approved by the county in which the residential real property securing the covered loan is located to provide home buyer education or housing counseling.

§12–410.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle

that meets the criteria for a loan subject to the federal Home Ownership and Equity Protection Act set forth in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026.

(3) "Credit health insurance" has the meaning stated in § 13–101 of the Insurance Article.

(4) "Credit involuntary unemployment benefit insurance" has the meaning stated in § 13–101 of the Insurance Article.

(5) (i) "Credit life insurance" means insurance on the life of a borrower that provides indemnity for repayment of a specific loan or credit transaction on the death of the borrower.

(ii) "Credit life insurance" does not include life insurance payable to a beneficiary designated by the borrower other than the obligee of a specific loan or credit transaction.

(6) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(7) "Premium" has the meaning stated in § 1–101 of the Insurance Article.

(8) "Single premium coverage" means insurance for which the total premium is payable in one lump sum at or before the time coverage commences.

(b) Subject to the provisions of this section, a lender may require a borrower to insure and may collect from the borrower the premiums paid for insurance on:

(1) Any real property securing the loan;

(2) The life of any person obligated on the loan; and

(3) The title of any real property securing the loan.

(c) Subject to the provisions of this section, the licensee may collect from the borrower, at the borrower's option, the premiums paid for credit health insurance covering any one borrower obligated on the loan. The insurance may not provide benefits exceeding the actual period of disability.

(d) (1) Subject to the provisions of subsections (e), (f), (g), and (h) of this section, a lender may collect from a borrower, at the option of the borrower, the premiums paid for credit involuntary unemployment benefit insurance covering the borrower.

(2) The availability of credit involuntary unemployment benefit

insurance to a borrower may not be made contingent on the purchase of any other type of insurance permitted under this section.

(e) (1) Except as provided in this subsection, a lender making a covered loan may not finance as a part of the covered loan transaction single premium coverage for:

(i) Credit health insurance;

(ii) Credit involuntary unemployment benefit insurance; or

(iii) Credit life insurance.

(2) Nothing in this subsection shall prohibit the financing of any insurance coverage in connection with a mobile home or its premises, as those terms are defined in § 8A-101 of the Real Property Article.

(f) (1) (i) 1. In this paragraph the following words have the meanings indicated.

2. "Improvements" means buildings or structures erected upon or affixed to real property that enhance the value of the real property.

3. "Property insurance coverage" means property insurance against losses caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage".

4. A. "Replacement cost" means the amount needed to repair damage to or rebuild improvements on real property to restore the improvements to their pre-loss condition.

B. "Replacement cost" does not include the value of land.

(ii) A lender may not require a borrower, as a condition to receiving or maintaining a secondary mortgage loan, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement cost of the improvements on the real property.

(iii) In determining the replacement cost of the improvements on any real property, the lender may:

1. Accept the value placed on the improvements by the insurer; or

2. Use the value placed on the improvements by the lender's appraisal of the improvements.

(iv) Any property insurance coverage required by a lender shall bear

a reasonable relation to the existing risk of loss.

(v) A violation of this paragraph or of subsection (h) of this section shall entitle the borrower to:

1. Seek an injunction to prohibit the lender who has engaged or is engaging in the violation from continuing or engaging in the violation;

2. Reasonable attorney's fees; and

3. Damages directly resulting from the violation.

(vi) A violation of this paragraph or of subsection (h) of this section does not affect the validity of the mortgage or deed of trust securing the secondary mortgage loan.

(2) The amount of credit life insurance may not exceed the total original amount payable under the loan contract.

(3) The credit health insurance shall provide:

(i) Benefits not exceeding the then scheduled unpaid total of payments of the loan;

(ii) A waiting period for the collection of benefits of at least 14 days; and

(iii) Periodic benefits, the amount of each of which may not exceed the originally scheduled total of payments under the loan contract, divided by the number of installments.

(4) The credit involuntary unemployment benefit insurance may not provide that:

(i) The periodic benefits shall continue for a period exceeding the actual period of the borrower's involuntary unemployment; or

(ii) The aggregate amount of periodic benefits payable in the event of a borrower's involuntary loss of employment shall exceed the scheduled unpaid total of payments remaining on the loan on the date of the borrower's involuntary loss of employment.

(5) A lender may not require a borrower to purchase credit involuntary unemployment benefit insurance as a condition of obtaining a loan.

(g) Under this subtitle, insurance may be obtained only:

(1) From an insurance company qualified to do business in the State; and

(2) At rates not exceeding those approved by the Insurance Administration.

(h) A lender may not require the borrower to purchase any insurance:

(1) Through a particular insurance producer or insurance company; or

(2) From the lender.

§12–411.

A lender may not directly or indirectly, contract for, charge, or receive, any interest, discount, fee, fine, commission, brokerage, charge, or other consideration in excess of that permitted by this subtitle.

§12–412.

A lender may not make or offer to make any secondary mortgage loan except within the terms and conditions authorized by this subtitle.

§12–413.

Except for a bona fide error of computation, if a lender violates any provision of this subtitle he may collect only the principal amount of the loan and may not collect any interest, costs, or other charges with respect to the loan. In addition, a lender who knowingly violates any provision of this subtitle also shall forfeit to the borrower three times the amount of interest and charges collected in excess of that authorized by law.

§12–414.

Any lender, his officer or employee and any other person who willfully violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding one year or both.

§12–415.

This subtitle may be cited as the Maryland Secondary Mortgage Loan Law.

§12–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Account" means a retail credit account.

(c) (1) "Buyer" means a person who, under a retail credit account transaction, buys goods or obtains services from a seller not principally for the purpose of resale.

(2) "Buyer" includes:

(i) A person who enters into a prior agreement with a financial institution by which the financial institution agrees to pay the debts of the buyer as they accrue at various retail sellers designated by the financial institution, in consideration of which the buyer pays to the financial institution the cash sale price and the finance charge; and

(ii) A prospective buyer.

(d) (1) "Cash sale price" means the price for which the seller would sell or furnish to the buyer the goods or services which are the subject of a retail credit account if the sale were a sale for cash and not under the account.

(2) "Cash sale price" includes any taxes and charges for delivery, installation, servicing, repair, alteration, or any improvement which is supplied or rendered in connection with the sale.

(e) "Closed end account" means a retail credit account in which the finance charge is computed in advance and assessed on the original unpaid balance of the purchase price.

(f) "Finance charge" means the amount, however expressed, in excess of the cash sale price which a seller or financial institution charges a buyer for the privilege of purchasing goods or services in a retail credit account transaction.

(g) (1) "Financial institution" means a person who enters into an agreement with a buyer by which the person agrees to extend credit to the buyer and apply it as directed by him by use of a credit card which the person issues to the buyer.

(2) "Financial institution" includes an incorporated bank, savings institution, and trust company.

(h) (1) "Goods" means any tangible personal property purchased primarily for personal, family, or household purposes, including any certificate or coupon exchangeable for it.

(2) "Goods" includes goods which at or after the time of sale are affixed to real property or become a part of it, whether or not severable from it.

(3) "Goods" does not include any:

(i) Tangible personal property purchased primarily for industrial, commercial, or agricultural purposes;

(ii) Motor vehicle, as defined in the State Motor Vehicle Law; or

(iii) Home improvement, as defined in the Maryland Home Improvement Law, or any transaction under that law.

(i) "Holder" means a person, including a seller and a financial institution, entitled to enforce a retail credit account against a buyer.

(j) "Open end account" means a retail credit account in which the finance charge is assessed on the outstanding balances from month to month.

(k) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(l) (1) "Retail credit account" means an agreement or transaction for the retail sale of goods or services, which is negotiated or entered into and pursuant to which a time sale price is established.

(2) "Retail credit account" includes credit card financing by a financial institution.

(m) "Seller" means a person regularly engaged in the business of selling goods to retail buyers.

(n) (1) "Services" means work, labor, and services furnished primarily for personal, family, or household purposes.

(2) "Services" includes:

(i) Services furnished in connection with the improvement of real property; and

(ii) Contributions to a "charitable organization" as defined in the Maryland Charitable Solicitations Act.

(3) "Services" does not include any:

(i) Work, labor, or service furnished primarily for industrial, commercial, or agricultural purposes; or

(ii) Service for which the tariff, rate, charge, cost, or expense, including in each instance the time sale price, is required by law to be filed with or approved by the United States, the State, or any department, division, commission, or agency of either.

(o) "Time sale price" means the total of the cash sale price and the amount of the finance charge.

§12–502.

(a) Each retail credit account established after May 31, 1967 shall comply with this subtitle.

(b) (1) Notwithstanding any situs of contract specified in it, a retail credit account is made in this State and is subject to this subtitle if:

(i) The seller offers or agrees in this State to sell to a resident buyer of this State; or

(ii) The resident buyer of this State accepts or makes the offer in this State to buy.

(2) A verbal or written solicitation or communication to sell that originates outside the State but that is forwarded to and received in the State by a resident buyer of this State shall be construed as an offer or agreement to sell in this State.

(3) A verbal or written solicitation to buy that originates in this State from a resident buyer of this State and that is forwarded to and received by a retail seller outside this State shall be construed as an acceptance or offer to buy in this State.

(c) This subtitle does not apply to an installment sale agreement, as defined in § 12-601 of this title, relating to goods, as defined in that section, regardless of the cash sale price of the goods.

§12–503.

(a) A retail credit account may be established by a seller or financial institution only on the request of a buyer or with his consent.

(b) (1) A seller or financial institution may not discriminate solely on the basis of sex, marital status, geographic area of residence, neighborhood of residence, or age against a buyer who wishes to establish an account. Refusal to establish an account for a buyer who is under the age of 18 is not discrimination solely on the basis of age.

(2) An application, questionnaire, or other written document used to establish credit for an applicant may not contain any reference to the race, creed, color, or national origin of the applicant.

(3) An investigation made for the purpose of establishing credit for an applicant may not contain any information pertaining to the race, creed, color, or national origin of the applicant.

(c) For the purpose of considering the eligibility of a buyer for an extension of credit, a seller or financial institution shall consider alimony or child support awarded by a court and received by the buyer as income to the buyer.

(d) (1) If a seller or financial institution establishes an account for the use of a buyer, the seller or financial institution shall confirm the fact to the buyer in writing. The confirmation shall be in type no smaller than elite typewriter characters and shall contain:

(i) A clear and understandable statement of the amount or the rate of the finance charge;

(ii) A legend that the buyer may pay at any time the entire balance without incurring any additional charge for prepayment;

(iii) A statement which advises the buyer of his right under § 12-510 of this subtitle to an answer to a written inquiry concerning the status of his account; and

(iv) Unless set out in a copy of the application form delivered to the buyer, the legend required by subsection (e)(2) of this section.

(2) If no copy of the confirmation is retained by the seller or financial institution, a notation in the permanent records of the seller or financial institution which shows that the confirmation was mailed and the date of mailing is admissible as evidence of the mailing.

(e) (1) A retail credit account agreement shall be in writing and either:

(i) Signed by the buyer; or

(ii) The seller or financial institution shall have made a reasonable attempt to obtain the signature of the buyer to the agreement.

(2) A legend stating that finance charges will be made in amounts or at rates not in excess of those permitted by law shall be printed in type no smaller than elite typewriter characters in both:

(i) The application form used by the seller or financial institution; and

(ii) A copy of either the application form or the confirmation delivered or mailed to the buyer when the retail credit account is established.

(f) Before the first payment on an account is due, other than any down payment, and within 40 days after each purchase, the holder of a retail credit account shall inform the buyer in writing of:

(1) The cash sale price of the goods or services purchased;

(2) The amount of any down payment;

(3) A general description of the type of goods or services and the date of each purchase;

(4) If the account is a closed end account:

(i) The amount of the finance charge;

(ii) The time sale price;

(iii) The amount of each installment due, expressed in dollars; and

(iv) The time or period of the payment of each installment; and

(5) If the account is an open end account:

(i) The amount or the rate of the finance charge on the outstanding balance; and

(ii) The method of determining the outstanding balance pursuant to § 12-506(c) of this subtitle.

(g) Unless the buyer previously received written notice by coupon, book, or otherwise of the amount of the payment and the amount of the unpaid balance after the payment, the holder of a retail credit account shall inform the buyer in writing, within 40 days after each payment, of:

(1) The total amount remaining due to the seller; and

(2) The total amount paid by the buyer since the last written notice.

(h) The buyer under an open end retail credit account may request in writing, not more frequently than once each year, that the holder of the account inform the buyer of the total amount of finance charges assessed on the account during the preceding calendar year and the holder shall so advise the buyer in writing within 30 days of the request.

(i) The holder of a retail credit account shall disclose his address and telephone number on each billing statement for the use of the buyer for status and billing inquiries under §§ 12-510 and 12-511 of this subtitle.

(j) Except as otherwise provided in this section, the information required by this section may be stated in any sequence, order, or form and in one or more documents. Additional items may be included with the information to explain the computations made in determining the amount to be paid by the buyer.

§12–504.

(a) Notwithstanding any other statutory law, a seller, financial institution, or the successor in interest of either may charge, collect, and receive under a retail credit account a finance charge, however described, not to exceed the amounts permitted in §§ 12-505 and 12-506 of this subtitle.

(b) If the date of performance or delivery of an item or service is more than 10 days from the date of purchase, the finance charge shall be computed from the date of performance or delivery.

§12–505.

(a) In a closed end account, the finance charge may not exceed the greater of:

(1) An amount computed using the following annual simple interest rates of finance charge:

(i) 22 percent on that part of the outstanding balance not exceeding $1,000; and

(ii) 18 percent on that part of the outstanding balance exceeding $1,000; or

(2) A minimum charge of $10 or, if the due date of the last installment is eight months or less after the effective date of the retail credit account agreement, $8.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, in a closed end account made on or after July 1, 1982, the finance charge may not exceed 24 percent per annum simple interest.

(b) (1) In a closed end account, the finance charge may be computed:

(i) On the actual unpaid principal outstanding from time to time; or

(ii) In advance, at the time the purchase is made, by adding to the original unpaid balance the amount of finance charge that would be earned if the account were repaid exactly according to its terms at the rate stated in subsection (a) of this section.

(2) Nothing in this section shall be construed to prohibit any particular method of computing the finance charge on a closed end account so long as the amount of the finance charge does not result in a rate of charge in excess of that permitted by subsection (a) of this section.

(c) Amounts due under a closed end account may be payable in successive monthly, semimonthly, or weekly installments.

(d) As part of the regular practice of a holder, he may include fractional periods of 15 days or more as a whole month if he also entirely excludes fractional periods of 14 days or less.

(e) (1) A buyer may prepay at any time, without penalty, all or any part of the outstanding balance of a closed end account.

(2) Except as provided in paragraph (4) of this subsection, if the buyer pays the balance in full before maturity, the holder immediately shall refund to him a portion of the finance charge, including the charge provided in subsection (a)(2) of this section.

(3) The amount of the refund shall be calculated in accordance with subsection (g) of this section.

(4) If a prepayment is made, the holder is entitled to retain a finance charge of at least $6. If the amount of credit for prepayment is less than $1, no refund need be made.

(f) (1) The holder of a closed end account on which the finance charge is computed in advance may:

(i) By agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or part of the installments payable under it; and

(ii) Charge the buyer an extension or deferral charge.

(2) The extension or deferral charge may not exceed an amount equal to 1 percent per month of the amount extended or deferred for the period of extension or deferral.

(3) The period of extension or deferral may not exceed the period from the date when the extended or deferred amount would have been payable in the absence of the extension or deferral to the date when the amount is made payable under the agreement of extension or deferral.

(g) If interest charged pursuant to this subtitle in respect of a loan to a buyer has been precomputed, then, in the event of prepayment of the entire loan, the holder shall refund or credit to the buyer the unearned portion of the precomputed interest charge. This refund or credit shall be in an amount not less than the amount which would be refunded or credited if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the buyer may not be entitled to a refund or credit of less than $5. The unearned portion of the precomputed interest charge is, at the option of the holder, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions of payment periods, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each period, or portion of a period, had the loan not been precomputed, by applying to the unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The holder at its option, may round this annual percentage rate to the nearest 1/4 of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

§12–505.1.

Any closed end account made prior to July 1, 1982 which is refinanced at a higher rate pursuant to § 12-505(a)(3) of this subtitle must comply with the following requirements:

(1) The holder must give the following disclosure in writing to the buyer prior to the execution by the buyer of the new retail credit account agreement:

If you do agree to consolidate your existing account, you will be paying an annual percentage rate of ..... on the existing net balance of $....., instead of the rate of ..... which you are now paying.

Schedule of Monthly Payments

Separate Account Agreements	Consolidated Account Agreement
$..... per month for the next ..... months	$..... per month for the next ..... months

then

$..... per month for ..... months after that

Total of Payments

Separate Account Agreements	Consolidated Account Agreement
$..... total of payments for your existing account ..... total of payments for your new account	$..... total of payments for your consolidated account

(2) The holder must allow the buyer the choice of repaying his existing account balance at the originally agreed upon rate and obtaining any additional extension of credit as a separate account, notwithstanding any law which limits the holder's ability to establish more than 1 account for the same buyer;

(3) An account may be refinanced only upon the buyer's request;

(4) The holder must refund or credit to the buyer's account any unearned finance charge and any returned insurance premiums upon the cancellation of insurance sold in connection with the obligation;

(5) The holder must allow the buyer the right to cancel the consolidated

purchase agreement within 3 business days and to elect the separate account option pursuant to subsection (2). The holder shall provide to the buyer conspicuous notice of the provisions of this subsection; and

(6) Nothing in this subsection shall prohibit the receipt of goods or services by the buyer at the time the consolidated purchase agreement is made.

§12–505.2.

A seller or holder may not enter into a closed end retail credit account agreement, providing for an initial rate of finance charge pursuant to § 12-505(a)(3) of this subtitle, which contains a provision that permits the seller or holder to increase or decrease the applicable rate of finance charge from time to time during the term of the account.

§12–505.3.

With respect to a closed end retail credit account established at a rate pursuant to § 12-505(a) of this subtitle, the agreement may not provide for a balloon payment.

§12–506.

(a) In an open end account:

(1) The finance charge may not exceed 1.5 percent a month on that part of the outstanding balance not exceeding $700;

(2) The finance charge may not exceed 1 percent per month on that part of the outstanding balance exceeding $700;

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subsection, the finance charge may not exceed 2 percent per month on that part of the outstanding balance originating on or after July 1, 1982;

(4) Including a credit card plan that provides for sales, cash advances, or both, the buyer or borrower may not be required to pay a membership fee for the privilege of participating in the plan;

(5) If made at a rate pursuant to paragraph (3) of this subsection, the seller or holder may not contract for, charge, or receive any compounded interest or compounded finance charge; and

(6) A seller or financial institution may assess either, but not both:

(i) A finance charge equal to the rate of interest charged on past due accounts as provided in the agreement; or

(ii) A late payment charge.

(b) In an open end account, if a finance charge is applied to all outstanding

balances within a range not exceeding $10, the finance charge may be computed on the basis of the median amount within the range.

(c) For the purpose of computing the outstanding balance of an open end account subject to the finance charge, the outstanding balance:

(1) On any day may not exceed the sum of the total charges to the account less the amounts paid or credited to the account before that day; or

(2) May be computed by the average daily balance method except that a finance charge may not be assessed on an account if the outstanding balance is paid in full 25 days after the billing cycle.

(d) In an open end account, (1) the finance charge in any given month may not exceed an amount which may be assessed pursuant to subsection (c)(2) of this section; and (2) if there is no balance at the beginning of a billing cycle, a finance charge may not be assessed on any charge added to the account during that billing cycle from the date of purchase to the end of that billing cycle.

(e) A finance charge for a monthly period may not be imposed on an open end account unless the periodic statement for that month is mailed to the buyer at least 15 days before the end of the next billing cycle.

(f) (1) If a seller or financial institution establishes two or more open end accounts for an individual buyer, the seller or financial institution may not impose a higher rate of finance charge than would be obtained if there was but one open end account between the buyer and the seller or financial institution.

(2) A seller does not establish two open end accounts within the meaning of this subsection solely because the seller accepts payment from a financial institution, as directed by a buyer by use of a credit card issued to the buyer by the financial institution, and also establishes an account directly payable to him by the buyer.

(g) Regardless of the date of actual posting of a payment to an account, the payment shall be credited to the customer's account as of the date the payment is received by the creditor, and no finance charge, late payment charge, or other charge shall be imposed with respect to the amount of the payment which is properly received by the creditor on or before the time indicated by the creditor as necessary to avoid imposition thereof, provided that:

(1) If a creditor fails to post the customer's payment in time to avoid the imposition of finance charges, late payment charges, or other charges, the creditor shall adjust the customer's account so that the finance charges, late payment charges, or other charges are credited to the account during the customer's next billing cycle.

(2) For the purposes of paragraph (g) of this section the creditor may specify on the periodic statement or on accompanying material that need not be retained by the customer, reasonable requirements with respect to the form, amount,

manner, location, and time for receipt of payments, except that:

(i) If no particular hour of the day has been clearly specified by the creditor as the time by which payment must be received by the creditor in order to obtain crediting to the customer's account as of that date, payments received prior to the close of business on that day must be credited as of that date;

(ii) If no location(s) has been clearly specified as the location(s) at which payment may be made, then payment at any location where the creditor conducts business shall be credited as of the date payment is presented; and

(iii) If no particular manner of payment has been clearly specified, then payment by check, cash, money order, bank draft or other similar instrument in properly negotiable form shall constitute proper manner of payment.

(3) If the creditor accepts payment at locations other than those specified under paragraph (g)(2)(ii) of this section, the creditor shall credit the customer's account promptly (in no case later than five days from the date of receipt), provided that the possibility of the delay is clearly disclosed to the customer on the periodic statement or on accompanying material that need not be retained by the customer.

(4) Payments need not be credited as of the date of receipt (but in any case must be credited promptly) if a delay in crediting does not result in the imposition of any finance charges, late payment charges, or other charges for that billing cycle or a later billing cycle.

(h) (1) A seller or financial institution that imposes a finance charge in connection with an open end account may not directly or indirectly contract for, charge, or receive from the buyer any finance charge, discount, fine, commission, charge, brokerage, or other consideration on that account in excess of that permitted by this section.

(2) If a credit card plan allows for both purchases and the extension of cash advances, the charges prohibited by this section may not be imposed as to either function.

§12–506.1.

(a) In this section "credit balance" means a balance on an open end retail credit account which indicates that the buyer has made payments or obtained refunds in excess of charges, resulting in a credit due to the buyer.

(b) If there is a credit balance in excess of $1 on any retail credit account:

(1) The holder shall send to the buyer a monthly statement which indicates the amount of the credit balance; and

(2) If the credit balance remains the same after four consecutive monthly

statements, the holder shall send to the buyer a check or money order in the full amount of the credit balance.

(c) The provisions of this section shall apply only to credit balances remaining the same after four consecutive monthly statements for billing periods commencing after July 1, 1975.

§12–506.2.

Changes in the rate applicable to an open end account, including a credit card plan which provides for sales, cash advances, or both, are limited as follows:

(1) Any balance existing before July 1, 1982 is to be repaid at the then applicable rate of interest or finance charge regardless of any subsequent increase in the rate applicable to the account.

(2) If the rate applicable to any balance for which the borrower or buyer becomes obligated on or after July 1, 1982 is increased, the borrower or buyer may repay the existing balance at the rate in effect prior to the time the increase becomes effective. If the borrower or buyer increases the balance of his account by making purchases or requesting cash advances, the increased rate shall apply only to the portion of the balance incurred after the rate increases.

§12–507.

(a) If, as part of a retail credit account, a promissory note is taken by the seller or financial institution, the note shall refer to the account out of which it arises.

(b) The note may not contain a confession of judgment or any power of attorney to appear for the buyer or for any surety or guarantor for the buyer to confess judgment.

(c) If the note is assigned, it is subject to all defenses which the buyer might have asserted against the seller or financial institution.

§12–508.

If a retail credit account agreement provides for the payment of attorney's fees, that provision may permit the holder only to receive reasonable attorney's fees to be set by a court in the event of the filing of suit.

§12–509.

Notwithstanding any agreement to the contrary between a seller and the issuer of a credit card, the seller is permitted to offer a cash discount to consumers who pay cash instead of using the credit card.

§12–510.

If a buyer inquires in writing about the status of his account and the holder fails to answer the inquiry in clear and definite terms within 60 days after receiving it, the buyer is not required to pay a finance charge for that 60-day period or for any further period during which the holder fails to so answer.

§12–511.

(a) In this section, "billing error" means the initial occurrence of an error in a billing statement given to a buyer by the holder of an account, which error results from:

(1) An omission or commission by the holder in posting any debit or credit;

(2) The computation of any amount; or

(3) Any similar error of an accounting nature.

(b) The provisions of this section do not apply to a status inquiry made under § 12-510 of this subtitle if a billing error is not asserted by the buyer.

(c) If, on receipt of a billing statement from a holder, a buyer believes the billing is in error, he may inquire as to the computation of the statement. The inquiry by the buyer shall:

(1) Be made within 60 days of receipt of the billing statement which contains the claimed error;

(2) Be in writing and sent to the holder by mail at the address designated on the statement pursuant to § 12-503(i) of this subtitle; and

(3) Set forth sufficient information to enable the holder to identify:

(i) The buyer and the account;

(ii) The amount and transaction shown in the billing statement which the buyer in good faith believes to be a billing error; and

(iii) The facts providing the basis for the buyer's belief that the billing statement is in error.

(d) On receipt of an inquiry under this section, the holder shall:

(1) Within 30 days after its receipt, mail a written acknowledgement to the buyer; and

(2) Within 60 days after its receipt, before taking any action to collect the amount believed by the buyer to be a billing error:

(i) Make appropriate corrections in the account and mail to the buyer a written notice which states that the amount believed to be in error has been corrected and will be so shown on the next billing statement mailed to him; or

(ii) Send to the buyer a written notice which sets forth in a clear and definitive manner the reasons why the holder believes that the account was correctly shown in the statement.

(e) Notwithstanding the receipt of an inquiry, the holder may:

(1) Transmit to the buyer regular periodic billing statements which include the amount believed by the buyer to be a billing error; and

(2) Undertake collection of any amount which the buyer does not dispute under this section.

(f) On or before the first billing statement for a new account, the holder shall send to the buyer a written notice which describes the procedures to be followed by a buyer under this section to claim a billing error.

(g) On receipt of an inquiry under this section, until the holder has complied with the provisions of this section, he may not communicate to any person, including any credit bureau or credit reporting agency, unfavorable credit information concerning the buyer and based on the buyer's failure to pay the amount believed by him to be a billing error.

(h) If a holder of an account receives a written inquiry from a buyer under this section and fails to comply with the requirements of this section, then:

(1) If the disputed amount is not a billing error, the holder:

(i) May proceed to collect the disputed amount; and

(ii) Shall forfeit the right to collect any finance charge assessed on the account in connection with the disputed amount from the date of the mailing of the written inquiry to the date the holder complies with this section; or

(2) If the disputed amount is a billing error, the holder:

(i) May not collect the amount of the error or any finance charge on that amount; and

(ii) Is liable to the buyer for his actual damages sustained as a result of the failure of the holder to comply with this section.

§12–511.1.

A holder may not charge a buyer a fee for any reply to an account status inquiry

or billing status inquiry made under § 12-510 or § 12-511 of this subtitle.

§12–512.

No act, agreement, or statement of a buyer may constitute a valid waiver of any benefit or protection provided to him under this subtitle.

§12–513.

(a) Except as provided in subsection (b) of this section, if a holder violates any provision of this subtitle, no holder may collect or receive any finance charge from the buyer.

(b) (1) If the seller or any subsequent holder unintentionally and in good faith fails to comply with any provision of §§ 12-504 through 12-507 of this subtitle, the holder may correct the error within 10 days after:

(i) He notices it; or

(ii) The buyer notifies him in writing of the error.

(2) If the holder corrects the error within the 10-day period, he may not be subject to any penalty under this subtitle.

§12–514.

(a) If a complaint for violation of any provision of this subtitle is filed with the Commissioner of Financial Regulation, he may investigate the complaint and hold a hearing on it in accordance with § 11-413 of the Financial Institutions Article.

(b) The Commissioner shall give to the person complained against at least 10 days' written notice of the complaint and the time and place of any hearing. The notice shall be in writing and sent by registered or certified mail to his principal place of business.

(c) (1) If, after the hearing, the Commissioner finds that the person has engaged or is engaging in any act or practice prohibited by this subtitle, he shall order the person to cease and desist from the act or practice.

(2) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

(e) For purposes of this section, the Commissioner's order may not apply to any:

(1) Incorporated bank, savings institution, or trust company; or

(2) A savings and loan association.

§12–515.

Any person who knowingly violates or participates in the violation of any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 for the first offense and not exceeding $500 for any subsequent offense.

§12–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Agreement" means an installment sale agreement, a renewed or extended installment sale agreement, and any renewal, extension, or refund agreement made in connection with an installment sale agreement.

(c) (1) "Buyer" means a person who buys or leases goods under an installment sale agreement, even though the person has entered into one or more renewal, extension, or refund agreements.

(2) "Buyer" includes a prospective buyer.

(d) "Cash price" means the minimum price for which goods subject to an installment sale agreement, or other goods of like kind and quality, may be purchased for cash from the seller by the buyer.

(e) (1) "Collateral security" means any security interest in, encumbrance on, or pledge of property or goods that is given to secure performance of an obligation of a buyer or a surety for a buyer under an agreement.

(2) "Collateral security" includes the undertaking of a surety for a buyer.

(3) "Collateral security" does not include any goods or interest in goods that are the subject of an installment sale agreement.

(f) "Consumer goods" means goods bought for use primarily for personal, family, or household purposes, as distinguished from industrial, commercial, or agricultural purposes.

(g) "County" includes Baltimore City.

(h) "Debt cancellation agreement" means an agreement between a seller and a buyer which provides for cancellation of the outstanding balance payable under an installment sale agreement in the event of theft or total destruction of the motor vehicle that is the subject of the installment sale agreement minus the proceeds of any

insurance maintained on the motor vehicle or, if the buyer does not have insurance, the actual cash value of the motor vehicle at the time of loss, determined as provided in the agreement.

(i) "Down payment" includes all amounts paid in cash, credits, or the agreed value of goods, by or for a buyer and to or for the benefit of a seller at or before execution of an installment sale agreement.

(j) "Finance charge" means the amount in excess of the cash price of the goods sold, agreed on by a seller and a buyer, to be paid by the buyer for the privilege of purchasing the goods under an installment sale agreement.

(k) (1) "Goods" means all tangible personal property that has a cash price of $25,000 or less.

(2) "Goods" does not include money or things in action.

(l) "Holder" means a person, including a seller and a sales finance company, entitled to enforce an agreement against a buyer.

(m) (1) "Installment sale agreement" means a contract for the retail sale of consumer goods, negotiated or entered into in this State, under which:

(i) Part or all of the price is payable in one or more payments after the making of the contract; and

(ii) The seller takes collateral security or keeps a security interest in the goods sold.

(2) "Installment sale agreement" includes:

(i) A prospective installment sale agreement;

(ii) A purchase money security agreement; and

(iii) A contract for the bailment or leasing of consumer goods under which the bailee or lessee contracts to pay as compensation a sum that is substantially equal to or is more than the value of the goods.

(3) "Installment sale agreement" does not include:

(i) A bona fide C.O.D. transaction or a layaway agreement as defined in § 14–1101(g) of this article; or

(ii) A lease for industrial, commercial, or agricultural purposes.

(n) "Mechanical repair contract" has the meaning stated in Title 15, Subtitle 3 of the Transportation Article.

(o) "Motor vehicle" has the meaning stated in Title 11 of the Transportation Article.

(p) "Outstanding balance", when used in reference to a debt cancellation agreement, does not include:

(1) Any delinquent or deferred payments;

(2) Past due charges;

(3) Late payment charges;

(4) Unearned interest;

(5) Unearned rental payments;

(6) The portion of any financed taxes or charges, including charges for credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and mechanical repair contracts, actually refunded to the buyer or credited as a reduction to the loan balance; or

(7) By agreement of the parties, the amount of any primary insurance deductible.

(q) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(r) "Principal balance" means the sum of items described in § 12–606(b)(5), (6), and (7) of this subtitle.

(s) "Retail sale" means the sale of goods for use or consumption by the buyer or for the benefit or satisfaction that the buyer may derive from the use or consumption of the goods by another, but not for resale by the buyer.

(t) "Sales finance company" means a person who is engaged, whether by purchase, discount, pledge, loan, or otherwise, in the business of acquiring, investing in, or lending money or credit on the security of any interest in:

(1) An installment sale agreement made between other parties;

(2) A retail credit account transaction, as defined in § 12–501 of this title, made between other parties; or

(3) A transaction that deals with home improvement, as defined in § 8–101 of the Business Regulation Article, made between other parties, if collateral security is required by and given to the contractor as a condition to the transaction.

(u) "Security interest" has the meaning stated in § 1–201(37) of this article.

(v) "Seller" means a person who sells or leases or agrees to sell or lease goods under an installment sale agreement.

(w) (1) "Surety" includes a guarantor.

(2) "Surety" does not include a seller who sells, transfers, or assigns an agreement.

(x) "Time balance" means the sum of the items described in § 12–606(b)(10) and (11) of this subtitle.

(y) "Wages" means all remuneration paid to any employee for his employment, including the cash value of all remuneration paid in any medium other than cash.

§12–602.

A seller or sales finance company may not make in any advertisement, publication, display, broadcast, solicitation, or representation any false, misleading, or deceptive statement relating to:

(1) Any finance, delinquency, or extension charge or rate; or

(2) The security interest, collateral, terms, or conditions on which it will make or finance any installment agreement.

§12–603.

A seller or sales finance company may not discriminate against a buyer solely on the basis of the sex, marital status, geographic area of residence, neighborhood of residence, or age of the buyer. Refusal to grant credit to a buyer who is under the age of 18 is not discrimination solely on the basis of age.

§12–604.

An installment sale agreement shall be evidenced by an instrument in writing which contains all of the agreements of the parties. It shall be signed by all parties before the seller delivers to the buyer any of the goods covered by the agreement.

§12–605.

(a) (1) At or before the time the buyer signs an installment sale agreement, the seller shall deliver to him an exact copy of it.

(2) If the seller does not sign the copy, and if, within 15 days after the buyer signs the installment sale agreement, the seller does not deliver to the buyer a copy of it signed by the seller, the installment sale agreement and the instruments signed by the buyer are void without any action by the buyer, and the seller immediately shall refund to the buyer all of his payments and deposits.

(b) (1) Until the buyer signs an installment sale agreement and receives a copy of it signed by the seller, he has an unconditional right to cancel it and receive immediate refund of all payments and deposits made on account or in contemplation of it.

(2) The buyer's request for the refund operates as cancellation of the installment sale agreement.

(c) Until the buyer signs an installment sale agreement and receives a copy of it signed by the seller, if a payment or deposit is accepted by the seller, he immediately shall deliver to the buyer a receipt for it which clearly states in 12-point type or larger the buyer's rights under subsection (b) of this section.

(d) An acknowledgment of delivery of a copy of an installment sale agreement shall be printed in 12-point type or larger, and, if the acknowledgment is contained in the agreement, it shall be printed immediately below the signature to the agreement and independently signed.

§12–606.

(a) An installment sale agreement shall:

(1) State the full name, place of residence, and post office address of each party to it;

(2) State the date when signed by the buyer; and

(3) Contain a clear description of the goods sold sufficient to identify them readily.

(b) An installment sale agreement also shall state in simple tabular form the following separate items in the following order:

(1) The cash price of the goods sold;

(2) All charges for delivery, installation, or repair of or other services to the goods which, separate from the cash price, are included in the installment sale agreement;

(3) The sum of the cash price in item (1) and the charges for services in item (2);

(4) The amount of the buyer's down payment, together with:

(i) A statement of the respective amounts credited for cash, credits, and the agreed value of goods;

(ii) A statement of amounts actually paid or to be paid by the seller

pursuant to an agreement with the buyer, on behalf of the buyer to discharge any amount financed under an outstanding loan agreement or installment sale agreement or the unpaid portion of the early termination obligation under any lease or other obligation of the lessee, with respect to a motor vehicle or other property traded in;

(iii) A statement of the net amount available to reduce the cash price, which is item (i) of this item less item (ii) of this item; and

(iv) A description of all goods sufficient to identify them;

(5) The unpaid balance of the cash price payable by the buyer to the seller, which is item (3) less item (4);

(6) The cost to the buyer of any insurance for the payment of which credit is to be extended to the buyer, together with:

(i) The amount or extent of the insurance;

(ii) The expiration date of the insurance;

(iii) The party to whom the insurance is payable; and

(iv) A concise description of the coverage, including, if the goods sold include a motor vehicle, a definite statement in 12-point bold type or larger as to whether the insurance includes coverage for personal liability and for property damage caused to others;

(7) The amount of any official fees charged to the buyer which the seller expects to be paid to a public official for filing or recording the installment sale agreement or other instrument securing or evidencing the buyer's obligation or an equal or lesser amount for a nonfiling insurance premium at rates approved by the Insurance Commissioner and on which no commissions may be paid;

(8) The cost to the buyer of any optional debt cancellation agreement sold in connection with a motor vehicle;

(9) The principal balance owed, which is the sum of items (5), (6), (7), and (8) plus, if the amount stated in item (4)(iii) of this subsection is a negative number, add that amount as a positive number;

(10) The finance charge stated as a sum in dollars; and

(11) The time balance owed by the buyer to the seller, which is the sum of items (9) and (10), the number of installment payments required to pay it, and the amount and time of each payment.

(c) In addition to the items in subsections (a) and (b) of this section, the installment sale agreement shall:

(1) State clearly any collateral security taken for the buyer's obligation under it; and

(2) Contain the following notice in 12-point bold type or larger, directly above the space reserved in the agreement for the signature of the buyer:

Notice to Buyer

1. You are entitled to a copy of this agreement at the time you sign it.

2. Under the State law regulating installment sales, you have certain rights, among others:

(1) To pay off the full amount due in advance and obtain a partial rebate of the financing charge;

(2) To redeem the property if repossessed for a default;

(3) To require, under certain conditions, a resale of the property, if repossessed.

(d) A seller may not be deemed to be making loans for purposes of § 11-301(b)(6)(i) of the Financial Institutions Article merely by engaging in activities described in subsection (b)(4)(ii) of this section.

§12–607.

(a) A holder may not take or receive any instrument from a buyer or a surety for a buyer, which contains:

(1) Except as provided in subsection (b) of this section, any blank space to be filled in after the instrument is signed by a party to it;

(2) A confession of judgment or any power of attorney to appear for the buyer or for a surety for the buyer to confess judgment;

(3) A schedule of payments under which any installment, except the down payment, is more than double the average of all other installments, excluding the down payment, or under which the interval between any consecutive installments is less than one-half the average of all other intervals, unless the buyer is given an absolute right, on default in any of the excess or irregular installments, to have the schedule of unpaid installments, including that in default, revised to conform in both amounts and intervals to the average of all preceding installments and intervals;

(4) A provision for repossession of the goods or for the acceleration of the time when any part or all of the time balance becomes payable, if the condition of the repossession or acceleration is that the holder considers himself insecure;

(5) A provision by which the buyer waives or purports to waive a tort claim or by which the seller has the right to enter unlawfully upon any premises;

(6) A provision by which a person acting on behalf of a holder in connection with the formation or execution of an agreement is treated as an agent of the buyer; or

(7) An assignment or order for payment of wages, whether earned or to be

earned.

(b) If, at the time of its execution, an installment sale agreement contains a sufficient description of the goods as required by § 12-606 of this subtitle, further serial numbers or other identifying marks on the goods may be inserted in the agreement on delivery of the goods.

§12–608.

(a) This section applies to an installment sale agreement negotiated and entered into without personal solicitation by a salesman or other representative of a seller, if the seller's prices, terms of payment, and other terms are clearly set forth in a catalog or other printed solicitation of business which is generally available to the public and contains at least two copies of the form of the agreement.

(b) If the buyer enters into a sale described in subsection (a) of this section, all of the provisions of this subtitle apply, except that:

(1) The seller is not required to deliver a copy of the installment sale agreement to him;

(2) If the installment sale agreement received by the seller from the buyer contains blank spaces to be filled in or corrections to be made, the seller may insert or correct in the appropriate blank spaces the amounts of money and other terms set forth in the seller's catalog then in effect; and

(3) Instead of the copy of the installment sale agreement required by § 12-605 of this subtitle, the seller shall furnish to the buyer, within 15 days from the date of shipment of the goods, a written statement of the items inserted in the blank spaces.

§12–609.

(a) The finance charge imposed on the sale of a motor vehicle may not exceed an amount computed using the following annual simple interest rates of finance charge:

(1) Class 1: A new motor vehicle -- 16.5 percent on the outstanding balance;

(2) Class 2: A used motor vehicle designated by the manufacturer by a model year not more than two years before the year in which the sale is made -- 22 percent on the outstanding balance; and

(3) Class 3: A used motor vehicle designated by the manufacturer by a model year more than two years before the year in which the sale is made -- 27 percent on the outstanding balance.

(b) (1) A service or other charge not specifically provided for in this section may not be included in a retail installment sale of a motor vehicle.

(2) (i) This section does not prohibit a seller from financing the cost to the buyer of a mechanical repair contract sold in connection with a motor vehicle, provided that the cost of the mechanical repair contract is separately itemized in the financing agreement.

(ii) A seller may finance the cost of a mechanical repair contract sold in connection with a motor vehicle whether or not the motor vehicle is covered by an original manufacturer's warranty.

(3) A seller may not require a buyer of a motor vehicle, as a condition of receiving a loan, to enter a mechanical repair contract.

(4) A seller may contract for, charge for, receive, and finance the cost to the buyer of an optional debt cancellation agreement sold in connection with a motor vehicle, provided that the cost of the debt cancellation agreement is separately itemized in the financing agreement.

(c) Except for an overcharge which results from a bona fide error in computation and which is corrected within 60 days from the date of the agreement, if a holder collects a charge greater in amount than the maximum permitted by this section, he shall forfeit to the buyer all finance charges paid or payable under the agreement.

(d) (1) A holder may not collect from the buyer a greater amount for insurance than that allowed by the State Insurance Department for the insurer carrying the risk.

(2) The insurance for which the holder may collect from the buyer is limited to automobile bodily injury and property damage liability, automobile physical damage, life and accident, medical reimbursement, and nonfiling insurance.

(3) Except for an overcharge which results from a bona fide error in computation and which is corrected within 60 days from the date of the agreement, if a holder collects from the buyer a charge for insurance greater than that permitted under this subsection, he shall pay to the buyer a sum equal to ten times the amount of the overcharge.

(e) A finance charge in excess of the rates provided in this section may be imposed on the sale of new and used trucks, new and used truck tractors, new and used trailers, or new and used semitrailers purchased for industrial, commercial, or agricultural purposes.

(f) Notwithstanding subsection (a) of this section, the finance charge imposed on a motor vehicle sold under a contract may not exceed the following annual simple interest rates of finance charge:

(1) Class 1: A new motor vehicle -- 24 percent on the outstanding balance; and

(2) Class 2: A used motor vehicle designated by the manufacturer by a

model year not more than 2 years before the year in which the sale is made -- 24 percent on the outstanding balance.

(g) A seller may assign a retail installment agreement and receive a portion of the finance charge only if the fact is disclosed in the agreement. The specific amount to be received need not be disclosed.

§12–610.

Except as provided in § 12-609 of this subtitle as to a motor vehicle, and notwithstanding the provisions of any other statutory law, in the retail sale of consumer goods bought under an installment sale agreement, including any add-on contract described in § 12-618 of this subtitle, the finance charge may not exceed the greater of:

(1) An amount computed using the following annual simple interest rates of finance charge:

(i) 22 percent on that part of the outstanding balance not exceeding $1,000; and

(ii) 18 percent on that part of the outstanding balance exceeding $1,000; or

(2) A minimum charge of $10 or, if the date of the last installment is eight months or less after the effective date of the installment sale agreement, $8.

(3) Notwithstanding the provisions of subsection (1) of this section, a seller may charge a finance charge at a rate not in excess of 24 percent per annum simple interest on the outstanding balance under an installment sale agreement made on or after July 1, 1982.

§12–610.1.

Any agreement made before July 1, 1982, which is refinanced at a higher rate allowed by § 12–609(f) or § 12–610(3) of this subtitle must comply with the following requirements:

(1) The holder must give the following disclosures in writing to the buyer prior to the execution by the buyer of the new agreement:

If you do agree to consolidate your existing obligation, you will be paying an annual percentage rate of . . . .% on the existing net balance of $. . . . . ., instead of the rate of . . . . .% which you are now paying.

Schedule of Monthly Payments

Separate Purchase Agreements	Consolidated Purchase Agreement
$ . . . . per month for the next . . . . months then $ . . . . per month for . . . . months after that	$ . . . . per month for the next . . . . months

Total of Payments

Separate Agreements	Consolidated Agreement
$ . . . . total of payments for your existing purchases . . . . total of payments for your new purchases	$ . . . . total of payments for your consolidated purchases

(2) The holder must allow the buyer the choice of repaying his existing purchase balance at the originally agreed upon rate and obtaining any additional extension of credit as a separate agreement, notwithstanding any law which limits the holder's ability to have more than 1 agreement with the same buyer;

(3) An existing balance may be refinanced only upon the buyer's request;

(4) The holder must refund or credit to the buyer's account any unearned finance charge and any returned insurance premiums upon the cancellation of insurance sold in connection with the purchases;

(5) The holder must allow the buyer the right to cancel the consolidated purchase agreement within 3 business days and to elect the separate account option pursuant to subsection (2). The holder shall provide to the buyer conspicuous notice of the provisions of this subsection; and

(6) Nothing in this subsection shall prohibit the receipt of goods or services by the buyer at the time the consolidated purchase agreement is made.

§12–610.2.

A holder may not enter into a retail installment sales agreement, providing for an initial rate of finance charge pursuant to § 12-609(f) or § 12-610(3) of this subtitle, which contains a provision that permits the holder to increase or decrease the applicable rate of finance charge from time to time during the term of an agreement.

§12–611.

(a) (1) The finance charge under an installment sale agreement relating to

consumer goods or a motor vehicle may be computed:

(i) On the actual unpaid principal outstanding from time to time; or

(ii) In advance, at the time the agreement is made, by adding to the principal balance the amount of the finance charge that would be earned if the installment sale agreement were repaid exactly according to its terms at the applicable rate.

(2) Nothing in this subtitle shall be construed to prohibit any particular method of computing the finance charge on an installment sale agreement so long as the amount of the finance charge does not result in a rate of finance charge in excess of that permitted by § 12-609 or § 12-610 of this subtitle, as applicable.

(b) Amounts due under an installment sale agreement relating to consumer goods may be payable in successive monthly, semimonthly, or weekly installments.

(c) As part of the regular practice of a holder, he may include fractional periods of 15 days or more as a whole month if he also entirely excludes fractional periods of 14 days or less.

(d) Unless the buyer has notice of an assignment of an installment sale agreement relating to consumer goods, his payments to the last known holder of the agreement shall discharge his obligation to the extent of the payments.

§12–612.

(a) Notwithstanding the provisions of § 12-601(k) of this subtitle, for the purposes of this section, "goods" means any personal property bought for use primarily for personal, family, or household purposes regardless of the cash price of the goods.

(b) A buyer may prepay at any time, without penalty, all or part of the outstanding balance payable under an installment sale agreement relating to consumer goods.

(c) (1) Except as provided in subsection (d) of this section, if the buyer pays the balance in full before maturity, the holder immediately shall refund to him a portion of the finance charge, including the charge provided for in § 12-610(2) of this subtitle.

(2) The amount of the refund shall be calculated according to the actuarial method based on the original schedule of payments.

(d) If a prepayment is made, the holder is entitled to retain a finance charge of at least $6.

(e) If the amount of the credit prepayment is less than $1, no refund need be made.

§12–613.

(a) The provisions of this section are in addition to and not in substitution for any other applicable provision of statutory law.

(b) If a holder undertakes at the expense of the buyer to sell, purchase, or supply insurance on the goods sold, the amount charged the buyer for the insurance may not exceed the lesser of:

(1) The premium actually payable by the holder; or

(2) The rate charged for similar insurance coverage by those companies whose rates are promulgated by a nationally recognized organization of underwriters.

(c) (1) If the buyer is charged for insurance, the holder shall deliver or mail to the buyer at his address shown on the agreement, within 25 days after delivery of the goods, a copy of each insurance policy or an owner's certificate representing the policy, which sets forth:

(i) The amount of the premium, type of insurance, scope of coverage, and each term, exception, limitation, restriction, and condition of the insurance contract; and

(ii) If the goods sold include a motor vehicle, a definite statement in 12-point bold type or larger as to whether the insurance includes coverage for personal liability and for property damage caused to others.

(2) If the holder assigns the agreement and has not complied with the requirements of this subsection, the assignee shall deliver or mail in like manner to the buyer the copy or certificate, within the same period or within five days after the assignment, whichever is later.

(d) Each cancellation, surrender, or other refund and each dividend received under the insurance policy by the holder immediately shall be remitted to the buyer or credited against any amount then due by the buyer to the holder under the agreement.

(e) (1) If the amount charged for insurance exceeds the amount authorized by subsection (b) of this section, the buyer may deduct the overcharge from the amount of any payment.

(2) If the buyer does not deduct the overcharge from his payment, the holder shall credit the amount of the overcharge against the last installment or installments under the agreement.

(f) (1) If the seller or his assignee does not comply with the requirements of subsection (c) of this section, the buyer may deduct the full amount charged to him for the insurance from the amount of any payment.

(2) If the buyer does not deduct the amount charged from his payment, the holder shall credit the amount charged against the last installment or installments under the agreement.

§12–614.

(a) Except as provided in subsection (b) of this section, a holder may not directly or indirectly contract for, charge, or receive from a buyer or a surety for a buyer on account of or in connection with any agreement, any charge or amount for the extension of credit, interest, fees, commissions, delinquency, collection, repossession, and foreclosure or otherwise.

(b) A holder may charge the buyer the following charges or fees:

(1) Subject to the provisions of § 12-630 of this subtitle, the time balance of an installment sale agreement;

(2) If allowed by a court as costs, the official fees paid to a public official in connection with a proceeding to:

(i) Recover possession of the goods;

(ii) Enforce any obligation of the buyer or his surety; or

(iii) Realize on any security interest or collateral security;

(3) If no charge was made in the agreement on account of the insurance for the period covered, the premiums for insurance as provided by § 12-613 of this subtitle;

(4) The amount paid for copies of agreements and statements of accounts pursuant to § 12-621 of this subtitle;

(5) Charges permitted by:

(i) §§ 12-623 and 12-626 of this subtitle for delinquencies and repossession expenses; and

(ii) Law for extensions and refunds; and

(6) An amount not exceeding $15 if payment is made with a check that is dishonored on the second presentment.

§12–615.

(a) (1) If, in addition to any down payment, a buyer is required under an installment sale agreement to make a payment to a seller before the seller is obligated to deliver the goods sold, the buyer may cancel the installment sale agreement before delivery or tender of the goods by the seller.

(2) Notwithstanding any provision of the installment sale agreement, if it is canceled pursuant to this subsection, the seller shall refund to the buyer within ten days after notice of the cancellation an amount equal to at least 90 percent of all payments made by the buyer under the installment sale agreement, including any down payment.

(b) If, because of a down payment made under an installment sale agreement, the buyer is entitled to delivery of the goods before making any further payment and the buyer refuses to accept delivery of the goods in accordance with the installment sale agreement, all or part of his down payment may be forfeited to the extent provided in the installment sale agreement.

§12–616.

(a) If the holder does not pay out to a public official the full amount charged to the buyer for filing and recording instruments, the buyer shall receive credit for the amount so charged to him and not paid out.

(b) The holder shall credit the amount of the overcharge against the last installment or installments under the agreement.

§12–617.

(a) (1) If a payment is made on account of an agreement, the person receiving the payment shall give the buyer on his request, or, if payment is made in cash, without request, a complete written receipt for the payment.

(2) If the buyer specifies that the payment is made on one of several obligations, the receipt shall so indicate. However, this provision does not affect the allocation of payments under an add-on contract pursuant to § 12-618 of this subtitle.

(b) (1) Unless a written notice of actual or intended assignment of an agreement is given to the buyer, he may pay or tender any amount due under the agreement or give any notice required by the agreement or this subtitle to the last known holder of the agreement.

(2) A payment, tender, or notice so given is binding on any subsequent holder or assignee as fully as if made to him.

§12–618.

(a) In this section, "add-on contract" means an installment sale agreement which allows the inclusion in it of additional goods subsequently purchased and under which the amount due on the subsequent purchase is combined with an unpaid balance on any prior purchase so as to permit the seller to retain a security interest in all goods under that agreement.

(b) If goods are purchased under an add-on contract, the seller shall deliver to

the buyer and attach to the add-on contract, at the time of the additional purchase, a statement which:

(1) Contains all information regarding the additional purchase required by § 12-606 of this subtitle; and

(2) Shows:

(i) The amount due on the installment sale agreement immediately before the additional purchase;

(ii) The amount due after the additional purchase;

(iii) The payments agreed to be made subsequently; and

(iv) The number of additional months required to complete the payments.

(c) (1) If a payment is made on an add-on contract after an additional purchase is added, the payment is considered as applied to each of the separate purchases in the same proportion which the cash price of each purchase bears to the total cash price of all goods in which the seller retains a security interest.

(2) Before repossessing or attempting to repossess any goods under an add-on contract, the seller shall apply all payments made to him by the buyer in the manner provided by paragraph (1) of this subsection.

(3) If the amount due on any separate purchase is paid fully, the goods paid for are the absolute property of the buyer and may not be subject to repossession for any subsequent default on the agreement.

(d) The buyer under an add-on contract may prepay at any time the amount due on any of the separate purchases in the manner provided by § 12-620 of this subtitle.

(e) If the goods subject to an add-on contract are repossessed, the buyer may redeem any of the separate purchases by payment of the amount due on that purchase alone.

§12–619.

(a) The holder of an installment sale agreement on which the finance charge is computed in advance may:

(1) By agreement with the buyer, extend the scheduled due date or defer the scheduled payment of all or part of the installments payable under it; and

(2) Charge the buyer an extension or deferral charge.

(b) The extension or deferral charge may not exceed an amount equal to 1

percent per month of the amount extended or deferred for the period of extension or deferral.

(c) The period of extension or deferral may not exceed the period from the date when the extended or deferred amount would have been payable in the absence of the extension or deferral to the date when the amount is made payable under the agreement of extension or deferral.

§12–620.

(a) Notwithstanding the provisions of § 12-601(k) of this subtitle and any provision of an installment sale agreement to the contrary, a buyer may prepay at any time, without penalty, all or any part of the unpaid time balance payable under the installment sale agreement if such agreement is for the retail sale of personal property purchased primarily for personal, family, or household purposes, regardless of the original price of that personal property.

(b) (1) Except as provided in paragraph (2) of this subsection, if the buyer pays the time balance in full before maturity, the holder immediately shall refund to him a portion of the finance charge. The amount of the refund shall be calculated by the actuarial method based on the original schedule of payments.

(2) If the amount of the credit for prepayment is less than $1, no refund need be made.

§12–621.

(a) At any time after execution of an agreement, but not later than one year after the last payment is made under it, the holder shall deliver or mail to the buyer at his last known address, within 10 days after the holder receives a written request from the buyer, a copy of the agreement and a signed statement which sets forth:

(1) The amount paid by or on behalf of the buyer, and the allocation of the amount between principal obligations and charges, including charges for delinquencies, expenses of repossession, extensions, and refunds;

(2) Any amount which remains payable, and the allocation of the amount between principal obligations and charges, including charges for delinquencies, expenses of repossessions, extensions, and refunds; and

(3) The number of installments payable in the future, and the amount and time of each.

(b) The statement shall be supplied free of charge, except that a fee of 50 cents may be charged for any statement supplied within 60 days after a prior statement was supplied.

§12–622.

(a) After the buyer has paid all sums due under an agreement, the holder shall deliver or mail to the buyer at his last known address, within 15 days after the holder receives a written request from the buyer:

(1) A signed statement which describes the goods and states that all payments due or to become due under the agreement are paid in full;

(2) Good and sufficient instruments to release all security interests in the goods and collateral security owned by the buyer; and

(3) Good and sufficient assignments and instruments necessary to vest the buyer with complete evidence of title.

(b) After the buyer has paid all sums due under an agreement, the holder shall deliver or mail to each surety for the buyer and to each person who is the owner of collateral security, within 15 days after the holder receives a request from the buyer, surety, or other person:

(1) A signed statement which shows that the suretyship is completely discharged; and

(2) Good and sufficient instruments to release any collateral security owned by that person.

(c) If the holder fails to comply with the requirements of this section, he shall forfeit $10 to the buyer and is liable for damages.

§12–623.

(a) If an agreement on which the finance charge is computed in advance so provides, the holder of the agreement may collect a delinquency or collection charge of the lesser of $10 or 5 percent of the amount of any payment in default, if the default has continued for at least 10 days.

(b) (1) In addition to the delinquency or collection charge, the agreement may provide for the payment of:

(i) Attorney's fees not exceeding 15 percent of the amount due and payable under the agreement; and

(ii) Court costs.

(2) Attorney's fees may be collected only if the agreement is referred for collection to an attorney who is not a salaried employee of the holder.

§12–624.

(a) The holder may repossess goods sold under an agreement if:

(1) The buyer is in default in:

(i) The payment of any sum due under the agreement;

(ii) The performance of any other condition which the agreement lawfully requires him to perform in order to obtain unencumbered title to the goods; or

(iii) The performance of any promise the breach of which is expressly made a ground for repossessing the goods; or

(2) The goods were seized by a police department, bureau, or force.

(b) (1) The holder may repossess goods only by:

(i) Legal process; or

(ii) Self-help, without use of force.

(2) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before he repossesses any goods, the holder may serve a written notice on the buyer of his intention to repossess the goods.

(2) The notice shall:

(i) State the default and any period at the end of which the goods will be repossessed; and

(ii) Briefly state the rights of the buyer in case the goods are repossessed.

(3) The notice may be delivered to the buyer personally or sent to him at his last known address by registered or certified mail.

(d) Within five days after he repossesses the goods, the holder shall deliver to the buyer personally or send to him at his last known address by registered or certified mail, a written notice which briefly states:

(1) The right of the buyer to redeem the goods, and the amount payable for them;

(2) The rights of the buyer as to a resale, and his liability for a deficiency; and

(3) The exact location where the goods are stored and the address where

any payment is to be made or notice delivered.

§12–625.

(a) For 15 days after the holder gives the notice required by § 12-624(d) of this subtitle, the holder shall retain any repossessed goods in the county where the goods were sold to the buyer or were repossessed.

(b) During the period provided for in subsection (a) of this section, the buyer may:

(1) Redeem and take possession of the goods; and

(2) Resume the performance of the agreement.

(c) To redeem the goods, the buyer shall:

(1) Tender the amount due under the agreement at the time of redemption, without giving effect to any provision which allows acceleration of any installment otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the goods were repossessed; and

(3) If the discretionary notice provided for in § 12-624(c) of this subtitle was given, pay the actual and reasonable expenses of retaking and storing the goods.

(d) This section does not apply if the goods were seized by a police department, bureau, or force and the goods were repossessed because of that seizure, in which event, the buyer shall have no right to redeem or take possession, even if the buyer tenders payment of the entire balance due under the agreement.

(e) Notwithstanding subsections (b) and (c) of this section:

(1) The holder shall have the right to require the buyer to tender payment of the entire balance due under the agreement if:

(i) The date of the default in the payments due under the agreement that led to the present repossession occurred within 18 months after the last repossession; or

(ii) The buyer was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the goods, or attempted to do so, and the goods were repossessed because of that conduct.

(2) Under paragraph (1) of this subsection, the payment by the buyer of the entire balance due under the agreement shall:

(i) Constitute redemption by the buyer; and

(ii) Entitle the buyer to take possession of the goods.

§12–626.

(a) Subject to the provisions of subsection (b) of this section, the holder shall sell any repossessed goods at public auction if the buyer:

(1) Has paid at least 50 percent of the cash price of the goods; and

(2) Within the 15-day period provided for in § 12-625(a) of this subtitle, requests sale of the goods in writing sent to the holder by registered or certified mail.

(b) (1) To cover the costs of the sale, at the time a buyer requests sale of the goods he shall deposit with the holder an amount equal to the lesser of:

(i) 10 percent of the time balance due at the time of repossession; or

(ii) $10.

(2) If the buyer does not make the deposit at the time of his request, the holder promptly shall notify the buyer in writing sent by registered or certified mail of the deposit requirement. If the buyer fails to make the deposit within five days after he receives the notice from the holder, his right to have the goods sold at public auction is forfeited.

(c) The sale of goods at public auction shall take place within 30 days from the date the buyer requested the sale.

(d) At least 10 days before the sale, the holder shall notify the buyer in writing sent by registered or certified mail of the time and place of the sale.

(e) (1) The provisions of this subsection (e) apply to:

(i) A public sale held under the provisions of this section; and

(ii) Any other bona fide public or private sale of goods which had a cash price in excess of $2,000 at the time of their purchase by the buyer, if the buyer has not paid at least 50 percent of the cash price of the goods or if he has paid that amount but has not requested a public sale under subsection (a) of this section.

(2) The proceeds of a sale to which this subsection applies, including the deposit required by subsection (b) of this section, shall be applied, in the following order, to:

(i) The actual and reasonable cost of the sale;

(ii) The actual and reasonable cost of retaking and storing the goods; and

(iii) The unpaid balance owing under the agreement at the time the goods are repossessed.

(3) After application of the proceeds and deposit in accordance with paragraph (2) of this subsection, any remaining balance shall be paid to the buyer, unless the sale occurred because of the seizure of the goods by a police department, bureau, or force, in which event the remaining balance shall be paid to the police department, bureau, or force that seized the goods, to be disposed of in accordance with the provisions of Title 12 of the Criminal Procedure Article or any other law that applies to the seizure and forfeiture of the goods.

(4) If the proceeds and deposit are insufficient to pay the items enumerated in paragraph (2) of this subsection, the buyer is liable for the deficiency if:

(i) The agreement provides for liability for a deficiency; and

(ii) The holder has complied with all requirements of this subtitle, including the notice requirement of § 12-624(d) of this subtitle.

(f) The holder shall furnish to the buyer a written statement which shows the disposition of the proceeds and deposit.

§12–627.

If there is no resale of repossessed goods under § 12-626 of this subtitle, all obligations of the buyer under the agreement shall be discharged, and the holder may retain the goods as his own property without obligation to account to the buyer.

§12–628.

(a) If, as part of an installment sale, a promissory note is taken by a seller or sales finance company, the note shall refer to the agreement out of which it arises.

(b) If the note is assigned, it is subject to all defenses which the buyer might have asserted against the seller or sales finance company, except that an acknowledgment by the buyer of delivery of a copy of the agreement pursuant to § 12-605 of this subtitle is conclusive proof of the delivery in favor of an assignee of the note without actual knowledge to the contrary.

§12–629.

No act, agreement, or statement of a buyer in an agreement may constitute a valid waiver of any benefit or protection provided to him under this subtitle.

§12–630.

(a) Except as provided by subsections (b) and (c) of this section, a holder may not collect or receive any finance, delinquency, or collection charge from the buyer if:

(1) The agreement does not contain the information required by §§ 12-604 through 12-606 of this subtitle;

(2) The seller fails to deliver to the buyer a required copy of the agreement; or

(3) The agreement contains a finance charge in excess of the applicable charge permitted by § 12-609 or § 12-610 of this subtitle.

(b) Written acknowledgment by the buyer of delivery of a copy of the agreement pursuant to § 12-605 of this subtitle is conclusive proof of the delivery as between the buyer and any assignee of the agreement without actual knowledge to the contrary.

(c) If the seller or any subsequent holder unintentionally and in good faith fails to comply with any provision of §§ 12-609 through 12-612 of this subtitle, the holder may correct the error within 10 days after:

(1) He notices it; or

(2) The buyer notifies him in writing of the error.

(d) If an instrument contains any provision prohibited by § 12-607 of this subtitle, that provision is void and the holder may not collect or receive from the buyer, in connection with the transaction to which the instrument relates, any finance, delinquency, or collection charge.

(e) The penalties of this section are in addition to those provided in Part IV of this subtitle or in any other statutory law.

§12–631.

(a) If a complaint for violation of any provision of Part II of this subtitle is filed with the Commissioner of Financial Regulation, he may investigate the complaint and hold a hearing on it in accordance with § 11-413 of the Financial Institutions Article.

(b) The Commissioner shall give to the person complained against at least ten days' written notice of the complaint and the time and place of any hearing. The notice shall be in writing and sent by registered or certified mail to his principal place of business.

(c) (1) If, after the hearing, the Commissioner finds that a person has engaged or is engaging in any act or practice prohibited by Part II of this subtitle, he shall order the person to cease and desist from the act or practice.

(2) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the

time allowed by the Administrative Procedure Act for appeals from the Commissioner's order.

(2) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

(e) For the purposes of this section, the Commissioner's order may not apply to any:

(1) Incorporated bank, savings institution, or trust company;

(2) A savings and loan association; or

(3) A federal credit union or State chartered credit union.

§12–632.

In connection with an installment sale agreement, a sales finance company may:

(1) Renew or extend the time for payment of any installment sale agreement or any installment; or

(2) Refund to the buyer, for subsequent repayment by him, the amount of any installment previously paid.

§12–633.

(a) (1) Except as provided in paragraph (2) of this subsection, any renewal, extension, or refund made under § 12-632 of this subtitle shall be by a written agreement signed by each party.

(2) If an extension is granted without any additional charge, the agreement need be signed only by the sales finance company.

(b) (1) At the time a renewal, extension, or refund is made, the sales finance company shall deliver to the buyer an exact copy of the agreement.

(2) The agreement shall:

(i) State the name and post office address of each party;

(ii) Identify the prior agreement to which it relates;

(iii) Describe the goods;

(iv) Describe any security interest or collateral security which was reserved or taken to secure the prior agreement and which is retained to secure the renewal, extension, or refund; and

(v) State the amount of the extended principal, the agreed rate of charge, the number of scheduled installments, and the time and amount of each installment.

§12–634.

(a) A sales finance company may charge the buyer for a renewal, extension, or refund made under § 12-632 of this subtitle, an amount not exceeding an annual effective rate of simple interest, as defined in Subtitle 1 of this title, of 15 percent per annum on the balances outstanding from time to time of the extended principal, from the date of the renewal, extension, or refund to the date set for the final payment.

(b) The extended principal may not exceed the aggregate amount of the unpaid portion of the time balance under the agreement, any delinquency charges lawfully payable, and any amount of cash actually refunded to the buyer, less a credit for prepayment computed as if the unpaid portion of the time balance had been paid in full at the time of the renewal, extension, or refund.

(c) Notwithstanding the provisions of subsection (a) of this section, a sales finance company may charge an annual effective rate of simple interest of 24 percent on renewals or extensions on contracts made on or after July 1, 1982, on the balances outstanding from time to time.

(d) No sales finance company may charge the rates permitted by subsection (c) of this section unless the sales finance company complies with the limitations of §§ 12-610.1 and 12-610.2 of this subtitle and provided that such a renewal or extension agreement may not provide for a balloon payment.

§12–635.

(a) A sales finance company shall permit a buyer to prepay in full or in part at any time, without penalty, the outstanding balance payable under a renewal, extension, or refund agreement.

(b) If a buyer prepays the entire outstanding balance, the sales finance company shall pay or credit to him the unearned portion of the charge.

§12–636.

(a) Any person who knowingly violates or participates in the violation of any provision of Part II of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 for the first offense and not exceeding $500 for any subsequent offense.

(b) Any person who violates or participates in the violation of any provision of Part III of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding six months or both.

§12–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Applicant" means any person who applies to a creditor:

(1) Directly for an extension, renewal, or continuation of credit; or

(2) Indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) "Commissioner" means the Commissioner of Financial Regulation.

(d) "Credit" means the right granted by a creditor to a debtor to:

(1) Defer payment of a debt;

(2) Incur a debt and defer its payment; or

(3) Purchase property or services and defer payment for it.

(e) "Creditor" means any person who regularly:

(1) Extends, renews, or continues credit for personal, family or household purposes; or

(2) Arranges for the extension, renewal, or continuation of credit.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§12–702.

(a) The General Assembly finds that there is a need to insure that the various financial institutions and other persons and firms engaged in the extension of credit exercise their responsibility to make credit available with fairness, impartiality, and without discrimination on the basis of sex or marital status. Economic stabilization would be enhanced, and competition among the various financial institutions and other persons and firms engaged in the extension of credit would be strengthened by an absence of discrimination on the basis of sex, marital status, race, color, religion, national origin, or age (provided the applicant has capacity to contract).

(b) It is the purpose of this subtitle to require that financial institutions and other persons and firms engaged in the extension of credit do not deny credit on the basis of sex, marital status, race, color, religion, national origin, or age (provided the applicant has capacity to contract).

§12–703.

(a) If a complaint for violation of any provisions of this subtitle is filed with the Commissioner, the Commissioner shall investigate the complaint and may hold a hearing on it in accordance with the Administrative Procedure Act.

(b) The Commissioner shall give to the creditor complained against at least 10 days' written notice of the complaint and the time and place of any hearing. The notice shall be in writing and sent by registered or certified mail to the creditor's principal place of business.

(c) (1) If, after the hearing, the Commissioner finds that the creditor has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the creditor to cease and desist from the act or practice.

(2) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

§12–704.

With respect to any aspect of a credit transaction:

(1) A creditor may not discriminate against any applicant on the basis of sex, marital status, race, color, religion, national origin, or age;

(2) A creditor that complies with the applicable provisions of the federal Equal Credit Opportunity Act, or regulations adopted under the federal Equal Credit Opportunity Act, is in compliance with the requirements of this subtitle; and

(3) Any violation of the federal Equal Credit Opportunity Act, or any regulation adopted under the federal Equal Credit Opportunity Act, is a violation of the provisions of this subtitle.

§12–705.

Prohibited discriminatory practices include any:

(1) Refusal to consider both applicants' income when both parties of a marriage party apply for a joint account;

(2) Refusal to consider alimony or child support awarded by a court and

received by the applicant as a valid source of income, where that source can be verified as to its amount, length of time received, and regularity of receipt;

(3) Refusal to extend credit to any person solely because of marital status or change in marital status;

(4) Refusal to issue separate accounts to married persons where each would be credit worthy if unmarried;

(5) Request for or consideration of the credit rating of an applicant's spouse where the applicant is otherwise credit worthy and is not applying for a joint account unless the applicant lists credit references in the name of spouse or former spouse or has no individual prior credit history or the creditor permits the applicant to designate the applicant's spouse as an authorized purchaser on the account;

(6) Refusal to recognize the legal name of any married person; and

(7) Requests for or consideration of information about birth control practices in evaluating any credit application.

§12–706.

The provisions of this subtitle shall be administered by the Commissioner.

§12–707.

(a) Notwithstanding the provisions of § 12–703 of this subtitle, any creditor who violates any provisions of this subtitle is liable to the applicant in an amount equal to the sum of any actual damages sustained by the applicant acting either in an individual capacity or as a representative of a class.

(b) Any creditor who fails to comply with any requirement imposed under this subtitle shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, as determined by the court, in addition to any actual damages provided in subsection (a) of this section. In pursuing the recovery allowed under this subsection, the applicant may proceed only in an individual capacity and not as a representative of a class.

(c) Notwithstanding subsection (b) of this section, any creditor who fails to comply with any requirement imposed under this subtitle may be liable for punitive damages in the case of a class action in such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not exceed the lesser of $100,000 or 1 percent of the net worth of the creditor. In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(d) When a creditor fails to comply with any requirement imposed under this subtitle, an aggrieved applicant may institute a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other action.

(e) In the case of any successful action to enforce the foregoing liability, the costs of the action together with a reasonable attorney's fee as determined by the court shall be added to any damages awarded by the court under the provisions of subsections (a), (b), and (d) of this section.

(f) A creditor does not violate this subtitle if the creditor shows by a preponderance of evidence in any administrative or judicial proceeding that the violation was not willful or resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(g) An action under this title may be brought in any district court or circuit court, depending upon the amount in controversy, within one year from the date of the occurrence of the violation.

§12–708.

This subtitle may be cited as the Maryland Equal Credit Opportunity Act.

§12–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Borrower" means an individual who obtains a loan or advance of money.

(c) "Commissioner" means the Commissioner of Financial Regulation.

(d) "Finder's fee" means any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money.

(e) "Lender" means a person defined as a mortgage lender under § 11–501(j)(1)(ii) of the Financial Institutions Article.

(f) "Mortgage broker" means a person defined as a mortgage lender under § 11–501(j)(1)(i) of the Financial Institutions Article.

(g) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§12–802.

This subtitle does not apply to any loan:

(1) Described in § 12–103(e) of this title; or

(2) Made by motor vehicle or recreational vehicle dealers in connection with the sale of their vehicles.

§12–803.

A mortgage broker may not be a director, officer, or employee of any lender where he places a loan.

§12–804.

(a) A mortgage broker may charge a finder's fee not in excess of 8 percent of the amount of the loan or advance.

(b) In addition to a finder's fee, a mortgage broker may charge a borrower for the actual cost of:

(1) Any appraisal, credit report, condominium document, or subordination agreement document obtained by the mortgage broker at the written request of the borrower; and

(2) Any other good or service, as specified in regulations adopted by the Commissioner, that is required to complete a loan application process and that, at the written request of the borrower, is paid by the mortgage broker to a third–party provider of the good or service.

(c) A mortgage broker obtaining a mortgage loan with respect to the same property more than once within a 24–month period may charge a finder's fee only on so much of the loan as is in excess of the initial loan.

(d) The provisions of this section do not apply to:

(1) The charging of fees and charges otherwise permitted under this title; or

(2) Attorney's fees unless the attorney is functioning as a mortgage broker.

(e) A mortgage broker may not charge a finder's fee in any transaction in which the mortgage broker or an owner, part owner, partner, director, officer, or employee of the mortgage broker is the lender or an owner, part owner, partner, director, officer, or employee of the lender.

§12–805.

(a) A mortgage broker may not receive any fee in the form of a note, mortgage, or other evidence of indebtedness.

(b) Payment of the finder's fee to the mortgage broker out of the proceeds of the loan is not considered as interest to the lender if the finder's fee is not in excess of that permitted by this subtitle.

(c) If the finder's fee is paid from the proceeds of the loan, the lender shall comply with the disclosure provisions of § 12–106 of this title or the federal Truth in Lending Act and in addition shall advise the borrower, in writing, of the borrower's right to a refund of the finder's fee upon the exercise of any right of rescission of the loan.

(d) (1) A finder's fee may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document.

(2) The terms of the proposed agreement shall:

(i) Be disclosed to the borrower before the mortgage broker undertakes to assist the borrower in obtaining a loan or advance of money;

(ii) Specify the amount of the finder's fee; and

(iii) Contain a representation by the mortgage broker that the mortgage broker is acting as a mortgage broker and not as a lender in the transaction.

(3) A copy of the agreement, dated and signed by the mortgage broker and the borrower, shall be provided to the borrower within 10 business days after the date the loan application is completed.

§12–806.

A borrower is entitled to a refund of any finder's fee paid to a mortgage broker if:

(1) The loan transaction is not made to the borrower; or

(2) The borrower exercises his right to rescind the loan transaction under the federal Truth in Lending Act or any similar federal or State law.

§12–807.

Any mortgage broker who violates any provision of this subtitle shall forfeit to the borrower the greater of:

(1) Three times the amount of the finder's fee collected; or

(2) The sum of $500.

§12–808.

A licensed real estate broker, insurer, salesman, attorney-at-law, or agent thereof who arranges or procures a mortgage may not collect a finder's fee if, in addition to acting as broker under this subtitle, he is also acting as a real estate broker, insurer, salesman, attorney-at-law, or agent thereof in connection with the subject property or transaction.

§12–809.

The provisions of this subtitle may not be used to circumvent the provisions of § 12–108 of this title.

§12–901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Borrower" means a corporation, partnership, association, government or governmental subdivision or agency, trust, individual, or other entity receiving a loan or other extension of credit under this subtitle.

(c) "Commercial loan" and "extension of credit for a commercial purpose" mean an extension of credit made:

(1) Solely to acquire an interest in or to carry on a business or commercial enterprise; or

(2) To any business or commercial organization.

(d) "Consumer borrower" means an individual receiving a loan or other extension of credit under this subtitle for personal, household, or family purposes or an individual receiving a commercial loan or other extension of credit for any commercial purpose not in excess of $75,000, secured by residential real property.

(e) "Credit device" means any card, plate, check, draft, identification code, or other means of identification contemplated by the agreement governing the plan.

(f) (1) "Credit grantor" means any individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity making a loan or other extension of credit under this subtitle which is incorporated, chartered, or licensed pursuant to State or federal law, the lending operations of which are subject to supervision, examination, and regulation by a State or federal agency or which is licensed under Title 12, Subtitle 4 of the Financial Institutions Article or is a retailer.

(2) "Credit grantor" includes:

(i) Any bank, trust company, depository institution, or savings bank having a branch in this State;

(ii) Any subsidiary of a bank holding company, as defined in the federal Bank Holding Company Act of 1956, as amended, which is domiciled, doing business, and offering a revolving credit plan involving the issuance of credit devices in this State; and

(iii) Any person who acquires or obtains the assignment of a revolving credit plan made under this subtitle.

(g) "Loan" means a cash advance to be paid to or for the account of the borrower.

(h) "Nonconsumer borrower" means any borrower other than a consumer borrower.

(i) (1) "Outstanding unpaid indebtedness" means on any day the total amount of purchases and loans charged to the borrower's account under the plan which is outstanding and unpaid at the end of the day, after adding the aggregate amount of any new purchases and loans charged to the account that day and deducting the aggregate amount of any payments and credits applied to the account that day.

(2) If the agreement governing the plan permits, "outstanding unpaid indebtedness" may include the amount of any interest, finance charges, and additional charges, including late or delinquency charges, that have accrued in the account and are unpaid at the end of the day.

(j) "Purchase" means an extension of credit for a purchase of real or personal, tangible or intangible property, or an extension of credit for services, licenses, taxes, official fees, fines, private or governmental obligations, or any other thing of value, including a charitable contribution.

(k) "Residential real property" means owner-occupied real property having a dwelling on it designated principally as a residence with accommodations for not more than four families.

(l) "Revolving credit plan" or "plan" means a plan that contemplates the extension of credit under an account governed by an agreement between a credit grantor and a borrower under which:

(1) The credit grantor permits the borrower and, if the agreement governing the plan permits, persons acting on behalf of or with authorization from the borrower to make purchases or obtain loans from time to time;

(2) The amounts of purchases and loans are charged to the borrower's account;

(3) The borrower is required to pay the credit grantor the amounts of all

purchases and loans charged to the borrower's account under the plan but has the privilege of paying amounts due from time to time as agreed; and

(4) Interest or finance charges may be charged and collected by the credit grantor from time to time on the amounts due under the plan.

§12–902.

(a) Any credit grantor may, subject to the other provisions of this subtitle:

(1) Offer and extend credit under a revolving credit plan to a borrower and in that connection charge and collect the interest, finance charges, and other charges permitted by this subtitle;

(2) (i) Take any security as collateral as may be acceptable to the credit grantor.

(ii) If real property is taken as security, the credit grantor shall record the entire line of credit when the credit plan is established.

(b) Without limiting subsection (a) of this section, credit may be extended under a revolving credit plan by a credit grantor's acquisition of obligations arising out of the honoring of a credit device made available to a borrower under a plan, whether directly or indirectly by means of telephone, point of sale terminal, automated teller machine or other electronic or similar device, or through the mails, by:

(1) A merchant;

(2) A bank or other financial institution chartered or organized under the laws of this or any other state, the District of Columbia, the United States or any district, territory, or possession of the United States, or any foreign country;

(3) Any other person or entity; or

(4) A government or governmental subdivision or agency.

§12–903.

(a) (1) A credit grantor may charge and collect interest or finance charges under the plan on the outstanding unpaid indebtedness in the borrower's account under the plan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement governing the plan provides, if the effective rate of simple interest does not exceed 24 percent per year. The rate of interest chargeable on a plan must be expressed in the agreement as a simple interest rate or rates.

(2) The repayment terms for a plan extended to a consumer borrower may not include a provision under which the consumer borrower may be required to pay a balloon payment at maturity. However, the adjustment of payment amounts, due to

fluctuations in unpaid balance or rate of interest, may not be deemed to result in a balloon payment.

(3) If the plan is secured by a lien on residential real property, the credit grantor may, in addition to the periodic percentage rate charge authorized under subsection (a)(1) of this section, charge and collect at the time the plan is entered into by the borrower points, loan origination fees, loan discount fees, and similar fees, provided that:

(i) All such fees, when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this title, may not exceed 10 percent of the maximum amount of credit made available to the borrower under the plan;

(ii) The documents evidencing the plan specifically enumerate any such fees;

(iii) The borrower agrees in writing to pay those fees; and

(iv) The fees are disclosed to the borrower in accordance with the federal Truth in Lending Act.

(b) With respect to a revolving credit plan of a consumer borrower, interest may be calculated on an amount not in excess of the average of the outstanding unpaid indebtedness for the applicable billing period, determined by dividing the total of the amounts of outstanding unpaid indebtedness for each day in the applicable billing period by the number of days in the billing period, or on an amount calculated by another balance computation method specified in the agreement.

(c) If the applicable periodic percentage rate under the agreement governing the plan is monthly, a billing period shall be deemed to be monthly if the last day of each billing period is on the same day of each month or does not vary by more than 4 days.

(d) (1) Notwithstanding subsections (a) and (b) of this section:

(i) If the outstanding balance of purchase obligations under an open-end credit plan is paid in full within 25 days after the end of a prior billing period, a finance charge or interest may not be imposed on a consumer borrower with respect to such balance for the period from the end of the prior billing period to the date of the payment in full; and

(ii) If there is no purchase balance at the beginning of a current billing period or if full payment of an outstanding balance from a prior billing period is made under subparagraph (i) of this paragraph within 25 days after the end of the prior billing period, a finance charge or interest may not be imposed on a consumer borrower with respect to any purchase obligation added to the account during the current billing period from the date of purchase to the end of the current billing period.

(2) Notwithstanding paragraph (1) of this subsection, if the agreement governing a plan so provides, a finance charge or interest may be imposed from the date of purchase, if the agreement does not provide any charge permitted by § 12-905(a) of this subtitle.

§12–904.

(a) If the agreement governing the revolving credit plan so provides, the periodic percentage rate of interest or finance charges under the plan may vary in accordance with an index or formula that:

(1) Is made readily available to and verifiable by the borrower;

(2) Is beyond the control of the credit grantor; and

(3) May be within the control of the borrower.

(b) The periodic percentage rate, as varied, may be made applicable to all outstanding unpaid indebtedness on or after the effective date of the variation, including any indebtedness arising out of purchases made or loans obtained prior to the variation.

(c) The periodic percentage rate, as varied, may not exceed the maximum rate permitted pursuant to § 12–903(a)(1) of this subtitle.

(d) If a formula used under subsection (a)(3) of this section measures credit risk, the periodic percentage rate of interest or finance charges:

(1) Shall be lower for any consumer borrower measured as more creditworthy under the formula; and

(2) If the formula considers delinquency or arrearages, may not be raised unless a consumer borrower is at least 2 months in arrears in payment.

§12–905.

(a) With respect to an unsecured open end credit plan, fees or charges may not be imposed on a consumer borrower in addition to interest or finance charges as permitted by this subtitle, except as follows:

(1) If the plan is offered by a seller of goods or services, or both, and may be used only for the purchase or lease of the seller's goods and services, the seller may charge one of the following fees:

(i) An annual charge in any amount the agreement provides for the privileges made available to the consumer borrower under the plan;

(ii) A transaction charge or charges in such amount or amounts as

the agreement may provide for each separate purchase under the plan; or

(iii) A minimum charge for each scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan.

(2) If the plan is offered by any other credit grantor, the credit grantor may impose any or all of the following fees:

(i) An annual charge in any amount the agreement provides for the privileges made available to the consumer borrower under the plan;

(ii) A transaction charge or charges in such amount or amounts as the agreement may provide for each separate purchase or loan under the plan; and

(iii) A minimum charge for each scheduled billing period under the plan during any portion of which there is an outstanding unpaid indebtedness under the plan.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, if the credit agreement provides, a credit union may make loans or extend credit to its members incorporating the same terms and conditions as a federal credit union is permitted under federal law and regulations relating to:

(i) An over the limit fee assessed on a credit card account; and

(ii) Fees for ancillary and administrative services requested by the member, including:

1. Researching account records;

2. Providing duplicate statements and other documents; and

3. Expedited issuance of a duplicate or original credit card or device.

(b) (1) Except as provided in subsection (f) of this section, with respect to a secured open end credit plan, fees or charges may not be imposed on a consumer borrower in addition to interest or finance charges except for actual and verifiable fees incurred by the credit grantor and not retained by the credit grantor for the following:

(i) Attorney's fees for services rendered in connection with the preparation, closing, or disbursement of the loan;

(ii) Any expense, tax, or charge paid to a governmental agency;

(iii) Examination of title, appraisal, or other costs necessary or appropriate to the security of the loan; and

(iv) Premiums for any insurance coverage permitted under this subtitle.

(2) The additional fees or charges permitted under this subsection may be imposed, charged, and collected at any time.

(c) If a plan is established for a consumer borrower, a fee or charge may not be charged or collected unless the agreement concerning the plan permits the fee to be charged.

(d) If a plan is established for a nonconsumer borrower, the nonconsumer borrower and credit grantor may agree upon any terms concerning charges and fees.

(e) For purposes of this section, the additional charges listed in subsections (a), (b), and (f) of this section are not interest or finance charges with respect to a plan.

(f) (1) Subject to the provisions of paragraphs (2) through (8) of this subsection, a credit grantor of an open end credit plan that is secured by a deposit, savings, passbook, or other similar account or certificate of deposit may impose:

(i) An application fee not to exceed $35; and

(ii) An annual charge not to exceed $35 for the privileges made available to the consumer borrower under the plan.

(2) If an application to the plan is approved, the credit grantor shall credit the application fee:

(i) To the initial annual charge; and

(ii) If there is no annual charge, to the interest or finance charges under the plan.

(3) If an application to the plan is rejected, the credit grantor shall return the application fee to the applicant.

(4) Within 45 days after the receipt of the application, the credit grantor shall:

(i) Accept the application; or

(ii) Reject the application and return the application fee to the applicant.

(5) Any such plan shall have a credit limit of no less than the amount of the deposit, savings, passbook, or other similar account or certificate of deposit required as security.

(6) The application shall state the amount of:

(i) The minimum required security; and

(ii) The application fee.

(7) The agreement shall state the amount of the annual charge.

(8) If an annual charge is imposed, the credit grantor shall pay interest on the deposit, savings, passbook, or other similar account or certificate of deposit required as security in the greater of:

(i) A rate of 4 percent per annum simple interest; or

(ii) The rate of interest regularly paid on regular passbook savings accounts by the lending institution that issued the deposit, savings, passbook, or other similar account or certificate of deposit required as security.

§12–906.

(a) If the agreement governing a revolving credit plan permitting the borrower to obtain both loans and purchases so provides, a credit grantor may impose different terms on the indebtedness arising out of purchases than to the indebtedness arising out of loans.

(b) Subsection (a) of this section applies to all terms, including:

(1) The terms governing the periodic percentage rate used to calculate interest or finance charges;

(2) The method of computing the outstanding unpaid indebtedness to which the periodic percentage rate is applied;

(3) The amounts of other charges; and

(4) The applicable repayment schedule.

§12–907.

(a) If credit under a revolving credit plan is offered and extended by a credit grantor which is a depository institution in connection with a demand deposit account or other transaction account maintained by the borrower with the credit grantor under an agreement or arrangement where the credit grantor agrees to honor checks, drafts, or other debits to the account by making extensions of credit to the borrower under a revolving credit plan, any charges customarily imposed by the credit grantor under the terms governing the account in the absence of any associated revolving credit plan may continue to be imposed on the account without specific reference or incorporation in the agreement governing the revolving credit plan.

(b) The account charges referred to in subsection (a) of this section include:

(1) Check charges;

(2) Monthly maintenance charges;

(3) Checkbook charges;

(4) Charges for checks drawn in excess of an available line of credit; or

(5) Any similar charges.

(c) The amount of any charge imposed on the account may be charged to the account under the plan as a loan and may be included in the outstanding unpaid indebtedness under the terms of the agreement governing the revolving credit plan, to the extent the balance in the demand deposit or other transaction account is insufficient to pay the charge.

§12–908.

A credit grantor may at any time allow a borrower under a revolving credit plan to defer scheduled payments and charge the borrower a deferral charge agreed to by the credit grantor and the borrower.

§12–909.

(a) In connection with a plan established for a consumer borrower:

(1) The purchase of credit life, credit accident and health, credit disability, involuntary unemployment benefit, and similar coverages is optional with the consumer borrower; and

(2) Subject to § 12-909.1 of this subtitle, the purchase of property insurance, title insurance, and credit loss insurance from an insurer of the borrower's choice may be required if the loan is secured.

(b) The provisions of this section do not alter or modify rights, privileges, or restrictions heretofore existing between the credit grantor and a nonconsumer borrower.

(c) Premiums for any insurance coverage permitted by this section are not interest or finance charges under the plan.

(d) The offering and placement of insurance under this section shall be subject to the provisions of the Insurance Article.

(e) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Improvements" means buildings or structures erected upon or affixed to real property that enhance the value of the real property.

(iii) "Property insurance coverage" means property insurance against losses caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage".

(iv) 1. "Replacement cost" means the amount needed to repair damage to or rebuild improvements on real property to restore the improvements to their pre-loss condition.

2. "Replacement cost" does not include the value of land.

(2) (i) A credit grantor may not require a borrower, as a condition to receiving or maintaining a loan secured by a lien, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement cost of the improvements on the real property.

(ii) In determining the replacement cost of the improvements on any real property, the credit grantor may:

1. Accept the value placed on the improvements by the insurer; or

2. Use the value placed on the improvements by the credit grantor's appraisal of the improvements.

(3) A violation of this subsection shall entitle the borrower to:

(i) Seek an injunction to prohibit the credit grantor who has engaged or is engaging in the violation from continuing or engaging in the violation;

(ii) Reasonable attorney's fees; and

(iii) Damages directly resulting from the violation.

(4) A violation of this subsection does not affect the validity of the lien securing the loan.

§12–909.1.

(a) In this section, "binder" means a binder or other temporary contract of insurance as provided under § 12-106 of the Insurance Article.

(b) A credit grantor shall comply with this section if the credit grantor:

(1) Makes any loan secured by a first lien on any interest in owner-occupied residential real property; and

(2) As a condition of making the loan, requires the consumer borrower to purchase property insurance or credit loss insurance.

(c) A credit grantor who makes a loan subject to this section shall accept as evidence of insurance a written binder issued by any authorized insurer or its insurance producer if the binder includes or is accompanied by:

(1) The name and address of the insured consumer borrower;

(2) The name and address of the credit grantor;

(3) A description of the insured residential real property;

(4) A provision that the binder may not be canceled within the term of the binder unless the credit grantor and the insured consumer borrower receive written notice of the cancellation at least 10 days prior to the cancellation;

(5) Except in the case of the renewal of a policy subsequent to the closing of the loan, a paid receipt for the full amount of the applicable premium; and

(6) The amount of coverage.

(d) This section does not prohibit a credit grantor from refusing to honor a binder in cases where:

(1) The credit grantor receives notice of the cancellation of the binder by the insurer; or

(2) At the expiration of 30 days of the date the binder was given, the insurer has failed to issue the policy of insurance.

§12–910.

(a) If the agreement governing a revolving credit plan permits, a credit grantor may:

(1) For a nonconsumer borrower, charge a higher periodic percentage rate of interest on outstanding unpaid payments or portions of payments under the plan which are in default; and

(2) For any borrower, impose:

(i) A late or delinquency charge on payments or portions of payments; and

(ii) If payment is made with a check that is dishonored on the second presentment, a charge not to exceed $15.

(b) (1) No more than one late or delinquency charge may be imposed for any single scheduled payment or portion regardless of the period during which it remains in default.

(2) For the purpose of this subsection, all payments by the borrower shall be applied to satisfaction of scheduled payments in the order in which they become due.

(3) Charges permitted by this section may not be considered interest or finance charges under the plan.

§12–911.

(a) If a borrower defaults under the terms of a plan and the credit grantor refers the borrower's account to an attorney who is not a salaried employee of the credit grantor for collection, the credit grantor may, if the agreement governing the revolving credit plan permits, charge and collect from the borrower a reasonable attorney's fee.

(b) If the agreement governing the revolving credit plan permits, the credit grantor may recover from the borrower all court or other collection costs actually incurred by the credit grantor relating to the borrower's default.

§12–912.

(a) A credit grantor may, if the agreement governing a revolving credit plan permits, at any time amend the terms of the agreement in accordance with the provisions of this section including:

(1) The terms governing the periodic percentage rate used to calculate interest or finance charges;

(2) The method of computing the outstanding unpaid indebtedness to which the rate is applied;

(3) The amounts of other charges; and

(4) The applicable repayment schedule.

(b) (1) The credit grantor shall notify each affected borrower of an amendment in the manner set forth in the agreement governing the plan and in compliance with the requirements of the federal Truth in Lending Act, and regulations promulgated thereunder. If the amendment has the effect of increasing the interest, finance charges, or other fees and charges to be paid by the borrower, including, but not limited to those enumerated in § 12–905 of this subtitle, the credit grantor shall mail or deliver to the borrower, at least 25 days before the effective date of the amendment, a clear and conspicuous written notice which shall describe the amendment, including:

(i) A clear statement comparing the original terms and the terms under the amended agreement; and

(ii) Any other pertinent information required by the provisions of this section.

(2) If the amendment has the effect of increasing the interest, finance charges, or other charges to be paid by the borrower, the amendment shall become effective as provided in subsections (c) and (d) of this section.

(c) (1) Subject to the provisions of this paragraph, an amendment made under this section shall become effective as to a particular borrower on:

(i) The first day of the billing cycle during which the effective date of the amendment occurs; or

(ii) Any later date specified in the notice of amendment.

(2) After receiving the notice of amendment under subsection (b) of this section, the borrower may send a signed, written notice of refusal to the creditor that the borrower refuses to accept the amendment.

(3) The notice of refusal sent by the borrower may be accompanied by a payment on the borrower's account and shall be mailed within 25 days of the mailing of the notice of amendment.

(4) Any borrower who gives timely notice of refusal may use the account pursuant to its original, unamended terms for:

(i) 1. The duration of the time for which a fee was paid for use of the plan through the borrower's credit device; or

2. Any longer period of time as determined by the credit grantor; or

(ii) If no fee is paid for use of the plan or if the remaining time period for which a fee was paid for use of the plan through the borrower's credit device is less than 3 months, a period of time of not less than 3 months from the date of mailing of the notice of refusal.

(5) At the expiration of the periods provided under paragraph (4) of this subsection, the borrower who has given a timely notice of refusal may pay any outstanding unpaid indebtedness in the account under the terms of the unamended agreement governing the plan.

(6) A credit grantor amending the agreement governing a revolving credit plan under this subsection shall include in the notice of amendment under subsection (b) of this section a statement in at least 10 point type that:

(i) If a written notice of refusal from the borrower in which the borrower refuses to accept the amendment is not received by the credit grantor within 25 days of the mailing of the notice of amendment, the amendment will become effective on the first day of the billing cycle during which the effective date of the amendment occurs or at any later date specified in the notice of amendment;

(ii) Enumerates the borrower's rights under paragraphs (4) and (5) of this subsection upon timely notice of refusal by the borrower; and

(iii) Includes the address to which the borrower may send notice of a refusal.

(7) The notice of amendment under subsection (b) of this section shall be enclosed in an envelope that contains on its face a statement in 10 point type that an important notice of an increase in rates or fees of the revolving credit plan is enclosed.

(d) (1) Notwithstanding subsection (c) of this section, at the election of the credit grantor, an amendment made under this section may become effective as to a particular borrower on the first day of the billing cycle in which the borrower:

(i) Makes a purchase or obtains a loan under the plan, after the date specified in the notice of amendment which is not less than 25 days after the date the notice of amendment was mailed; or

(ii) Sends a notice of agreement to the credit grantor in which the borrower expressly agrees to the amendment.

(2) In addition to the requirements of subsection (b) of this section, a credit grantor electing to amend the agreement governing a revolving credit plan under this subsection shall include in the notice of amendment a statement that the amendment will become effective on the first date of the billing cycle during which the borrower:

(i) Makes a purchase or obtains a loan under the plan, so long as the purchase is made or the loan is obtained after a specific date which is at least 25 days after the mailing of the notice of amendment; or

(ii) Sends a notice of agreement to the credit grantor in which the borrower expressly agrees to the amendment.

(3) A borrower who receives a notice of amendment under this subsection may pay any outstanding unpaid indebtedness in the account under the terms of the unamended agreement governing the plan if the borrower does not:

(i) Make any purchase or obtain any loan under the plan after the date specified in the notice of amendment; or

(ii) Send a notice of agreement to the credit grantor in which the borrower expressly agrees to the amendment.

(e) If the terms of the agreement governing the plan, as originally drawn or as amended provide, any amendment may, on and after the date on which it becomes effective as to a particular borrower, apply to all then outstanding unpaid indebtedness in the borrower's account under the plan, including any indebtedness which shall have arisen out of purchases made or loans obtained prior to the effective date of the

amendment.

(f) For purposes of this section, a decrease in the required amount of scheduled payments shall not be deemed an amendment which has the effect of increasing the interest or finance charges to be paid by the borrower.

(g) The procedures for amendment by a credit grantor of the terms of a plan to which a nonconsumer borrower is a party may, notwithstanding the provisions of this section, be as the agreement governing the plan may otherwise provide.

§12–913.

(a) Unless otherwise provided under the express terms of the agreement governing a revolving credit plan, the provisions of Subtitle 1, 3, 4, 5, 6, or 10 of this title do not apply to any extension of credit made pursuant to a revolving credit plan if:

(1) The plan is established before October 1, 1993; and

(2) The extension of credit is made under this subtitle before October 1, 1993.

(b) For the purposes of subsection (a) of this section, an extension of credit is made under this subtitle if:

(1) The credit grantor has made a written election to do so in the agreement governing the plan; or

(2) The agreement governing the plan is offered pursuant to the provisions of this subtitle.

(c) For the purposes of subsection (a) of this section, if there is no written election to extend credit under this subtitle in the agreement governing the plan, the burden of proof is on the credit grantor to show the agreement governing the plan was offered pursuant to this subtitle.

(d) Any plan established before October 1, 1993 is not subject to § 12-913.2 of this subtitle.

§12–913.1.

(a) (1) On or after October 1, 1993, a credit grantor may at its option elect to offer a plan to any borrower either pursuant to this subtitle or as otherwise permitted by applicable law.

(2) In order for a plan to be established under and governed by this subtitle, a credit grantor shall make a written election to that effect in the agreement governing the plan.

(b) (1) If a credit grantor elects in accordance with this section to establish a plan under this subtitle, the provisions of Subtitle 1, 3, 4, 5, 6, or 10 of this title do not apply to the plan.

(2) If a person fails to elect in accordance with this section to establish a plan under this subtitle, the provisions of this subtitle do not apply.

§12–913.2.

(a) The credit grantor shall deliver a copy of the agreement governing the plan to the borrower no later than 30 days after the credit grantor establishes the account governed by the agreement for the borrower's use.

(b) If there is more than one borrower, a copy of the agreement governing the plan may be delivered to any borrower who is primarily liable on the account.

(c) Written acknowledgment by a borrower of delivery in accordance with this section of a copy of the agreement governing the plan is conclusive proof of delivery as between the borrower and any assignee of the account established under the plan without actual knowledge to the contrary.

§12–914.

(a) If any provision of this subtitle is held invalid, the invalidity shall not affect any other provision of this subtitle which can be given effect without the invalid provision.

(b) Notwithstanding any other provisions of this title, a plan under this subtitle is subject only to the disclosure requirements of this subtitle and, to the extent applicable, of the federal Truth in Lending Act and regulations promulgated thereunder.

§12–915.

(a) A credit grantor making a loan or extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.

(b) In addition to any license which may be required by subsection (a) of this section, a credit grantor making a loan or extension of credit under this subtitle secured by any lien on residential real property is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 5 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 5 of the Financial Institutions Article.

(c) If a license is required by this section, it shall be issued by the Commissioner

of Financial Regulation.

(d) (1) An extension of credit made under this subtitle prior to October 1, 1994 by a home improvement contractor may not be deemed unenforceable or violative of this section because the contractor was not licensed under Title 11, Subtitle 3 of the Financial Institutions Article.

(2) Paragraph (1) of this subsection does not apply to any person engaged in the business of making loans at the time the credit was extended.

§12–916.

(a) If a written complaint for violation of any provision of this subtitle, including the disclosure requirements of this subtitle and the federal Truth in Lending Act and regulations promulgated thereunder, or any other law of this State that regulates loans or other extensions of credit is filed with the Commissioner of Financial Regulation, the Commissioner may investigate the complaint and hold a hearing on it in accordance with § 11-413 of the Financial Institutions Article.

(b) (1) The Commissioner shall give to the credit grantor against whom a complaint is filed at least 10 days' written notice of the complaint and the time and place of any hearing. The notice shall be in writing and sent by registered or certified mail to the credit grantor's principal place of business.

(2) Before a hearing under this section may be scheduled, the Commissioner shall:

(i) Send a written notice to the complaining party that describes the provisions in paragraph (3) of this subsection concerning preclusion; and

(ii) Obtain from the complaining party a written:

1. Election to proceed with a hearing in accordance with this section; and

2. Waiver of any right to pursue any cause of action or remedy as to the matters addressed in the complaint or the hearing.

(3) (i) If a complaining party provides a written election and waiver as described in paragraph (2)(ii) of this subsection, the complaining party shall be precluded from raising or asserting against the credit grantor in any subsequent forum any claim, defense, setoff, recoupment, penalty for violation, or right of any kind based on the matters addressed in the complaint or the hearing.

(ii) The preclusion in subparagraph (i) of this paragraph does not apply to an appeal from the order of the Commissioner resulting from the hearing.

(4) If a complaining party fails to provide a written election and waiver as

described in paragraph (2) (ii) of this subsection, the Commissioner shall not schedule a hearing on the complaint.

(c) (1) If, after the hearing, the Commissioner finds that the credit grantor has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the credit grantor to cease and desist from the act or practice.

(2) (i) If the Commissioner finds that the act or practice described in paragraph (1) of this subsection resulted in the credit grantor collecting an amount from the complaining party not permitted under this subtitle, the Commissioner may direct the credit grantor to make a refund to the complaining party.

(ii) The Commissioner may direct a refund only up to the amount collected by the credit grantor from the complaining party that:

1. Exceeds the amount expressly permitted under this subtitle; or

2. The credit grantor is expressly not permitted to collect.

(3) (i) If an order issued under this section directs the credit grantor to make a refund as authorized in paragraph (2) of this subsection, the credit grantor may make the refund before the order becomes final.

(ii) If a credit grantor makes the refund directed by the Commissioner's order, the order for the refund shall not become final and shall be withdrawn by the Commissioner.

(iii) Any order withdrawn by the Commissioner may not be considered evidence of the Commissioner's interpretation of this subtitle.

(4) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

(e) For purposes of this section, "complaining party" means an individual who files a written complaint with the Commissioner of Financial Regulation pursuant to this section.

§12–917.

Any credit grantor or his officer or employee who willfully violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both.

§12–918.

(a) (1) In this subsection, "notice" means the first to occur of the following:

(i) When the credit grantor receives a written notice from the borrower notifying the credit grantor of an error or violation;

(ii) When the credit grantor receives a written notice from the Commissioner of Financial Regulation or the appropriate regulatory authority notifying the credit grantor of an error or violation; or

(iii) When the credit grantor receives service of process in a civil action for an error or violation instituted by the borrower in a court of competent jurisdiction.

(2) Except for a bona fide error of computation, if a credit grantor violates any provision of this subtitle the credit grantor may collect only the principal amount of credit extended and may not collect any interest, costs, fees, or other charges with respect to the credit extension.

(3) The penalty provided under paragraph (2) of this subsection does not apply where a credit grantor:

(i) Unintentionally and in good faith fails to comply with § 12-903, § 12-904, § 12-905, § 12-910, § 12-911, § 12-913.2, § 12-923(d), or § 12-924 of this subtitle; and

(ii) Corrects the error or violation and makes the borrower whole for all losses, including reasonable attorney's fees and interests, where appropriate, within 10 days after the credit grantor receives notice of the error or violation.

(4) The burden shall be on the credit grantor to show that the credit grantor's failure to comply with § 12-903, § 12-904, § 12-905, § 12-910, § 12-911, § 12-913.2, § 12-923(d), or § 12-924 of this subtitle was unintentional and in good faith.

(b) A credit grantor who knowingly violates any provision of this subtitle shall forfeit to the borrower 3 times the amount of interest, fees, and charges collected in excess of that authorized by this subtitle.

§12–918.1.

(a) In this section, "Commissioner" means the Commissioner of Financial

Regulation.

(b) Except as provided in subsection (c) of this section, the penalty provided under § 12–918(a)(2) of this subtitle does not apply if a credit grantor:

(1) Performed or omitted to perform an act in conformity with or in reliance on:

(i) A written opinion of the Attorney General of Maryland or a regulation adopted by the Commissioner;

(ii) A written opinion by the Commissioner or Deputy Commissioner; or

(iii) An interpretation by the Commissioner in a written notice or examination report; or

(2) Used a form or procedure that has been approved in writing by the Commissioner and the Attorney General.

(c) The provisions of subsection (b) of this section do not apply to an act or omission to act that occurs after:

(1) The opinion, regulation, or interpretation relied on is amended, repealed, or determined to be invalid for any reason by any judicial or other authority; or

(2) Approval for a form or procedure is amended, rescinded, or determined to be invalid for any reason by any judicial or other authority.

(d) This section may not be construed to:

(1) Limit the imposition of any civil or criminal penalty for a knowing or willful violation of this subtitle; or

(2) Limit the power of the Commissioner or the courts to order a refund to a borrower of moneys collected in violation of this subtitle.

§12–919.

An action for violation of this subtitle may not be brought more than 6 months after the credit extension is repaid in full.

§12–920.

A credit grantor is not liable for any failure to comply with a provision of this subtitle if, within 60 days after discovering an error and prior to institution of an action under this subtitle or the receipt of written notice from the borrower, the credit grantor notifies the borrower of the error and makes whatever adjustments are necessary to

correct the error.

§12–921.

(a) (1) A credit grantor may repossess tangible personal property securing a plan under an agreement if the consumer borrower is in default.

(2) The credit grantor may repossess tangible personal property from a consumer borrower only by:

(i) Legal process; or

(ii) Self-help, without use of force.

(b) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before a credit grantor repossesses any tangible personal property, the credit grantor may serve a written notice on the consumer borrower of the intention to repossess the tangible personal property.

(2) The notice shall:

(i) State the default and any period at the end of which the tangible personal property will be repossessed; and

(ii) Briefly state the rights of the consumer borrower in case the tangible personal property is repossessed.

(d) The notice may be delivered to the consumer borrower personally or sent to him at his last known address by registered or certified mail.

(e) Within 5 days after the credit grantor repossesses the tangible personal property the credit grantor shall deliver to the consumer borrower personally or send to him at his last known address by registered or certified mail, a written notice which briefly states:

(1) The right of the consumer borrower to redeem the tangible personal property, and the amount payable for it;

(2) The rights of the consumer borrower as to a resale, and his liability for a deficiency; and

(3) The exact location where the tangible personal property is stored and the address where any payment is to be made.

(f) For 15 days after the credit grantor gives the notice required by subsection (e) of this section, the credit grantor shall retain any repossessed property.

(g) During the period provided for in subsection (f) of this section, the consumer

borrower may:

(1) Redeem and take possession of the property; and

(2) Resume the performance of the agreement.

(h) To redeem the property, the consumer borrower shall:

(1) Tender the amount due under the agreement at the time of redemption, without giving effect to any provision which allows acceleration of any installment otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the property was repossessed; and

(3) If the discretionary notice provided for in subsection (c) of this section was given, pay the actual and reasonable expenses of retaking and storing the property.

(i) This section does not apply if the consumer borrower was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the property, or attempted to do so, and the property was repossessed because of that conduct, or if the property has been previously repossessed from the consumer borrower and redeemed by the consumer borrower.

(j) (1) (i) Subject to subsection (l) of this section, the credit grantor shall sell the property that was repossessed at:

1. Subject to paragraph (2) of this subsection, a private sale; or

2. A public auction.

(ii) At least 10 days before the sale, the credit grantor shall notify the consumer borrower in writing of the time and place of the sale, by certified mail, return receipt requested, sent to the consumer borrower's last known address.

(iii) Any sale of repossessed property must be accomplished in a commercially reasonable manner.

(2) In all cases of a private sale of repossessed goods under this section, a full accounting shall be made to the borrower in writing and the seller shall retain a copy of this accounting for at least 24 months. This accounting shall contain the following information:

(i) The unpaid balance at the time the goods were repossessed;

(ii) The refund credit of unearned finance charges and insurance premiums, if any;

(iii) The remaining net balance;

(iv) The proceeds of the sale of the goods;

(v) The remaining deficiency balance, if any, or the amount due the buyer;

(vi) All expenses incurred as a result of the sale;

(vii) The purchaser's name, address, and business;

(viii) The number of bids sought and received; and

(ix) Any statement as to the condition of the goods at the time of repossession which would cause their value to be increased or decreased above or below the market value for goods of like kind and quality.

(3) The Commissioner of Financial Regulation may make a determination concerning any private sale that the sale was not accomplished in a commercially reasonable manner. Upon that determination, the Commissioner may enter an order disallowing any claim for a deficiency balance.

(k) (1) The provisions of this subsection apply to a public sale of property which secured a plan in excess of $2,000 at the time the plan was made.

(2) The proceeds of a sale to which this subsection applies shall be applied, in the following order, to:

(i) The actual and reasonable cost of the sale;

(ii) The actual and reasonable cost of retaking and storing the property; and

(iii) The unpaid balance owing under the agreement at the time the property was repossessed.

(3) The credit grantor shall furnish to the consumer borrower a written statement which shows the distribution of the proceeds.

(4) If the provisions of this section, including the requirement of furnishing a notice following repossession, are not followed, the credit grantor shall not be entitled to any deficiency judgment to which he would be entitled under the plan.

(l) (1) (i) In this subsection, "consumer goods" means tangible personal property used or bought for use primarily for personal, family, or household purposes that is:

1. Movable at the time a security interest attaches; or

2. A fixture.

(ii) "Consumer goods" does not include money, documents, instruments, accounts, chattel paper, or general intangibles.

(2) This subsection applies to tangible personal property securing a plan that:

(i) Has been repossessed by the credit grantor; or

(ii) Is in actual or constructive possession of the credit grantor where the perfection of the security interest in the property depends on the possession of the property.

(3) In the case of a purchase money security interest in consumer goods, if a consumer borrower has paid 60 percent of the cash price and, after default, has not signed a statement renouncing or modifying the consumer borrower's rights under this subsection, a credit grantor who has repossessed the consumer goods must take reasonable action within 90 days after the repossession to commence disposal of them in the manner provided under subsection (j) of this section.

(4) (i) In any other case involving tangible personal property securing a plan, a credit grantor may, after default, propose to retain the property in full satisfaction of the obligations of the borrower under the plan.

(ii) If, as authorized by subparagraph (i) of this paragraph, a credit grantor proposes to retain property in full satisfaction of the obligations of the borrower under the plan, the credit grantor shall send written notice of the proposal to:

1. The consumer borrower; and

2. Except in the case of consumer goods, any other person who has a security interest in the property and who:

A. Has duly filed a financing statement indexed in the name of the consumer borrower in this State; or

B. Is known by the credit grantor to have a security interest in the property.

(iii) 1. If the consumer borrower or other person entitled to receive notification objects in writing within 30 days from the sending of the notification, the credit grantor must take reasonable action to dispose of the property in the manner provided under subsection (j) of this section.

2. In the absence of written objection, the credit grantor may retain the property in full satisfaction of the outstanding unpaid indebtedness under the plan.

(5) If despite complying with the requirements of this section there is no sale of tangible personal property securing a plan under subsection (j) of this section:

(i) The credit grantor may retain the property without obligation to account to the borrower; and

(ii) If the property is retained, all obligations of the borrower under the plan shall be discharged.

§12–922.

(a) (1) In this section the following words have the meanings indicated.

(2) "Borrower" means a consumer borrower who makes an application for a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower as the borrower's primary residence.

(3) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.

(4) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(i) Results in or is secured by a first mortgage or a first deed of trust on residential real property to be occupied by the borrower; and

(ii) Is offered or extended to the borrower.

(5) (i) "Lender" means a credit grantor subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

(ii) "Lender" does not include a credit grantor exempt from licensing under § 11-502 of the Financial Institutions Article.

(6) (i) "Loan application" means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.

(ii) "Loan application" does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

(2) The financing agreement shall provide:

(i) The term and principal amount of the loan;

(ii) An explanation of the type of mortgage loan being offered;

(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(iv) The points, if any, to be paid by the borrower or the seller, or both; and

(v) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.

(c) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:

(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(ii) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(d) (1) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(2) The penalties set out under § 12-918 of this subtitle do not apply to any violation of this section.

§12–923.

(a) This section applies only to a plan established by a credit grantor under this subtitle for a consumer borrower.

(b) (1) Paragraph (2) of this subsection applies only to a loan or an extension of credit primarily for personal, household, or family purposes.

(2) An agreement governing a revolving credit plan or any instrument which evidences or secures an extension of credit under the plan may not contain:

(i) An assignment or order for the payment of wages, whether earned or to be earned, or of any chose in action covering lost wages;

(ii) An acceleration clause under which any part or all of the unpaid balance of any extension of credit not yet matured may be declared due and payable because the credit grantor deems itself insecure;

(iii) A confession of judgment or any power of attorney authorizing the credit grantor to appear in court to confess judgment against the borrower or a surety or guarantor of the borrower, or any other waiver of the right to notice and an opportunity to be heard in the event of suit or process thereon; or

(iv) A provision by which a person acting on behalf of a holder of the agreement is treated as an agent of the borrower in connection with its formation or execution.

(3) Except as expressly allowed by law, an agreement governing a revolving credit plan or any instrument which evidences or secures an extension of credit under the plan may not contain a provision by which the borrower waives any right accruing to the borrower under this subtitle.

(4) (i) Any clause or provision in an agreement governing the plan or in any instrument which evidences or secures an extension of credit under a plan that is in violation of this subsection shall be unenforceable.

(ii) Subject to subparagraph (iii) of this paragraph, the penalties set out under §§ 12-917 and 12-918 of this subtitle do not apply unless the credit grantor attempts to enforce a provision prohibited under this subsection.

(iii) The penalties set out under §§ 12-917 and 12-918 of this subtitle do not apply to the enforcement by a credit grantor of a provision otherwise prohibited under this subsection where the enforcement was initiated by the credit grantor prior to October 1, 1993.

(c) Unless a borrower has notice of an assignment of the account established under the plan, any payments made by the borrower to the last known holder of the account shall discharge the borrower's obligation to the extent of the payments.

(d) Upon receipt of a cash payment from a borrower, a credit grantor shall give the borrower a written receipt for the payment.

§12–923.1.

(a) Any statement or characterization that indicates the borrower intends to use a plan to obtain loans or other extensions of credit solely to acquire an interest in or to carry on a business or commercial enterprise may be relied upon by a credit grantor in establishing a plan, unless the credit grantor knows or should know that the statement or characterization is false or misleading.

(b) As a condition to the establishment of a plan, a credit grantor may not require a borrower to make any false or misleading statement or characterization that loans or other extensions of credit to be obtained under a plan are commercial loans or for a commercial purpose if the credit grantor knows or should know they are not commercial loans or for a commercial purpose.

(c) The borrower has the burden of proving that a credit grantor knew or should have known that a statement or characterization described in subsection (a) or (b) of this section was false or misleading when made and that loans or other extensions of credit obtained under a plan were not commercial loans or extensions of credit for a commercial purpose.

(d) Unless a credit grantor knew or should have known that a statement or characterization described in subsection (a) or (b) of this section was false or misleading when made, a credit grantor shall have no liability under this subtitle if loans or other extensions of credit under a plan are actually used by the borrower other than as commercial loans or other extensions of credit for a commercial purpose.

§12–924.

(a) (1) Except as provided in paragraph (2) of this subsection, this section applies only to a plan between a credit grantor and a consumer borrower under which a credit grantor has taken any property as security for credit extended under the plan.

(2) This section does not apply to a loan to which § 3-105.1 of the Real Property Article applies.

(b) A credit grantor shall release any recorded mortgage, deed of trust, security agreement, or other lien securing the extension of credit within a reasonable time after:

(1) The outstanding unpaid indebtedness under a plan has been paid in full;

(2) There are no further obligations of the credit grantor or the consumer borrower under the plan; and

(3) The account under the plan is closed.

(c) The release shall be:

(1) In writing; and

(2) Prepared at the expense of the credit grantor.

(d) (1) If the credit grantor does not record the release, the credit grantor shall furnish the consumer borrower with the release in a recordable form.

(2) If the credit grantor records the release, the credit grantor shall furnish the consumer borrower with a copy of the release.

(e) (1) If a fee is collected by a credit grantor for the recording of a release:

(i) The release shall be recorded by the credit grantor; and

(ii) Any portion of the fee not paid to a governmental entity for recording the release shall be refunded to the borrower.

(2) If a fee is not collected by a credit grantor for the recording of a release, the credit grantor is not obligated to record the release.

§12–925.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fully indexed rate" means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the credit grantor, plus the margin that will apply after the expiration of an introductory interest rate.

(3) (i) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(ii) "Mortgage loan" does not include a reverse mortgage loan.

(b) A credit grantor may not make a mortgage loan without giving due regard to the borrower's ability to repay the mortgage loan in accordance with its terms, including the fully indexed rate of the mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

(c) (1) Due regard to a borrower's ability to repay a mortgage loan must include:

(i) Consideration of the borrower's debt to income ratio, including existing debts and other obligations; and

(ii) Verification of the borrower's gross monthly income and assets by review of third–party written documentation reasonably believed by the credit grantor to be accurate and complete.

(2) Acceptable third–party written documentation includes:

(i) The borrower's Internal Revenue Service form W–2;

(ii) A copy of the borrower's income tax return;

(iii) Payroll receipts;

(iv) The records of a financial institution; or

(v) Other third–party documents that provide reasonably reliable evidence of the borrower's income or assets.

(3) This subsection does not apply to a mortgage loan:

(i) Approved for government guaranty by the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration; or

(ii) That refinances an existing mortgage loan if the refinance mortgage loan is:

1. Offered under the federal Homeowner Affordability and Stability Plan; and

2. Made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

§12–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Balloon payment" means any scheduled payment on an installment loan that is more than 2 times the average of all other payments scheduled to repay the installment loan.

(2) "Balloon payment" does not include a down payment.

(c) "Borrower" means a corporation, partnership, association, government, or governmental subdivision or agency, trust, individual, or other entity receiving a loan or other extension of credit under this subtitle.

(d) "Closed end credit" means the extension of credit by a credit grantor to a borrower under an arrangement or agreement which is not a revolving credit plan as defined in Subtitle 9 of this title.

(e) "Commercial loan" and "extension of credit for a commercial purpose" mean an extension of credit made:

(1) Solely to acquire an interest in or to carry on a business or commercial enterprise; or

(2) To any business or commercial organization.

(f) "Consumer borrower" means an individual receiving a loan or other extension of credit under this subtitle for personal, household, or family purposes or an individual receiving a commercial loan or other extension of credit for any commercial purpose not in excess of $75,000, secured by residential real property.

(g) (1) "Credit grantor" means any individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity making a loan or other extension of credit under this subtitle which is incorporated, chartered, or licensed pursuant to State or federal law, the lending operations of which are subject to supervision, examination, and regulation by a State or federal agency or which is licensed under Title 12, Subtitle 4 of the Financial Institutions Article or is a retailer.

(2) "Credit grantor" includes:

(i) Any bank, trust company, depository institution, or savings bank having a branch in this State;

(ii) A person not required to be licensed under this subtitle, who is exempt from the licensing provisions of Title 11, Subtitle 5 of the Financial Institutions Article, who makes a loan or extension of credit under this subtitle secured by a secondary mortgage on residential real property; and

(iii) Any person who acquires or obtains the assignment of an agreement for an extension of credit made under this subtitle.

(h) "Debt cancellation agreement" means an agreement between a credit grantor and a borrower which provides for cancellation of the remaining loan balance in the event of theft or total destruction of the collateral for the loan minus the proceeds of any insurance maintained on the collateral for the loan or, if the borrower does not have insurance, the actual cash value of the collateral at the time of loss, determined as provided in the agreement.

(i) "Installment loan" means a loan repayable in scheduled periodic payments of principal and interest.

(j) "Loan" means any single extension of closed end credit, whether repayable in installments, on demand, or otherwise and whether extended in one or more advances.

(k) "Mechanical repair contract" has the meaning stated in Title 15, Subtitle 3 of the Transportation Article.

(l) "Remaining loan balance", when used in reference to a debt cancellation

agreement, does not include:

(1) Any delinquent or deferred payments;

(2) Past due charges;

(3) Late payment charges;

(4) Unearned interest;

(5) Unearned rental payments;

(6) The portion of any financed taxes or charges, including charges for credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and mechanical repair contracts, actually refunded to the borrower or credited as a reduction to the loan balance; or

(7) By agreement of the parties, the amount of any primary insurance deductible.

(m) "Residential real property" means owner-occupied real property having a dwelling on it designated principally as a residence with accommodations for not more than four families.

§12–1002.

(a) Any credit grantor may, subject to the other provisions of this subtitle, offer and extend closed end credit to a borrower.

(b) In connection with closed end credit offered and extended under this subtitle, a credit grantor may charge and collect the interest and other charges permitted by this subtitle and may take any security as collateral as may be acceptable to the credit grantor.

§12–1003.

(a) A credit grantor may charge and collect interest on a loan at any daily, weekly, monthly, annual, or other periodic percentage rate as the agreement, the note, or other evidence of the loan provides if the effective rate of simple interest is not in excess of 24 percent per year. The rate of interest chargeable on a loan must be expressed in the agreement as a simple interest rate or rates.

(b) (1) Interest may be calculated by way of simple interest or by any other method as the agreement, note, or other evidence of the loan provides. If the interest is precomputed, it may be calculated on the assumption that all scheduled payments will be made when due.

(2) For purposes of this section, a year may be any period of from 360 to

366 days, including or disregarding the effect of leap year, as the credit grantor may determine.

(c) (1) (i) Except as provided in paragraph (2) of this subsection, if an installment loan under this subtitle made to a consumer borrower is secured by collateral other than a lien on residential real property, the credit grantor may not require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity.

(ii) If an installment loan under this subtitle made to a consumer borrower is secured by a secondary lien on residential real property, the credit grantor may require a schedule of repayment providing for a balloon payment at maturity. On request, the consumer borrower is permitted to postpone payment of the balloon payment once for a period not to exceed 6 months. The borrower must continue to make installment payments in the amount required prior to maturity during the extension period. The credit grantor may not impose any charges or fees as a result of allowing an extension period.

(2) (i) 1. In this paragraph the following words have the meanings indicated.

2. "Motorcycle" has the meaning stated in § 11–136 of the Transportation Article.

3. "Passenger car" has the meaning stated in § 11–144.1 of the Transportation Article.

(ii) A credit grantor may require a schedule of repayment under which a consumer borrower may be required to pay a balloon payment at maturity if:

1. The installment loan is secured by a lien on a motor vehicle that is a motorcycle or passenger car; and

2. The amount of the installment loan exceeds:

A. $10,000, if the motor vehicle is a motorcycle; and

B. $30,000, if the motor vehicle is a passenger car.

§12–1004.

(a) If the agreement, note, or other evidence of the loan permits, the periodic percentage rate of interest charged and collected on the loan may, if the interest is not precomputed, vary in accordance with an index that is made readily available to and verifiable by the borrower and is beyond the control of the credit grantor.

(b) The periodic percentage rate, as varied, may be made applicable to any outstanding indebtedness on the loan on and after the effective date of the variation.

(c) This section does not limit the authority of a credit grantor to charge and collect interest on a loan in the manner and at the rate authorized in any other section of this subtitle.

(d) The periodic percentage rate, as varied, may not exceed the maximum rate permitted pursuant to § 12-1003(a) of this subtitle.

§12–1005.

In addition to interest at a periodic percentage rate or rates permitted by §§ 12-1003 and 12-1004 of this subtitle, a credit grantor may charge and collect:

(a) (1) Subject to the limitations in this section, loan fees, points, finder's fees, and other charges; however, all such charges, when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this title, may not exceed 10 percent of the original extension of credit;

(2) In the case of a loan to a consumer borrower, no loan fees, points, finder's fees, or other charges may be charged and collected unless:

(i) The agreement, note, or other evidence of the loan so provides and the borrower agrees in writing to pay those charges;

(ii) The loan is secured by a lien on residential real property; however, all such charges, when combined with any finder's fee imposed by a mortgage broker under § 12-804 of this title, may not exceed 10 percent of the original extension of credit; and

(iii) The charges are disclosed to the borrower in accordance with the federal Truth in Lending Act; and

(3) The limitations imposed by paragraphs (1) and (2) of this subsection do not apply to a credit extension:

(i) Secured by a first lien on residential real property; or

(ii) Made for a bona fide commercial purpose in excess of $75,000.

(b) Reasonable fees for services rendered or for reimbursement of expenses incurred in good faith by the credit grantor or its agents in connection with the loan, including:

(1) Commitment fees;

(2) Official fees and taxes;

(3) Premiums or other charges for any guarantee or insurance protecting the credit grantor against the borrower's default or other credit loss;

(4) Costs incurred by reason of examination of title, inspection, recording, and other formal acts necessary or appropriate to the security of the loan;

(5) Filing fees;

(6) Attorney's fees; and

(7) Travel expenses.

(c) (1) The cost to the borrower of an optional debt cancellation agreement, provided that the cost of the debt cancellation agreement is separately itemized in the financing agreement.

(2) This cost is in addition to the charges permitted under subsections (a), (b), and (d) of this section.

(d) (1) In the case of a loan to a consumer borrower, a fee permitted under subsection (b) of this section may not be charged and collected unless:

(i) The agreement, note, or other evidence of the loan permits;

(ii) The fee is an actual and verifiable expense of the credit grantor not retained by him; and

(iii) Limited to charges for:

1. Attorney's fees for services rendered in connection with the preparation, closing, or disbursement of the loan;

2. Any expense, tax, or charge paid to a governmental agency;

3. Examination of title, appraisal, or other costs necessary or appropriate to the security of the loan; and

4. Premiums for any insurance coverage permitted under this subtitle.

(2) Notwithstanding § 12–1009(e) of this subtitle, fees and charges permitted under this subsection may be imposed, charged, and collected at any time.

(e) For purposes of this subtitle, fees and charges permitted under this section are not interest with respect to a loan.

§12–1006.

A credit grantor may at any time permit a borrower to defer scheduled payments of a loan and may, in connection with the deferral and by agreement of the credit grantor and borrower:

(1) Charge and collect deferral charges; and

(2) Require payment by the borrower of the additional cost to the credit grantor of premiums for continuing in force, until the end of the period of deferral, any insurance coverage provided in connection with the loan.

§12–1007.

(a) (1) In this section the following words have the meanings indicated.

(2) "Covered loan" means a mortgage loan made under this subtitle that meets the criteria for a loan subject to the federal Home Ownership and Equity Protection Act set forth in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026, except that the comparison percentages for the mortgage loan shall be one percentage point less than those specified in 15 U.S.C. § 1602(bb), as modified from time to time by Regulation Z, 12 C.F.R. Part 1026.

(3) "Credit health insurance" has the meaning stated in § 13–101 of the Insurance Article.

(4) "Credit involuntary unemployment benefit insurance" has the meaning stated in § 13–101 of the Insurance Article.

(5) (i) "Credit life insurance" means insurance on the life of a borrower that provides indemnity for repayment of a specific loan or credit transaction on the death of the borrower.

(ii) "Credit life insurance" does not include life insurance payable to a beneficiary designated by the borrower other than the obligee of a specific loan or credit transaction.

(6) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(7) "Premium" has the meaning stated in § 1–101 of the Insurance Article.

(8) "Single premium coverage" means insurance for which the total premium is payable in one lump sum at or before the time coverage commences.

(b) In connection with a loan to a consumer borrower:

(1) The purchase of credit life insurance, credit health insurance, credit involuntary unemployment benefit insurance, and similar insurance coverages is optional with the consumer borrower; and

(2) Subject to § 12-1007.1 of this subtitle, the purchase of property insurance, title insurance, and credit loss insurance from an insurer of the borrower's choice may be required if the loan is secured.

(3) (i) Except as provided in this subsection, a credit grantor making a covered loan may not finance as a part of the covered loan transaction single premium coverage for:

1. Credit health insurance;

2. Credit involuntary unemployment benefit insurance; or

3. Credit life insurance.

(ii) Nothing in this subsection shall prohibit the financing of any insurance coverage in connection with a mobile home or its premises, as those terms are defined in § 8A-101 of the Real Property Article.

(c) The provisions of this section do not alter or modify rights, privileges, or restrictions heretofore existing between the credit grantor and a borrower other than a consumer borrower.

(d) Premiums for any insurance coverage permitted by this section are not interest with respect to a loan.

(e) The offer and placement of insurance under this section shall be subject to the provisions of the Insurance Article.

(f) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Improvements" means buildings or structures erected upon or affixed to real property that enhance the value of the real property.

(iii) "Property insurance coverage" means property insurance against losses caused by perils that commonly are covered in insurance policies described with terms similar to "standard fire" or "standard fire with extended coverage".

(iv) 1. "Replacement cost" means the amount needed to repair damage to or rebuild improvements on real property to restore the improvements to their pre-loss condition.

2. "Replacement cost" does not include the value of land.

(2) (i) A credit grantor may not require a borrower, as a condition to receiving or maintaining a loan secured by a lien, to provide or purchase property insurance coverage against risks to any improvements on any real property in an amount exceeding the replacement cost of the improvements on the real property.

(ii) In determining the replacement cost of the improvements on any real property, the credit grantor may:

1. Accept the value placed on the improvements by the insurer; or

2. Use the value placed on the improvements by the credit grantor's appraisal of the improvements.

(3) A violation of this subsection shall entitle the borrower to seek:

(i) An injunction to prohibit the credit grantor who has engaged or is engaging in the violation from continuing or engaging in the violation;

(ii) Reasonable attorney's fees; and

(iii) Damages directly resulting from the violation.

(4) A violation of this subsection does not affect the validity of the lien securing the loan.

§12–1007.1.

(a) In this section, "binder" means a binder or other temporary contract of insurance as provided under § 12-106 of the Insurance Article.

(b) A credit grantor shall comply with this section if the credit grantor:

(1) Makes any loan secured by a first lien on any interest in owner-occupied residential real property; and

(2) As a condition of making the loan, requires the consumer borrower to purchase property insurance or credit loss insurance.

(c) A credit grantor who makes a loan subject to this section shall accept as evidence of insurance a written binder issued by any authorized insurer or its insurance producer if the binder includes or is accompanied by:

(1) The name and address of the insured consumer borrower;

(2) The name and address of the credit grantor;

(3) A description of the insured residential real property;

(4) A provision that the binder may not be canceled within the term of the binder unless the credit grantor and the insured consumer borrower receive written notice of the cancellation at least 10 days prior to the cancellation;

(5) Except in the case of the renewal of a policy subsequent to the closing of the loan, a paid receipt for the full amount of the applicable premium; and

(6) The amount of coverage.

(d) This section does not prohibit a credit grantor from refusing to honor a binder in cases where:

(1) The credit grantor receives notice of the cancellation of the binder by the insurer; or

(2) At the expiration of 30 days of the date the binder was given, the insurer has failed to issue the policy of insurance.

§12–1008.

(a) If the agreement governing a loan permits, a credit grantor may:

(1) For a nonconsumer borrower, charge a higher periodic percentage rate or rates of interest on the amount of outstanding unpaid payments or portions of payments under the loan which are in default; and

(2) For any borrower, impose:

(i) A late or delinquency charge on payment or portions of payments; and

(ii) If payment is made with a check that is dishonored on the second presentment, a charge not to exceed $15.

(b) In the case of a loan to a consumer borrower, no late or delinquency charge may be charged unless the agreement, note, or other evidence of the loan permits. No more than 1 late or delinquency charge may be imposed for any single payment or portion of payment, regardless of the period during which it remains in default.

(c) For the purposes of subsection (b) of this section, all payments by the borrower shall be applied to satisfaction of scheduled payments in the order in which they become due.

(d) Charges permitted under this section may not be considered interest or finance charges under the agreement.

§12–1009.

(a) A consumer borrower may prepay a loan in full at any time.

(b) If interest charged pursuant to § 12–1003 of this subtitle in respect of a loan to a consumer borrower has been precomputed, then, in the event of prepayment of the entire loan, the credit grantor shall refund or credit to the borrower the unearned portion of the precomputed interest charge. This refund or credit shall be in an amount not less than the amount which would be refunded or credited if the unearned precomputed interest charge were calculated in accordance with the actuarial method, except that the borrower may not be entitled to a refund or credit of less than $5. The

unearned portion of the precomputed interest charge is, at the option of the credit grantor, either:

(1) That portion of the precomputed interest charge which is allocable to all originally scheduled or, if deferred, all deferred payment periods, or portions of payment periods, ending subsequent to the date of prepayment. The unearned precomputed interest charge is the total of that which would have been earned for each period, or portion of a period, had the loan not been prepaid, by applying to the unpaid balances of principal, according to the actuarial method, an annual percentage rate based on the precomputed interest charges, assuming that all payments were made as scheduled, or as deferred, if deferred. The credit grantor, at its option, may round this annual percentage rate to the nearest 1/4 of 1 percent; or

(2) The total precomputed interest charge less the earned precomputed interest charge. The earned precomputed interest charge shall be determined by applying an annual percentage rate based on the total precomputed interest charge, under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment.

(c) (1) As used in subsection (b) of this section, the following terms have the meanings indicated.

(2) "Actuarial method" means the method of allocating payments made on a loan between the outstanding principal balance of the loan and interest, by which a payment is applied first to the accumulated interest, and any remainder is subtracted from the outstanding principal balance of the loan.

(3) "Payment period" means the time period within which scheduled payments on a loan are due as provided in the agreement, note, or other evidence of the loan.

(4) "Precomputed interest charge" means interest as computed by an add on, discount, or other similar method.

(d) If a charge is made to a consumer borrower for premiums for insuring the borrower under an insurance policy pursuant to § 12–1007 of this subtitle, then, in the event of prepayment in full, the credit grantor shall refund or credit to the borrower any unearned premiums paid by the borrower, provided that no refund or credit of less than $5 shall be required.

(e) Except as provided in § 12–1005(d) of this subtitle, in connection with any prepayment of any loan by a consumer borrower, the credit grantor may not impose any prepayment charge.

(f) The terms of prepayment of any loan made to a borrower other than a consumer borrower shall be those agreed to by the credit grantor and the borrower.

§12–1010.

(a) Except as provided under subsection (c) of this section, a consumer borrower may, with the consent of the credit grantor, refinance the entire outstanding and unpaid amount of a loan, and the credit grantor may charge and collect a refinancing charge in connection with any refinancing in an amount agreed to by the credit grantor and the borrower.

(b) For purposes of this section, "the entire outstanding and unpaid amount of a loan" is:

(1) If the interest and charges in respect of the loan were not precomputed, the total of the unpaid balance and the accrued and unpaid interest and charges on the date of refinancing; or

(2) If the interest and charges on the loan were precomputed, the total of the unpaid balance and the accrued and unpaid charges on the date of refinancing, less the amount which the credit grantor would have been required to refund or credit upon prepayment on the date of refinancing under § 12-1009 of this subtitle governing refunds upon prepayment.

(c) A credit grantor may not impose any refinancing charges on the refinancing of an installment loan more often than once during any 12-month period of the loan if the loan is:

(1) Made by the credit grantor;

(2) Secured by a secondary lien on residential real property; and

(3) Made to cure a default on the loan being refinanced where the default has been in existence for more than 30 days.

§12–1011.

(a) If a consumer borrower defaults under the terms of a loan and the credit grantor refers the borrower's account to an attorney who is not a salaried employee of the credit grantor for collection, the credit grantor may, if the agreement, note, or other evidence of the loan permits, charge and collect from the borrower a reasonable attorney's fee.

(b) If the agreement, note, or other evidence of the loan permits, the credit grantor may recover from the borrower all court and other collection costs actually incurred by the credit grantor relating to the borrower's default.

§12–1012.

(a) (1) This subtitle does not prohibit a credit grantor from including in the loan amount the cost to the borrower of a mechanical repair contract sold in connection

with a motor vehicle, provided that the cost of the mechanical repair contract is separately itemized in the financing agreement.

(2) The cost of a mechanical repair contract sold in connection with a motor vehicle may be included in the loan amount whether or not the motor vehicle is covered by an original manufacturer's warranty.

(3) A credit grantor may not require a buyer of a motor vehicle, as a condition of receiving a loan, to enter a mechanical repair contract.

(b) This subtitle does not prohibit a credit grantor, in connection with a loan to a nonconsumer borrower, from:

(1) Extending or deferring all or any portion of any scheduled payment under the loan;

(2) Permitting prepayment or refinancing of the loan in whole or in part;

(3) Charging and collecting any charges in connection with the matters referred to in paragraphs (1) and (2) of this subsection; or

(4) Charging and collecting late or delinquency charges, attorney's fees, or collection charges.

(c) (1) This subtitle does not prohibit a credit grantor, in connection with a sale, from including in the loan amount the amounts actually paid or to be paid by the credit grantor pursuant to an agreement with the borrower, on behalf of the borrower to discharge any amount financed under an outstanding loan agreement or installment sale agreement or the unpaid portion of the early termination obligation under any lease or other obligation of the lessee, with respect to a motor vehicle or other property traded in.

(2) A credit grantor who is a seller of goods or services may not be deemed to be making loans for purposes of § 11-301(b)(6)(i) of the Financial Institutions Article merely by engaging in activities described in paragraph (1) of this subsection.

§12–1013.

(a) Unless otherwise provided under the express terms of the agreement, note, or other evidence of the extension of closed end credit, the provisions of Subtitle 1, 3, 4, 5, 6, or 9 of this title do not apply to an extension of closed end credit if:

(1) The agreement, note, or other evidence of the extension of credit is made before October 1, 1993; and

(2) The extension of credit is made under this subtitle before October 1, 1993.

(b) For the purposes of subsection (a) of this section, an extension of credit is made under this subtitle if:

(1) The credit grantor has made a written election to do so in the agreement, note, or other evidence of the extension of credit; or

(2) The agreement, note, or other evidence of the extension of credit is made pursuant to the provisions of this subtitle.

(c) For the purposes of subsection (a) of this section, if there is no written election to extend credit under this subtitle, the burden of proof is on the credit grantor to show the agreement, note, or other evidence of the extension of credit was made pursuant to this subtitle.

(d) Any agreement, note, or other evidence of an extension of credit made before October 1, 1993 is not subject to § 12-1013.2 of this subtitle.

§12–1013.1.

(a) (1) On or after October 1, 1993, a credit grantor may at its option elect to make a loan to any borrower either pursuant to this subtitle or as otherwise permitted by applicable law.

(2) In order to make a loan under this subtitle, a credit grantor shall make a written election to that effect in the agreement, note, or other evidence of the loan.

(b) (1) If a credit grantor elects in accordance with this section to make a loan under this subtitle, the provisions of Subtitle 1, 3, 4, 5, 6, or 9 of this title do not apply to the loan.

(2) If a person fails to elect in accordance with this section to extend closed end credit under this subtitle, the provisions of this subtitle do not apply.

§12–1013.2.

(a) (1) Except as provided under paragraph (2) of this subsection, the credit grantor shall deliver a copy of the agreement, note, or other evidence of the loan to the borrower no later than the time of consummation of the loan.

(2) If consummation of the loan does not occur in a face-to-face transaction between the credit grantor and the borrower, the credit grantor may delay delivering a copy of the agreement, note, or other evidence of the loan to the borrower until the due date of the first payment.

(b) If there is more than one borrower, a copy of the agreement, note, or other evidence of the loan may be delivered to any borrower who is primarily liable on the loan.

(c) Written acknowledgment by a borrower of delivery made in accordance with this section of a copy of the agreement, note, or other evidence of the loan is conclusive proof of the delivery as between the borrower and any assignee of the agreement, note, or other evidence of the loan without actual knowledge to the contrary.

§12–1014.

(a) If any provision of this subtitle is held invalid, such invalidity shall not affect any other provisions of this subtitle which can be given effect without the invalid provision.

(b) Notwithstanding any provisions of this title, a loan under this subtitle is subject only to the disclosure requirements of this subtitle, and, to the extent applicable, of the federal Truth in Lending Act and regulations promulgated thereunder.

§12–1015.

(a) A credit grantor making a loan or an extension of credit under this subtitle is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 3 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 3 of the Financial Institutions Article.

(b) In addition to any license which may be required by subsection (a) of this section, a credit grantor making a loan or extension of credit under this subtitle secured by any lien on residential real property is subject to the licensing, investigatory, enforcement and penalty provisions of Title 11, Subtitle 5 of the Financial Institutions Article unless the credit grantor or the loan or extension of credit is exempt under Title 11, Subtitle 5 of the Financial Institutions Article.

(c) If a license is required by this section, it shall be issued by the Commissioner of Financial Regulation.

(d) (1) An extension of credit made under this subtitle prior to October 1, 1994 by a home improvement contractor may not be deemed unenforceable or violative of this section because the contractor was not licensed under Title 11, Subtitle 3 of the Financial Institutions Article.

(2) Paragraph (1) of this subsection does not apply to any person engaged in the business of making loans at the time the credit was extended.

§12–1016.

(a) If a written complaint for violation of any provision of this subtitle, including the disclosure requirements of this subtitle and the federal Truth in Lending Act and regulations promulgated thereunder, or any other law of this State that regulates loans or other extensions of credit is filed with the Commissioner of Financial Regulation, the Commissioner may investigate the complaint and hold a hearing on it in accordance

with § 11–413 of the Financial Institutions Article.

(b) (1) The Commissioner shall give to the credit grantor against whom a complaint is filed at least 10 days' written notice of the complaint and the time and place of any hearing. The notice shall be in writing and sent by registered or certified mail to the credit grantor's principal place of business.

(2) Before a hearing under this section may be scheduled, the Commissioner shall:

(i) Send a written notice to the complaining party that describes the provisions in paragraph (3) of this subsection concerning preclusion; and

(ii) Obtain from the complaining party a written:

1. Election to proceed with a hearing in accordance with this section; and

2. Waiver of any right to pursue any cause of action or remedy as to the matters addressed in the complaint or the hearing.

(3) (i) If a complaining party provides a written election and waiver as described in paragraph (2)(ii) of this subsection, the complaining party shall be precluded from raising or asserting against the credit grantor in any subsequent forum any claim, defense, setoff, recoupment, penalty for violation, or right of any kind based on the matters addressed in the complaint or the hearing.

(ii) The preclusion in subparagraph (i) of this paragraph does not apply to an appeal from the order of the Commissioner resulting from the hearing.

(4) If a complaining party fails to provide a written election and waiver as described in paragraph (2)(ii) of this subsection, the Commissioner shall not schedule a hearing on the complaint.

(c) (1) If, after the hearing, the Commissioner finds that the credit grantor has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the credit grantor to cease and desist from the act or practice.

(2) (i) If the Commissioner finds that the act or practice described in paragraph (1) of this subsection resulted in the credit grantor collecting an amount from the complaining party not permitted under this subtitle, the Commissioner may direct the credit grantor to make a refund to the complaining party.

(ii) The Commissioner may direct a refund only up to the amount collected by the credit grantor from the complaining party that:

1. Exceeds the amount expressly permitted under this

subtitle; or

2. The credit grantor is expressly not permitted to collect.

(3) (i) If an order issued under this section directs the credit grantor to make a refund as authorized in paragraph (2) of this subsection, the credit grantor may make the refund before the order becomes final.

(ii) If a credit grantor makes the refund directed by the Commissioner's order, the order for the refund shall not become final and shall be withdrawn by the Commissioner.

(iii) Any order withdrawn by the Commissioner may not be considered evidence of the Commissioner's interpretation of this subtitle.

(4) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

(e) For purposes of this section, "complaining party" means an individual who files a written complaint with the Commissioner of Financial Regulation pursuant to this section.

§12–1017.

Any credit grantor or his officer or employee who willfully violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both.

§12–1018.

(a) (1) In this subsection, "notice" means the first to occur of the following:

(i) When the credit grantor receives a written notice from the borrower notifying the credit grantor of an error or violation;

(ii) When the credit grantor receives a written notice from the Commissioner of Financial Regulation or the appropriate regulatory authority notifying the credit grantor of an error or violation; or

(iii) When the credit grantor receives service of process in a civil action for an error or violation instituted by the borrower in a court of competent

jurisdiction.

(2) Except for a bona fide error of computation, if a credit grantor violates any provision of this subtitle the credit grantor may collect only the principal amount of the loan and may not collect any interest, costs, fees, or other charges with respect to the loan.

(3) The penalty provided under paragraph (2) of this subsection does not apply where a credit grantor:

(i) Unintentionally and in good faith fails to comply with § 12-1003, § 12-1004, § 12-1005, § 12-1008, § 12-1011, § 12-1013.2, § 12-1023(d), § 12-1024, § 12-1025, § 12-1026, § 12-1027, or § 12-1028 of this subtitle; and

(ii) Corrects the error or violation and makes the borrower whole for all losses, including reasonable attorney's fees and interests, where appropriate, within 10 days after the credit grantor receives notice of the error or violation.

(4) The burden shall be on the credit grantor to show that the credit grantor's failure to comply with § 12-1003, § 12-1004, § 12-1005, § 12-1008, § 12-1011, § 12-1013.2, § 12-1023(d), § 12-1024, § 12-1025, § 12-1026, § 12-1027, or § 12-1028 of this subtitle was unintentional and in good faith.

(b) In addition, a credit grantor who knowingly violates any provision of this subtitle shall forfeit to the borrower 3 times the amount of interest, fees, and charges collected in excess of that authorized by this subtitle.

§12–1018.1.

(a) In this section, "Commissioner" means the Commissioner of Financial Regulation.

(b) Except as provided in subsection (c) of this section, the penalty provided under § 12–1018(a)(2) of this subtitle does not apply if a credit grantor:

(1) Performed or omitted to perform an act in conformity with or in reliance upon:

(i) A written opinion of the Attorney General of Maryland or a regulation adopted by the Commissioner;

(ii) A written opinion by the Commissioner or the Deputy Commissioner; or

(iii) An interpretation by the Commissioner in a written notice or examination report; or

(2) Used a form or procedure that has been approved in writing by the

Commissioner and the Attorney General.

(c) The provisions of subsection (b) of this section do not apply to an act or omission to act that occurs after:

(1) The opinion, regulation, or interpretation relied on is amended, repealed, or determined to be invalid for any reason by any judicial or other authority; or

(2) Approval for a form or procedure is amended, rescinded, or determined to be invalid for any reason by any judicial or other authority.

(d) This section may not be construed to:

(1) Limit the imposition of any civil or criminal penalty for a knowing or willful violation of this subtitle; or

(2) Limit the power of the Commissioner or the courts to order a refund to a borrower of moneys collected in violation of this subtitle.

§12–1019.

An action for violation of this subtitle may not be brought more than 6 months after the loan is satisfied.

§12–1020.

A credit grantor is not liable for any failure to comply with a provision of this subtitle if, within 60 days after discovering an error and prior to institution of an action under this subtitle or the receipt of written notice from the borrower, the credit grantor notifies the borrower of the error and makes whatever adjustments are necessary to correct the error.

§12–1021.

(a) (1) A credit grantor may repossess tangible personal property securing a loan under an agreement, note, or other evidence of the loan if the consumer borrower is in default.

(2) The credit grantor may repossess tangible personal property from a consumer borrower only by:

(i) Legal process; or

(ii) Self-help, without use of force.

(b) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before a credit grantor repossesses any tangible

personal property, the credit grantor may serve a written notice on the consumer borrower of the intention to repossess the tangible personal property.

(2) The notice shall:

(i) State the default and any period at the end of which the tangible personal property will be repossessed; and

(ii) Briefly state the rights of the consumer borrower in case the tangible personal property is repossessed.

(d) The notice may be delivered to the consumer borrower personally or sent to him at his last known address by registered or certified mail.

(e) Within 5 days after the credit grantor repossesses the tangible personal property the credit grantor shall deliver to the consumer borrower personally or send to him at his last known address by registered or certified mail, a written notice which briefly states:

(1) The right of the consumer borrower to redeem the tangible personal property, and the amount payable for it;

(2) The rights of the consumer borrower as to a resale, and his liability for a deficiency; and

(3) The exact location where the tangible personal property is stored and the address where any payment is to be made.

(f) For 15 days after the credit grantor gives the notice required by subsection (e) of this section, the credit grantor shall retain any repossessed property.

(g) During the period provided for in subsection (f) of this section, the consumer borrower may:

(1) Redeem and take possession of the property; and

(2) Resume the performance of the agreement.

(h) To redeem the property, the consumer borrower shall:

(1) Tender the amount due under the agreement at the time of redemption, without giving effect to any provision which allows acceleration of any installment otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the property was repossessed; and

(3) If the discretionary notice provided for in subsection (c) of this section was given, pay the actual and reasonable expenses of retaking and storing the property.

(i) (1) Notwithstanding subsections (g) and (h) of this section, the credit grantor shall have the right to require the consumer borrower to tender payment of the entire balance due under the agreement if:

(i) The date of the default in the payments due under the agreement that led to the present repossession occurred within 18 months after the last repossession; or

(ii) The consumer borrower was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the property, or attempted to do so, and the property was repossessed because of that conduct.

(2) Under paragraph (1) of this subsection, the payment by the consumer borrower of the entire balance due under the agreement shall:

(i) Constitute redemption by the consumer borrower; and

(ii) Entitle the consumer borrower to take possession of the property.

(j) (1) (i) Subject to subsection (l) of this section, the credit grantor shall sell the property that was repossessed at:

1. Subject to paragraph (2) of this subsection, a private sale; or

2. A public auction.

(ii) At least 10 days before the sale, the credit grantor shall notify the consumer borrower in writing of the time and place of the sale, by certified mail, return receipt requested, sent to the consumer borrower's last known address.

(iii) Any sale of repossessed property must be accomplished in a commercially reasonable manner.

(2) In all cases of a private sale of repossessed goods under this section, a full accounting shall be made to the borrower in writing and the seller shall retain a copy of this accounting for at least 24 months. This accounting shall contain the following information:

(i) The unpaid balance at the time the goods were repossessed;

(ii) The refund credit of unearned finance charges and insurance premiums, if any;

(iii) The remaining net balance;

(iv) The proceeds of the sale of the goods;

(v) The remaining deficiency balance, if any, or the amount due the

buyer;

(vi) All expenses incurred as a result of the sale;

(vii) The purchaser's name, address, and business address;

(viii) The number of bids sought and received; and

(ix) Any statement as to the condition of the goods at the time of repossession which would cause their value to be increased or decreased above or below the market value for goods of like kind and quality.

(3) The Commissioner of Financial Regulation may make a determination concerning any private sale that the sale was not accomplished in a commercially reasonable manner. Upon that determination, the Commissioner may enter an order disallowing any claim for a deficiency balance.

(k) (1) The provisions of this subsection apply to a public sale of property which secured a loan in excess of $2,000 at the time the loan was made.

(2) The proceeds of a sale to which this subsection applies shall be applied, in the following order, to:

(i) The actual and reasonable cost of the sale;

(ii) The actual and reasonable cost of retaking and storing the property; and

(iii) The unpaid balance owing under the agreement at the time the property was repossessed.

(3) The credit grantor shall furnish to the consumer borrower a written statement which shows the distribution of the proceeds.

(4) If the provisions of this section, including the requirement of furnishing a notice following repossession, are not followed, the credit grantor shall not be entitled to any deficiency judgment to which he would be entitled under the loan agreement.

(l) (1) (i) In this subsection, "consumer goods" means tangible personal property used or bought for use primarily for personal, family, or household purposes that is:

1. Movable at the time a security interest attaches; or

2. A fixture.

(ii) "Consumer goods" does not include money, documents, instruments, accounts, chattel paper, or general intangibles.

(2) This subsection applies to tangible personal property securing a loan that:

(i) Has been repossessed by the credit grantor; or

(ii) Is in actual or constructive possession of the credit grantor where the perfection of the security interest in the property depends on the possession of the property.

(3) In the case of a purchase money security interest in consumer goods, if a consumer borrower has paid 60 percent of the cash price or 60 percent of the loan in the case of another security interest in consumer goods and, after default, has not signed a statement renouncing or modifying the consumer borrower's rights under this subsection, a credit grantor who has repossessed the consumer goods must take reasonable action within 90 days after the repossession to commence disposal of them in the manner provided under subsection (j) of this section.

(4) (i) In any other case involving tangible personal property securing a loan, a credit grantor may, after default, propose to retain the property in full satisfaction of the obligations of the borrower under the loan.

(ii) If, as authorized by subparagraph (i) of this paragraph, a credit grantor proposes to retain property in full satisfaction of the obligations of the borrower under the loan, the credit grantor shall send written notice of the proposal to:

1. The consumer borrower; and

2. Except in the case of consumer goods, any other person who has a security interest in the property and who:

A. Has duly filed a financing statement indexed in the name of the consumer borrower in this State; or

B. Is known by the credit grantor to have a security interest in the property.

(iii) 1. If the consumer borrower or other person entitled to receive notification objects in writing within 30 days from the sending of the notification, the credit grantor must take reasonable action to dispose of the property in the manner provided under subsection (j) of this section.

2. In the absence of written objection, the credit grantor may retain the property in full satisfaction of the outstanding unpaid indebtedness under the loan.

(5) If despite complying with the requirements of this section there is no sale of tangible personal property securing a loan under subsection (j) of this section:

(i) The credit grantor may retain the property without obligation to account to the borrower; and

(ii) If the property is retained, all obligations of the borrower under the loan shall be discharged.

§12–1022.

(a) (1) In this section the following words have the meanings indicated.

(2) "Borrower" means a consumer borrower who makes an application for a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower as the borrower's primary residence.

(3) "Commitment" means a written, specific, binding agreement between a borrower and a lender which sets forth the terms of a loan being extended to the borrower.

(4) "Financing agreement" means a written agreement between a borrower and a lender which sets forth the terms of a purchase money loan or a refinancing of an existing loan that:

(i) Results in or is secured by a first mortgage or a first deed of trust on residential real property to be occupied by the borrower; and

(ii) Is offered or extended to the borrower.

(5) (i) "Lender" means a credit grantor subject to the licensing requirements of Title 11, Subtitle 5 of the Financial Institutions Article.

(ii) "Lender" does not include a credit grantor exempt from licensing under § 11-502 of the Financial Institutions Article.

(6) (i) "Loan application" means any oral or written request for an extension of credit that is made in accordance with procedures established by a lender for the purpose of inducing the lender to seek to procure or make a mortgage loan.

(ii) "Loan application" does not include the use of an account or line of credit to obtain a loan within a previously established credit limit.

(b) (1) A lender who offers to make or procure a loan secured by a first mortgage or first deed of trust on residential real property to be occupied by the borrower shall provide the borrower with a financing agreement executed by the lender within 10 business days after the date the loan application is completed.

(2) The financing agreement shall provide:

(i) The term and principal amount of the loan;

(ii) An explanation of the type of mortgage loan being offered;

(iii) The rate of interest that will apply to the loan and, if the rate is subject to change or is a variable rate or is subject to final determination at a future date based on some objective standard, a specific statement of those facts;

(iv) The points, if any, to be paid by the borrower or the seller, or both; and

(v) The term during which the financing agreement remains in effect.

(3) If all the provisions of the financing agreement are not subject to future determination, change, or alteration during its term, the financing agreement shall constitute the final binding agreement between the parties as to the items covered by the financing agreement.

(c) (1) If any of the provisions of the financing agreement are subject to change or determination after its execution, the lender shall provide the borrower with a commitment, executed by the lender, at least 72 hours before the time of settlement agreed to by the parties, providing:

(i) The effective fixed interest rate or initial interest rate that will be applied to the loan; and

(ii) A restatement of all the remaining unchanged provisions of the financing agreement.

(2) Subsequent to execution of the financing agreement, the borrower may waive in writing the 72-hour advance presentation requirement and accept the commitment at settlement only if compliance with the 72-hour requirement is shown by the lender to be infeasible.

(d) If a lender fails to comply with the requirements of this section, the lender shall be subject to the penalties set forth in § 11-523 of the Financial Institutions Article.

(e) (1) A borrower aggrieved by any violation of this section shall be entitled to bring a civil suit for damages, including reasonable attorney's fees, against the lender.

(2) The penalties set out under § 12-1018 of this subtitle do not apply to any violation of this section.

(f) This section may not be construed to exempt a lender from the provisions of §§ 12-1027 and 12-1028 of this subtitle.

§12–1023.

(a) This section applies only to a loan made by a credit grantor under this subtitle to a consumer borrower.

(b) (1) Paragraph (2) of this subsection applies only to a loan or an extension of credit primarily for personal, household, or family purposes.

(2) An agreement, note, or other evidence of a loan may not contain:

(i) An assignment or order for the payment of wages, whether earned or to be earned, or of any chose in action covering lost wages;

(ii) An acceleration clause under which any part or all of the unpaid balance of the loan not yet matured may be declared due and payable because the credit grantor deems itself insecure;

(iii) A confession of judgment or any power of attorney authorizing the credit grantor to appear in court to confess judgment against the borrower or a surety or guarantor of the borrower, or any other waiver of the right to notice and an opportunity to be heard in the event of suit or process thereon; or

(iv) A provision by which a person acting on behalf of a holder of the agreement, note, or other evidence of the loan is treated as an agent of the borrower in connection with its formation or execution.

(3) Except as expressly allowed by law, an agreement, note, or other evidence of a loan may not contain a provision by which the borrower waives any right accruing to the borrower under this subtitle.

(4) (i) Any clause or provision in an agreement, note, or other evidence of a loan that is in violation of this subsection shall be unenforceable.

(ii) Subject to subparagraph (iii) of this paragraph, the penalties set out under §§ 12-1017 and 12-1018 of this subtitle do not apply unless the credit grantor attempts to enforce a provision prohibited under this subsection.

(iii) The penalties set out under §§ 12-1017 and 12-1018 of this subtitle do not apply to the enforcement by a credit grantor of a provision otherwise prohibited under this subsection where the enforcement was initiated by the credit grantor prior to October 1, 1993.

(c) Unless a borrower has notice of an assignment of an agreement, note, or other evidence of a loan, any payments made by the borrower to the last known holder of the agreement, note, or other evidence of the loan shall discharge the borrower's obligation to the extent of the payments.

(d) Upon receipt of a cash payment from a borrower, a credit grantor shall give

the borrower a written receipt for the payment.

§12–1023.1.

(a) Any statement or characterization that indicates the borrower intends to obtain a loan solely to acquire an interest in or to carry on a business or commercial enterprise may be relied upon by a credit grantor in making the loan, unless the credit grantor knows or should know that the statement or characterization is false or misleading.

(b) As a condition to making a loan, a credit grantor may not require a borrower to make any false or misleading statement or characterization that the loan is a commercial loan or for a commercial purpose if the credit grantor knows or should know it is not a commercial loan or for a commercial purpose.

(c) The borrower has the burden of proving that a credit grantor knew or should have known that a statement or characterization described in subsection (a) or (b) of this section was false or misleading when made and that the loan was not a commercial loan or for a commercial purpose.

(d) Unless a credit grantor knew or should have known that a statement or characterization described in subsection (a) or (b) of this section was false or misleading when made, a credit grantor shall have no liability under this subtitle if a loan is actually used by the borrower other than as a commercial loan or for a commercial purpose.

§12–1024.

(a) (1) Except as provided in paragraph (2) of this subsection, this section applies only to a loan made by a credit grantor to a consumer borrower.

(2) This section does not apply to a loan to which § 3-105.1 of the Real Property Article applies.

(b) Within a reasonable time after a loan to a consumer borrower has been repaid in full and all other obligations under the agreement, note, or other evidence of the loan have been fulfilled, a credit grantor shall:

(1) (i) Indelibly mark with the word "paid" or "canceled" and return to the consumer borrower each agreement, note, or other evidence of the loan; or

(ii) Furnish the consumer borrower with a written statement that identifies the loan transaction and states that the loan has been paid in full; and

(2) Release any recorded mortgage, deed of trust, security agreement, or other lien securing the loan.

(c) The release shall be:

(1) In writing; and

(2) Prepared at the expense of the credit grantor.

(d) (1) If the credit grantor does not record the release, the credit grantor shall furnish the consumer borrower with the release in a recordable form.

(2) If the credit grantor records the release, the credit grantor shall furnish the consumer borrower with a copy of the release.

(e) (1) If a fee is collected by a credit grantor for the recording of a release:

(i) The release shall be recorded by the credit grantor; and

(ii) Any portion of the fee not paid to a governmental entity for recording the release shall be refunded to the borrower.

(2) If a fee is not collected by a credit grantor for the recording of a release, the credit grantor is not obligated to record the release.

§12–1025.

(a) A credit grantor who receives scheduled monthly periodic payments on more than five loans secured by any interest in residential real property or tangible personal property shall furnish to the consumer borrower a written statement informing the consumer borrower of the amount of:

(1) If the interest and charges on the loan were precomputed:

(i) Payments credited to reducing the outstanding unpaid balance of the loan, either in terms of a total dollar figure or individually itemized; and

(ii) The remaining outstanding unpaid balance of the loan; or

(2) If the interest and charges on the loan were not precomputed:

(i) Payments credited to reducing the outstanding unpaid principal balance of the loan, either in terms of a total dollar figure or individually itemized;

(ii) Payments credited to interest and fees, either in terms of a total dollar figure or individually itemized; and

(iii) The remaining outstanding unpaid principal balance of the loan.

(b) At the option of the credit grantor, each written statement shall contain the information required in subsection (a)(1)(i) and (2)(i) and (ii) of this section either from the date the loan was made or, if previous written statements have been furnished to the consumer borrower, from the date of the last written statement.

(c) The written statement shall be furnished to the consumer borrower:

(1) In the case of loans secured by any interest in residential real property, at least annually; and

(2) In the case of loans secured by any interest in residential real property or tangible personal property, within a reasonable time after receipt of a written request of a consumer borrower provided the request is made at a reasonable time or interval since the furnishing of the last written statement.

(d) A credit grantor may charge a fee of up to $5 for each written statement requested by a consumer borrower.

§12–1026.

(a) (1) In this section the following words have the meanings indicated.

(2) "Escrow account" means an expense or escrow account which tends to protect the security of a loan by the accumulation of funds for the payment of taxes, insurance premiums, or other expenses.

(3) "Lending institution" means a bank, savings bank, or savings and loan association doing business in Maryland.

(b) (1) A lending institution that makes a loan to a consumer borrower secured by a first mortgage or first deed of trust on residential real property and creates or is the assignee of an escrow account in connection with that loan shall pay interest to the consumer borrower on the funds in the escrow account at an annual rate not less than the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year, as published by the Federal Reserve in "Selected Interest Rates (Daily) – H.15", as of the first business day of the calendar year.

(2) Interest on these funds shall be:

(i) Adjusted, if applicable, as of the first day of each calendar year to reflect the rate to be paid during that year, as determined under paragraph (1) of this subsection;

(ii) Computed on the average monthly balance in the escrow account; and

(iii) Paid annually to the borrower by crediting the escrow account with the amount of interest due.

(3) The lending institution shall annually provide the consumer borrower with a statement of the escrow balance.

(4) The provisions of this subsection do not apply to a lending institution

that provides for the payment of taxes, insurance, or other expenses under the direct reduction method by which these expenses, when paid by the lending institution, are added to the outstanding principal balance of the loan.

(5) (i) This subsection does not apply if the loan:

1. Is purchased by an out–of–state lender through the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and

2. The out–of–state lender elects to service the loan as a condition of purchase.

(ii) Notwithstanding subparagraph (i) of this paragraph, this subsection shall apply if the out–of–state lender:

1. Sells the loan to a Maryland lender; or

2. Places the loan with a Maryland lender for servicing.

(c) (1) Except upon foreclosure, release, or as provided in paragraph (2) of this subsection, funds in any escrow account maintained by a credit grantor on behalf of a consumer borrower for use in paying taxes, insurance premiums, and ground rents may not be used:

(i) To reduce the principal; or

(ii) To pay interest or other loan charges.

(2) If there is periodically a balance in the escrow account maintained by a credit grantor on behalf of a consumer borrower which exceeds the amount stated in the agreement, note, or other evidence of the loan, the consumer borrower shall be given at least annually the option of:

(i) Receiving a refund of the excess amount;

(ii) Applying the excess amount to the payment of principal and interest; or

(iii) Leaving the excess amount in the escrow account.

(3) A refund of any excess amount shall be made:

(i) Within 60 days after the receipt by the credit grantor of the consumer borrower's request for a refund; or

(ii) If the consumer borrower has not notified the credit grantor of the option chosen by the consumer borrower, within 60 days after the date the credit grantor mailed notice of an excess amount.

(4) (i) Subject to subparagraph (iii) of this paragraph, if, after recalculating the amount that is required to be maintained in escrow under a first mortgage or first deed of trust on residential real property, a credit grantor or a servicer of a loan determines that the amount that a consumer borrower is required to pay must increase, the credit grantor or servicer may not include, for a 1–year period after the determination is made, the amount of the increase in escrow payments in any calculation of the amount of interest or any fee due under the loan.

(ii) This paragraph may not be construed to limit the ability of a credit grantor or a servicer of a loan to impose a late fee for any escrow payment that is due and not timely paid.

(iii) 1. In this subparagraph, "other expenses" does not include money required by a credit grantor or a servicer of a loan for an escrow account cushion as permitted by the federal Real Estate Settlement Procedures Act.

2. A credit grantor or a servicer of a loan may charge interest to a consumer borrower on the amount of funds the credit grantor or servicer advances to pay taxes, insurance premiums, or other expenses owed by the consumer borrower in order to protect the security of the loan.

3. Interest may be charged by a credit grantor or a servicer of a loan under subsubparagraph 2 of this subparagraph only if:

A. The credit grantor or servicer advances its own funds because funds of the consumer borrower were not available to pay the taxes, insurance premiums, or other expenses owed by the consumer borrower;

B. The need for the advance was not caused by an error of the credit grantor or servicer in servicing the loan;

C. The credit grantor or servicer provides notice to the consumer borrower that the advance was made and that interest will be charged on the advance;

D. Interest does not begin to accrue until 60 days after notice has been provided to the consumer borrower in accordance with item C of this subsubparagraph;

E. Interest is charged only on the amount of funds actually advanced by the credit grantor or servicer after the credit grantor or servicer has used all available funds of the consumer borrower to pay taxes, insurance premiums, or other expenses owed by the consumer borrower; and

F. The consumer borrower is permitted to repay the advance as permitted by the federal Real Estate Settlement Procedures Act.

(d) (1) Funds in any escrow account shall be kept separate from and may not

be commingled with the funds of the credit grantor.

(2) A credit grantor may place escrow funds received in connection with more than one loan into a single escrow account.

(3) In the event of the bankruptcy of the credit grantor, any escrow funds placed in any escrow account may not be considered to be part of the bankrupt estate of the credit grantor.

(e) A credit grantor may not impose a collection fee or service charge on the maintenance of an escrow account on a first mortgage or first deed of trust.

§12–1027.

(a) In this section, "lender's inspection fee" means a fee imposed by a credit grantor to pay for a visual inspection of residential real property.

(b) Except as provided in subsection (c) of this section, a credit grantor may not impose a lender's inspection fee in connection with a loan made to a consumer borrower that is secured by residential real property.

(c) A lender's inspection fee may be imposed on a consumer borrower if the inspection is needed to ascertain completion of:

(1) Construction of a new home; or

(2) Repairs, alterations, or other work required by the credit grantor.

(d) This section does not apply to an appraisal of the value of real property by a credit grantor or to fees imposed in connection with an appraisal.

§12–1028.

(a) This section applies only to a loan to a consumer borrower secured by a first mortgage or first deed of trust on residential real property used as the consumer borrower's primary residence.

(b) A credit grantor may require a consumer borrower to pay for services rendered by the credit grantor's attorney only if the attorney's fee:

(1) Is limited to legal services attributable to processing and closing the loan and not to unrelated services performed by the attorney for the credit grantor;

(2) If in excess of $100, is supported by a statement provided to the borrower at or prior to settlement that:

(i) Describes the services performed;

(ii) Sets forth the time spent by the attorney and the hourly rate or

other basis for determining the fee;

(iii) States that the legal services are being performed on behalf of the credit grantor and not on behalf of the consumer borrower; and

(iv) States that the services are being paid for by the consumer borrower;

(3) Is reasonable on the basis of the legal services performed; and

(4) Is separately itemized on the loan settlement sheet and identified as a fee to the credit grantor's attorney.

(c) (1) A credit grantor may not require as a condition of settlement that a consumer borrower employ a particular attorney or title insurance company to perform a title search, examination of title, or closing if:

(i) The consumer borrower notifies the credit grantor, within 7 days after application for the loan, of the name and business address of the borrower's choice of attorney or title insurance company to perform the title search, examination of title, or closing; and

(ii) The credit grantor does not reject the consumer borrower's choice of attorney or title insurance company for good cause within 7 days after the receipt of the notice under item (i) of this paragraph.

(2) Subject to the requirements of subsection (b) of this section, this subsection may not be construed to prohibit a credit grantor from requiring a consumer borrower to pay for:

(i) Preparation of loan closing documents;

(ii) Title insurance;

(iii) Review of documents prepared by the borrower's attorney; or

(iv) Attendance at settlement by the credit grantor's attorney.

(d) (1) Any credit grantor that imposes fees on a consumer borrower for settlement services, or document review services, performed by an attorney designated by the credit grantor, or who conditions settlement on the employment of a particular attorney or title insurance company, shall provide a prospective consumer borrower with a written notice stating:

(i) The credit grantor's requirements concerning selection of an attorney, title insurance company, or other person to perform settlement services relating to the purchase of the residential real property;

(ii) The consumer borrower's ability to choose an attorney or title insurance company under subsection (c) of this section; and

(iii) A good faith estimate of the fee or fees to be charged to the borrower.

(2) (i) The notice required under this subsection shall be provided at the time of or within 3 business days after the application for a loan, or earlier upon request.

(ii) A copy of the notice, signed by the applicant, shall accompany any executed application for a loan.

§12–1029.

(a) (1) In this section the following words have the meanings indicated.

(2) "Fully indexed rate" means the index rate, as defined in the mortgage loan documents, prevailing at the time the mortgage loan is approved by the credit grantor, plus the margin that will apply after the expiration of an introductory interest rate.

(3) (i) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(ii) "Mortgage loan" does not include a reverse mortgage loan.

(b) A credit grantor may not make a mortgage loan without giving due regard to the borrower's ability to repay the mortgage loan in accordance with its terms, including the fully indexed rate of the mortgage loan, if applicable, and property taxes and homeowner's insurance whether or not an escrow account is established for the collection and payment of these expenses.

(c) (1) Due regard to a borrower's ability to repay a mortgage loan must include:

(i) Consideration of the borrower's debt to income ratio, including existing debts and other obligations; and

(ii) Verification of the borrower's gross monthly income and assets by review of third–party written documentation reasonably believed by the credit grantor to be accurate and complete.

(2) Acceptable third–party written documentation includes:

(i) The borrower's Internal Revenue Service form W–2;

(ii) A copy of the borrower's income tax return;

(iii) Payroll receipts;

(iv) The records of a financial institution; or

(v) Other third–party documents that provide reasonably reliable evidence of the borrower's income or assets.

(3) This subsection does not apply to a mortgage loan:

(i) Approved for government guaranty by the Federal Housing Administration, the Veterans Administration, the United States Department of Agriculture, the Maryland Department of Housing and Community Development, or the Community Development Administration; or

(ii) That refinances an existing mortgage loan if the refinance mortgage loan is:

1. Offered under the federal Homeowner Affordability and Stability Plan; and

2. Made available by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

§12–1101.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a rental–purchase agreement.

(2) "Advertisement" does not include in–store merchandising ads.

(c) "Cash price" means the price at which the lessor would have sold rental property covered by a rental–purchase agreement to the consumer unconditionally for cash on the date of consummation.

(d) "Consumer" means an individual who rents personal property under a rental–purchase agreement primarily for personal, family, or household purposes.

(e) "Consummation" means the time at which a consumer enters into a rental–purchase agreement.

(f) "Cost of lease services" means the difference between the final purchase price of rental property and the cash price of rental property.

(g) "Lessor" means a person who regularly provides the use of personal property through rental–purchase agreements to consumers and to whom rental payments are initially payable on the face of a rental–purchase agreement.

(h) "Rental property" means personal property that is the subject of a rental–purchase agreement.

(i) "Rental–purchase agreement" means an agreement that:

(1) Is for the use of personal property by an individual primarily for personal, family, or household purposes;

(2) Is for an initial period of 4 months or less;

(3) Is automatically renewable for a weekly or monthly period with each rental payment after the initial period; and

(4) Allows but does not obligate the consumer to become the owner of the property.

§12–1102.

(a) A rental-purchase agreement that complies with this subtitle may not be deemed to be:

(1) A "retail sale", as defined in § 12-601(s) of this title;

(2) An "installment sale agreement", as defined in § 12-601(m) of this title; or

(3) A "security interest", as defined in § 1-201(37) of this article.

(b) This subtitle does not apply to:

(1) A rental-purchase agreement made primarily for business, commercial, or agricultural purposes, or made with governmental agencies, instrumentalities, or organizations;

(2) A rental of a safe deposit box;

(3) A lease or bailment of personal property that:

(i) Is incidental to the rental of real property; and

(ii) Provides that the consumer has no option to purchase the rented real property; or

(4) A lease of an automobile.

§12–1103.

(a) (1) A lessor shall disclose to a consumer the information required under this subtitle.

(2) In a transaction involving more than 1 lessor, only 1 lessor need make the disclosures required under this subtitle, but all lessors shall be bound by the disclosures made.

(b) A lessor shall make the disclosures required under this subtitle before consummation of the rental–purchase agreement.

(c) A lessor shall:

(1) Make the disclosures required under this subtitle in a written form that is simple and understandable and is written or typed in a size not less than 10 point type;

(2) Make the disclosures required under this subtitle in English or in any other language used by the lessor in advertisements related to the rental–purchase transaction;

(3) Make the disclosures required under this subtitle on the face of the rental–purchase agreement and summary of costs chart above the consumer's signature lines; and

(4) Deliver a copy of the rental–purchase agreement and the summary of costs chart to the consumer.

(d) If a disclosure becomes inaccurate as a result of any act, occurrence, or agreement by the consumer after delivery of the rental property, the resulting inaccuracy is not a violation of this subtitle.

§12–1104.

(a) The lessor shall disclose in each rental–purchase agreement, as applicable:

(1) The total number, total amount, and timing of all rental payments necessary to acquire ownership of the rental property;

(2) A statement that the consumer will not own the rental property until the consumer has paid the total of payments necessary to acquire ownership;

(3) A brief description of the rental property sufficient to identify the rental property to the consumer and the lessor, including an identification number and a statement indicating whether the rental property is new or used;

(4) (i) A statement of the cash price of the rental property; or

(ii) If a single rental–purchase agreement involves a lease of 2 or more items of rental property as a set, a statement of the aggregate cash price of all items;

(5) The cost of lease services of the rental property;

(6) The total of initial payments paid or required to be paid at or before consummation of the rental–purchase agreement or delivery of the rental property, whichever is later;

(7) A statement that the total of rental payments does not include other charges, such as reinstatement fees, damage fees, or pickup fees;

(8) A statement that the consumer has the right to exercise an early purchase option and the price, formula, or method for determining the early purchase option price;

(9) A statement that the consumer must pay the early purchase option price for the rental property if, and when, the rental property is lost, stolen, damaged, or destroyed;

(10) (i) A statement identifying the lessor as the party responsible for maintaining or servicing the rental property while it is being rented;

(ii) A description of that responsibility; and

(iii) A statement that if any part of a manufacturer's express warranty covers the rental property at the time the consumer acquires ownership of the rental property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(11) The date of consummation and the identities of the lessor and consumer;

(12) A statement that the consumer may terminate the rental–purchase agreement without penalty by voluntarily surrendering or returning the rental property in good repair, normal wear and tear excepted, upon expiration of any rental term and payment of any past due rental payments;

(13) Notice of the consumer's right to reinstate an agreement as provided in § 12–1106 of this subtitle; and

(14) Any other charges, including reinstatement fees, damage fees, and pickup fees.

(b) The lessor shall disclose in each summary of costs chart, as applicable:

(1) The cash price of the rental property;

(2) The timing of the payments for the rental property;

(3) The total purchase price if the payment schedule under item (2) of this

subsection is completed according to the schedule; and

(4) The cost of lease services of the rental property.

(c) A lessor shall place on property which is to be leased as a part of a rental–purchase agreement and is displayed in the lessor's place of business a tag which shall indicate:

(1) The number and amount of individual renewal payments necessary to purchase the property;

(2) The total amount necessary to purchase the property; and

(3) Whether the property is new or used.

§12–1105.

A rental-purchase agreement may not contain:

(1) A confession of judgment;

(2) A negotiable instrument;

(3) A security interest or any other claim of a property interest in any goods except the rental property delivered by the lessor pursuant to the rental-purchase agreement;

(4) A wage assignment;

(5) A waiver by the consumer of claims or defenses; or

(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of rental property.

§12–1106.

(a) A consumer who fails to make a timely rental payment may reinstate the rental-purchase agreement, without losing any rights or options that exist under the rental-purchase agreement, if within 5 days of the renewal date, for a consumer who renews on a monthly basis, or within 2 days of the renewal date, for a consumer who renews on a weekly basis, the consumer pays:

(1) All past due rental charges;

(2) If the rental property has been picked up or repossessed, the reasonable costs of pickup and redelivery; and

(3) Any applicable reinstatement fee, which may not exceed $5.

(b) A consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership of the rental property and who has returned or voluntarily surrendered the rental property without judicial process during the applicable reinstatement period under subsection (a) of this section or who has made the property available for pickup at the request of the lessor, whichever occurs last, may reinstate the rental-purchase agreement prior to a date not less than 21 days after the date of the return of the rental property.

(c) A consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership of the rental property and who has returned or voluntarily surrendered the rental property without judicial process during the applicable period set forth in subsection (a) of this section or who has made the property available for pickup at the request of the lessor, whichever occurs last, may reinstate the rental-purchase agreement prior to a date not less than 45 days after the date of the return of the rental property.

(d) Nothing in this section shall prevent a lessor from repossessing the property during the reinstatement period, but a repossession may not affect the consumer's right to reinstate. After reinstatement, the lessor shall provide the consumer with the same rental property or a substitute property of comparable quality and condition.

(e) (1) A lessor may repossess property under a rental-purchase agreement if the consumer is in default of:

(i) Any sum due under the agreement; or

(ii) The performance of any promise the breach of which is expressly made a ground for repossessing the property.

(2) A lessor may repossess property only by legal process or self-help without the use of force. Nothing in this section authorizes a violation of criminal law.

(3) At the time of repossession of the property, the lessor shall deliver to the consumer a written notice which states the right of the buyer to reinstate the rental-purchase agreement, the last date by which the consumer may reinstate the agreement, and the amount payable for reinstatement.

(4) The consumer may reinstate the rental-purchase agreement within 15 days after the date of repossession by paying:

(i) All past due rental charges;

(ii) The reasonable costs of pickup and redelivery; and

(iii) A reinstatement fee of $5.

§12–1106.1.

A lessor shall maintain a copy of the rental–purchase agreement for 3 years after the final payment on a rental–purchase agreement.

§12–1107.

(a) A lessor shall provide the consumer with a written receipt for each payment under a rental–purchase agreement made in person by cash or money order, or, if the payment is made in any other form, on request.

(b) The written receipt shall contain the:

(1) Total amount paid;

(2) Total amount due that week or month; and

(3) Total remaining rental payments necessary to acquire ownership of the item.

(c) The lessor shall provide the consumer with a written statement of account within 3 days after the consumer's request.

§12–1108.

(a) When a rental-purchase agreement is satisfied and replaced by a new rental-purchase agreement between the lessor and consumer, the lessor and consumer shall negotiate a new rental-purchase agreement requiring new disclosures.

(b) The following do not require the negotiation of a new rental-purchase agreement:

(1) The addition or return of rental property under a multiple-item agreement or the substitution of the rental property, if in either case the average payment allocable to a payment period is not changed by more than 25 percent;

(2) A deferral or extension of 1 or more rental payments, or portions of a rental payment;

(3) A reduction in charges in the rental-purchase agreement; or

(4) A rental-purchase agreement involved in a court proceeding.

§12–1109.

(a) An advertisement for a rental-purchase agreement that refers to or states the dollar amount of any payment and the right to acquire ownership for any 1 specific item shall clearly and conspicuously state, as applicable:

(1) That the transaction advertised is a rental-purchase agreement;

(2) The total cost and the number of payments necessary to acquire ownership; and

(3) That the consumer acquires no ownership right if the total amount necessary to acquire ownership is not paid.

(b) Any owner, employee, or agent of any medium in which an advertisement appears or through which it is disseminated may not be liable for violations under this section.

(c) The requirements under subsection (a) of this section do not apply to an advertisement that:

(1) Does not refer to or state the amount of any payment; or

(2) Is published in the yellow pages of a telephone directory or in any similar directory of business.

§12–1110.

(a) A person who willfully and intentionally violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not to exceed $500 per violation.

(b) For a violation of a provision of this subtitle, a consumer under a rental-purchase agreement may recover from the lessor committing the violation, or may set off by way of a counterclaim in an action brought by the lessor or its assignee, an amount equal to:

(1) Actual damages; and

(2) $500 plus reasonable attorney's fees and court costs.

(c) A lessor or its assignee may not be held liable under this subtitle if the lessor or its assignee proves by a preponderance of the evidence:

(1) That the violation was unintentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adopted to avoid that type of error; and

(2) That the lessor or its assignee corrected the error and refunded any money excessively charged due to the error, within 30 days after discovering or receiving notice of the error.

§12–1110.1.

(a) A lessor may not bring a court action to recover property subject to a

rental–purchase agreement until 15 days after the consumer has been sent notice of a default.

(b) Notice of default sent by certified mail to the consumer's last known address constitutes notice.

(c) The notice shall include any amount the consumer must pay to reinstate the rental–purchase agreement, if applicable.

§12–1111.

(a) The following is an example of a form which shall be used to satisfy the disclosure requirements of §§ 12–1103(c) and 12–1104(a) of this subtitle:

"Rental–Purchase Agreement

1. Lessor(s):
Name _____
Address _____
Telephone no. _____

Lessee(s):
Name _____
Address _____
Telephone no. _____

2. Description of Rental Property:

Item	Quantity	Identification Number	Condition
_____	_____	_____	New _____ Used _____

Cash Price:
_____

3. Total Initial Payment:

Rental Payment: $_____
Delivery Charge: $_____
Tax: $_____
Other (specify): $_____
Total: $_____

4. Rental Payments:
Total Weekly Rental Payment: _____ (includes tax)
Total Monthly Rental Payment: _____ (includes tax)

5. Other Charges:
In Home Pick–up Fee: $_____
Reinstatement Fee: $_____
Other (specify): $_____

6. Total Cost To Acquire Ownership:
If you renew this rental agreement each week/month, for _____ weeks/months, you will pay a total of $_____ to own the rental property. This amount includes your total initial payment but does not include other charges such as damage, reinstatement or pick–up fees for which you may be liable.

7. Cost of Lease Services:
The cost of lease services is the difference between the final purchase price of the rental property and the cash price of the rental property. The cost of lease services for the rental property is $_____.

8. No Ownership Until Total Paid:
You will not acquire ownership of the rental property until you pay the total rental payments necessary to acquire ownership, or unless you exercise an early purchase option.

9. Early Purchase Option:
You may purchase the rental property at any time after your first rental payment.

(Describe formula or method here)

10. Maintenance:
We (lessor) are responsible for maintaining the rental property in good working condition while it is being rented. We will provide all necessary service, repair or replacement (specify if in home or in store) if you notify us by phone or mail that service is needed. We will not be responsible for repairs done by anyone other than us.

11. Warranty:
If allowed by the manufacturer, the manufacturer's express warranty covering the rental property rented under this agreement will be transferred to you if, and at the time, you acquire ownership of the rental property.

12. Damages:
You (lessee) are entirely responsible for loss, damages, theft or destruction of the rental property while it is in your possession. Your liability for such damage will not exceed the early purchase option price of the rental property as of the date it is lost, stolen, damaged or destroyed.

13. Termination:
You (lessee) may terminate this agreement without penalty at the end of any weekly or monthly term by returning the rental property to us in good condition. You will be liable for any unpaid rental payments due upon the date of return.

14. Reinstatement:
If you (lessee) fail to make a timely payment, you may reinstate the agreement without penalty, if: _____

1) You pay all past due rental charges and a reinstatement fee within 2 days (weekly renters) or 5 days (monthly renters) of your renewal date; or

2) You return or voluntarily surrender the rental property within 2 days (weekly renters) or 5 days (monthly renters) of your renewal date. If you choose to reinstate the agreement after returning the rental property, you will have up to 21 days (or longer depending on how long you have rented the rental property) to pay all past due rental charges, a reinstatement fee and a reasonable redelivery fee if we deliver the rental property.

I have read the above disclosures before signing this rental–purchase agreement.
Lessee(s): _____ Date: _____
_____ ."

(b) The following is an example of a form which shall be used to satisfy the disclosure requirements of §§ 12–1103(c) and 12–1104(b) of this subtitle:

Summary of Costs of Your Rental–Purchase Agreement			
Cash Price	Scheduled Payments	Final Purchase Price	Cost of Lease Services
The price of the rental property if purchased in–store at the time of consummation. $ _____	The amount you pay per week/month. $ _____	The amount you will have paid after you have made all payments as scheduled. $ _____	The cost of your rental–purchase transaction. $ _____
Timing of Payments: Payment in the amount of $ _____ is due on a (weekly/bi–weekly/semi–monthly/monthly) basis.			
Early Payment Option: You have the right to purchase the rental property prior to the date listed above for (enter formula).			
Termination: You have the right to terminate this rental–purchase agreement at the end of any term by surrendering the rental property to the lessor.			

The disclosures above are part of the terms and conditions of your rental–purchase agreement with (company name).			
Lessee(s): _____ Date: _____ _____			

§12–1111.1.

The Attorney General's Web site shall include the sample forms in § 12–1111 of this subtitle.

§12–1112.

This subtitle may be cited as the Maryland Rental-Purchase Agreement Act.

§12–1201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Arranger of financing" means a person that:

(1) For a fee or other valuable consideration, whether received directly or indirectly, aids or assists a borrower in obtaining a reverse mortgage loan; and

(2) Is not named as the lender in the reverse mortgage loan agreement.

(c) "Borrower" means an individual who makes a loan application for or receives a reverse mortgage loan.

(d) "Counseling agency" means an entity approved by the U.S. Department of Housing and Urban Development to provide counseling regarding reverse mortgage loans.

(e) "Dwelling" has the meaning stated in § 11–501 of the Financial Institutions Article.

(f) "Lender" means a person who makes a reverse mortgage loan.

(g) "Person" includes an individual, corporation, business trust, statutory trust,

estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Reverse mortgage loan" means a nonrecourse loan that:

(1) Is secured by the borrower's principal dwelling;

(2) Provides the borrower with purchase money proceeds, a lump sum payment, periodic cash advances, a line of credit, or any combination of those payment plans based on the equity in or value of the borrower's principal dwelling; and

(3) Requires no payment of principal or interest until the full loan becomes due and payable.

§12–1202.

(a) The provisions of this subtitle:

(1) Apply to a reverse mortgage loan secured by a borrower's principal dwelling in the State; and

(2) Are in addition to any other applicable provisions of law.

(b) If a provision of this subtitle conflicts with any provision of this title, the provision of this subtitle applies.

§12–1203.

This subtitle does not require a lender that offers to make a reverse mortgage loan to offer a reverse mortgage loan:

(1) With any one or more particular payment plans; or

(2) To a prospective borrower who holds title to a dwelling in other than fee simple interest.

§12–1204.

(a) Except as otherwise provided in this subtitle, a lender that offers or makes a reverse mortgage loan secured by a dwelling in the State shall conform to the requirements of 12 U.S.C. § 1715z–20, and any regulations and guidance adopted under 12 U.S.C. § 1715z–20, regardless of whether the reverse mortgage loan is insured under 12 U.S.C. § 1715z–20.

(b) Except as otherwise provided in this subtitle, an arranger of financing that aids or assists, or offers to aid or assist, a borrower in obtaining a reverse mortgage loan secured by a dwelling in the State shall conform to the requirements of 12 U.S.C. § 1715z–20, and any regulations and guidance adopted under 12 U.S.C. § 1715z–20, regardless of whether the reverse mortgage loan is insured under 12 U.S.C. § 1715z–20.

§12–1205.

(a) A reverse mortgage loan that is not insured under 12 U.S.C. § 1715z–20 is not subject to the provisions in 12 U.S.C. § 1715z–20, or in any regulations or guidance adopted under 12 U.S.C. § 1715z–20, that:

(1) Limit origination fees to $6,000 as adjusted under 12 U.S.C. § 1715z–20(r);

(2) Impose maximum claim amounts or other loan limit restrictions; or

(3) Require government insurance for the loan.

(b) A lender or an arranger of financing is not subject to the federal regulatory approval requirements of 24 C.F.R., Part 202 when making or arranging a reverse mortgage loan that is not insured under 12 U.S.C. § 1715z–20.

§12–1206.

(a) (1) Except as provided in paragraph (2) of this subsection, a lender or an arranger of financing may not require a borrower to purchase an annuity, a long–term care policy, or other financial or insurance product as a condition to obtaining a reverse mortgage loan.

(2) A lender or an arranger of financing may require a borrower to purchase title insurance, hazard, flood, or other peril insurance, and any other financial or insurance product that is required for reverse mortgage loans insured under 12 U.S.C. § 1715z–20.

(b) A lender or an arranger of financing may not refer a borrower to any person for the purchase of an annuity or any other financial or insurance product before the later of:

(1) The closing of the reverse mortgage loan; or

(2) The expiration of the borrower's right to rescind the reverse mortgage loan agreement.

(c) This section does not prohibit a lender or an arranger of financing from offering to a borrower, or referring a borrower to a person for the purchase of:

(1) Title insurance;

(2) Hazard, flood, or other peril insurance; or

(3) Other products that are customary under a reverse mortgage loan.

§12–1207.

(a) On receiving an application for a reverse mortgage loan, a lender or an arranger of financing shall provide a prospective borrower with a written checklist, written in 12 point type or larger, advising the borrower to discuss the following issues with a counseling agency counselor:

(1) How unexpected medical or other events that cause the borrower to move out of the borrower's home earlier than anticipated will impact the total annual cost of the reverse mortgage loan;

(2) The extent to which the borrower's financial needs would be better met by options other than a reverse mortgage loan, including less costly home equity lines of credit, property tax deferral programs, or governmental aid programs;

(3) Whether the borrower intends to use the proceeds of the reverse mortgage loan to purchase an annuity or other financial or insurance product and the consequences of doing so;

(4) The effect of repayment of the reverse mortgage loan on other residents of the home securing the reverse mortgage loan after all borrowers have died or permanently left the home;

(5) The borrower's ability to finance routine or catastrophic home repairs, especially if maintenance is a factor that may determine when the reverse mortgage loan becomes payable;

(6) The impact that the reverse mortgage loan may have on the borrower's tax obligations and eligibility for government assistance programs, and the effect that losing equity in the home securing the reverse mortgage loan will have on the borrower's estate and heirs; and

(7) The ability of the borrower to finance alternative living accommodations, such as assisted living or long–term care, after the borrower's equity is depleted.

(b) If an individual obtains counseling on reverse mortgage loans from a counseling agency before applying for a reverse mortgage loan, the counseling agency shall provide the individual with the written checklist required under subsection (a) of this section.

§12–1208.

(a) Except as otherwise provided in this section:

(1) A lender or arranger of financing for a reverse mortgage loan insured under 12 U.S.C. § 1715z–20 that violates this subtitle is subject to the penalties provided in 12 U.S.C. § 1715z–20, and in any regulations and guidance adopted under

12 U.S.C. § 1715z–20; and

(2) A lender or arranger of financing for a reverse mortgage loan not insured under 12 U.S.C. § 1715z–20 that violates this subtitle:

(i) Engages in an unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(ii) Is subject to the enforcement and penalty provisions contained in Title 13 of this article, except § 13–411.

(b) A violation of this subtitle does not constitute a violation of any other subtitle of this title.

§12–1301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Borrower" has the meaning stated in § 11–501 of the Financial Institutions Article.

(c) "Home buyer education or housing counseling" means instruction on preparing for home ownership, shopping for a home, obtaining a mortgage, loan closing, and life as a homeowner.

(d) "Lender" means a person that makes a mortgage loan.

(e) "Mortgage loan" has the meaning stated in § 11–501 of the Financial Institutions Article.

(f) "Secondary mortgage loan" means a mortgage loan secured by residential real property that is subject to the lien of one or more prior mortgage loans.

§12–1302.

(a) This subtitle applies to any lender that makes a mortgage loan secured by owner–occupied residential real property located in the State.

(b) This subtitle does not apply to:

(1) A secondary mortgage loan;

(2) An open–end or revolving home equity line of credit;

(3) A construction loan;

(4) An individual who takes back a deferred purchase money mortgage in connection with the sale of residential real property owned by, and titled in the name of, the individual; or

(5) An individual who makes a mortgage loan to a borrower who is the individual's spouse, child, child's spouse, parent, sibling, grandparent, grandchild, or grandchild's spouse.

§12–1303.

(a) Unless the lender is otherwise required by federal or State law to refer the borrower to housing counseling, a lender shall provide to a borrower a written notice, in the form specified in regulations adopted by the Department of Housing and Community Development, in consultation with the Commissioner of Financial Regulation, that includes:

(1) A statement recommending that the borrower complete home buyer education or housing counseling; and

(2) Information about home buyer education and housing counseling programs and services provided by nonprofit and government organizations certified by the U.S. Department of Housing and Urban Development that are available to residents of the State.

(b) The Department of Housing and Community Development shall provide and maintain the information required under subsection (a)(2) of this section.

§12–1304.

A lender may not close on a mortgage loan unless the lender has provided to the borrower the notice required under § 12–1303 of this subtitle.

§13–101.

(a) In this title the following words have the meanings indicated.

(b) (1) "Advertisement" means the publication, dissemination, or circulation of any oral or written matter, including labeling, which directly or indirectly tends to induce a person to enter into an obligation, sign a contract, or acquire title or interest in any merchandise, real property, intangibles, or service.

(2) "Advertisement" includes every device to disguise any form of business solicitation by using:

(i) A word such as "renewal", "invoice", "bill", "statement", or "reminder" to create an impression of an existing obligation if there is none; or

(ii) Other language to mislead a person in relation to a proposed commercial transaction.

(c) (1) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, consumer realty, or consumer credit.

(2) "Consumer" includes:

(i) A co–obligor or surety for a consumer;

(ii) A licensee or recipient of computer information or computer programs under a consumer contract as defined in § 22–102 of this article;

(iii) An individual who sells or offers for sale to a merchant consumer goods or consumer realty that the individual acquired primarily for personal, household, family, or agricultural purposes; or

(iv) A fraternal, religious, civic, patriotic, educational, or charitable organization that purchases, rents, or leases goods or services for the benefit of the members of the organization.

(d) (1) "Consumer credit", "consumer debts", "consumer goods", "consumer realty", and "consumer services" mean, respectively, credit, debts or obligations, goods, real property, and services which are primarily for personal, household, family, or agricultural purposes.

(2) "Consumer goods" and "consumer services" include, respectively, goods and services which are purchased, rented, or leased by a fraternal, religious, civic, patriotic, educational, or charitable organization for the benefit of the members of the organization.

(e) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(f) "Merchandise" means any commodity, object, wares, or goods.

(g) (1) "Merchant" means a person who directly or indirectly either offers or makes available to consumers any consumer goods, consumer services, consumer realty, or consumer credit.

(2) "Merchant" includes a person:

(i) Who directly or indirectly purchases or offers to purchase any consumer goods or consumer realty from a consumer; and

(ii) Whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

(h) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(i) "Sale" includes any:

(1) Sale of or offer or attempt to sell merchandise, real property, or intangibles for cash or credit; or

(2) Service or offer for service which relates to any person, building, or equipment.

(j) "Service" means any:

(1) Building repair or improvement service;

(2) Subprofessional service;

(3) Repair of a motor vehicle, home appliance, or other similar commodity; or

(4) Repair, installation, or other servicing of any plumbing, heating, electrical, or mechanical device.

(k) "Unfair or deceptive trade practice" has the meaning stated in Subtitle 3 of this title.

§13–101.1.

The provisions of this title apply to the subject matter of a consumer contract as defined in § 22-102 of this article in the same manner they apply to consumer goods and consumer services.

§13–102.

(a) (1) The General Assembly of Maryland finds that consumer protection is one of the major issues which confront all levels of government, and that there has been mounting concern over the increase of deceptive practices in connection with sales of merchandise, real property, and services and the extension of credit.

(2) The General Assembly recognizes that there are federal and State laws which offer protection in these areas, especially insofar as consumer credit practices are concerned, but it finds that existing laws are inadequate, poorly coordinated and not widely known or adequately enforced.

(3) The General Assembly of Maryland also finds, as a result of public hearings in some of the metropolitan counties during the 1973 interim, that improved enforcement procedures are necessary to help alleviate the growing problem of deceptive consumer practices and urges that favorable consideration be given to requests for increased budget allocation for increases in staff and other measures tending to improve the enforcement capabilities or increase the authority of the Division.

(b) (1) It is the intention of this legislation to set certain minimum statewide

standards for the protection of consumers across the State, and the General Assembly strongly urges that local subdivisions which have created consumer protection agencies at the local level encourage the function of these agencies at least to the minimum level set forth in the standards of this title.

(2) The General Assembly is concerned that public confidence in merchants offering goods, services, realty, and credit is being undermined, although the majority of business people operate with integrity and sincere regard for the consumer.

(3) The General Assembly concludes, therefore, that it should take strong protective and preventive steps to investigate unlawful consumer practices, to assist the public in obtaining relief from these practices, and to prevent these practices from occurring in Maryland. It is the purpose of this title to accomplish these ends and thereby maintain the health and welfare of the citizens of the State.

§13–103.

(a) This title is intended to provide minimum standards for the protection of consumers in the State.

(b) A county, Baltimore City, municipality, or agency of either may adopt, within the scope of its authority, more stringent provisions not inconsistent with the provisions of this title.

(c) The provisions of this title shall be enforced by each agency of the State within the scope of its authority.

§13–104.

This title does not apply to:

(1) The professional services of a certified public accountant, architect, clergyman, professional engineer, lawyer, veterinarian, insurance company authorized to do business in the State, insurance producer licensed by the State, Christian Science practitioner, land surveyor, property line surveyor, chiropractor, optometrist, physical therapist, podiatrist, real estate broker, associate real estate broker, or real estate salesperson, or medical or dental practitioner;

(2) A public service company, to the extent that the company's services and operations are regulated by the Public Service Commission; or

(3) A television or radio broadcasting station or a publisher or printer of a newspaper, magazine, or other form of printed advertising who broadcasts, publishes, or prints an advertisement which violates this title, unless the station, publisher, or printer engages in an unfair or deceptive trade practice in the sale of its own goods or services or has knowledge that the advertising is in violation of this title.

§13–105.

This title shall be construed and applied liberally to promote its purpose. It is the intent of the General Assembly that in construing the term "unfair or deceptive trade practices", due consideration and weight be given to the interpretations of § 5 (a)(1) of the Federal Trade Commission Act by the Federal Trade Commission and the federal courts.

§13–201.

There is a Division of Consumer Protection in the Office of the Attorney General. The Division shall administer this subtitle.

§13–202.

(a) There is a Consumer Council in the Division. The Council shall advise the Division on general goals for the development of programs, undertake studies and issue reports, and foster cooperation among federal, State, and local agencies and private groups.

(b) (1) The Council consists of:

(i) The Division Chief; and

(ii) Nine members appointed by the Governor with the advice and consent of the Senate.

(2) The members appointed by the Governor shall be divided into three categories, as follows:

(i) Three members to represent consumer groups or interests;

(ii) Three members to represent business groups or interests; and

(iii) Three members to represent the public sector.

(3) The term of membership is six years, except that, of the original appointees, one of each category shall serve a six-year term, one of each category shall serve a four-year term, and one of each category shall serve a two-year term. A member serves until his successor is appointed and qualified. An appointment to a vacancy in an unexpired term is limited to the remainder of that term. The members shall serve without compensation, but shall be reimbursed for all expenses reasonably incurred. The Council shall elect annually a chairman from among its members and appoint a secretary.

§13–203.

In addition to any other of his powers and duties, the Attorney General:

(1) May recommend to the Governor and the General Assembly legislation to protect the public from fraudulent promoters and the schemes they propose;

(2) Shall appoint an assistant, whose salary shall be as provided in the budget, to perform the duties of assistant Attorney General in charge of consumer protection;

(3) Shall employ the investigators and clerical staff which he considers necessary to carry out the purpose of this subtitle; and

(4) May use the funds and employ the media which he considers necessary to:

(i) Fully acquaint the public and business community with the provisions of this title;

(ii) Educate the public as to nefarious schemes which might be foisted on the public;

(iii) Generally study consumer problems from the standpoint of value received by the consumer; and

(iv) Report periodically to the public.

§13–204.

In addition to any other of its powers and duties, the Division has the powers and duties to:

(1) Receive and investigate complaints from any person affected by any potential or actual violation of this title;

(2) Initiate its own investigation of any unfair or deceptive trade practice;

(3) In accordance with § 13–402 of this title, conciliate all matters covered by this title;

(4) In accordance with § 13–403 of this title, issue a cease and desist order with respect to any practice found by the Division to be an unfair or deceptive trade practice;

(5) In cooperation with the Department of Labor, Licensing, and Regulation, suspend or revoke the license of any merchant who refuses to cease and desist from engaging in an unfair or deceptive trade practice;

(6) Report to the appropriate law enforcement officer any information concerning violations of any consumer protection law;

(7) Assist, advise, and cooperate with local and federal agencies and

officials to protect and promote the interests of consumers in the State;

(8) Assist, develop, and conduct programs of consumer education and information through publications and other materials prepared for distribution to consumers;

(9) Undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion, and sale or lease or rental of consumer goods, consumer realty, and consumer services and in the extension of consumer credit;

(10) Assess against any violator of this title the costs of investigation by the Division and damages which flow from the improper, incomplete or untimely restitution by the violator to the consumer of money, property, or other thing received from the consumer in connection with a violation of this title;

(11) Exercise and perform any other function, power, and duty appropriate to protect and promote the welfare of consumers;

(12) In accordance with § 13–205 of this subtitle, adopt rules, regulations, and standards which:

(i) Are necessary to assure the orderly operation of the Division; and

(ii) Further define unfair or deceptive trade practices for purposes of this title;

(13) Enter into reciprocal agreements with consumer protection agencies of other states, in which each state mutually agrees to receive and investigate complaints from the foreign state's consumer protection agency on behalf of their consumers against businesses in the receiving and investigating state; and

(14) Maintain a list of nonprofit organizations that:

(i) Solely offer counseling or advice to homeowners in foreclosure or loan default; and

(ii) Are not directly or indirectly related to and do not contract for services with for–profit lenders or foreclosure purchasers, as defined in § 7–301 of the Real Property Article.

§13–205.

(a) (1) After obtaining the advice of the Consumer Council and holding a public hearing, the Division may adopt reasonable rules, regulations, and standards appropriate to effectuate the purposes of this subtitle, including rules, regulations, or standards which further define specific unfair or deceptive trade practices.

(2) These rules, regulations, and standards may not modify, expand or conflict with the definitions or standards set forth in this title.

(b) In addition to any publication of notice required to be made in the Maryland Register by the State Documents Law, a notice of the hearing shall be published in two daily newspapers at least 15 days before the hearing.

(c) If the Division adopts a rule, regulation, or standard, it shall issue a concise statement of:

(1) The reasons for adoption; and

(2) Any reasons against adoption which were rejected by the Division.

(d) (1) Any bona fide consumer group or trade association, the members of which are directly affected by a rule, regulation, or standard, has standing to challenge it in the name of the group or the association, even though the group or association may not be directly affected by the rule, regulation, or standard.

(2) A challenge to a rule, regulation, or standard shall be made in accordance with the Administrative Procedure Act.

(e) Copies of each rule, regulation, and standard shall be filed in accordance with the Administrative Procedure Act and the State Documents Law and shall be made available to the public.

§13–206.

(a) As used in this section, "legal assistance organization" means a firm, group, corporation, or other entity which recommends, furnishes, arranges, or pays for legal services for its own members or beneficiaries, whether or not for profit.

(b) A legal assistance organization may not sell or offer its services for sale in Maryland except in accordance with this section.

(c) A legal assistance organization annually shall file a report with the Division of its activities and its financial condition.

(d) A legal assistance organization which sells or offers its legal services in the State is subject to the powers and duties of the Division within this subtitle.

§13–301. IN EFFECT

Unfair or deceptive trade practices include any:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;

(2) Representation that:

(i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;

(ii) A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have;

(iii) Deteriorated, altered, reconditioned, reclaimed, or secondhand consumer goods are original or new; or

(iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;

(3) Failure to state a material fact if the failure deceives or tends to deceive;

(4) Disparagement of the goods, realty, services, or business of another by a false or misleading representation of a material fact;

(5) Advertisement or offer of consumer goods, consumer realty, or consumer services:

(i) Without intent to sell, lease, or rent them as advertised or offered; or

(ii) With intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition;

(6) False or misleading representation of fact which concerns:

(i) The reason for or the existence or amount of a price reduction; or

(ii) A price in comparison to a price of a competitor or to one's own price at a past or future time;

(7) Knowingly false statement that a service, replacement, or repair is needed;

(8) False statement which concerns the reason for offering or supplying consumer goods, consumer realty, or consumer services at sale or discount prices;

(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with:

(i) The promotion or sale of any consumer goods, consumer realty,

or consumer service;

(ii) A contract or other agreement for the evaluation, perfection, marketing, brokering or promotion of an invention; or

(iii) The subsequent performance of a merchant with respect to an agreement of sale, lease, or rental;

(10) Solicitations of sales or services over the telephone without first clearly, affirmatively, and expressly stating:

(i) The solicitor's name and the trade name of a person represented by the solicitor;

(ii) The purpose of the telephone conversation; and

(iii) The kind of merchandise, real property, intangibles, or service solicited;

(11) Use of any plan or scheme in soliciting sales or services over the telephone that misrepresents the solicitor's true status or mission;

(12) Use of a contract related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;

(13) Use by a seller, who is in the business of selling consumer realty, of a contract related to the sale of single family residential consumer realty, including condominiums and town houses, that contains a clause limiting or precluding the buyer's right to obtain consequential damages as a result of the seller's breach or cancellation of the contract;

(14) Violation of a provision of:

(i) This title;

(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;

(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;

(iv) Title 14, Subtitle 3 of this article, the Maryland Door–to–Door Sales Act;

(v) Title 14, Subtitle 9 of this article, Kosher Products;

(vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

(vii) Section 14–1302 of this article;

(viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;

(ix) Section 22–415 of the Transportation Article;

(x) Title 14, Subtitle 20 of this article;

(xi) Title 14, Subtitle 15 of this article, the Automotive Warranty Enforcement Act;

(xii) Title 14, Subtitle 21 of this article;

(xiii) Section 18–107 of the Transportation Article;

(xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone Solicitations Act;

(xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts Act;

(xvi) Title 10, Subtitle 6 of the Real Property Article;

(xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

(xviii) Title 14, Subtitle 26 of this article, the Maryland Door–to–Door Solicitations Act;

(xix) Title 14, Subtitle 31 of this article, the Maryland Household Goods Movers Act;

(xx) Title 14, Subtitle 32 of this article, the Maryland Telephone Consumer Protection Act;

(xxi) Title 14, Subtitle 34 of this article, the Social Security Number Privacy Act;

(xxii) Title 14, Subtitle 37 of this article, the Online Child Safety Act;

(xxiii) Section 14–1319, § 14–1320, or § 14–1322 of this article;

(xxiv) Section 7–304 of the Criminal Law Article;

(xxv) Title 7, Subtitle 3 of the Real Property Article, the Protection of Homeowners in Foreclosure Act;

(xxvi) Title 6, Subtitle 13 of the Environment Article;

(xxvii) Section 7–405(e)(2)(ii) of the Health Occupations Article;

(xxviii) Title 12, Subtitle 10 of the Financial Institutions Article;

(xxix) Title 19, Subtitle 7 of the Business Regulation Article; or

(xxx) Section 15–311.3 of the Transportation Article; or

(15) Act or omission that relates to a residential building and that is chargeable as a misdemeanor under or otherwise violates a provision of the Energy Conservation Building Standards Act, Title 7, Subtitle 4 of the Public Utilities Article.

13–301. // EFFECTIVE JUNE 30, 2016 PER CHAPTERS 276 AND 277 OF 2014 //

Unfair or deceptive trade practices include any:

(1) False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers;

(2) Representation that:

(i) Consumer goods, consumer realty, or consumer services have a sponsorship, approval, accessory, characteristic, ingredient, use, benefit, or quantity which they do not have;

(ii) A merchant has a sponsorship, approval, status, affiliation, or connection which he does not have;

(iii) Deteriorated, altered, reconditioned, reclaimed, or secondhand consumer goods are original or new; or

(iv) Consumer goods, consumer realty, or consumer services are of a particular standard, quality, grade, style, or model which they are not;

(3) Failure to state a material fact if the failure deceives or tends to deceive;

(4) Disparagement of the goods, realty, services, or business of another by a false or misleading representation of a material fact;

(5) Advertisement or offer of consumer goods, consumer realty, or consumer services:

(i) Without intent to sell, lease, or rent them as advertised or offered; or

(ii) With intent not to supply reasonably expected public demand, unless the advertisement or offer discloses a limitation of quantity or other qualifying condition;

(6) False or misleading representation of fact which concerns:

(i) The reason for or the existence or amount of a price reduction; or

(ii) A price in comparison to a price of a competitor or to one's own price at a past or future time;

(7) Knowingly false statement that a service, replacement, or repair is needed;

(8) False statement which concerns the reason for offering or supplying consumer goods, consumer realty, or consumer services at sale or discount prices;

(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with:

(i) The promotion or sale of any consumer goods, consumer realty, or consumer service;

(ii) A contract or other agreement for the evaluation, perfection, marketing, brokering or promotion of an invention; or

(iii) The subsequent performance of a merchant with respect to an agreement of sale, lease, or rental;

(10) Solicitations of sales or services over the telephone without first clearly, affirmatively, and expressly stating:

(i) The solicitor's name and the trade name of a person represented by the solicitor;

(ii) The purpose of the telephone conversation; and

(iii) The kind of merchandise, real property, intangibles, or service solicited;

(11) Use of any plan or scheme in soliciting sales or services over the telephone that misrepresents the solicitor's true status or mission;

(12) Use of a contract related to a consumer transaction which contains a confessed judgment clause that waives the consumer's right to assert a legal defense to an action;

(13) Use by a seller, who is in the business of selling consumer realty, of a contract related to the sale of single family residential consumer realty, including condominiums and town houses, that contains a clause limiting or precluding the buyer's right to obtain consequential damages as a result of the seller's breach or

cancellation of the contract;

(14) Violation of a provision of:

(i) This title;

(ii) An order of the Attorney General or agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article;

(iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt Collection Act;

(iv) Title 14, Subtitle 3 of this article, the Maryland Door–to–Door Sales Act;

(v) Title 14, Subtitle 9 of this article, Kosher Products;

(vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

(vii) Section 14–1302 of this article;

(viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales Act;

(ix) Section 22–415 of the Transportation Article;

(x) Title 14, Subtitle 20 of this article;

(xi) Title 14, Subtitle 15 of this article, the Automotive Warranty Enforcement Act;

(xii) Title 14, Subtitle 21 of this article;

(xiii) Section 18–107 of the Transportation Article;

(xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone Solicitations Act;

(xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts Act;

(xvi) Title 10, Subtitle 6 of the Real Property Article;

(xvii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

(xviii) Title 14, Subtitle 26 of this article, the Maryland Door–to–Door Solicitations Act;

(xix) Title 14, Subtitle 31 of this article, the Maryland Household Goods Movers Act;

(xx) Title 14, Subtitle 32 of this article, the Maryland Telephone Consumer Protection Act;

(xxi) Title 14, Subtitle 34 of this article, the Social Security Number Privacy Act;

(xxii) Title 14, Subtitle 37 of this article, the Online Child Safety Act;

(xxiii) Section 14–1319, § 14–1320, or § 14–1322 of this article;

(xxiv) Section 7–304 of the Criminal Law Article;

(xxv) Title 7, Subtitle 3 of the Real Property Article, the Protection of Homeowners in Foreclosure Act;

(xxvi) Title 6, Subtitle 13 of the Environment Article;

(xxvii) Section 7–405(e)(2)(ii) of the Health Occupations Article;

(xxviii) Title 19, Subtitle 7 of the Business Regulation Article; or

(xxix) Section 15–311.3 of the Transportation Article; or

(15) Act or omission that relates to a residential building and that is chargeable as a misdemeanor under or otherwise violates a provision of the Energy Conservation Building Standards Act, Title 7, Subtitle 4 of the Public Utilities Article.

§13–302.

Any practice prohibited by this title is a violation of this title, whether or not any consumer in fact has been misled, deceived, or damaged as a result of that practice.

§13–303.

A person may not engage in any unfair or deceptive trade practice, as defined in this subtitle or as further defined by the Division, in:

(1) The sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services;

(2) The offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services;

(3) The offer for sale of course credit or other educational services;

(4) The extension of consumer credit;

(5) The collection of consumer debts; or

(6) The purchase or offer for purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

§13–304.

A seller may not use any general referral sales technique, plan, arrangement, or agreement by which a buyer is induced to purchase merchandise, real property, or intangibles on the representation or promise of the seller that if the buyer furnishes to the seller the names of other prospective buyers of like or identical merchandise, real property, or intangibles, he will receive a reduction in purchase price by means of a cash rebate, commission, or credit toward balance due or any other consideration.

§13–305.

(a) This section does not apply to:

(1) Trading stamps, as defined by § 13–101 of the Business Regulation Article;

(2) State lottery tickets issued under the authority of Title 9, Subtitle 1 of the State Government Article;

(3) Retail promotions, not involving the offer of gifts and prizes, which offer savings on consumer goods or services including "one–cent sales", "two–for–the–price–of–one–sales", or manufacturer's "cents–off" coupons;

(4) Games of skill competition not involving sales promotion efforts; or

(5) A savings promotion raffle conducted by a depository institution under § 1–211 of the Financial Institutions Article.

(b) A person may not notify any other person by any means, as part of an advertising scheme or plan, that the other person has won a prize, received an award, or has been selected or is eligible to receive anything of value if the other person is required to purchase goods or services, pay any money to participate in, or submit to a sales promotion effort.

(c) In addition to the exceptions provided in subsection (a) of this section, subsection (b) of this section does not prohibit the offer of prizes requiring the person to purchase other goods and services if the retail price of the prize offered does not exceed the greater of:

(1) $40; or

(2) The lesser of:

(i) 20% of the purchase price of the goods or services that must be purchased; or

(ii) $400.

(d) The exception provided in subsection (c) of this section does not apply to the offer of a prize requiring the person either to pay any money to participate in or to submit to a sales promotion effort, or to a prize promotion involving the award of prizes by chance.

(e) When a person offers prizes in a sales promotion effort relating to the sale, lease, or rental of real property not prohibited by this section, that person shall disclose to each offeree, in writing, clearly and conspicuously:

(1) That the purpose of the sales promotion effort is to solicit the purchase, lease, or rental of real property;

(2) The exact number of each prize offered in each category to be made available during the sales promotion;

(3) The manufacturer's suggested retail price or comparable retail price of each prize offered;

(4) (i) If calculable in advance, the odds against winning each prize; or

(ii) If not calculable in advance, a statement to that effect, or that the odds of winning will be determined by the number of entries;

(5) Whether all prizes offered will be awarded and when a determination of winners will be made; and

(6) If prizes with retail prices or monetary values in excess of $100 are offered, where and when a list of winners of those prizes can be obtained.

(f) Where provisions of law or regulations relating to the awarding of prizes in the sale, lease, or rental of real property exist, including § 11A–119 of the Real Property Article, the provisions of those laws or regulations shall apply if the provisions are more stringent than this section.

(g) If a person offers a contest, sweepstakes, or other sales promotion effort not prohibited by this section, involving the award of prizes by chance, that person shall disclose to each offeree in writing:

(1) The exact number of each prize offered in each category to be made available during the contest, sweepstakes, or sales promotion;

(2) The manufacturer's suggested retail price, or comparable retail price, of each prize offered;

(3) If calculable in advance, the odds against winning each prize and if not calculable in advance, a statement that the odds of winning will be determined by the number of entries;

(4) Whether all prizes offered will be awarded and when a determination of winners will be made;

(5) What, if any, conditions must be met in order to receive a prize;

(6) If prizes with retail prices or monetary values in excess of $100 are offered, where and when a list of winners of those prizes can be obtained; and

(7) That in order to receive the prize offered in the sales promotion you may not be required to:

(i) Purchase goods or services;

(ii) Pay any money; or

(iii) Where applicable, submit to a sales promotion effort.

(h) If a person offers a contest, sweepstakes, or other sales promotion effort not prohibited by this section, not involving the award of prizes by chance, that person shall disclose to each offeree in writing:

(1) The manufacturer's suggested retail price, or comparable retail price of each prize offered;

(2) What, if any, conditions must be met in order to receive a prize; and

(3) That in order to receive the prize offered in the sales promotion you may not be required to:

(i) Purchase goods or services, unless the retail price of the prize is within the limits set by subsection (c) of this section;

(ii) Pay any money; or

(iii) Where applicable, submit to a sales promotion effort.

(i) The disclosures shall appear on the first page of the prize notification document.

§13–306.

(a) If a gift or other inducement offered to a customer in exchange for business is not available at the time the customer complies with the conditions attached to the offer, the offeror shall:

(1) Give the customer a certificate which states in unequivocal language that:

(i) The customer has complied with the conditions which entitle him to receive the gift or other inducement; and

(ii) The offeror will give the customer an identical or substantially similar item of equal value on presentment of the certificate; and

(2) Fully comply with the terms of the certificate.

(b) The certificate may designate a period of not less than 90 days after the date the customer receives the certificate within which the certificate must be presented for redemption.

§13–307.

(a) (1) In this section the following terms have the meanings indicated.

(2) (i) "Home appliance" means any device the retail cost of which exceeds $100 and which is generally used in a private residence;

(ii) "Home appliance" includes an air conditioner, washing machine, dishwasher, television set, stereo set, oil burner, and any similar item.

(3) "Repair company" means any person who repairs home appliances for a fee or consideration.

(b) Except as provided in subsection (c) of this section, a repair company shall furnish a written bill for the cost of repairing a home appliance to the person for whom the repair was made. The bill shall include the following information:

(1) The hourly labor rate;

(2) The time actually used to repair the home appliance;

(3) The itemized cost of any new parts used to repair the home appliance;

(4) The itemized cost of any used or reconditioned parts used to repair the home appliance and a statement that used or reconditioned parts were used; and

(5) Any other charges.

(c) This section does not apply if:

(1) The repair work is done under a service contract; or

(2) A flat price or firm estimate is given before repair of the home appliance.

§13–308.

(a) A person may not sell or distribute an electrical consumer product which is intended ultimately for the personal use of a consumer in or around a permanent or temporary household or residence, unless the product is clearly labeled, marked, or stamped with the symbol of an electrical testing laboratory which is certified by the State Fire Marshal to test products to determine that they are safe for use.

(b) (1) The Attorney General and the State Fire Marshal shall each enforce this section under the enforcement powers provided in this title and in the Public Safety Article.

(2) The fire department of Baltimore City shall report to the Division any violation of this section which it finds.

(c) Any person who knowingly and willfully violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than $5,000.

§13–309.

(a) An electrical extension cord which conducts electrical current in commercial or household use shall be labeled to designate the maximum number of amperes it may safely conduct.

(b) Any manufacturer, distributor, wholesaler, or retailer who sells or causes to be sold an electrical extension cord without a label as required by this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 for each sale.

§13–310.

(a) This section does not apply to nonprofit organizations.

(b) A person who sells reserved seat tickets for an athletic, recreational, cultural, or entertainment event shall display prominently at the ticket-sale location a seating plan which clearly shows the location of every reserved seat and every physical obstruction to the viewing of the event.

§13–311.

A seller may not require as a condition of sale of any merchandise that the purchaser of the merchandise enter into a contract for the service of that merchandise.

§13–312.

Any subpoena served on an entity which issues a credit card to a person in this State for information relating to the person's account shall contain a certification that complies with § 1-304 of the Financial Institutions Article.

§13–313.

(a) A person may not sell or distribute cellulose or foam insulating material which is intended ultimately for the installation in a permanent or temporary household or residence, unless the insulating material meets minimum standards of fire retardancy established by the State Fire Prevention Commission or the federal government.

(b) The standards of fire retardancy shall be based on the results of tests conducted by a recognized fire testing laboratory approved by the State Fire Marshal.

(c) A person who sells or distributes cellulose or foam insulating material shall file with the State Fire Marshal a statement, on a form prescribed by the State Fire Marshal, for each brand and type of insulating material sold or distributed by the person, that the brand or type meets the fire retardancy standards established by the State Fire Prevention Commission or the federal government.

(d) (1) The Attorney General and the State Fire Marshal shall each enforce this section under the enforcement powers provided in this title and in the Public Safety Article.

(2) The fire department of Baltimore City shall report to the Division of Consumer Protection any violation of this section which it finds.

(e) Any person who knowingly and willfully violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than $5,000.

§13–314.

A person who places any advertisement that represents that any person can earn money at home by stuffing or addressing envelopes, mailing circulars, clipping newspaper or magazine articles, or performing similar work:

(1) Shall pay compensation to others for performing the represented tasks; and

(2) May not require the person who will perform the represented tasks to advance any monetary payment or deposit to the person who placed the advertisement on any instructional booklets, brochures, kits, programs or similar information materials, mailing lists, directories, memberships in cooperative associations, or other items or services.

§13–315.

A person may not sell or install a temperature activated attic fan unless the fan has a preset, nonadjustable firestat or a fusible link.

§13–316.

(a) (1) In this section the following terms have the meanings indicated.

(2) "Mortgage" includes a mortgage, deed of trust, security agreement, or other lien on 1 to 4 family residential real estate located in this State.

(3) "Servicer" means a person responsible for collection and payment of principal, interest, escrow, and other moneys under an original mortgage.

(b) Within 7 days of acquiring mortgage servicing, a servicer shall send to the mortgagor a written notice containing the following information regarding the mortgage on the date of transfer:

(1) The name, address, and telephone number of the new servicer and the address where mortgage payments are to be forwarded;

(2) The principal balance and escrow balance;

(3) The telephone number of the contact designated under subsection (c) of this section;

(4) The responsibilities of the contact under subsection (c) of this section; and

(5) A statement that the servicer's violation of this section will result in the servicer being held liable under subsection (e) of this section.

(c) (1) A servicer shall designate a contact to whom mortgagors may direct complaints and inquiries.

(2) The contact shall respond in writing to each written complaint or inquiry within 15 days if requested.

(d) A servicer shall make timely payments of the taxes or insurance premiums due under the mortgage so long as the mortgagor has paid an amount sufficient to pay the tax or insurance premium due and, with regard to the taxes, so long as the servicer is in possession of either the tax bill or notice from the taxing authority.

(e) (1) If a servicer fails to comply with any provision of this section, the servicer is liable for any economic damages caused by the violation.

(2) The penalties provided in this section are in addition to any other applicable remedies.

(f) A servicer shall provide a toll-free telephone number through which any borrower residing in this State may direct telephone inquiries on outstanding loans during regular business hours.

§13–317.

(a) Except as provided in subsection (b) of this section, as a condition of accepting a credit card or device as payment for consumer credit, goods, realty, or services, a person may not record the address or telephone number of the credit card holder.

(b) A person may record the address or telephone number of a credit card holder if:

(1) The information is necessary for:

(i) The shipping, delivery, or installation of consumer goods; or

(ii) Special orders of consumer goods or services;

(2) Authorization from the credit card issuer as to the availability of credit is not required by the issuer to complete the credit card transaction; or

(3) The person processes credit card transactions by mailing transaction forms to a designated bankcard center for settlement.

(c) A person accepting a credit card or device as payment for consumer credit, goods, realty, or services may request that the credit card holder display a form of identification.

§13–318.

(a) (1) In this section the following words have the meanings indicated.

(2) "Draft" does not include a credit or debit card sales draft.

(3) "Drawer" means the individual who makes or signs a check or other draft.

(b) Subject to the provisions of subsection (c) of this section, as a condition of accepting a check or other draft as payment for consumer credit, goods, realty, or services, a person may not request or record the account number of any credit card of the drawer of the check or other draft.

(c) The provisions of this section do not prohibit a person from:

(1) Requesting the drawer to display a credit card for purposes only of identification or credit worthiness;

(2) Requesting or recording the type or issuer of a credit card of the drawer; or

(3) Recording the number and expiration date of a credit card if the person

requesting the information has agreed with the credit card issuer to cash checks as a service to the issuer's cardholders and the issuer has agreed to guarantee payment of cardholder checks cashed by that person.

§13–319.

If a merchant advertises a rebate for consumer goods that is available only if a consumer mails in a rebate form, the advertisement shall clearly state that the rebate is only available by mail.

§13–401.

(a) A consumer who is subjected to a violation of this title may file with the Division a written complaint which states:

(1) The name and address of the person alleged to have committed the violation complained of;

(2) The particulars of the violation; and

(3) Any other information required by the Division.

(b) After the filing of a complaint, the Division shall investigate the allegations to ascertain issues and facts. If appropriate, the Division shall refer a complaint to the Federal Trade Commission.

(c) The Division may seek the cooperation of the licensing authorities and contracting departments of the State in connection with its investigation of a person who is licensed to do business in the State or who has a contractual relationship with the State.

(d) If the Division determines that the complaint lacks reasonable grounds on which to base a violation of this subtitle, it may:

(1) Dismiss the complaint; or

(2) Conduct any further investigation it considers necessary.

(e) This section does not prevent a consumer from:

(1) Exercising any right or seeking any remedy to which he might otherwise be entitled; or

(2) Filing a complaint with any other agency or court.

§13–402.

(a) (1) If the Division determines that there are reasonable grounds to believe that a violation has occurred, it shall, except as provided in paragraph (2), attempt

to conciliate the matter by methods of conference and persuasion with all interested parties and any representatives which they may choose to assist them.

(2) If the Division determines that violations are occurring which are causing immediate, substantial and irreparable injury, the Attorney General may seek an ex parte or interlocutory injunction pursuant to § 13-406, without first attempting conciliation.

(3) The terms of any conciliation agreed to by the parties may be made part of a written assurance of discontinuance or settlement agreement to be signed by the Division and each party. The assurance or agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated.

(b) (1) A written assurance of discontinuance or a settlement agreement may include a stipulation or condition for the violator or alleged violator to:

(i) Pay the costs of investigation by the Division;

(ii) Make restitution to the consumer of money, property, or any other thing received from the consumer in connection with a violation or alleged violation of this title;

(iii) Pay economic damages;

(iv) Post a performance bond or other security; and

(v) Provide information to the Division that is appropriate to assist the public in obtaining relief or to prevent future violations.

(2) When a violator or alleged violator agrees or is ordered to post a performance bond or other security, in determining the amount of security to be posted, the Division shall consider:

(i) The nature of the violation;

(ii) The amount of money, property, or any other thing received from the consumer in connection with the violation;

(iii) Whether full restitution has been paid to the consumer; and

(iv) The risk of future harm to consumers.

(3) In addition to the stipulations and conditions listed in paragraph (1) of this subsection, the Division may use any other stipulation, condition, or remedy necessary to correct a violation of this title.

(4) A cease and desist order issued under § 13-403 of this subtitle may include any stipulation or condition listed in this subsection.

(c) (1) It is a violation of this title to fail to adhere to any provision contained in a written assurance of discontinuance or settlement agreement.

(2) A failure by the Division to enforce a violation of any provision of the assurance or agreement does not constitute a waiver of any other provision or of any right of the Division.

§13–403.

(a) (1) The Division may hold a public hearing to determine if a violation of this title has occurred.

(2) The Division shall serve:

(i) A statement of charges on the alleged violator; and

(ii) A notice of the time and place of hearing on each party of record.

(3) The Division shall hold the hearing not less than ten days after service of the statement of charges. Each party of record may appear before the Division in person or, at his option, by his authorized representative and may have the assistance of an attorney. The parties may present evidence and cross-examine witnesses. All testimony shall be given under oath and may be required by the issuance of a subpoena signed by the Division. Irrelevant, unduly repetitious, or protracted evidence may not be admitted. Hearings may be limited by the Division if the Division so notifies each party before the hearing.

(4) The Division shall keep a full record of the hearing. The record shall be open to inspection by any person. On request of an interested party to the proceeding, the Division shall furnish the party a copy of the hearing record at a cost which the Division considers appropriate.

(b) (1) (i) If, at the conclusion of the hearing, the Division determines on the preponderance of evidence that the alleged violator violated this title, the Division shall state its findings and issue an order requiring the violator to cease and desist from the violation and to take affirmative action, including the restitution of money or property.

(ii) The order may contain any stipulation or condition listed in § 13-402(b) of this subtitle.

(iii) The order shall contain a notice which states that if the Division determines that the violator has not corrected the violation and complied with the order within 30 days following service of the order, the Division shall proceed with enforcement pursuant to this subtitle.

(2) If, at the conclusion of the hearing, the Division determines on the preponderance of evidence that the alleged violator did not violate this title, the

Division shall state its findings and issue an order dismissing the complaint.

(c) (1) If, at any time after a complaint has been filed, the Division believes that an appropriate civil action to preserve the status quo or prevent irreparable harm is advisable, it may file an action in court, including an action which seeks a temporary restraining order or preliminary injunction.

(2) To obtain compliance with its order, the Division may institute a civil proceeding, including a proceeding which seeks a restraining order and a temporary or permanent injunction.

(d) (1) Notwithstanding the provisions of subsection (b) of this section, the Division may issue a cease and desist order without first conducting a hearing if the Division has reasonable grounds to believe that:

(i) A person has violated this title;

(ii) The person will continue to violate this title causing harm to additional consumers; and

(iii) Consumers harmed by the violations will be unable to obtain restitution after a cease and desist hearing.

(2) (i) If the Division intends to issue a cease and desist order under this subsection against a person who is in compliance with all applicable State and local registration, licensing, and bonding laws, and is operating out of a fixed retail location in the State, the Division shall serve an unsigned copy of the order on the person at least 3 business days before it is to be issued.

(ii) The unsigned copy shall be served by delivering it to an employee or agent of the person at the fixed retail location or, if the person operates more than one retail location in the State, at the location that serves as the person's principal office.

(iii) If the person presents evidence or security establishing that the person will be able to pay restitution after a cease and desist hearing, the order may not be issued.

(iv) If, after the person presents evidence under subparagraph (iii) of this paragraph, the Division issues the order, the order shall discuss that evidence and state with specificity the reasonable grounds the Division has to believe that consumers harmed by the violations will be unable to obtain restitution after a cease and desist hearing.

(3) A cease and desist order issued under this subsection shall grant the respondent an opportunity to request a hearing under this section following issuance of the order.

(4) A hearing shall be held within 7 days after the day on which a request for hearing is made.

(5) If no request is made, an order entered under this subsection is final 30 days after the day on which the order is entered.

§13–404.

(a) Notwithstanding any other provision of this title, the Division may enter into an agreement with a person in the State to submit a dispute arising under this title to arbitration in accordance with the Maryland Uniform Arbitration Act.

(b) (1) The Division may administer a program of voluntary arbitration of consumer disputes, including:

(i) The recruitment and training of volunteer arbitrators; and

(ii) The education of the public and business community as to the benefits of arbitration.

(2) The Division shall provide clerical help and office space for arbitration tribunals.

§13–405.

(a) In the course of any examination, investigation, or hearing conducted by him, the Attorney General may subpoena witnesses, administer oaths, examine an individual under oath, and compel production of records, books, papers, contracts, and other documents.

(b) Information obtained under this section is not admissible in a later criminal proceeding against the person who provides the evidence.

§13–406.

(a) The Attorney General may seek an injunction to prohibit a person who has engaged or is engaging in a violation of this title from continuing or engaging in the violation.

(b) The Attorney General shall serve notice of the general relief sought on the alleged violator at least seven days before the action for an injunction is filed.

(c) The court may enter any order of judgment necessary to:

(1) Prevent the use by a person of any prohibited practice;

(2) Restore to a person any money or real or personal property acquired from him by means of any prohibited practice; or

(3) Appoint a receiver in case of willful violation of this title.

§13–407.

If a person is aggrieved by an order or decision of the Division, he may institute any appropriate proceeding he considers necessary.

§13–408.

(a) In addition to any action by the Division or Attorney General authorized by this title and any other action otherwise authorized by law, any person may bring an action to recover for injury or loss sustained by him as the result of a practice prohibited by this title.

(b) Any person who brings an action to recover for injury or loss under this section and who is awarded damages may also seek, and the court may award, reasonable attorney's fees.

(c) If it appears to the satisfaction of the court, at any time, that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees.

(d) Notwithstanding any other provision of this section, a person may not bring an action under this section to recover for injuries sustained as a result of the professional services provided by a health care provider, as defined in § 3-2A-01 of the Courts Article.

§13–409.

In any action brought by the Attorney General under the provisions of this title, the Attorney General is entitled to recover the costs of the action for the use of the State.

§13–410.

(a) A merchant who engages in a violation of this title is subject to a fine of not more than $1,000 for each violation.

(b) A merchant who has been found to have engaged in a violation of this title and who subsequently repeats the same violation is subject to a fine of not more than $5,000 for each subsequent violation.

(c) The fines provided for in subsections (a) and (b) of this section are civil penalties and are recoverable by the State in a civil action or an administrative cease and desist action under § 13-403(a) and (b) of this subtitle or after an administrative hearing has been held under § 13-403(d)(3) and (4) of this subtitle.

(d) The Consumer Protection Division shall consider the following in setting the

amount of the penalty imposed in an administrative proceeding:

(1) The severity of the violation for which the penalty is assessed;

(2) The good faith of the violator;

(3) Any history of prior violations;

(4) Whether the amount of the penalty will achieve the desired deterrent purpose; and

(5) Whether the issuance of a cease and desist order, including restitution, is insufficient for the protection of consumers.

§13–411.

(a) Except as provided in subsection (b) of this section, any person who violates any provision of this title is guilty of a misdemeanor and, unless another criminal penalty is specifically provided elsewhere, on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding one year or both, in addition to any civil penalties.

(b) A person may not be imprisoned for violation of any provision of an order of the Attorney General or an agreement of a party relating to unit pricing under Title 14, Subtitle 1 of this article.

§13–4A–01.

There is a Health Education and Advocacy Unit in the Division.

§13–4A–02.

(a) The Unit may implement an educational and advocacy program designed to:

(1) Enable health care consumers to make more informed choices in the health marketplace, and to be able to participate in decisions concerning their health care; and

(2) Otherwise promote the interest of health consumers in the health marketplace.

(b) (1) (i) The Unit may assist health care consumers in understanding their health care bills and third party coverage, in identifying improper billing or coverage determinations, and in reporting any billing or coverage problems to appropriate entities, including the Division, the Attorney General or other governmental agencies, insurers, or providers.

(ii) Whenever the Unit requests information from an insurer, nonprofit health service plan, or health maintenance organization in order to assist

a health care consumer for the purposes provided in this paragraph, the insurer, nonprofit health service plan, or health maintenance organization shall provide the information to the Unit no later than 7 working days from the date the insurer, nonprofit health service plan, or health maintenance organization received the request.

(2) Whenever any billing or coverage question concerns the adequacy or propriety of any services or treatment, the Unit shall refer the matter to an appropriate professional, licensing, or disciplinary body, as applicable. The Unit may monitor the progress of the concerns raised by health consumers through such referrals.

(3) Whenever any billing or coverage question concerns a matter within the jurisdiction of the Insurance Commissioner, the Unit shall refer the matter to the Commissioner. The Unit may monitor the progress of the concerns raised by health consumers through such referrals.

(4) The Unit shall work with the Department of Health and Mental Hygiene to assist with resolving any billing or coverage questions as necessary.

(c) The Unit may:

(1) Recommend to the Attorney General, the Governor, the General Assembly, or other appropriate governmental agencies any measures that will promote the interests of health consumers in the health marketplace; and

(2) Present for consideration relevant information on the effects on health care consumers generally in any agency proceeding which is otherwise open to the public.

(d) Nothing in this section shall mean that the Unit may have authority to bring any civil action seeking review of a State agency determination.

§13–4A–03.

To the extent possible, the Attorney General's Office shall include in its annual budget funds for the administration and operation of the Unit.

§13–4A–04.

The Unit shall prepare each annual and quarterly report required under Title 15, Subtitle 10A of the Insurance Article.

§13–501.

This title may be cited as the Maryland Consumer Protection Act.

§14–101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer commodity" means any food, drug, cosmetic, or other article, product, or commodity of any kind or class which is:

(1) Customarily produced for sale at retail for consumption by individuals for purposes of personal care or in the performance of services ordinarily performed in or around the household; and

(2) Usually consumed or expended in the course of that use or performance other than by wear or deterioration from use.

(c) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Unit price" means the retail price of an item expressed in dollars and cents per unit. In addition to any units commonly in use in the United States, the following units may be used if appropriate:

(1) Per pound for an item the net quantity of which is expressed in pounds, ounces, or both;

(2) Per kilogram (1000 grams) for an item the net quantity of which is expressed in kilograms, grams, or both;

(3) Per meter (100 centimeters) for an item the net quantity of which is expressed in meters, centimeters, millimeters, or a combination of them;

(4) Per quart for an item the net quantity of which is expressed in quarts, pints, fluid ounces, or a combination of them;

(5) Per liter for an item the net quantity of which is expressed in liters and milliliters, or a combination of them;

(6) Per 100 feet for an item the net quantity of which is expressed in yards, feet, inches, or a combination of them;

(7) Per 100 square feet for an item the net quantity of which is expressed in square yards, square feet, square inches, or a combination of them; or

(8) Per 100 units for an item the net quantity of which is expressed in terms of a numerical count.

§14–102.

(a) This subtitle does not apply to:

(1) Prepackaged food which contains separately identifiable items that are separated by physical division within the package;

(2) Any item sold only by prescription;

(3) Any item subject to the packaging or labeling requirements of the federal Bureau of Alcohol, Tobacco and Firearms or to any pricing requirements under federal law;

(4) Any item actually being sold through a vending machine;

(5) Any item delivered directly to a retail sales agency without passing through warehousing or other inventory facility used by the agency; or

(6) Except as provided in subsection (b) of this section, a retail sales agency which:

(i) During the preceding calendar year, sold a gross volume of consumer commodities of less than $750,000;

(ii) Is not part of a company which consists of ten or more sales agencies in or out of the State;

(iii) Derives less than 15 percent of its total revenues from consumer commodities subject to this subtitle; or

(iv) Is owned and operated by not more than one individual and the members of his immediate family.

(b) A sales agency which otherwise is exempt under subsection (a)(6) of this section nevertheless is subject to this subtitle if, during the preceding calendar year, the company of which the sales agency is a part has a gross volume of sales of consumer commodities in excess of $30,000,000.

§14–103.

(a) Except as provided in § 14-102 of this subtitle, each person who sells or offers or displays for sale a consumer commodity at retail shall disclose:

(1) The total price of the consumer commodity; or

(2) Except as provided in subsection (c) of this section, the unit price of the consumer commodity if:

(i) It is sold only by units; or

(ii) It is a prepackaged or retail-packaged consumer commodity within any of the following categories:

1. Foods, condiments, cooking oils, shortenings, and similar consumer commodities;

2. Paper products, including napkins, towels, and tissues;

3. Wrapping products, including those made of paper, plastic, and aluminum; and

4. Soaps, detergents, cleansing aids, deodorizing aids, and similar consumer commodities.

(b) If a packaged consumer commodity described in subsection (a)(2)(ii) of this section is priced for a multiple-package purchase, the seller shall disclose the unit price of that commodity on the basis of the multiple package.

(c) A person is not required to disclose the unit price of a consumer commodity described in subsection (a)(2) of this section if he then is disclosing unit prices for at least 90 percent of the dollar volume or number of items of all his consumer commodities which are subject to the disclosure requirements of subsection (a)(2) of this section.

§14–104.

The seller shall disclose the total price or unit price, as the case may be, for each item in the following manner:

(1) If the item is visible conspicuously to the consumer, by attachment of a stamp, tag, or label:

(i) Directly on the item or its package; or

(ii) Directly adjacent to the item or on the shelf on which the item is displayed; or

(2) If the item is not visible conspicuously to the consumer or if the stamp, tag, or label would not be visible conspicuously to the consumer, by a sign or list which contains the price information and is visible conspicuously to the consumer.

§14–105.

(a) At the direction of the Attorney General, the Division may:

(1) In accordance with § 13-205 of this article, adopt reasonable rules and regulations appropriate to effectuate any provision of this subtitle, which rules and regulations, however, may not extend, modify, or conflict with this subtitle or its reasonable implications; and

(2) Grant to a sales agency an exemption from any requirement of this subtitle if the sales agency uses a program which is approximately as or more comprehensive than the program of unit pricing required by this subtitle.

(b) A person who willfully violates any rule or regulation of the Division, in addition to any other penalty provided, is subject to the same penalty applicable to violation of the provision of this subtitle to which the rule or regulation relates.

§14–106.

If the Division has reason to believe that a sales agency has violated any provision of this subtitle or any rule or regulation adopted under § 14-105 of this subtitle, the Attorney General or the Division at his direction may institute a proceeding under Title 13 of this article.

§14–107.

Notwithstanding any other provision of this subtitle, the Division may submit disputes under this subtitle for arbitration in accordance with the provisions of § 13-404 of this article.

§14–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Collector" means a person collecting or attempting to collect an alleged debt arising out of a consumer transaction.

(c) "Consumer transaction" means any transaction involving a person seeking or acquiring real or personal property, services, money, or credit for personal, family, or household purposes.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§14–202.

In collecting or attempting to collect an alleged debt a collector may not:

(1) Use or threaten force or violence;

(2) Threaten criminal prosecution, unless the transaction involved the violation of a criminal statute;

(3) Disclose or threaten to disclose information which affects the debtor's reputation for credit worthiness with knowledge that the information is false;

(4) Except as permitted by statute, contact a person's employer with

respect to a delinquent indebtedness before obtaining final judgment against the debtor;

(5) Except as permitted by statute, disclose or threaten to disclose to a person other than the debtor or his spouse or, if the debtor is a minor, his parent, information which affects the debtor's reputation, whether or not for credit worthiness, with knowledge that the other person does not have a legitimate business need for the information;

(6) Communicate with the debtor or a person related to him with the frequency, at the unusual hours, or in any other manner as reasonably can be expected to abuse or harass the debtor;

(7) Use obscene or grossly abusive language in communicating with the debtor or a person related to him;

(8) Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist; or

(9) Use a communication which simulates legal or judicial process or gives the appearance of being authorized, issued, or approved by a government, governmental agency, or lawyer when it is not.

§14–203.

A collector who violates any provision of this subtitle is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury.

§14–204.

This subtitle may be cited as the Maryland Consumer Debt Collection Act.

§14–301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Business day" means any calendar day except Sunday or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(c) "Consumer goods" and "consumer services" mean:

(1) Goods or services purchased, leased, or rented primarily for personal, family, or household purposes; and

(2) Courses of instruction or training regardless of the purpose for which

they are taken.

(d) (1) "Door-to-door sale" means a sale, lease, or rental of consumer goods or consumer services under single or multiple contracts with a purchase price of $25 or more, in which:

(i) The seller or his representative personally solicits the sale, including a solicitation in response to or following an invitation by the buyer; and

(ii) The buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

(2) "Door-to-door sale" does not include a transaction:

(i) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment which has a fixed permanent location where the consumer goods are exhibited or the consumer services are offered for sale on a continuing basis;

(ii) In which the consumer may rescind under the provisions of the federal Consumer Credit Protection Act or any regulation adopted under the Act;

(iii) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting which describes the situation that requires immediate remedy and expressly acknowledges and waives the right to cancel the sale within three business days, and the seller in good faith makes a substantial beginning of the performance of the contract;

(iv) Conducted and consummated entirely by mail or telephone, without any other contact between the buyer and the seller or its representative before delivery of the consumer goods or performance of the consumer services;

(v) In which the buyer has initiated the contact and specifically requests the seller to visit his home to repair or perform maintenance on the buyer's personal property, except that, if, in the course of the visit, the seller sells the buyer the right to receive any additional consumer services or consumer goods, other than replacement parts necessarily used to perform the maintenance or to make the repairs, the sale of the additional consumer goods or consumer services is not within this exclusion; or

(vi) Which pertains to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission or with the Division of Securities of this State.

(e) "Person" includes an individual, corporation, business trust, statutory trust,

estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Place of business" means the main or permanent branch office or local address of a seller.

(g) "Purchase price" means the total price paid or to be paid for the consumer goods or consumer services, including all interest and service charges.

(h) "Sale" means a door-to-door sale.

(i) "Seller" means a person engaged in the door-to-door sale of consumer goods or consumer services.

§14–302.

It is an unfair or deceptive trade practice within the meaning of Title 13 of this article for a seller to:

(1) Fail to furnish the buyer with:

(i) A fully completed receipt or copy of any contract which pertains to a door-to-door sale at the time of its execution, which is in the same language as that principally used in the oral sales presentation, shows the date of the transaction, and contains the name and address of the seller; and

(ii) A statement which is in immediate proximity to the space reserved in the contract for the signature of the buyer or, if a contract is not used, is on the front page of the receipt and which, in boldface type of a minimum size of 10 points, is in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) Fail to furnish the buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or consumer services from the seller, a completed form in duplicate, captioned "Notice of Cancellation", which:

(i) Is attached to the contract or receipt and is easily detachable; and

(ii) Contains in 10 point boldface type the following information and statements, in the same language as that used in the contract:

"Notice of Cancellation

(Enter date of transaction)

.....

(Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to

(name of seller) (address of seller's place of business)

....., at .....

not later than midnight of ..... (date)

I hereby cancel this transaction.

.....

(date)

.....

(Buyer's signature)";

(3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation;

(4) Include in any door-to-door sales contract or receipt any confession of judgment or waiver of any of the rights to which the buyer is entitled under this section, including specifically his right to cancel the sale in accordance with the provisions of this section;

(5) Fail to inform the buyer orally, at the time he signs the contract or

purchases the consumer goods or consumer services, of his right to cancel;

(6) Misrepresent in any manner the buyer's right to cancel;

(7) Fail or refuse to honor any valid notice of cancellation by a buyer and, within 10 business days after the receipt of that notice, to:

(i) Refund all payments made under the contract or sale;

(ii) Return, in substantially as good condition as when received by the seller, any goods or property traded in;

(iii) Cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction;

(8) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party before midnight of the fifth business day following the day the contract was signed or the consumer goods or consumer services were purchased;

(9) Fail, within 10 business days of receiving a buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods;

(10) Solicit a sale or order for sale of goods or services at the residence of a prospective buyer, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions:

(i) The identity of the person making the solicitation.

(ii) The trade name of the person represented by the person making the solicitation.

(iii) The kind of goods or services being offered.

(iv) And, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (i), (ii), and (iii), show and display identification which states the information required by paragraphs (i) and (ii) as well as the address of the place of business of one of the persons identified; or

(11) To use any plan, scheme, or ruse in soliciting a sale or order for the sale of goods or services at the residence of a prospective buyer, which misrepresents the solicitor's true status or mission for the purpose of making the sale or order for the sale of goods or services.

§14–303.

If the seller violates any provision of § 14-302 of this subtitle, the buyer may cancel the door-to-door sale by notifying the seller in any manner and by any means of his intention to cancel.

§14–304.

Any person who violates any provision of this subtitle is liable to the person affected by the violation for all damages proximately caused by the violation and for reasonable attorney fees incurred by the person damaged.

§14–305.

Any person who willfully violates any provision of this subtitle is guilty of a misdemeanor and, in addition to the injunctive relief provided for in Title 13, Subtitle 4 of this article, on conviction is subject to a fine of not more than $1,000 or imprisonment of not more than one year or both.

§14–306.

This subtitle may be cited as the Maryland Door-to-Door Sales Act.

§14–401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer product" means goods or services used for personal, family, or household purposes, the actual cash sales price of which to the person guaranteed was in excess of $10.

(c) "Guarantor" means a person who is engaged in the business of making consumer products available to consumers and who makes a guaranty.

(d) (1) "Guaranty" means any of the following which is made at the time of the sale of a consumer product by a guarantor to a person guaranteed and which is part of the basis of the bargain between them:

(i) A written affirmation of fact or written promise which relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is defect-free or meets a specified level of performance; or

(ii) A written undertaking to refund, repair, replace, or take other remedial action with respect to the consumer product if it proves defective in material or workmanship or fails to meet a specified level of performance.

(2) "Guaranty" includes warranty.

(3) "Guaranty" does not include:

(i) A written statement or expression of general policy concerning customer satisfaction which is not subject to specified limitations; or

(ii) A service contract.

(e) "Mechanical breakdown insurance" means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of property or indemnification for repair, replacement, or services, for the operational or structural failure of a product due to a defect in the materials or workmanship or due to normal wear and tear.

(f) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(g) "Person guaranteed" means:

(1) The person who is the first buyer at retail of a consumer product which is the subject of a guaranty;

(2) A person who is entitled to enforce the obligations of a guaranty against the guarantor; or

(3) The person who is entitled to enforce the obligations of the provider under a service contract.

(h) "Provider" means a person or persons acting in concert who are contractually obligated under the terms of a service contract to provide services to the owner of a product covered by the service contract.

(i) "Reasonable and necessary maintenance" means those operations which the person guaranteed reasonably can be expected to perform or have performed and which are necessary to keep the product performing its intended function.

(j) "Replace" means:

(1) To replace a product or its component with a new and identical or equivalent product or component; or

(2) To refund the price of the product or its component less reasonable depreciation if:

(i) Neither replacement nor repair is commercially practicable; or

(ii) The person guaranteed is willing to accept the refund in place of the replacement or repair.

(k) (1) "Service contract" means a contract or agreement for a separately

stated consideration for a specific duration to perform the repair, replacement, or maintenance of a product, or to indemnify for the repair, replacement, or maintenance, because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances.

(2) "Service contract" includes:

(i) A contract or agreement for repair, replacement, or maintenance of a product for damage resulting from power surges and accidental damage from handling; and

(ii) A mechanical repair contract under § 15–311.2 of the Transportation Article.

(3) "Service contract" does not include:

(i) A guaranty;

(ii) A maintenance agreement that does not include a provision for the repair, replacement, or maintenance of a product because of an operational or structural failure due to a defect in materials, workmanship, or normal wear and tear;

(iii) A warranty, service contract, or maintenance agreement offered by a public utility on its transmission devices to the extent it is regulated by the Public Service Commission; or

(iv) Mechanical breakdown insurance.

(l) (1) "Services" means work, labor, or any other kind of activity furnished or agreed to be furnished to a person guaranteed.

(2) "Services" includes services for home improvement, repair of a motor vehicle and other products, and the repair or installation of plumbing, heating, electrical, or mechanical devices.

(3) "Services" does not include the professional services of an accountant, architect, clergyman, engineer, lawyer, or medical or dental practitioner.

(m) (1) "Without charge" means that the guarantor cannot charge the person guaranteed for any costs which the guarantor or the guarantor's representative incurs in connection with the required repair or replacement of a consumer product.

(2) "Without charge" does not mean that the guarantor must compensate the person guaranteed for incidental expenses unless the expenses were incurred because the repair or replacement was not made within a reasonable time.

(n) "Wrongful breach of a guaranty" means the failure of a guarantor to perform

the duties imposed by § 14-404(a), (b), and (c) of this subtitle.

(o) "Wrongful breach of a service contract" means the failure of a provider to perform the duties imposed by § 14-404(a), (b), and (c) of this subtitle.

§14–402.

This subtitle shall be liberally construed and applied to promote its purposes and policies.

§14–403.

(a) A guarantor shall deliver to the first person guaranteed the following written information:

(1) The duration of the guaranty period measured by time or, if practical, by some measure of usage such as mileage;

(2) Any reasonable and necessary maintenance required as a condition for the performance of the guaranty;

(3) A recital of the guarantor's obligations to the person guaranteed during the guaranty period;

(4) The procedure which the person guaranteed should follow to obtain the repair or replacement of the malfunctioning or defective consumer product; and

(5) Any means established by the guarantor for quick informal settlement of any guaranty dispute.

(b) Each service contract shall be in writing and shall specify:

(1) The duration of the service contract measured by time or, if practical, by some measure of usage;

(2) Any reasonable and necessary maintenance required to be performed by the person guaranteed as a condition for the performance of the service contract;

(3) The purchase price and terms of the service contract, including a recital of the provider's obligations under the service contract;

(4) The merchandise and services to be provided;

(5) The procedures which the person guaranteed should follow to obtain the services under the service contract or to file a claim under the service contract;

(6) Limitations, exceptions, or exclusions, if any, under the service contract;

(7) The terms, restrictions, or conditions governing the cancellation of the service contract before the termination or expiration date of the service contract either by the provider or person guaranteed; and

(8) Any means established by the provider for quick informal settlement of a service contract dispute.

(c) Within a reasonable time after the person guaranteed and the provider enter into a service contract, the provider shall deliver a copy of the service contract to the person guaranteed.

(d) A service contract may be canceled by the person guaranteed:

(1) Within 20 days after receipt of the service contract if mailed to the person guaranteed;

(2) Within 20 days after the date of delivery of the service contract if delivered to the person guaranteed at the time of sale; or

(3) For a period of time not less than 20 days as specified in the service contract.

(e) If a service contract is canceled under subsection (d) of this section and a claim has not been made under the service contract prior to its cancellation, the service contract is void and the provider shall refund to the person guaranteed the full consideration paid for the service contract.

(f) The right to void a service contract under subsection (e) of this section:

(1) Is not transferable;

(2) Applies only to the original person guaranteed under the service contract; and

(3) Applies only if a claim has not been made under the service contract prior to cancellation of the service contract.

(g) (1) A provider shall pay or credit the account of a person guaranteed who has canceled a service contract under subsection (d) of this section the full consideration paid for the service contract within 45 days after the cancellation.

(2) A provider that does not pay or credit the account of the person guaranteed in accordance with paragraph (1) of this subsection shall pay to the person guaranteed an amount equal to 10% of the value of the consideration paid for the service contract for each month that the refund is not paid or credited.

§14–404.

(a) (1) A guarantor shall fulfill the guarantor's guaranty according to its terms:

(i) Within a reasonable time; and

(ii) For the stated period of the guaranty or, if no period is stated, for a reasonable period of time.

(2) A provider shall fulfill the obligations under the service contract according to its terms:

(i) At or within the period stated in the service contract, or if no period is stated, within a reasonable time; and

(ii) For the stated duration of the service contract.

(b) (1) (i) A guaranty is extended automatically when a guarantor fails to repair successfully a malfunctioning or defective product within the guaranty period.

(ii) The guaranty does not terminate until the consumer product successfully performs its intended function for the remaining period of the guaranty plus a period equal to the time of repair.

(2) (i) A service contract is extended automatically when the provider fails to perform the services under the service contract.

(ii) The service contract does not terminate until the services are provided in accordance with the terms of the service contract.

(c) If a guaranty fails to disclose the information required by § 14-403 of this subtitle, the guarantor shall, without charge and within a reasonable period of time:

(1) Repair a malfunctioning or defective consumer product; or

(2) If repair is not commercially practicable or cannot be timely made, replace the malfunctioning or defective consumer product.

(d) (1) If a guarantor is unable to fulfill the terms of the guaranty within 10 days of the tender or delivery of a consumer product to the guarantor, the guarantor shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.

(2) If a provider is unable to fulfill the terms of the service contract within 10 days after the date on which the provider is required to perform obligations under the service contract, the provider shall provide on request of the person guaranteed a brief written explanation of the reasons for the delay.

§14–405.

(a) The duties prescribed in § 14-404 of this subtitle may not be imposed on a guarantor if the guarantor shows that while the consumer product was in the possession of any person other than the guarantor, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under § 14-403 of this subtitle, caused the product to malfunction.

(b) The duties prescribed in § 14-404 of this subtitle may not be imposed on a provider if the provider shows that while the product was in the possession of any person other than the provider, damage or unreasonable use, including failure to provide any reasonable and necessary maintenance disclosed under § 14-403 of this subtitle, caused the product to malfunction or caused the inability of the provider to provide any service under the service contract.

§14–406.

(a) If a guarantor or provider violates any provision of this subtitle, the Attorney General may obtain a court order prohibiting the guarantor or provider from further violations.

(b) At least 7 days before the filing of an action for the order, the Attorney General shall give appropriate notice to the guarantor or provider stating generally the relief sought.

(c) The court may issue an order or render a judgment necessary to:

(1) Prevent violations of this subtitle; and

(2) Restore to the person damaged any money or property acquired by means of any practice in violation of any provision of this subtitle.

§14–407.

(a) It is the policy of the State to encourage:

(1) A guarantor voluntarily to establish procedures whereby a guaranty dispute is fairly and expeditiously settled through informal dispute settlement procedures; and

(2) A provider voluntarily to establish procedures whereby a service contract dispute is fairly and expeditiously settled through informal dispute settlement procedures.

(b) A guarantor or provider who establishes informal dispute settlement procedures may elect to settle guaranty disputes or service contract disputes, as the case may be, in cooperation with any private agency or the Consumer Protection Division of the Attorney General's office.

(c) The guarantor or provider is liable to the person guaranteed for any wrongful breach of a guaranty or wrongful breach of a service contract, as the case may be, and is under a duty to:

(1) Perform as required under this subtitle; and

(2) Compensate the person guaranteed for all reasonable incidental expenses incurred as a result of the breach.

(d) (1) If the guarantor or provider breaches any duties under this subtitle, the person guaranteed may file an action in any court of competent jurisdiction.

(2) (i) Except as provided in paragraph (3) of this subsection, if the person guaranteed prevails in an action filed under this subsection, the court shall include in the amount of the judgment a sum equal to the aggregate amount of costs and expenses which have been reasonably incurred by the person guaranteed for or in connection with the action filed.

(ii) These costs and expenses shall include attorney's fees based on actual time expended, unless the court finds that an award of attorney's fees would be inappropriate.

(3) The person guaranteed is not entitled to costs and expenses, if:

(i) The guarantor or provider affords the person guaranteed a reasonable opportunity to settle informally in accordance with subsection (a) of this section; and

(ii) The person guaranteed fails to so settle.

§14–408.

(a) (1) In addition to making a guaranty, the guarantor may enter into a service contract at the time of the sale or at any other time with the person guaranteed.

(2) In addition to entering into a service contract, the provider may make a guaranty at the time of the sale or at any other time to the person guaranteed.

(b) (1) The guarantor or provider may designate a representative to perform the duties under this subtitle.

(2) However, this designation does not relieve the guarantor or provider of the duties to the person guaranteed.

§14–409.

(a) Except for Title 13 of this article and § 15–311.2 of the Transportation Article with respect to mechanical repair contracts, this subtitle provides the exclusive remedy

by which a person guaranteed may recover damages for a breach of a service contract or may enforce a service contract.

(b) (1) Providers, administrators, and other persons marketing, selling, or offering to enter into service contracts that comply with the terms of this subtitle need not comply with any provision of the Insurance Article, except with respect to mechanical repair contracts as expressly provided in § 15–311.2 of the Transportation Article.

(2) Guarantors, administrators, and other persons marketing, selling, or offering to issue guarantees that comply with the terms of this subtitle need not comply with any provision of the Insurance Article.

(c) (1) In this subsection, "licensee" means a person who:

(i) Is licensed as a master plumber and meets the qualifications to engage in the business of providing plumbing services under Title 12 of the Business Occupations and Professions Article;

(ii) Provides heating, ventilation, air-conditioning, or refrigeration services in accordance with a master license or a master restricted license issued under Title 9A of the Business Regulation Article; or

(iii) Is a licensed contractor under Title 8 of the Business Regulation Article.

(2) A licensee is not subject to:

(i) This subtitle if the services provided or to be provided under the service contract are within the scope of the licensee's license; or

(ii) Any provision of the Insurance Article applicable to service contracts.

§14–410.

This subtitle may be cited as the Maryland Service Contracts and Consumer Products Guaranty Act.

§14–4A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Administrator" means a person that is designated by a warrantor to be responsible for the administration of a vehicle protection product warranty.

(c) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(d) (1) "Incidental costs" means an expense that:

(i) Is specified in a vehicle protection product warranty;

(ii) Is incurred by the warranty holder; and

(iii) Relates to the failure of a vehicle protection product to perform as provided in the vehicle protection product warranty.

(2) "Incidental costs" include:

(i) Insurance policy deductibles;

(ii) Charges for rental vehicles;

(iii) The difference between the value of a stolen vehicle at the time of theft and the cost of a replacement vehicle;

(iv) Sales taxes;

(v) Registration fees;

(vi) Transaction fees; and

(vii) Mechanical inspection fees.

(e) (1) "Vehicle protection product" means a vehicle protection device, system, or service that:

(i) Is sold with a written warranty;

(ii) Is installed on or applied to a vehicle; and

(iii) Is designed to prevent loss or damage to a vehicle from a specific cause.

(2) "Vehicle protection product" includes:

(i) An alarm system;

(ii) A body part marking product;

(iii) A steering lock;

(iv) A window etch product;

(v) A pedal or ignition lock;

(vi) A fuel or ignition kill switch; and

(vii) An electronic, radio, or satellite tracking device.

(f) "Vehicle protection product warranty" means a written agreement by a warrantor that provides that if a vehicle protection product fails to prevent loss or damage to a vehicle from a specific cause, the warrantor shall pay to, or on behalf of, the warranty holder specified incidental costs incurred as a result of the failure of the vehicle protection product to perform in accordance with the terms of the vehicle protection product warranty.

(g) (1) "Warrantor" means a person that is contractually obligated to the warranty holder under the terms of the vehicle protection product warranty.

(2) "Warrantor" does not include an authorized insurer that issues a warranty reimbursement insurance policy.

(h) "Warranty holder" means a person that purchases a vehicle protection product warranty or a permitted transferee.

(i) "Warranty reimbursement insurance policy" means a policy of insurance that is issued to a warrantor to:

(1) Provide reimbursement to the warrantor; or

(2) Pay on behalf of the warrantor all covered contractual obligations incurred by the warrantor under the terms and conditions of the insured vehicle protection product warranties sold by the warrantor.

§14–4A–02.

(a) This subtitle does not apply to:

(1) A service contract provider that does not sell vehicle protection products; or

(2) A warranty, indemnity agreement, or guarantee that is not provided in connection with the sale of a vehicle protection product.

(b) A vehicle protection product warranty is not subject to the provisions of Subtitle 4 of this title.

(c) A seller or warrantor of a vehicle protection product, or a warrantor's administrator, that complies with this subtitle is not subject to any provisions of the Insurance Article.

§14–4A–03.

A vehicle protection product may not be sold or offered for sale in the State unless the seller and warrantor of the vehicle protection product, and the warrantor's

administrator, comply with the provisions of this subtitle.

§14–4A–04.

(a) A warrantor of a vehicle protection product that is sold or offered for sale in the State shall register with the Division on the form that the Division provides.

(b) The registration form shall include:

(1) The name, address, and telephone number of the warrantor, including any name under which the warrantor does business;

(2) The name, address, and telephone number of the warrantor's administrator, if any;

(3) The name and address of the warrantor's registered agent, if any;

(4) The name of at least one officer of the warrantor who is directly responsible for the warrantor's vehicle protection product business;

(5) (i) If the warrantor elects to carry warranty reimbursement insurance in accordance with § 14–4A–07(a)(1) of this subtitle, a copy of the warrantor's warranty reimbursement insurance policy; or

(ii) If the warrantor elects to meet its financial obligations in accordance with § 14–4A–07(a)(2) of this subtitle, one of the following:

1. A copy of the most recent form 10–K or form 20–F filed by the warrantor or the warrantor's parent company with the United States Securities and Exchange Commission; or

2. If the warrantor or the warrantor's parent company does not file with the United States Securities and Exchange Commission, a copy of the warrantor's or the warrantor's parent company's financial statement that shows a net worth or stockholders' equity of not less than $50,000,000; and

(6) A copy of each warranty that the warrantor proposes to use in the State.

(c) (1) A warrantor that registers under subsection (a) of this section shall pay a registration fee to the Division at the time of registration.

(2) On January 1 of each year following a warrantor's initial registration, the warrantor shall pay a renewal fee to the Division.

(3) The registration fee and the renewal fee required under this subsection shall be set by the Division in an amount not exceeding $500 for each fee.

§14–4A–05.

Except for information received under § 14–4A–04(b)(5)(ii) of this subtitle, any information received by the Division in the course of administering this subtitle shall be made available to the public, subject to the provisions of the Maryland Public Information Act.

§14–4A–06.

(a) A warrantor of a vehicle protection product sold or offered for sale in the State shall keep accurate accounts, books, and records that relate to its vehicle protection product warranties.

(b) A warrantor's accounts, books, and records shall include:

(1) A copy of each vehicle protection product warranty sold or issued in the State;

(2) The name and address of each warranty holder; and

(3) The date, amount, and description of each receipt, claim, and expenditure.

(c) A warrantor shall keep accounts, books, and records relating to a vehicle protection product warranty and a warranty holder for at least 2 years following the expiration of the vehicle protection product warranty.

(d) A warrantor that discontinues business in the State shall maintain its accounts, books, and records until it can prove to the Division that it has discharged all of its obligations to any warranty holder in the State.

(e) On request, a warrantor shall make all of its accounts, books, and records available for inspection by the Division.

§14–4A–07.

(a) A warrantor of a vehicle protection product sold or offered for sale in the State shall:

(1) Be insured under a warranty reimbursement insurance policy; or

(2) Maintain a net worth or stockholders' equity of not less than $50,000,000.

(b) A warrantor that meets its financial obligation in accordance with subsection (a) of this section is not required to meet any other financial requirement or financial standard.

(c) If a warrantor elects to carry warranty reimbursement insurance under

subsection (a)(1) of this section, the warranty reimbursement insurance policy purchased by the warrantor shall provide:

(1) That the insurer will pay to, or on behalf of, the warrantor all sums that the warrantor is legally obligated to pay a warranty holder under the warrantor's vehicle protection product warranty;

(2) That, in the event payment due under the terms of the vehicle protection product warranty is not provided by the warrantor within 60 days after proof of loss has been filed by the warranty holder in accordance with the terms of the vehicle protection product warranty, the warranty holder may file a claim for reimbursement directly with the insurer;

(3) That the insurer shall be deemed to have received payment of the premium if the warranty holder paid the warrantor for the vehicle protection product warranty;

(4) That the insurer's liability under the warranty reimbursement insurance policy may not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a vehicle protection product warranty to the insurer; and

(5) That, with regard to cancellation of the warranty reimbursement insurance policy:

(i) The insurer may not cancel the warranty reimbursement insurance policy until a written notice of cancellation has been mailed or delivered to the insured warrantor;

(ii) The cancellation of a warranty reimbursement insurance policy may not reduce the insurer's responsibility for vehicle protection products sold before the date of cancellation; and

(iii) In the event an insurer cancels a warranty reimbursement insurance policy, the warrantor shall:

1. Discontinue offering vehicle protection product warranties as of the termination date of the warranty reimbursement insurance policy until a new warranty reimbursement insurance policy becomes effective; and

2. On obtaining a new warranty reimbursement insurance policy, file a copy of the new warranty reimbursement insurance policy with the Division.

(d) If a warrantor elects to meet its financial obligation in accordance with subsection (a)(2) of this section, the warrantor's parent company shall guarantee the obligations of the warrantor for the vehicle protection product warranties issued by the warrantor in the State.

§14–4A–08.

(a) A vehicle protection product warranty shall state:

(1) One of the following, as applicable:

(i) "The obligations of the warrantor to the warranty holder under this vehicle protection product warranty are guaranteed under a warranty reimbursement insurance policy. In the event payment due under the terms of the vehicle protection product warranty is not provided by the warrantor within 60 days after proof of loss has been filed by the warranty holder in accordance with the terms of the vehicle protection product warranty, the warranty holder may file a claim directly with the insurer that issued the warranty reimbursement insurance policy."; or

(ii) "The obligations of the warrantor to the warranty holder under this vehicle protection product warranty are backed by the full faith and credit of the warrantor.";

(2) The name and address of the insurer that issued the warranty reimbursement insurance policy to the warrantor, if applicable;

(3) The name and address of the warrantor, the seller of the vehicle protection product, and the warranty holder;

(4) The purchase price and terms of the vehicle protection product warranty, including a recital of the warrantor's obligations under the vehicle protection product warranty;

(5) The duration of the warranty period measured by time or, if practicable, by some measure of usage such as mileage;

(6) The procedure for making a claim, including a telephone number the warranty holder may call to make a claim;

(7) The payments or services to be provided under the vehicle protection product warranty, including payments for incidental costs, the manner of calculating or determining the payments to be provided, and any limitations, exceptions, or exclusions;

(8) The duties of the warranty holder, including:

(i) Protection of the vehicle from damage;

(ii) Notification to the warrantor in advance of any repair; and

(iii) Any other similar duty;

(9) Any terms, restrictions, or conditions relating to the transfer of the

vehicle protection product warranty; and

(10) The terms and conditions governing cancellation of the vehicle protection product.

(b) A vehicle protection product warranty shall include, in a prominent location, the following statement:

"This agreement is a product warranty and is not insurance."

(c) If the sale of a vehicle protection product includes a vehicle protection product warranty, the seller of the vehicle protection product or the warrantor shall provide to the purchaser:

(1) At the time of sale, a written copy of the vehicle protection product warranty; or

(2) (i) At the time of sale, a receipt or other written evidence of the purchase of the vehicle protection product; and

(ii) Within 30 days after the date of the purchase, a written copy of the vehicle protection product warranty.

(d) The information required under subsection (a)(3) and (5) of this section may be added to or stamped on the vehicle protection product warranty instead of being preprinted on the vehicle protection product warranty.

(e) At the time of purchase of a vehicle protection product, a warrantor may negotiate with the purchaser the purchase price and terms of the vehicle protection product warranty.

(f) A vehicle protection product warranty may provide for the reimbursement of incidental costs incurred by the warranty holder:

(1) In a fixed amount specified in the vehicle protection product warranty; or

(2) According to a formula that itemizes specific incidental costs incurred by the warranty holder.

§14–4A–09.

(a) Unless authorized by the Maryland Insurance Commissioner to engage in the insurance business in the State, a warrantor may not use the following words in its name, contracts, or literature:

(1) "Insurance";

(2) "Casualty";

(3) "Surety";

(4) "Mutual"; or

(5) Any other words that are:

(i) Descriptive of the insurance, casualty, or surety business; or

(ii) Deceptively similar to the name or description of an insurer, a surety corporation, or another warrantor.

(b) A warrantor may use the term "guaranty" or a similar word in the warrantor's name.

§14–4A–10.

A vehicle protection product seller or a warrantor may not require, as a condition of the sale or financing of a vehicle, that the purchaser of the vehicle buy a vehicle protection product.

§14–4A–11.

A warrantor that establishes an informal dispute settlement procedure may elect to settle vehicle protection product warranty disputes in coordination with a private mediation services provider or the Division.

§14–4A–12.

A warrantor is:

(1) Liable to the warranty holder for any wrongful breach of a vehicle protection product warranty; and

(2) Under a duty to:

(i) Comply with the requirements of this subtitle; and

(ii) Compensate the warranty holder for all reasonable incidental expenses incurred as a result of the breach.

§14–4A–13.

(a) A violation of this subtitle:

(1) Is an unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Except for § 13–410 of this article, is subject to the enforcement and penalty provisions contained in Title 13 of this article.

(b) A warrantor that violates the provisions of this subtitle is subject to a fine of $500 for each violation, not exceeding $10,000 for all violations.

(c) For purposes of this section, each individual failure to comply with the requirements of this subtitle is a separate violation.

§14–4A–14.

This subtitle may be cited as the Vehicle Protection Products Act.

§14–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Artist" means any person who conceived or created:

(1) The master image for a fine print; or

(2) The master image which served as the model for a fine print.

(c) (1) "Fine print" means a printed image on paper or any other suitable substance which has been taken off a plate by printing, stamping, casting, or any other process commonly used in the graphic arts.

(2) "Fine print" includes an engraving, etching, woodcut, lithograph, or serigraph.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Plate" means a plate, stone, block, or other material used to create a fine print or from which a fine print is taken.

(f) "Print" means a fine print.

(g) "Signed print" means a fine print autographed by the artist, whether it was signed or unsigned in the plate.

§14–502.

This subtitle does not apply to:

(1) A fine print printed before July 2, 1974; or

(2) A fine print offered for sale or sold at retail or wholesale for:

(i) $25 or less, if unframed; or

(ii) $40 or less, if framed.

§14–503.

(a) A person may not knowingly publish or distribute any catalog, prospectus, or circular which offers for sale a fine print unless it clearly and conspicuously discloses all information required by § 14-504 of this subtitle.

(b) A person may not knowingly sell at retail or wholesale any fine print unless a written invoice, receipt for the purchase price, or certificate furnished to the purchaser clearly and conspicuously discloses all information required by § 14-504 of this subtitle.

(c) If a fine print is described as a "reproduction", the information required by § 14-504 of this subtitle is not required to be disclosed, unless the print allegedly was published in a limited edition, an edition of numbered or signed prints, or any combination of them.

§14–504.

(a) A person who sells or offers to sell a fine print shall disclose the following information:

(1) The year when printed and the name of the artist;

(2) Whether the print is a part of a limited edition and, if it is:

(i) The authorized maximum number of numbered or signed prints, or both, in the edition;

(ii) The authorized maximum number of unnumbered or unsigned prints, or both, in the edition;

(iii) Any authorized maximum number of artist's, publisher's, printer's or other proofs, exclusive of trial proofs, outside the regular edition; and

(iv) The total size of the edition;

(3) Whether the plate has been destroyed, effaced, altered, defaced, or canceled after the current edition;

(4) If there were any prior plates of the same master image:

(i) The total number of plates; and

(ii) A designation of the plate from which the print was taken;

(5) If there were any prior or later editions from the same plate:

(i) The series number of the edition of which the print is a part; and

(ii) The aggregate size of all other editions;

(6) Whether the edition is a posthumous edition or restrike and, if it is, whether the plate has been reworked; and

(7) The name of any workshop where the edition was printed.

(b) If the person lacks knowledge as to any information required to be disclosed by this section, he shall disclaim that knowledge specifically with regard to each of these items of information so that the purchaser is able to judge the degree of uniqueness or scarcity of each print.

§14–505.

(a) A person who sells a fine print in violation of this subtitle is liable to the purchaser, on tender by the purchaser of the print, for its purchase price, with interest from the date of payment of the purchase price.

(b) A person who sells a fine print in willfull violation of this subtitle is liable to the purchaser, on tender by the purchaser of the print, for an amount equal to three times the sum of the purchase price and interest from the date of payment of the purchase price.

(c) An action may not be maintained under this section unless brought within one year after discovery of the violation on which it is based and, in no event, more than three years after the print was sold.

§14–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Package" includes a box, cover, or wrapper.

(c) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(d) "Sell" includes offer to sell.

(e) "Stamped" includes branded, engraved, or imprinted.

(f) "Tag" includes a card or label.

§14–602.

(a) A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of gold or a gold alloy, which has

stamped on it, on a tag attached to it, or on a package in which it is contained, any mark which indicates or is designed or intended to indicate that the gold or gold alloy in the item is greater than its actual degree of fineness, unless the actual fineness of the gold or gold alloy:

(1) In the case of flatware or a watch case, is not less than the fineness indicated by the mark by more than 0.003 parts; or

(2) In the case of any other article, is not less than the fineness indicated by the mark by more than one-half karat.

(b) For purposes of this section, in any assay or test undertaken to ascertain the fineness of gold or gold alloy in any item, the part of the gold or gold alloy used may not contain or have attached to it any solder or alloy of inferior fineness used to braze or unite the parts of the item.

(c) With respect to any item other than flatware or a watch case, in addition to the requirements of subsections (a) and (b) of this section, the actual fineness of all gold, gold alloy, and solder or alloy of inferior fineness used to braze or unite the parts of the item shall be assayed as one piece and may not be less than the fineness indicated by the mark by more than one karat.

§14–603.

A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of inferior metal which has deposited or plated on it or brazed or otherwise affixed to it a plate, plating, covering, or sheet of gold or gold alloy, and which has stamped on it, on a tag attached to it, or on a package in which it is contained, any word or mark usually employed to indicate the fineness of gold, unless the word or mark is accompanied by other words which plainly indicate that the item or some part of it is made of rolled gold plate, gold plate, or gold electroplate or is gold filled, as the case may be.

§14–604.

(a) A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of silver or a silver alloy, which has stamped on it, on a tag attached to it, or on a package in which it is contained, any mark or word, other than the word “sterling” or “coin”, which indicates or is designed or intended to indicate that the silver or silver alloy in the item is greater than its actual degree of fineness, unless the actual fineness of the silver or silver alloy is not less than the fineness indicated by the mark or word by more than 0.004 parts.

(b) For purposes of this section, in any assay or test undertaken to ascertain the fineness of the silver or silver alloy in an item, the part of the silver or silver alloy used may not contain or have attached to it any solder or alloy of inferior fineness used to braze or unite the parts of the item.

(c) In addition to the requirements of subsections (a) and (b) of this section, the actual fineness of all silver, silver alloy, and solder or alloy of inferior fineness used to braze or unite the parts of the item shall be assayed as one piece and may not be less than the fineness indicated by the mark by more than 0.010 parts.

§14–605.

(a) A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of silver or a silver alloy, which has stamped on it, on a tag attached to it, or on a package in which it is contained, the words "sterling silver", "sterling", or any colorable imitation of them, unless at least 0.925 of the component parts of the metal which appear or purport to be silver and of which the item is manufactured are pure silver.

(b) A divergence of 0.004 parts from the standard required by subsection (a) of this section is permitted.

§14–606.

(a) A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of silver or a silver alloy, which has stamped on it, on a tag attached to it, or on a package in which it is contained, the words "coin silver", "coin", or any colorable imitation of them, unless at least 0.900 of the component parts of the metal which appear or purport to be silver and of which the item is manufactured are pure silver.

(b) A divergence of 0.004 parts from the standard required by subsection (a) of this section is permitted.

§14–607.

A person may not sell, manufacture for sale, or possess with intent to sell any item of merchandise made in whole or in part of inferior metal which has deposited or plated on it or brazed or otherwise affixed to it a plate, plating, covering, or sheet of silver or silver alloy, and which has stamped on it, on a tag attached to it, or on a package in which it is contained, the word "sterling" or "coin", alone or in conjunction with any other word or mark.

§14–608.

(a) Any person who violates any provision of this subtitle, and each of his managers, managing agents, directors, or officers who directly participates in a violation or consents to a violation, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding three months or both.

(b) It is a defense to any prosecution brought under this subtitle that the item concerning which the prosecution is brought was manufactured before July 1, 1912.

§14–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means a person who buys for his own use or for the use of another but not for resale.

(c) "County" includes Baltimore City.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Secondhand watch" means:

(1) A watch or the case or movement of a watch which has been sold previously to a consumer; or

(2) Any watch of which the case or movement serial number or other distinguishing number or identification mark has been erased, defaced, removed, altered, or covered.

(f) "Sell" includes exchange or offer or display for sale or exchange.

§14–702.

(a) This subtitle does not apply to a secondhand watch which has been sold previously to a consumer and is returned to the seller within 30 calendar days for a refund, credit, or exchange in an amount equal to the full amount of the purchase price, if the seller keeps a written record which sets forth:

(1) The name and address of the consumer;

(2) The dates of the sale to and the return by the consumer;

(3) The name of the watch or its maker; and

(4) The serial number or, if none, any other distinguishing number or identification mark on the case and on the movement of the watch.

(b) The seller shall keep the record on file for at least three years from the date of the sale of the watch. The file shall be open for inspection during all business hours by the State's Attorney of the county in which the seller engages in business.

§14–703.

Any person, his agent, or employee who sells or possesses with intent to sell a secondhand watch shall affix and keep affixed to it a tag with the word "secondhand" legibly written on it in the English language.

§14–704.

(a) Any person, his agent, or employee who sells or possesses with intent to sell a secondhand watch shall deliver to the buyer a written invoice which sets forth:

(1) The name and address of the seller;

(2) The name and address of the buyer;

(3) The date of the sale;

(4) The name of the watch or its maker;

(5) The serial number or, if none, any other distinguishing number or identification mark on the case and the movement of the watch; and

(6) Whether any serial number or any other distinguishing number or identification mark has been erased, defaced, removed, altered, or covered.

(b) The seller of a secondhand watch shall keep a duplicate of the invoice on file for at least one year from the date of the sale of the watch. The file shall be open for inspection during all business hours by the State's Attorney of the county in which the seller engages in business.

§14–705.

Any person who in any manner advertises a secondhand watch for sale shall state clearly in the advertisement that the watch is a secondhand watch.

§14–706.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding three months or both.

§14–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(c) (1) "Used radio or television set" means any radio set or television set which is used, rebuilt, reconditioned, or repossessed.

(2) "Used radio or television set" does not include any set which is:

(i) Advertised or described and sold as antique goods; or

(ii) Returned by a retail customer if the sale price is canceled, refunded, or fully credited.

§14–802.

Any person, his agent, employee, or sales representative who offers for sale to the public any used radio or television set shall:

(1) State clearly in any advertisement of the set that it is "used", "rebuilt", "reconditioned", "repossessed", or "rebranded and used", as the case may be; and

(2) Affix to the set a tag or sticker which states that it is "used", "rebuilt", "reconditioned", "repossessed", or "rebranded and used", as the case may be.

§14–803.

(a) Any person who, with the intent to deceive a potential purchaser, violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

(b) A person is presumed to have the requisite intent to deceive if he fails to comply with any provision of this subtitle.

§14–901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertisement" has the meaning stated in § 13-101(b) of this article.

(c) "Disclosure statement" means the form provided by the Attorney General for the purpose of disclosing to consumers practices relating to the preparation, handling, and sale of any unpackaged food represented to be kosher, kosher for Passover, or prepared or maintained under rabbinical or other kosher supervision.

(d) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(e) (1) "Food" or "food product" means any food, food product, or food preparation, whether:

(i) Raw, solid or liquid; or

(ii) Prepared for human consumption.

(2) "Food" or "food product" includes:

(i) Any meat, meat product, or meat preparation;

(ii) Any milk, milk product, or milk preparation;

(iii) Any poultry or poultry product; and

(iv) Any alcoholic or nonalcoholic beverage.

(f) "Kosher" includes foods prepared for the festival of Passover and termed as "kosher for Passover".

(g) "Meat" includes any meat product or meat preparation.

(h) (1) "Mezuzah" means the Jewish religious article that, according to Jewish law, is designed to be attached to the doorpost of a room in a home.

(2) "Mezuzah" includes:

(i) The parchment or other material on which passages from the Bible are to be written; and

(ii) The writing on that parchment or other material.

(i) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(j) "Poultry" includes any poultry product or poultry preparation.

(k) (1) "Represents to the public" means any direct or indirect statement, orally or written, and any letter, word, sign, emblem, insignia, or mark which could reasonably lead a consumer to believe that a representation is being made that the final food product sold to the consumer is kosher, kosher for Passover, or prepared or maintained under rabbinical or other kosher supervision.

(2) "Represents to the public" includes any advertisement.

(l) (1) "Tefillin" means the Jewish religious article, also known as "phylacteries", that, according to Jewish law, is designed to be worn on the upper arm and head during morning prayers.

(2) "Tefillin" includes:

(i) The parchment or other material on which passages from the Bible are to be written;

(ii) The writing on that parchment or other material;

(iii) The capsules in which the parchment or other material is contained; and

(iv) The straps attached to the capsules.

§14–902.

(a) (1) A person that represents to the public that any unpackaged food that is sold or served is kosher, kosher for Passover, or under rabbinical or other kosher supervision shall prominently and conspicuously display on the premises on which the food is sold or served a complete disclosure statement.

(2) The Division shall develop a form for disclosure statements and shall make the form available to any person upon request.

(3) The disclosure statement shall:

(i) Be understandable and written in simple and readable plain language;

(ii) Disclose to the public the basis for a representation that any unpackaged food sold or served is kosher, kosher for Passover, or under rabbinical or other supervision, including a specification of practices relating to the preparation, handling, and sale of the food; and

(iii) Contain any additional information or conform to any additional requirements that the Division considers reasonable and necessary to carry out the provisions of this subtitle.

(4) (i) A person that displays a disclosure statement in accordance with this section shall retain a copy of the statement for at least:

1. 3 years after the date of the initial display of the disclosure statement; or

2. 3 years after the date of any amendment to the disclosure, whichever is longer.

(ii) A person that displays a disclosure statement in accordance with this section shall provide a copy of the statement to the Division within 2 business days of the person's receipt from the Division of a request for a copy of the disclosure statement.

(5) A person shall conform its practices with respect to the sale or serving of unpackaged food that is represented to the public as kosher, kosher for Passover, or under rabbinical or other kosher supervision.

(b) A person may not sell or offer for sale any unpackaged food represented to the public as kosher, whether for consumption in the person's place of business or elsewhere, if, in the same place of business, the person also offers for sale any unpackaged food, not represented to the public as kosher, unless the person includes on each window sign and each display advertisement in block letters at least 4 inches high the words "kosher and nonkosher food sold here" or, as to the sale of meat alone,

"kosher and nonkosher meat and poultry sold here".

(c) A person may not display for sale any food represented to the public as kosher, whether for consumption in the person's place of business or elsewhere, if, in the same show window or other location on or in the place of business, the person also displays any unpackaged food not represented to the public as kosher, unless the person displays over the kosher and nonkosher food signs that read, in block letters at least 4 inches high, "kosher food" and "nonkosher food", respectively, or, as to the display of meat alone, "kosher meat" and "nonkosher meat", or "kosher poultry" or "nonkosher poultry", respectively.

(d) A person may not prepare or serve any food represented to the public as kosher, whether for consumption in the person's place of business or elsewhere, if, in the same place of business, the person also prepares or serves food not represented to the public as kosher, unless the person includes on each sign and display advertisement in or about the person's premises in block letters at least 4 inches high the words "kosher and nonkosher food prepared and sold here".

(e) (1) In this subsection, "Hebrew" symbol means:

(i) Any Hebrew word or letter; or

(ii) Any symbol, emblem, sign, insignia, or other mark that simulates a Hebrew word or letter.

(2) In connection with any place of business that sells or offers for sale any food, a person may not display, whether in a window, door, or other location on or in the place of business, in any handbill or other printed matter distributed in or outside of the place of business, or otherwise in any advertisement, any Hebrew symbol, or any other representation to the public that the place of business is kosher, kosher for Passover, or under rabbinical or other kosher supervision, unless the person also displays in conjunction with the Hebrew symbol or such other representation, in English letters of at least the same size as the characters used in the Hebrew symbol, the words "we sell kosher meat and food only", "we sell nonkosher meat and food only", or "we sell both kosher and nonkosher meat and food", as the appropriate representation may be.

(f) (1) In this subsection, "fresh" means unprocessed other than by salting or soaking.

(2) A person may not sell or offer for sale, as kosher, any fresh meat or poultry unless the words "soaked and salted" or "not soaked and salted", as the appropriate case may be, is marked:

(i) On the package label; or

(ii) If the product is not packaged, on a sign prominently displayed in conjunction with the product.

§14–903.

A person may not advertise any food for sale or any place of business as being under rabbinical or other kosher supervision unless the advertisement identifies the name of the rabbi or other person that supervises or otherwise certifies the product or place of business as kosher.

§14–904.

(a) In this section, "packaged food product" means a food product that:

(1) In advance of sale, is put up or packaged, in any manner, in units suitable for retail sale; and

(2) Is not intended for consumption at its point of manufacture.

(b) A person may not sell or offer for sale, as kosher, kosher for Passover, or as being under rabbinical or other kosher supervision any packaged food product unless:

(1) It has a kosher identification securely attached to the outside of the package; and

(2) This identification was attached to the package by the producer or packer of the product at his place of business.

(c) Subsection (b) of this section applies to any packaged food product that is marked or identified with:

(1) In any language, the words "kosher", "parve", "glatt", or "rabbinical supervision";

(2) Any other word or symbol representing to the public that the product is kosher, kosher for Passover, or under rabbinical or other kosher supervision; or

(3) The English letters "K", "KP", "KD", "KM", "KF", "KOS", or "RS", except as part of a registered trademark.

§14–905.

(a) The manufacturer or importer of any mezuzah or tefillin represented as kosher or as produced under rabbinical or other supervision may not sell the product or offer it for sale unless the following information is printed legibly on the package of the product or on a label securely attached to the product:

(1) The name and address of the manufacturer or importer; and

(2) If the mezuzah or tefillin, in the form reasonably expected to be sold at retail, is not intended to be represented as kosher, the word "nonkosher".

(b) A person may not sell or offer for sale at retail any mezuzah or tefillin represented to the public as kosher or as produced under rabbinical supervision that does not have on or attached to it the information required by subsection (a) of this section.

§14–906.

A violation of any provision of this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of this article.

§14–907.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and is subject to the enforcement and penalty provisions set forth in Title 13 of this article.

§14–1001.

(a) In this subtitle the following words have the meanings indicated.

(b) "Automotive repair facility" means any person who diagnoses or corrects malfunctions of a motor vehicle for financial profit.

(c) "Motor vehicle" has the meaning stated in Title 11 of the Transportation Article.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§14–1002.

(a) (1) Before beginning any repair work on a motor vehicle for which a customer is charged more than $50, an automotive repair facility shall give the customer on the customer's request a written statement which contains:

(i) The estimated completion date;

(ii) The estimated price for labor and parts necessary to complete the work;

(iii) A clear statement that while the customer's motor vehicle is on the premises of the automotive repair facility, the automotive repair facility may not be responsible for damage to the customer's motor vehicle under certain circumstances, and that the customer should ask a representative of the automotive repair facility about the extent of its responsibility, including the extent of the insurance coverage of the automotive repair facility; and

(iv) The estimated surcharge, if any.

(2) If the fee is disclosed to the customer before the estimate is made, the automotive repair facility may charge a reasonable fee for making the estimate.

(b) An automotive repair facility may not charge a customer without his consent any amount which exceeds the written estimate by 10 percent.

(c) An automotive repair facility is not liable for breach of the written estimated completion date for a repair if the delay is caused by:

(1) An act of God;

(2) Strike;

(3) Unexpected illness; or

(4) Unexpected shortage of labor or parts.

(d) This section does not require an automotive repair facility to give a written estimate if the facility does not agree to perform the requested repair work.

§14–1003.

(a) An automotive repair facility shall prepare an invoice which describes:

(1) All work done by it, including all warranty work; and

(2) All parts supplied by it.

(b) The invoice shall state clearly:

(1) If any used, rebuilt, or reconditioned parts have been supplied or if a part of a component system supplied is composed of used, rebuilt, or reconditioned parts; and

(2) That while a customer's motor vehicle is on the premises of the automotive repair facility, the automotive repair facility may not be responsible for damage to the customer's motor vehicle under certain circumstances, and that the customer should ask a representative of the automotive repair facility about the extent of its responsibility, including the extent of the insurance coverage of the automotive repair facility.

(c) The invoice shall include the following notice:

"Manufacturer Special Policy Adjustment Programs

Federal law requires manufacturers to furnish the National Highway Traffic Safety Administration (N.H.T.S.A.) with bulletins describing any defects in their

vehicles. You may obtain copies of these bulletins from either the manufacturer or N.H.T.S.A. In addition, certain consumer publications or organizations publish this information, which may be available for a fee or for free."

(d) After the customer signs the invoice, the automotive repair facility shall give the customer a copy of it and retain a copy.

§14–1004.

(a) Except as provided in subsection (b) of this section, an automotive repair facility shall tender return of all replaced parts to the customer.

(b) Subsection (a) of this section does not apply to replaced parts which are required to be returned to the manufacturer or distributor under a warranty agreement.

§14–1005.

This subtitle does not:

(1) Prohibit a person from filing an action for damages against an automotive repair facility; or

(2) Require a person first to exhaust any administrative remedy he may have.

§14–1006.

An automotive repair facility may not charge the customer for repairs not originally authorized or requested by the customer. Additional repairs may be charged to the customer if the automotive repair facility receives written or oral permission from the customer.

§14–1007.

Any person aggrieved by a violation of any provision of this subtitle may take any action available under the consumer protection title of this article. Complaints may be filed with the Consumer Protection Division of the Office of the Attorney General.

§14–1008.

(a) Except as provided in subsection (c) of this section, before beginning any repair work on a motor vehicle, an automotive repair facility shall give the customer a copy of a form used for authorization of repairs which shall inform the customer of the following rights:

(1) That a customer:

(i) May request a written estimate for repairs which cost in excess

of $50; and

(ii) May not be charged any amount ten percent in excess of the written estimate without the customer's consent;

(2) That the customer is entitled to the return of any replaced parts except when parts are required to be returned to the manufacturer under a warranty agreement; and

(3) That repairs not originally authorized by the customer may not be charged to the customer without the customer's consent.

(b) The customer's rights provided in subsection (a) of this section shall be:

(1) Displayed immediately before the space for the signature of the customer conspicuously in easily readable type;

(2) Physically separated from the other terms of the form used for authorization of repairs; and

(3) Listed under the printed heading "Customer's Rights".

(c) (1) An automotive repair facility may inform the customer orally of the customer's rights if:

(i) The customer's motor vehicle is towed to the automotive repair facility for repair; or

(ii) The customer leaves the vehicle for repair at the repair facility when the facility is not open.

(2) Under this subsection, if any automotive repair facility informs a customer orally of the customer's rights, the facility shall record in writing:

(i) The name of the person notified;

(ii) The date and time of the notification; and

(iii) The signature of the person who made the notification.

(d) The authorization form shall include the following notice:

"Manufacturer Special Policy Adjustment Programs

Federal law requires manufacturers to furnish the National Highway Traffic Safety Administration (N.H.T.S.A.) with bulletins describing any defects in their vehicles. You may obtain copies of these bulletins from either the manufacturer or N.H.T.S.A. In addition, certain consumer publications or organizations publish this information, which may be available for a fee or for free."

(e) The authorization form shall include a clear statement that while the customer's motor vehicle is on the premises of the automotive repair facility, the automotive repair facility may not be responsible for damage to the customer's motor vehicle under certain circumstances, and that the customer should ask a representative of the automotive repair facility about the extent of its responsibility, including the extent of the insurance coverage of the automotive repair facility.

§14–1009.

A violation of any provision of this subtitle is an unfair or deceptive practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–1101.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Buyer" means a person who buys consumer goods under a layaway agreement, even though he has entered into one or more renewal, extension, or refund agreements.

(2) "Buyer" includes a prospective buyer.

(c) "Cash price" means the minimum price for which consumer goods subject to a layaway agreement, or other consumer goods of like kind and quality, may be purchased for cash from the seller by the buyer.

(d) "C.O.D. transaction" means an agreement by which the seller requires the buyer to pay the full cash price of the consumer goods upon delivery or tender of delivery by the seller, less any down payment made by the buyer. A C.O.D. transaction does not include an agreement by which the seller requires the buyer to pay interim payments before delivery or tender of delivery of the consumer goods by the seller.

(e) "Consumer goods" means goods bought for use primarily for personal, family, or household purposes, as distinguished from industrial, commercial, or agricultural purposes.

(f) "Down payment" means all amounts paid in cash, credits, or the agreed value of goods, by or for a buyer and to or for the benefit of the seller at or before execution of a layaway agreement or C.O.D. transaction.

(g) (1) "Layaway agreement" means a contract for the retail sale of consumer goods, negotiated or entered into in the State, under which:

(i) Part or all of the layaway price is payable in one or more payments subsequent to the making of the layaway agreement;

(ii) The consumer goods are specific existing consumer goods

identified from the seller's stock or inventory at the time of the making of the layaway agreement; and

(iii) The seller retains possession of the consumer goods and bears the risk of their loss or damage until the layaway price is paid in full.

(2) "Layaway agreement" includes a "special order transaction," as defined in this section.

(3) "Layaway agreement" does not include a bona fide C.O.D. transaction.

(4) "Layaway agreement" does not include any form of layaway agreement where the buyer can default without any penalty, other than a maximum service charge of $1.

(h) "Layaway price" means the cash price of consumer goods together with an optional service charge, not to exceed $1 if the price of the consumer goods is $500 or less or $5 if the price of the consumer goods exceeds $500.

(i) "Retail sale" means the sale of consumer goods for use or consumption by the buyer or for the benefit or satisfaction which the buyer may derive from the use or consumption of the consumer goods by another, but not for resale by the buyer.

(j) "Seller" means a person who sells or agrees to sell consumer goods under a layaway agreement.

(k) "Special order transaction" means a contract for the retail sale of consumer goods, negotiated or entered into in the State, under which either:

(1) Consumer goods:

(i) Are ordered by the buyer to the buyer's unique specifications;

(ii) Are not carried by the seller, either in the seller's showroom or warehouse;

(iii) Are ordered from a manufacturer or supplier; and

(iv) Are not resalable by the seller at the sale price negotiated with the buyer; or

(2) Consumer goods which have been altered at the request of the buyer so that the goods are no longer salable to the general public.

§14–1102.

A layaway agreement shall be in writing and contain all of the agreements of the parties and shall be signed by all of the parties to it.

§14–1103.

(a) A layaway agreement shall include:

(1) The full name, place of residence, and post office address of each party to it;

(2) The date when signed by the buyer;

(3) A clear description of the consumer goods sold sufficient to identify them readily;

(4) The cash price of the consumer goods sold;

(5) All charges for delivery, installation, or repair of or other services to the consumer goods which, separate from the cash price, are included in the layaway agreement;

(6) The sum of the cash price in item (4) of this subsection and the charges for services in item (5) of this subsection;

(7) The amount of the buyer's down payment, together with:

(i) A statement of the respective amounts credited for cash, credits, and the agreed value of any goods traded in; and

(ii) A description of all goods traded sufficient to identify them;

(8) The unpaid balance of the cash price payable by the buyer to the seller, which is the sum specified in item (6) of this subsection less the amount in item (7) of this subsection;

(9) The service charge;

(10) The total of payments owed by the buyer to the seller, which is the sum of items (8) and (9) of this subsection, the number of installment payments required to pay it, and the amount and time of each payment;

(11) The layaway price, which is the sum of items (6) and (9) of this subsection; and

(12) A clear and concise statement of all consequences of buyer's default.

(b) Subsection (a)(4) through (12) of this section does not apply to any layaway sale subject to the disclosure provisions of the federal Truth in Lending Act if the seller complies with the applicable disclosure provisions of the federal act and its regulation.

§14–1104.

(a) At or before the time the buyer signs a layaway agreement, the seller shall give him an exact copy signed by the seller.

(b) Upon execution of a layaway agreement, the seller shall hold for the buyer or agree to deliver to the buyer on a date mutually acceptable to both parties, the consumer goods or consumer goods that are identical to those originally selected by the buyer, as long as the buyer complies with all of the terms of the layaway agreement.

(c) (1) The seller shall permit the buyer to cancel a layaway agreement, without any penalty or obligation, within 7 calendar days from the date of the layaway agreement.

(2) If the buyer cancels the layaway agreement as provided in paragraph (1) of this subsection, the seller shall:

(i) Refund all payments made under the layaway agreement; and

(ii) Return, in substantially as good condition as when received by the seller, any goods or property traded in.

(d) (1) If a payment is made on account of a layaway agreement, the seller shall give the buyer on his request, or, if payment is made in cash, without request, a complete written receipt for the payment; and

(2) If the buyer requests information on the status of his account, the seller, within 10 days after the request at the place of business where the layaway sale was made, shall give the buyer a written statement setting forth:

(i) The layaway price;

(ii) The total amount paid by the buyer to date; and

(iii) The total amount remaining due to the seller.

(e) After the buyer has made all payments to the seller in accordance with the layaway agreement, the seller shall deliver to the buyer the consumer goods or consumer goods that are identical to those originally selected by the buyer.

§14–1105.

(a) The seller may not increase the layaway price of the consumer goods sold under a layaway agreement.

(b) If, within 10 calendar days after the execution of a layaway agreement, the seller reduces the selling price of existing items in his stock or inventory identical to those being held for a buyer, the seller shall credit the buyer for the difference between

the original layaway price and the reduced price.

§14–1106.

(a) The buyer is in default under a layaway agreement whenever 15 days has lapsed from the scheduled date on which the buyer failed to make a required payment.

(b) If the buyer defaults under subsection (a) of this section, the seller may immediately cancel the layaway agreement and recover from the buyer liquidated damages under subsection (c) of this section or § 14–1107 of this subtitle, as applicable.

(c) If the buyer defaults under a layaway agreement 8 or more calendar days after the date of its execution, the seller may retain as liquidated damages an amount not to exceed 10 percent of the layaway price or the total amount paid by the buyer to the date of default, whichever is less.

(d) Unless otherwise provided in the layaway agreement, subsection (c) of this section does not apply if the buyer defaults under a special order transaction.

(e) Except as provided in § 14–1104(c) of this subtitle, at any time before delivery or tender of delivery, and before default by the buyer, the layaway agreement may be canceled by the buyer. However, the seller may retain from the refund due the buyer liquidated damages in an amount which is the lesser of 10 percent of the layaway price or the total amount paid by the buyer to the date of cancellation.

§14–1107.

If the buyer defaults under a special order transaction, the seller may exercise all rights and remedies available at either law or equity, including those rights and remedies as provided in the Uniform Commercial Code, Title 2 "Sales," Subtitle 7 "Remedies," of this article.

§14–1108.

The Retail Installment Sales Act, Title 12, Subtitle 6 of this article, does not apply to any sale of consumer goods regulated by this subtitle.

§14–1109.

(a) If the seller fails to comply with § 14-1102, § 14-1103, or § 14-1104 of this subtitle, the buyer, before delivery by the seller and acceptance by the buyer of consumer goods purchased under a layaway agreement, may cancel the layaway agreement and receive from the seller a refund of all payments made under the layaway agreement and the return of any goods or property traded in.

(b) Any seller who makes a layaway sale in violation of this subtitle is liable to the buyer for a penalty amount equal to three times the amount paid by the buyer under the layaway agreement, plus reasonable attorney's fees. Any seller

who demonstrates that a violation was nonwillful is not liable for the penalty or attorney's fees. The penalty provided in this subsection is in addition to that provided in subsection (a) of this section.

(c) If the Division of Consumer Protection, Office of the Attorney General has reason to believe that any seller has violated any provision of this subtitle, the Division may institute a proceeding under Title 13 of this article.

§14–1110.

This subtitle may be cited as the Maryland Layaway Sales Act.

§14–1201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Commissioner" means the Commissioner of Financial Regulation of the Department of Labor, Licensing, and Regulation.

(c) "Consumer" means an individual.

(d) (1) "Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) Credit or insurance to be used primarily for personal, family, or household purposes;

(ii) Employment purposes; or

(iii) Other purposes authorized under § 14-1202 of this subtitle.

(2) The term does not include:

(i) Any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) Any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) Any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under § 14-1212 of this subtitle.

(e) (1) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of commerce for the purpose of preparing or furnishing consumer reports.

(2) "Consumer reporting agency" does not include:

(i) A person licensed as a private detective agency or certified as a private detective under the Maryland Private Detectives Act; or

(ii) A person who assembles and exchanges consumer credit information with an affiliated person or a person who is owned or controlled by the same entity, provided that, in the event of an adverse credit decision against a consumer based on that information, the entity making the decision shall comply with the notice requirements of § 14-1212(b) of this subtitle.

(f) "Employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) "File", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) "Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(i) "Medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

(j) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

§14–1202.

(a) Subject to subsection (b) of this section and § 14-1205 of this subtitle,

a consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue the order;

(2) In accordance with the written instructions of the consumer to whom it relates; or

(3) To a person which the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(ii) Intends to use the information for employment purposes;

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(b) If the consumer reporting agency receives written notice from the consumer restricting the sale or other transfer of information in the consumer's file, the consumer reporting agency may not sell, offer to sell, or furnish information in the consumer's file to:

(1) A mail-service organization;

(2) A marketing firm; or

(3) Any other similar organization that obtains information about a consumer for marketing purposes.

§14–1203.

(a) Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than 10 years;

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years;

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years;

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years; or

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with:

(1) A credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

(2) The underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) The employment of any individual at an annual salary which equals, or which may reasonably be expected to equal, $20,000 or more.

§14–1204.

(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless:

(1) It is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the disclosure:

(i) Is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested; and

(ii) Includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) The report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall make, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1) of this section, a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for the disclosure was received from the consumer or the report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b) of this section.

§14–1205.

(a) (1) A consumer reporting agency shall maintain reasonable procedures designed to avoid violations of § 14-1203 of this subtitle and to limit the furnishing of consumer reports to the purposes listed under § 14-1202 of this subtitle.

(2) The procedures at a minimum shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose.

(3) A consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user a consumer report.

(4) No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in § 14-1202 of this subtitle.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Notwithstanding the provisions of § 14-1202 of this subtitle, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

§14–1206.

(a) A consumer reporting agency shall, upon request and proper identification of a consumer, provide the consumer:

(1) An exact copy of any file on that consumer except any part of the file which contains medical information;

(2) A written explanation of codes or trade language used;

(3) A description of the rights of the consumer under this subtitle; and

(4) The name, address, and telephone number of the Commissioner.

(b) Whenever access to a file or a copy of a file has been furnished to a consumer, the consumer reporting agency may delete the sources of information acquired solely for use in an investigative report and used for no other purpose. If any action is brought by the consumer under this subtitle, the consumer reporting agency shall make such sources available to the plaintiff under appropriate discovery procedures.

§14–1207.

(a) A consumer reporting agency shall make the disclosures required under § 14-1206(a) of this subtitle during normal business hours and on reasonable notice.

(b) The disclosures required under § 14-1206(a) of this subtitle shall be made to the consumer:

(1) In person if he appears in person and furnishes proper identification;

(2) By telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer; or

(3) In writing if the consumer makes a written request and furnishes proper identification.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to § 14-1206 of this subtitle.

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in the person's presence.

(e) Except as provided in § 14-1213 of this subtitle, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, based on information disclosed pursuant to this section or § 14-1206 or § 14-1212 of this subtitle, except as to false information furnished with malice or willful intent to injure the consumer. Except as provided in § 14-1213 of this subtitle, no consumer may bring any action or proceeding against a person who furnishes information to a consumer reporting agency in the nature of defamation, invasion of privacy, or negligence for unintentional error.

§14–1208.

(a) (1) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and the dispute is directly conveyed to the consumer reporting agency in writing by the consumer, the consumer reporting agency shall within 30 days reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant.

(2) If after reinvestigation the information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall within 7 business days delete the information and mail:

(i) Written notice of the correction to the consumer and to each person to whom the erroneous information was furnished; and

(ii) A statement of the rights of the consumer under this subtitle.

(3) If after reinvestigation the information is found to be accurate or is verified, the consumer reporting agency shall within 7 business days mail:

(i) Written notice of the finding to the consumer; and

(ii) A statement of the rights of the consumer under this subtitle.

(4) (i) Within 60 days after receiving the notice under paragraphs (2) and (3) of this subsection, the consumer may request in writing that the consumer reporting agency disclose the name, address, and telephone number of each person contacted during the reinvestigation.

(ii) Within 30 days after receiving the consumer's written request under this paragraph, the consumer reporting agency shall make the requested disclosure.

(5) A person contacted during the reinvestigation who determines that the information was inaccurate shall correct the information in the person's records within 12 business days after the determination occurs.

(6) The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If a consumer reporting agency finds that a dispute is frivolous or irrelevant, the agency within 7 business days shall mail:

(1) Written notice of the finding, including the reasons for the finding, to the consumer; and

(2) A statement of the rights of the consumer under this subtitle.

(c) (1) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute.

(2) The consumer reporting agency may limit statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(d) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary of it.

(e) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (c) or (d) of this section to any person specifically designated by the consumer who has within 2 years prior received a consumer report for employment purposes, or within 1 year prior received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. The disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

§14–1209.

(a) Notwithstanding the provisions of subsection (b) of this section, a consumer reporting agency may not impose a fee for:

(1) A consumer report provided under § 14-1206(a) of this subtitle one time during a 12-month period;

(2) A consumer report or disclosure provided under §§ 14-1206(a) and 14-1208(e) of this subtitle if the consumer makes a request for the report within 30 days after receipt by the consumer of a notification under § 14-1212 of this subtitle or notification from a debt collection agency affiliated with a consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected; or

(3) A disclosure made under § 14-1208(e) of this subtitle to a person designated by the consumer of the deletion from the consumer report of information that is found to be inaccurate or can no longer be verified.

(b) (1) A consumer reporting agency may charge a consumer a reasonable fee:

(i) For a second or subsequent report made during a 12-month period

under § 14-1206(a) of this subtitle, not exceeding $5; and

(ii) For furnishing information under § 14-1208(e) of this subtitle, not exceeding the fee that the consumer reporting agency would impose on each designated recipient for a consumer report.

(2) The consumer reporting agency shall indicate the amount of the fee to the consumer before providing the report or furnishing the information.

§14–1210.

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall:

(1) At the time public record information is reported to the user of the consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom the information is being reported; or

(2) Maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

§14–1211.

Whenever a consumer reporting agency prepares an investigative consumer report, any adverse information in the consumer report (other than information which is a matter of public record) may not be included in a subsequent consumer report unless the adverse information has been verified in the process of making the subsequent consumer report or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

§14–1212.

(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom the adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for credit is increased either wholly or partly

because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of the information shall, within a reasonable period of time not to exceed 30 days, upon the consumer's written request for the reasons for the adverse action received within 60 days after learning of the adverse action disclose the nature of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his right to make the written request at the time the adverse action is communicated to the consumer.

(c) A person may not be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b) of this section.

§14–1212.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account review" includes activities related to account maintenance, account monitoring, credit line increases, and account upgrades and enhancements.

(3) "Security freeze" means a restriction placed on a consumer's consumer report at the request of the consumer that prohibits a consumer reporting agency from releasing the consumer's consumer report or any information derived from the consumer's consumer report without the express authorization of the consumer.

(b) (1) This section does not apply to the use of a consumer's consumer report by:

(i) A person, or a subsidiary, affiliate, agent, or assignee of the person, with which the consumer has, or prior to assignment had, an account, contract, or debtor–creditor relationship, for the purpose of account review or collecting the financial obligation owing for the account, contract, or debt;

(ii) A person that was given access to the consumer's consumer report under subsection (e) of this section for the purpose of facilitating an extension of credit to the consumer or another permissible use;

(iii) A person acting in accordance with a court order, warrant, or subpoena;

(iv) A unit of State or local government that administers a program for establishing and enforcing child support obligations;

(v) The Department of Health and Mental Hygiene in connection with a fraud investigation conducted by the Department;

(vi) The State Department of Assessments and Taxation, the Comptroller, or any other State or local taxing authority in connection with:

1. An investigation conducted by the Department, Comptroller, or taxing authority;

2. The collection of delinquent taxes or unpaid court orders by the Department, Comptroller, or taxing authority; or

3. The performance of any other duty provided for by law;

(vii) A person for the purpose of prescreening, as defined by the federal Fair Credit Reporting Act;

(viii) A person administering a credit file monitoring subscription service to which the consumer has subscribed;

(ix) A person providing a consumer with a copy of the consumer's consumer report on request of the consumer; or

(x) To the extent not prohibited by other State law, a person only for the purpose of setting or adjusting an insurance rate, adjusting an insurance claim, or underwriting an insurance risk.

(2) This section does not apply to:

(i) A check services or fraud prevention services company that issues:

1. Reports on incidents of fraud; or

2. Authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;

(ii) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; or

(iii) A consumer reporting agency database or file that consists entirely of consumer information concerning, and used solely for:

1. Criminal record information;

2. Personal loss history information;

3. Fraud prevention or detection;

4. Employment screening; or

5. Tenant screening.

(c) (1) A consumer may elect to place a security freeze on the consumer's consumer report by:

(i) Written request sent by certified mail;

(ii) Subject to paragraph (6) of this subsection, telephone, by providing certain personal information that the consumer reporting agency may require to verify the identity of the consumer;

(iii) Electronic mail using an electronic postmark if a secure electronic mail connection is made available by the consumer reporting agency; or

(iv) If the consumer reporting agency makes a secure connection available on its Web site, an electronic request through that secure connection.

(2) A consumer reporting agency shall require a consumer to provide proper identifying information when requesting a security freeze.

(3) Except as provided in paragraph (5) of this subsection, a consumer reporting agency shall place a security freeze on a consumer's consumer report within 3 business days after receiving a request under paragraph (1) of this subsection.

(4) Within 5 business days after placing a security freeze on a consumer's consumer report, the consumer reporting agency shall:

(i) Send a written confirmation of the security freeze to the consumer;

(ii) Provide the consumer with a unique personal identification number or password to be used by the consumer when authorizing the release of the consumer's consumer report to a specific person or for a specific period of time; and

(iii) Provide the consumer with a written statement of the procedures for requesting the consumer reporting agency to remove or temporarily lift a security freeze.

(5) (i) Subject to subparagraph (ii) of this paragraph, a consumer reporting agency is not required to place a security freeze on a consumer report if the consumer reporting agency:

1. Acts only as a reseller of credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

2. Does not maintain a permanent database of credit information from which new consumer reports are produced.

(ii) A consumer reporting agency that acts as a reseller of credit information shall honor a security freeze placed on a consumer report by another consumer reporting agency.

(6) (i) If a consumer requests placement of a security freeze by telephone under paragraph (1)(ii) of this subsection, the consumer reporting agency may require the consumer to confirm the request in writing on a form that the consumer reporting agency provides to the consumer with the materials sent in accordance with paragraph (4) of this subsection.

(ii) If the consumer fails to return written confirmation that the consumer reporting agency requires under subparagraph (i) of this paragraph, the consumer reporting agency may remove the security freeze in accordance with subsection (g)(2) of this section.

(d) (1) While a security freeze is in place, a consumer reporting agency may not release a consumer's consumer report or any information derived from a consumer's consumer report without the express prior authorization of the consumer.

(2) A consumer reporting agency may advise a person that a security freeze is in effect with respect to a consumer's consumer report.

(3) A consumer reporting agency may not state or imply to any person that a security freeze on a consumer's consumer report reflects a negative credit score, credit history, or credit rating.

(e) (1) If a consumer wants to temporarily lift a security freeze to allow the consumer's consumer report to be accessed by a specific person or for a specific period of time while a security freeze is in place, the consumer shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the Web site of the consumer reporting agency;

(ii) Request that the security freeze be temporarily lifted; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information;

2. The unique personal identification number or password provided to the consumer under subsection (c)(4)(ii) of this section; and

3. The proper information regarding the person that is to receive the consumer report or the time period during which the consumer report is to be available to users of the consumer report.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, a consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 3 business days after receiving the request.

(ii) 1. A consumer reporting agency shall comply with a request made under paragraph (1) of this subsection within 15 minutes after the consumer's request is received by the consumer reporting agency if the request is made by telephone, by electronic mail, or by secure connection on the Web site of the consumer reporting agency.

2. A consumer reporting agency that is unable to temporarily lift a security freeze under subsubparagraph 1 of this subparagraph shall lift the security freeze as soon as it is reasonably capable of doing so.

(3) A consumer reporting agency may develop procedures involving the use of facsimile or other electronic media to receive and process, in an expedited manner, a request from a consumer to temporarily lift or remove a security freeze on the consumer's consumer report.

(f) If, in connection with an application for credit or for any other use, a person requests access to a consumer's consumer report while a security freeze is in place and the consumer does not authorize access to the consumer report, the person may treat the application as incomplete.

(g) (1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may remove or temporarily lift a security freeze placed on a consumer's consumer report only on request of the consumer made under subsection (e) or (h) of this section.

(2) (i) A consumer reporting agency may remove a security freeze placed on a consumer's consumer report if:

1. Placement of the security freeze was based on a material misrepresentation of fact by the consumer; or

2. The consumer:

A. Made the request to place the security freeze by telephone under subsection (c)(1)(ii) of this section; and

B. Failed to confirm the request in writing if required in accordance with subsection (c)(6) of this section.

(ii) If a consumer reporting agency intends to remove a security freeze under subparagraph (i) of this paragraph, the consumer reporting agency shall notify the consumer in writing of its intent at least 5 business days before removing the security freeze.

(h) (1) Subject to subsection (g)(2) of this section, a security freeze shall remain in place until the consumer requests that the security freeze be removed.

(2) If a consumer wants to remove a security freeze from the consumer's consumer report, the consumer shall:

(i) Contact the consumer reporting agency by:

1. Mail in the manner prescribed by the consumer reporting agency;

2. Telephone in the manner prescribed by the consumer reporting agency;

3. Electronic mail using an electronic postmark if a secure electronic mail connection is made available to the consumer by the consumer reporting agency; or

4. Electronic request if a secure connection is made available on the Web site of the consumer reporting agency;

(ii) Request that the security freeze be removed; and

(iii) Provide the following to the consumer reporting agency:

1. Proper identifying information; and

2. The unique personal identification number or password provided by the consumer reporting agency under subsection (c)(4)(ii) of this section.

(3) A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal.

(i) (1) Except as provided in paragraph (2) of this subsection, a consumer may not be charged for any service relating to a security freeze.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding $5, for each placement, temporary lift, or removal of a security freeze.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section to a consumer who:

(i) Has obtained a report of alleged identity fraud against the consumer under § 8–304 of the Criminal Law Article or an identity theft passport under § 8–305 of the Criminal Law Article; and

(ii) Provides a copy of the report or passport to the consumer reporting agency.

(j) At any time that a consumer is entitled to receive a summary of rights under § 609 of the federal Fair Credit Reporting Act or § 14–1206 of this subtitle, the following notice shall be included:

"NOTICE

You have a right, under § 14–1212.1 of the Commercial Law Article of the Annotated Code of Maryland, to place a security freeze on your credit report. The security freeze will prohibit a consumer reporting agency from releasing your credit report or any information derived from your credit report without your express authorization. The purpose of a security freeze is to prevent credit, loans, and services from being approved in your name without your consent.

You may elect to have a consumer reporting agency place a security freeze on your credit report by written request sent by certified mail or by electronic mail or the Internet if the consumer reporting agency provides a secure electronic connection. The consumer reporting agency must place a security freeze on your credit report within 3 business days after your request is received. Within 5 business days after a security freeze is placed on your credit report, you will be provided with a unique personal identification number or password to use if you want to remove the security freeze or temporarily lift the security freeze to release your credit report to a specific person or for a specific period of time. You also will receive information on the procedures for removing or temporarily lifting a security freeze.

If you want to temporarily lift the security freeze on your credit report, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer reporting agency;

(2) The proper identifying information to verify your identity; and

(3) The proper information regarding the person who is to receive the credit report or the period of time for which the credit report is to be available to users of the credit report.

A consumer reporting agency must comply with a request to temporarily lift a security freeze on a credit report within 3 business days after the request is received, or within 15 minutes for certain requests. A consumer reporting agency must comply with a request to remove a security freeze on a credit report within 3 business days after the request is received.

If you are actively seeking credit, you should be aware that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a security freeze, either completely if you are seeking credit from a number of sources, or just for a specific creditor if you are applying only to that creditor, a few days before actually applying for new credit.

A consumer reporting agency may charge a reasonable fee not exceeding $5 for each placement, temporary lift, or removal of a security freeze. However, a consumer reporting agency may not charge any fee to a consumer who, at the time of a request to place, temporarily lift, or remove a security freeze, presents to the consumer reporting agency a police report of alleged identity fraud against the consumer or an identity theft passport.

A security freeze does not apply if you have an existing account relationship and a copy of your credit report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities."

(k) If a consumer reporting agency violates a security freeze by releasing a consumer's consumer report subject to a security freeze or any information derived from a consumer's consumer report subject to a security freeze without authorization, the consumer reporting agency, within 5 business days after discovering or being notified of the release, shall notify the consumer in writing of:

(1) The specific information released; and

(2) The name and address of, or other available contact information for, the recipient of the consumer report or the information released.

(l) The exclusive remedy for a violation of subsection (e)(2)(ii) of this section shall be a complaint filed with the Commissioner under § 14–1217 of this subtitle.

§14–1212.2.

(a) (1) In this section the following words have the meanings indicated.

(2) "Protected consumer" means an individual who is:

(i) Under the age of 16 years at the time a request for the placement of a security freeze is made; or

(ii) An incapacitated person or a protected person for whom a

guardian or conservator has been appointed in accordance with Title 13 of the Estates and Trusts Article.

(3) "Record" means a compilation of information that:

(i) Identifies a protected consumer;

(ii) Is created by a consumer reporting agency solely for the purpose of complying with this section; and

(iii) May not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in § 14–1201(d)(1) of this subtitle.

(4) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(5) "Security freeze" means:

(i) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

1. Is placed on the protected consumer's record in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

(ii) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

1. Is placed on the protected consumer's consumer report in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in this section.

(6) (i) "Sufficient proof of authority" means documentation that shows a representative has authority to act on behalf of a protected consumer.

(ii) "Sufficient proof of authority" includes:

1. An order issued by a court of law;

2. A lawfully executed and valid power of attorney; and

3. A written, notarized statement signed by a representative

that expressly describes the authority of the representative to act on behalf of a protected consumer.

(7) (i) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer.

(ii) "Sufficient proof of identification" includes:

1. A Social Security number or a copy of a Social Security card issued by the Social Security Administration;

2. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

3. A copy of a driver's license, an identification card issued by the Motor Vehicle Administration, or any other government–issued identification; or

4. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

(b) This section does not apply to the use of a protected consumer's consumer report or record by:

(1) A person administering a credit file monitoring subscription service to which:

(i) The protected consumer has subscribed; or

(ii) The representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or

(3) An entity listed in § 14–1212.1(b)(2)(i) or (ii) or (c)(5) of this subtitle.

(c) (1) A consumer reporting agency shall place a security freeze for a protected consumer if:

(i) The consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze under this section; and

(ii) The protected consumer's representative:

1. Submits the request to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer

reporting agency;

2. Provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

3. Provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

4. Pays to the consumer reporting agency a fee as provided in subsection (i) of this section.

(2) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under paragraph (1) of this subsection, the consumer reporting agency shall create a record for the protected consumer.

(d) Within 30 days after receiving a request that meets the requirements of subsection (c)(1) of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

(e) Unless a security freeze for a protected consumer is removed in accordance with subsection (g) or (j) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(f) A security freeze for a protected consumer placed under subsection (d) of this section shall remain in effect until:

(1) The protected consumer or the protected consumer's representative requests the consumer reporting agency to remove the security freeze in accordance with subsection (g) of this section; or

(2) The security freeze is removed in accordance with subsection (j) of this section.

(g) If a protected consumer or a protected consumer's representative wishes to remove a security freeze for the protected consumer, the protected consumer or the protected consumer's representative shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact and in the manner specified by the consumer reporting agency;

(2) Provide to the consumer reporting agency:

(i) In the case of a request by the protected consumer:

1. Proof that the sufficient proof of authority for the protected

consumer's representative to act on behalf of the protected consumer is no longer valid; and

2. Sufficient proof of identification of the protected consumer; or

(ii) In the case of a request by the representative of a protected consumer:

1. Sufficient proof of identification of the protected consumer and the representative; and

2. Sufficient proof of authority to act on behalf of the protected consumer; and

(3) Pay to the consumer reporting agency a fee as provided in subsection (i) of this section.

(h) Within 30 days after receiving a request that meets the requirements of subsection (g) of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

(i) (1) Except as provided in paragraph (2) of this subsection, a consumer reporting agency may not charge a fee for any service performed under this section.

(2) A consumer reporting agency may charge a reasonable fee, not exceeding $5, for each placement or removal of a security freeze for a protected consumer.

(3) Notwithstanding paragraph (2) of this subsection, a consumer reporting agency may not charge any fee under this section if:

(i) The protected consumer's representative:

1. Has obtained a report of alleged identity fraud against the protected consumer under § 8–304 of the Criminal Law Article or an identity theft passport under § 8–305 of the Criminal Law Article; and

2. Provides a copy of the report or passport to the consumer reporting agency; or

(ii) 1. A request for the placement or removal of a security freeze is for a protected consumer who is under the age of 16 years at the time of the request; and

2. The consumer reporting agency has a consumer report pertaining to the protected consumer.

(j) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(k) Notwithstanding any other provision of law, the exclusive remedy for a violation of this section shall be a complaint filed with the Commissioner under § 14–1217 of this subtitle.

§14–1212.3.

(a) (1) In this section the following words have the meanings indicated.

(2) "Department" means the Department of Human Resources.

(3) "Foster care" has the meaning stated in § 5–501(f) of the Family Law Article.

(4) "Local department" means:

(i) A local department of social services created or continued in a county of the State or in Baltimore City under § 3–201 of the Human Services Article; or

(ii) In Montgomery County, the Montgomery County Department of Health and Human Services.

(5) "Protected consumer" means an individual who:

(i) Is in the custody of a local department; and

(ii) Has been placed in a foster care setting.

(6) "Record" means a compilation of information that:

(i) Identifies a protected consumer;

(ii) Is created by a consumer reporting agency solely for the purpose of complying with this section; and

(iii) May not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose listed in § 14–1201(d)(1) of this subtitle.

(7) (i) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(ii) "Representative" includes a local department.

(8) "Security freeze" means:

(i) If a consumer reporting agency does not have a file pertaining to a protected consumer, a restriction that:

1. Is placed on the protected consumer's record in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section; or

(ii) If a consumer reporting agency has a file pertaining to the protected consumer, a restriction that:

1. Is placed on the protected consumer's consumer report in accordance with this section; and

2. Prohibits the consumer reporting agency from releasing the protected consumer's consumer report or any information derived from the protected consumer's consumer report except as provided in this section.

(9) (i) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative of a protected consumer.

(ii) "Sufficient proof of identification" includes:

1. A Social Security number or a copy of a Social Security card issued by the Social Security Administration;

2. A certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

3. A copy of a driver's license, an identification card issued by the Motor Vehicle Administration, or any other government–issued identification; or

4. A copy of a bill, including a bill for telephone, sewer, septic tank, water, electric, oil, or natural gas services, that shows a name and home address.

(b) This section does not apply to the use of a protected consumer's consumer report or record by:

(1) A person administering a credit file monitoring subscription service to which:

(i) The protected consumer has subscribed; or

(ii) The representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) A person providing the protected consumer or the protected consumer's representative a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative; or

(3) An entity listed in § 14–1212.1(b)(2)(i) or (ii) or (c)(5) of this subtitle.

(c) (1) A consumer reporting agency shall place a security freeze for a protected consumer if the consumer reporting agency receives a request from the Department for the placement of the security freeze as provided in subsection (j) of this section.

(2) The Department shall submit the request to the consumer reporting agency by electronic transmission to the electronic mail address or other point of contact in the manner specified by the consumer reporting agency.

(3) If a consumer reporting agency does not have a file pertaining to a protected consumer when the consumer reporting agency receives a request under subsection (j) of this section, the consumer reporting agency shall create a record for the protected consumer.

(4) If a consumer reporting agency has a file pertaining to a protected consumer, the local department shall act as the protected consumer's representative to resolve any issues with the file.

(d) Within 30 days after receiving a request that meets the requirements of subsection (c) of this section, a consumer reporting agency shall place a security freeze for the protected consumer.

(e) Unless a security freeze for a protected consumer is removed in accordance with subsection (g) or (k) of this section, a consumer reporting agency may not release the protected consumer's consumer report, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

(f) A security freeze for a protected consumer placed under subsection (d) of this section shall remain in effect until:

(1) The protected consumer or the Department requests the consumer reporting agency to remove the security freeze in accordance with subsection (g) of this section; or

(2) The security freeze is removed in accordance with subsection (k) of this section.

(g) If a protected consumer or the Department wishes to remove a security freeze for the protected consumer, the protected consumer or the Department shall:

(1) Submit a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact in the manner specified by the

consumer reporting agency; and

(2) Provide to the consumer reporting agency:

(i) In the case of a request by the protected consumer:

1. Proof that the authority of the Department to act on behalf of the protected consumer is no longer valid; and

2. Sufficient proof of identification of the protected consumer; or

(ii) In the case of a request by the Department, sufficient proof of identification of the protected consumer.

(h) Within 30 days after receiving a request that meets the requirements of subsection (g) of this section, the consumer reporting agency shall remove the security freeze for the protected consumer.

(i) A consumer reporting agency may charge a reasonable fee, not exceeding $5, for each placement or removal of a security freeze for a protected consumer under this section.

(j) (1) At least annually, the Department shall send to each consumer reporting agency by electronic transmission a list of children who are in the custody of a local department and have been placed in a foster care setting for the first time.

(2) The Department shall request a security freeze for each child on the list specified under paragraph (1) of this subsection on behalf of the protected consumer.

(3) The Department may enter into an agreement with a consumer reporting agency concerning the transmission of information between the Department and a consumer reporting agency to facilitate the implementation of this subsection.

(k) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

(l) Notwithstanding any other provision of law, the exclusive remedy for a violation of this section shall be a complaint filed with the Commissioner under § 14–1217 of this subtitle.

(m) (1) On the entry of an order for the adoption of a child who was in the custody of a local department under Title 5 of the Family Law Article, the Department shall provide notice to the adoptive parent of the provisions of § 14–1212.2 of this subtitle relating to the authority of the adoptive parent to request a security freeze by consumer reporting agencies.

(2) The Department shall notify a protected consumer who becomes an adult of the provisions of § 14–1212.2 of this subtitle, including providing contact information of organizations that may provide assistance to the protected consumer in removing a security freeze.

§14–1213.

(a) Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure;

(2) Such amount of punitive damages as the court may allow; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(c) A person who furnishes information to a consumer reporting agency or a user of information has no liability under this subtitle for any failure to comply with any requirement imposed under this subtitle with respect to any consumer if, within 30 days after discovering such failure to comply and prior to institution of an action under this subtitle or the receipt of written notice of the failure to comply from the consumer, such person or user notifies the consumer of the failure to comply and makes whatever adjustments are necessary to correct the noncompliance.

(d) A person who furnishes information to a consumer reporting agency or a user of information has no liability under this subtitle for any failure to comply with any requirement imposed under this subtitle where such person or user:

(1) Unintentionally and in good faith fails to comply with any requirement imposed under this subtitle; and

(2) Makes whatever adjustments are necessary to correct the noncompliance within 30 days after such person or user receives written notice

of the failure.

(e) A person who furnishes information to a consumer reporting agency or a user of information may not be held liable in an action brought under this subtitle for any failure to comply with any requirement imposed under this subtitle if such person or user shows by a preponderance of the evidence that the failure to comply was unintentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(f) The burden shall be on the person who furnishes information to a consumer reporting agency or user of information to show that the failure to comply with any requirement under this subtitle was unintentional and in good faith.

§14–1214.

An action to enforce any liability created under this subtitle may be brought within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subtitle to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subtitle, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

§14–1215.

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year or both.

§14–1216.

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than $5,000 or imprisoned not more than one year or both.

§14–1217.

(a) Any consumer who has reason to believe that this subtitle, or any other law regulating consumer credit reporting, has been violated by any person may file with the Commissioner a complaint setting forth the details of an alleged violation.

(b) After receipt of the complaint, the Commissioner may inspect the pertinent books, records, letters and contracts of any agency, and of any person who has furnished information to the agency relating to the specific written complaint.

§14–1218.

(a) The Commissioner may:

(1) Hold a hearing on the complaint at a time and place in this State reasonably convenient to the parties involved;

(2) Subpoena witnesses;

(3) Take depositions of witnesses residing without the State, in the manner provided for witnesses in civil actions in courts of record;

(4) Administer oaths;

(5) Issue orders for compliance with this subtitle;

(6) Issue cease and desist orders, if after a hearing the Commissioner finds a pattern and practice of violation of this subtitle; and

(7) If a consumer reporting agency that has violated any law regulating consumer credit reporting fails to comply with a lawful order of the Commissioner, impose a civil penalty of up to $100 for each violation from which the violator failed to cease and desist or for which the violator failed to take action ordered by the Commissioner for compliance with the law. In determining the amount of civil penalty to be imposed under this paragraph, the Commissioner shall consider:

(i) The seriousness of the violation;

(ii) The good faith of the violator;

(iii) The violator's history of previous violations;

(iv) The deleterious effect of the violation upon the public and the credit granting industry;

(v) The assets and financial status of the violator; and

(vi) Any other factors relevant to the determination of the financial penalty.

(b) If a person fails to comply with any lawful order of the Commissioner pursuant to this subtitle or if any witness fails to appear and testify to any matter regarding which the witness may be lawfully interrogated, on petition of the Commissioner setting forth the facts, the circuit court of any county shall:

(1) Compel obedience to the requirements of the subpoena or order;

(2) Compel the production of contracts, forms, files, and other evidence; and

(3) Order compliance with any lawful order issued by the Commissioner under the provisions of subsection (a)(5) or subsection (a)(6) of this section.

(c) If a person fails, refuses, or neglects to comply with the order of the court, the court may punish that person for contempt of court.

(d) The Administrative Procedure Act, including its provisions for judicial review of a final decision in a contested case, applies to proceedings before the Commissioner pursuant to this subtitle.

(e) (1) The Commissioner shall adopt regulations necessary to administer the provisions of this subtitle.

(2) The regulations shall include procedures for:

(i) Achieving accuracy in information collected and maintained in consumer files;

(ii) Developing a system to facilitate correction of information in a consumer file at each credit reporting agency on correction at one consumer reporting agency; and

(iii) Periodically distributing to the public a current listing of the names, addresses, and telephone numbers of consumer reporting agencies that maintain information or provide consumer reports on residents of the State.

§14–12A–01.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertising" means any oral, written, printed, or graphic statement or representation made in connection with the solicitation or sale of basement waterproofing services.

(c) "Basement" means a subsurface or subterranean portion of a home, dwelling, or other building.

(d) "Basement waterproofing" means the use or application of materials or processes for the prevention or control of water leakage or water flow through the basement walls or flooring into the interior portion of a basement.

(e) "Engineer's analysis" means a written report, from a professional engineer or architect licensed in this State, containing:

(1) An analysis of soil conditions, water tables or pressure, and other factors or conditions that affect the existence and correction of basement water problems; and

(2) An opinion as to the probability that the process and the particular substances or materials which are to be used in the performance of basement waterproofing services will or will not cure the basement water problem or have a significant waterproofing effect.

(f) "Seller" means a person, or an agent, representative, or employee of a person engaged in the business of basement waterproofing.

(g) "Seller's analysis" means a written statement, by the seller, of the causes and conditions responsible for the buyer's basement water problem and the specific processes and materials to be used to correct the problem.

(h) "Soil injection/pressure pumping" means a basement waterproofing process in connection with waterproofing services in which:

(1) A substance is injected into the ground adjacent to the basement walls or beneath the basement foundation or floor by pipes or other conduits; or

(2) Substances are poured into shallow trenches adjacent to basement walls for the purpose of protecting or sealing the basement walls, foundation, floors, or exterior soil against water penetration.

(i) "Waterproofing technique" means any single process designed to prevent or control water leakage into a house or dwelling, but does not include the combination of two or more processes.

§14–12A–02.

It is an unfair or deceptive trade practice within the meaning of Title 13 of this article for a seller to:

(1) Sell or offer to sell any basement waterproofing service that uses the soil injection/pressure pumping technique either alone or with any other waterproofing technique unless the need for, effectiveness of, and appropriateness of the method is established in a written seller's analysis. The written seller analysis shall be separate from the service contract and verified by a signed engineer's or architect's analysis furnished to the buyer prior to the sale;

(2) Fail to describe separately and conspicuously on the seller's analysis and the service contract the cost of a soil injection/pressure pumping procedure;

(3) Submit a seller's analysis to the buyer that the seller knows or has reason to know is founded on incorrect facts or conclusions;

(4) Misrepresent directly or through an agent the need for, or the effectiveness of the soil injection/pressure pumping technique alone or in conjunction with other waterproofing techniques. This section also applies to misrepresentation by an engineer in connection with the sale of waterproofing services;

(5) Advertise basement waterproofing services using the soil injection/pressure pumping technique without disclosing in the advertisement that an engineer's analysis recommending this process is required as a condition of its use and that the analysis must be furnished to the buyer before a contract is signed. This disclosure shall be in 10 point boldface type; or

(6) Fail to itemize on the service contract the individual cost of each waterproofing technique used.

§14–12A–03.

Any person who violates any provisions of this subtitle is subject to the penalties provided for in Title 13 of this article.

§14–12A–04.

If a judgment is entered in favor of a complaining party, the court may award attorney fees to the complaining party.

§14–12B–01.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Business day" means Monday through Friday.

(2) "Business day" includes Saturday if:

(i) The seller of health club services is open to members on Saturday; and

(ii) The health club services contract specifically identifies Saturday as a business day for purposes of the cancellation provisions of this subtitle.

(3) "Business day" does not include legal holidays.

(c) "Division" means the Consumer Protection Division of the Office of the Attorney General.

(d) (1) "Health club services agreement" means an agreement under which:

(i) The buyer of a health club service purchases, or becomes obligated to purchase, health club services to be rendered over a period longer than 3 months;

(ii) The seller of a health club services agreement collects more than 3 months' payment in advance; and

(iii) The service to be rendered under the agreement is for personal, family, or household use.

(2) "Health club services" includes health spa, figure salon, weight reduction center, self defense school, or other physical culture service enterprises offering facilities for the preservation, maintenance, encouragement, or development of physical fitness or physical well–being.

(3) "Health club services" does not include agreements for services rendered by:

(i) Any nonprofit public or private school, college, or university;

(ii) The State, or any of its political subdivisions; or

(iii) Any nonprofit religious, ethnic, community, or service organization.

§14–12B–02.

(a) Each person who sells health club services in this State shall register with the Division on forms the Division provides. The person shall furnish the full name and address of each business location where health club services are sold as well as any other registration information the Division deems appropriate.

(b) (1) Each person who registers under this subtitle shall pay a registration fee at the time of registration.

(2) On September 1 of each year following the initial registration, each registered person shall pay a renewal fee to the Division.

(3) The fees for registration and renewal required under this subsection shall be set by the Division:

(i) In an amount not exceeding $1,200 for a person who is required to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section;

(ii) In an amount not exceeding $300 for a person who:

1. Is exempt from the requirement to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section; and

2. Does not meet the requirements of item (iii) of this paragraph; and

(iii) In an amount not exceeding $75 for a person who:

1. Is exempt from the requirement to purchase a surety bond or file an irrevocable letter of credit or cash under subsection (e) of this section;

2. Does not charge an initiation fee or other fee that is not

identified as a payment for specified future services;

3. Does not contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; and

4. Does not collect from a buyer of health club services any payment in advance of the date the services are provided to the buyer.

(4) The fees collected under this subsection may only be used for the administration and enforcement of this subtitle.

(c) At least one member of the board of directors of each seller of health club services in this State shall be a resident of a county where a club of the seller is located and shall serve as a resident agent for receipt of service of process.

(d) The Division may bring an action for mandamus against a health club to require the club to register or to have and maintain the surety required by this section.

(e) (1) (i) Subject to the provisions of paragraph (3) of this subsection, a person who sells health club services agreements shall purchase a surety bond in an amount not less than the aggregate value of outstanding liabilities to members, including all prepaid fees, membership fees, dues, deposits, initiation fees, and fees for health club services. For the purposes of this section, "liabilities" means the moneys actually received in advance from the members less the prorated value of services rendered by the health club facility. In the case of a lifetime contract, the liabilities shall be calculated on a prorated basis for not more than 36 months.

(ii) The amount of the bond shall be based upon a report prepared by an independent certified public accountant describing the health club's outstanding liabilities to the members using accepted standard accounting principles. In this section "outstanding liabilities" includes all amounts that would be required to be refunded to members if the health club facility ceases operations.

(iii) The report shall be submitted at the time of initial registration and updated at each renewal under subsection (b) of this section.

(2) (i) The amount of the bond shall be increased, or may be decreased, as necessary to take into account changes in the health club facility's outstanding liabilities to members in the following cases, whichever comes first:

1. When the health club facility's outstanding liabilities to members increase or decrease by $10,000; or

2. On a quarterly basis.

(ii) If a registrant's outstanding liabilities to the members exceed the amount of the bond, and the registrant has failed to increase the bond, then the registrant shall immediately stop selling health club services agreements and shall

refrain from selling health club services agreements until the requirements of this subsection have been satisfied.

(3) (i) An irrevocable letter of credit in a form acceptable to the Division, or cash, may be filed with the Division instead of a surety bond.

(ii) Notwithstanding any other provision of this subtitle, a seller of health club services agreements does not have to file or maintain a bond, letter of credit, or cash in excess of $200,000 per health club services facility. The bonding requirement of this subsection applies to each location at which health club services are sold in any case where a person operates or plans to operate more than one facility within the State.

(f) (1) A buyer of health club services who suffers or sustains any loss or damage by reason of the closing of a facility or bankruptcy by the seller of the health club services agreement shall file a claim with the surety and, if the claim is not paid, may bring an action based on the bond and recover against the surety. In the case of a letter of credit or cash deposit that has been filed with the Division, the buyer may file a claim with the Division.

(2) Any claim under paragraph (1) of this subsection shall be filed no later than 1 year from the date on which the facility closed or bankruptcy was filed. The Division shall notify each known buyer described in paragraph (1) of this subsection about the procedure for filing a claim, unless the seller of the health club services agreements has provided sufficient notice to each known buyer.

(3) The Division may file a claim with the surety on behalf of any buyer in paragraph (1) of this subsection. The surety shall pay the amount of the claims to the Division for distribution to claimants entitled to restitution and shall be relieved of liability to that extent.

(4) The liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed.

(5) If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Division for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(6) The Division may obtain reimbursement for postage and other reasonable nonsalary expenses incurred in notifying buyers and distributing claims by:

(i) Filing a priority claim for the expenses against the surety bond posted by the seller; or

(ii) Applying to the expenses on a priority basis the proceeds of the letter of credit or cash deposit posted by the seller with the Division.

(7) For any claim under paragraph (1), (3), or (5) of this subsection, the

Division may not pay a claim of a buyer that is less than $5.

(8) The provisions of this subsection do not apply where the buyer's membership agreement provides for the transfer of membership privileges to a comparable new or existing facility within a reasonable distance of the closed facility.

(g) (1) Any person or business bonded under this section shall maintain accurate records of the bond and of premium payments on it. These records shall be open to inspection by the Division at any time during normal business hours.

(2) Any person who sells health club services agreements shall maintain accurate records, updated as necessary, of the name, address, contract terms, and payments of each buyer of health club services. These records shall be open to inspection by the Division, upon reasonable notice, at any time during normal business hours.

(3) In addition to any remedies otherwise available, the Division, after notice and a show cause hearing, may revoke the registration of any person who fails to maintain or produce the records described in paragraphs (1) and (2) of this subsection.

(h) (1) Each person who sells health club services to be offered at a planned facility or a facility under construction shall:

(i) Register under subsection (a) of this section before conducting any sales activities; and

(ii) Maintain a surety bond in an amount not less than $50,000 until the value of obligations to consumers exceeds that amount.

(2) Until the time a person opens a health club services facility, the amount of the bond shall be increased as necessary to take into account increases in the person's outstanding liabilities to the members with a final adjustment to be made at the time of opening.

(3) Upon opening the facility, the person is subject to the provisions of subsections (a) through (e) of this section.

(i) For purposes of subsections (e) and (f) of this section, any initiation fee, or other fee, that exceeds $200 and that is not identified as a payment for specific future services will be deemed to be a payment for services to be delivered during the initial 2 years of the buyer's membership term.

(j) Any information received by the Division in the course of administering the registration program under this subtitle shall be made available to the public subject to the provisions of the Maryland Public Information Act.

§14–12B–03.

(a) There is a Health Club Administration Fund which is established for the purpose of paying the expenses incurred in the administration and enforcement of the Health Club Services Act.

(b) The Fund shall be administered by the Division.

§14–12B–04.

(a) If a buyer described in § 14-12B-01(d)(1)(i) of this subtitle becomes disabled during the membership term, the buyer is entitled to extend the membership contract for a period equal to the duration of the disability.

(b) The provisions of subsection (a) of this section do not apply unless the disability is confirmed by a physician and is for a period longer than 3 months.

(c) If a health club facility at which a buyer of health club services is provided with those services is closed for a period longer than 1 month through no fault of the buyer, the buyer is entitled to:

(1) Extend the membership contract for a period equal to the period during which the facility is closed; or

(2) A prorated refund of the amount paid by the buyer under the contract.

(d) (1) If the health club facility is closed through no fault of the seller, the choice of remedy described in subsection (c) of this section shall be made by the seller.

(2) If the health club facility is closed through the fault of the seller, the choice of a remedy described in subsection (c) of this section shall be made by the buyer.

§14–12B–05.

(a) If a health club facility is not in existence on the date the health club services agreement is executed:

(1) The buyer may cancel the contract in the event the facility is not open for business on the date as provided by the agreement; and

(2) The buyer may cancel the contract within 3 business days after the opening of the facility, or after receiving notice of the opening of the facility, whichever comes later, in the event the services or facilities are not available substantially as described in the agreement.

(b) If the buyer cancels under this section, the health club facility shall refund any deposit, down payment, or payment on the agreement including any initiation, deposit, membership, or other fees.

§14–12B–06.

(a) A health club services agreement may not contain an automatic renewal clause, unless the agreement provides for a renewal option for continued membership which must be accepted by the buyer.

(b) (1) A buyer described in § 14-12B-01(d)(1)(i) of this subtitle may cancel a health club services agreement within 3 business days after receipt of a copy of the agreement by notifying the health club in writing. Written notification shall be delivered in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, and if mailed shall be postmarked by midnight of the third business day.

(2) If the buyer cancels within 3 business days, the health club facility shall refund any deposit, down payment, or payment on the agreement including any initiation, deposit, membership, or other fees.

(3) Each contract for health club services shall conspicuously disclose under the heading "Notice of Consumer Rights":

(i) The seller's health club registration number with the Division;

(ii) A description of whether the seller is bonded and the amount of the bond or, if not bonded, an explanation of the basis for the seller's exemption from the bonding requirements;

(iii) The buyer's right to cancel as defined in this section;

(iv) The buyer's rights in the event of a disability or temporary closing under § 14-12B-04 of this subtitle; and

(v) For those persons who register in accordance with § 14-12B-02(b)(3)(iii) of this subtitle, a statement that the facility does not:

1. Charge an initiation fee or other fee that is not identified as a payment for specific future services;

2. Contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; or

3. Collect from a buyer of health club services any payment in advance of the date the services are provided to the buyer.

(4) Each contract for the sale of health club services shall contain in a form acceptable to the Division:

(i) A clear and conspicuous itemized description of any fees and charges; and

(ii) If the facility is not in operation, the expected date of opening and a description of the specific services and facilities that will be available upon opening.

(c) A person who registers in accordance with § 14-12B-02(b)(3)(iii) of this subtitle shall post in a clear and conspicuous manner a sign in a prominent location in each health club facility that the person opens or operates that states that the facility does not:

(1) Charge an initiation fee or other fee that is not identified as a payment for specific future services;

(2) Contractually obligate a buyer of health club services to pay in advance of the date the services are provided to the buyer; or

(3) Collect from a buyer of health club services any payment in advance of the date the services are provided to the buyer.

§14–12B–07.

On the permanent closing of a facility or bankruptcy by the seller, the seller of the health club services shall provide the following information to the Division within 15 business days:

(1) A list of the names and addresses of all members of the health club;

(2) The original or a copy of all membership agreements; and

(3) A record of all payments received under the membership agreements.

§14–12B–08.

(a) In addition to any remedies otherwise available, if the Division determines that a person is selling health club services agreements in violation of § 14-12B-02(e) of this subtitle, the Division may issue a cease and desist order without conducting a hearing under § 13-403 of this article. A cease and desist order shall grant the respondent an opportunity to request a hearing under § 13-403 of this article, and the hearing shall be held no later than 7 days after the request. If no request is made, any order entered under this section shall be final 30 days after entry.

(b) Each sale of a health club services agreement that violates any provision of this subtitle, or a violation of § 14-12B-07 of this subtitle, is an unfair or deceptive trade practice under Title 13 of this article.

§14–1301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Merchandise" means any commodity, object, wares, or goods.

(c) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(d) "Sale" includes any:

(1) Sale of or offer or attempt to sell merchandise for cash or credit; or

(2) Service or offer for service which relates to any person, building, or equipment.

(e) "Service" means any:

(1) Building repair or improvement service;

(2) Subprofessional service;

(3) Repair of a motor vehicle, home appliance, or other similar commodity; and

(4) Repair, installation, or other servicing of any plumbing, heating, electrical, or mechanical device.

§14–1302.

(a) (1) In this section the following words have the meanings indicated.

(2) "Amounts paid by the debtor" shall include all amounts paid by the debtor and any remaining amount due under the contract.

(3) "Business arrangement" means any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(4) "Consumer" means a natural person who seeks or acquires goods or services for personal, family, or household use.

(5) "Consumer credit contract" means any instrument which evidences or embodies a debt arising from a "purchase money loan" transaction or a "financed sale" as defined in paragraphs (9) and (11) of this subsection.

(6) "Contract" means any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(7) "Credit card issuer" means a person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(8) "Creditor" means a person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis if that person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(9) "Financing a sale" means extending credit to a consumer in connection with a "credit sale" within the meaning of the Truth in Lending Act and Regulation Z.

(10) "Person" means an individual, corporation, or any other business organization.

(11) "Purchase money loan" means a cash advance which is received by a consumer in return for a "finance charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (i) refers consumers to the creditor or (ii) is affiliated with the creditor by common control, contract, or business arrangement.

(12) "Seller" means a person who, in the ordinary course of business, sells goods or services to consumers.

(b) In connection with any sale or lease in this State of goods or services to consumers, it is an unfair or deceptive trade practice within the meaning of Title 13 of this article for a seller, directly or indirectly, to:

(1) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained pursuant hereto or with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

Or,

(2) Accept, as full or partial payment for such sale, the proceeds of any purchase money loan, unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, boldface type:

NOTICE

Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services obtained with the proceeds hereof. Recovery hereunder by the debtor shall not exceed amounts paid by the debtor hereunder.

(c) The provisions of this section do not apply where the seller:

(1) Does not require a consumer credit contract which is a negotiable instrument or which contains any provision pursuant to which the consumer agrees to limit or waive claims or defenses which he may have against the seller as to any holder of the consumer credit contract; and

(2) Does not transfer, sell, pledge or assign a consumer credit contract except under conditions where any transferee is subject to all claims and defenses which the consumer has against the seller to the same extent as provided in this section.

§14–1303.

(a) In this section, "consumer transaction" means a transaction in which:

(1) Credit is extended by one regularly engaged in the business of extending credit in credit transactions of the same type;

(2) The creditor acquires a security interest in tangible personal property of the debtor; and

(3) The debt is incurred by an individual primarily for personal, family, or household purposes.

(b) In a consumer transaction, a waiver by the debtor of his right as a defendant in an action of replevin to a hearing or to notice of an opportunity to be heard before seizure of property securing the transaction is void if made before service of notice of the opportunity to be heard.

§14–1304.

(a) (1) A person may not offer any merchandise for sale in any manner or by any means if the offer includes the voluntary and unsolicited sending of merchandise not actually ordered or requested by the recipient orally or in writing.

(2) If a person receives any merchandise offered for sale in violation of this subsection, it is an unconditional gift to him for all purposes. He may use or dispose of the merchandise in any manner without any obligation on his part to the sender.

(b) (1) If a member of an organization making retail sales of merchandise to its members notifies the organization by registered or certified mail, return receipt requested, of his termination of membership, any unordered merchandise sent to the member after 30 days following execution of the return receipt by the organization is an unconditional gift to him for all purposes. He may use or dispose of the merchandise in any manner without any obligation on his part to the organization.

(2) This subsection does not relieve a person from liability for damages to which he might otherwise be subject if his termination of membership breaches any

agreement with the organization. However, he may not be subject to any damages with respect to the merchandise considered under this subsection to be an unconditional gift to him.

(c) After the receipt of any merchandise considered to be an unconditional gift under this section, if the sender continues to send any bill, statement of account, or request for payment with respect to the merchandise, the recipient may bring an action to enjoin the sender's conduct. In that action, the court may award reasonable attorney's fees and costs to the prevailing party.

§14–1305.

(a) Except as provided in subsection (c) of this section, if a credit card or card of identification for credit is issued to a person without his prior request or application, the card is not considered accepted until he signifies acceptance in writing or uses it to obtain credit.

(b) Until an unrequested card is accepted, the issuer of the card:

(1) Assumes the risk of its loss, theft, or unauthorized use; and

(2) Is barred from any recovery against the person to whom the card is issued for any damages occasioned by that loss, theft, or unauthorized use.

(c) This section does not apply if the card is issued for the purpose of renewal or replacement of an existing card originally applied for or accepted by the cardholder.

§14–1306.

(a) (1) In this section the following words have the meanings indicated.

(2) "Appliance" means any device used for a specific purpose, including any device run by electrical or mechanical means.

(3) "Service contract" means a contract between the owner of an appliance and another person under which the owner agrees to pay a specified amount of money in exchange for any necessary upkeep or repair to the appliance over a specified period.

(4) "Service contractor" means the person obligated to perform any upkeep or repair under a service contract.

(b) The duration of a service contract is extended automatically for each day an appliance is in the custody of a service contractor for upkeep or repair under a service contract, if it is in his custody:

(1) For 15 or more consecutive days; or

(2) For a total of 15 or more days in any 30-day period for the same upkeep

or repairs.

(c) For purposes of this section, the number of days during which the service contractor has custody of an appliance does not include any day:

(1) During which the owner has possession of the appliance; or

(2) After the day on which the owner receives notice that the service is completed and, without fault of the service contractor, fails to take possession of the appliance.

(d) This section applies to a service contract executed after June 30, 1974.

§14–1307.

A person may not sell any ladder manufactured after July 1, 1976 which is made with material capable of conducting an electrical current unless:

(1) A warning is affixed in a prominent place on the ladder which indicates that the ladder is a conductor of electricity; or

(2) The ladder is made in a manner to prevent the conduction of an electrical current.

§14–1308.

A person may not sell any photographic film manufactured after July 1, 1977, except black and white film, unless the cartridge or roll of film is marked with sufficient processing instructions so that a commercial photographic processor can identify the required chemical and developing procedures.

§14–1309.

(a) A person may not sell, distribute, or install any new hand-fired heating stove or freestanding fireplace that is intended ultimately for installation in a permanent or temporary residence unless the stove or fireplace is accompanied with complete instructions on the safe installation and operation of the appliance, including information on:

(1) The safe clearance of structural members, as established by the National Fire Protection Association Pamphlet 89M, "Clearances for Heat Producing Appliances";

(2) The type of fuel to be burned in the appliance;

(3) Proper starting instructions;

(4) Proper storage of fuel;

(5) Safe disposal of ashes; and

(6) Proper chimney maintenance.

(b) (1) The Attorney General and the State Fire Marshal shall each enforce this section under the enforcement powers provided in this title and in the Public Safety Article.

(2) The fire department of Baltimore City shall report any violation of this section to the Division of Consumer Protection.

(c) Any person who knowingly and willfully violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500.

§14–1310.

(a) With the written consent of the property owner, a person may use unvented portable kerosene-fired heaters in single family dwelling units and in commercial establishments in this State if the heaters otherwise comply with the State Fire Prevention Code regulations in effect on January 1, 1982.

(b) (1) "Commercial establishment" does not include:

(i) Places of public assembly capable of accommodating more than 50 persons;

(ii) Child care centers;

(iii) Educational occupancies;

(iv) Health care occupancies;

(v) Hotels and motels; or

(vi) Buildings (other than office facilities) where open flame devices would readily ignite flammable liquid vapor, explosives, or dust, or buildings over 3 stories in height.

(2) In commercial establishments, portable kerosene heaters may not be located in such a manner as to obstruct exits.

(3) This section shall not be construed to prohibit or allow the prohibition of the demonstration or repair of unvented portable kerosene–fired heaters in any commercial establishment.

(c) The manufacturer shall affix to each portable kerosene heater, in a safe and prominent place, a nondetachable warning label which states:

WARNING.

1. This unit must be used in an area which has proper ventilation. Consult owner's manual for details and instructions.

2. Use of this heater may possibly be dangerous to persons with respiratory or circulatory disorders.

3. Only "water-clear" kerosene meeting 1-K (ASTM) specifications should be used in this heater.

(d) In Baltimore City, this section does not affect or supersede any local law or ordinance which is more stringent or imposes a higher standard regarding the use or sale of portable kerosene heaters.

§14–1311.

(a) (1) In this section the following terms have the meanings indicated.

(2) "Consumer goods" means any new goods used for personal, family, or household purposes where:

(i) The purchaser of the goods has entered into an agreement to purchase an extended warranty on the goods purchased; and

(ii) The actual cash sales price of the goods paid by the purchaser is in excess of $50.

(3) "Consumer goods" includes household appliances.

(4) "Extended warranty" means a written warranty that:

(i) Covers consumer goods offered for sale by a guarantor or manufacturer;

(ii) Includes terms or conditions beyond those offered in any express warranty originally included as part of the contract of sale for the consumer goods; and

(iii) Is purchased at the time of the sale of the consumer goods.

(5) "Guarantor" means a person who:

(i) Is engaged in the business of making consumer products available to consumers; and

(ii) Makes a warranty.

(6) "Manufacturer" includes a manufacturer, its agent, or its authorized dealer.

(b) Any extended warranty sold by a guarantor or manufacturer to a purchaser of consumer goods may not supersede any original express warranty and shall be offered in addition to the original express warranty.

(c) This section applies only to an agreement to purchase an extended warranty which is executed on or after July 1, 1984.

§14–1312.

(a) (1) In this section the following terms have the meanings indicated.

(2) "Acceptor" means a seller, lender, or credit grantor to whom a discharged check was originally issued.

(3) "Discharged check" means a check or other instrument that has been:

(i) Issued to a seller, lender, or credit grantor by a buyer or borrower in full or partial satisfaction of an underlying obligation; and

(ii) Reacquired by the buyer or borrower in his own right.

(b) (1) Notwithstanding any other provision of this article, if an acceptor requires a buyer or borrower to submit to the acceptor a discharged check, rather than a facsimile thereof, for the purpose of verifying the full or partial payment of the obligation for which the check was issued, the acceptor shall return the discharged check directly to the buyer or borrower when payment or nonpayment has been verified.

(2) An acceptor may not return the discharged check directly to the financial institution on which the discharged check was drawn if the check was submitted to the acceptor under the circumstances outlined in paragraph (1) of this subsection.

(c) The failure of an acceptor to return a discharged check directly to a buyer or borrower as provided in subsection (b) of this section shall make the acceptor liable to the buyer or borrower for:

(1) The amount of the check; and

(2) Any charges made against the buyer's or borrower's account by the financial institution on which the check was drawn if those charges are a direct result of the acceptor's noncompliance with subsection (b) of this section.

§14–1313.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) "Commercial solicitation" means the unsolicited electronic or

telephonic transmission in the State to a facsimile device to encourage a person to purchase goods, realty, or services.

(ii) "Commercial solicitation" does not include:

1. An electronic or telephonic transmission made in the course of prior negotiations; or

2. An electronic or telephonic transmission made in the course of a preexisting business relationship with the person receiving the transmission.

(3) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(b) A person may not make intentionally an electronic or telephonic transmission to a facsimile device for the purpose of commercial solicitation.

(c) (1) The Attorney General may initiate a civil action against any person who violates this section to recover for the State a penalty not to exceed $1,000 for each violation.

(2) For the purposes of this section, each prohibited commercial solicitation is a separate violation.

§14–1314.

(a) (1) In this section the following words have the meanings indicated.

(2) "Law enforcement agency" means a police department of the State or of a county or municipal corporation of the State.

(3) "Response time" means the period of time from the moment an alarm from a security system is activated to the moment a law enforcement agency responds to the alarm sounding.

(4) (i) "Security system" means any burglary alarm system or robbery alarm system.

(ii) "Security system" includes the service of monitoring the property to which a security system is attached in case of an alarm sounding.

(5) "Seller" means a person who sells or offers for sale a security system.

(b) In connection with a sale or offer for sale of a security system, a seller may not state that the seller can or will provide, as part of the security system, a response time by a law enforcement agency to an alarm sounding that is shorter in time than the response time by the law enforcement agency to a general distress call.

§14–1315.

(a) (1) In this section the following words have the meanings indicated.

(2) "Consumer contract" means a contract involving the sale, lease, or provision of goods or services which are for personal, family, or household purposes.

(3) "Contract", unless specifically provided otherwise, includes consumer, commercial, and business contracts, covenants, leases of any kind, and tariffs on file with any regulatory authority.

(4) (i) "Late fee" means any charge or fee imposed because a payment is not made when the payment is due under the terms of a contract.

(ii) "Late fee" includes a fee imposed under subparagraph (i) of this paragraph that is described:

1. As a flat rate;

2. As a percentage of the amount due; or

3. In any other terms.

(b) The parties to a contract may agree to require the payment of a late fee when a party fails to make a payment when the payment is due.

(c) A contract that requires the payment of a late fee shall disclose, by its terms or by notice:

(1) The amount of the late fee;

(2) The conditions under which the late fee will be imposed; and

(3) The timing for the imposition of the late fee.

(d) A late fee imposed under this section is not:

(1) Interest;

(2) A finance charge;

(3) Liquidated damages; or

(4) A penalty.

(e) This section does not affect a late fee, a finance charge, interest, or any other fee or charge otherwise allowed under applicable law.

(f) (1) A late fee included in a consumer contract pursuant to this section is

subject to one of the following limitations:

(i) 1. The amount of the late fee may be up to $5 per month, or up to 10% per month of the payment amount that is past due, whichever is greater; and

2. No more than 3 monthly late fees may be imposed for any single payment amount that is past due, regardless of the period during which the payment remains past due; or

(ii) The amount of the late fee may be up to 1.5% per month of the payment amount that is past due.

(2) The amount of the late fee under paragraph (1) of this subsection shall be disclosed, in the consumer contract or by notice, in size equal to at least 10-point bold type.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, a late fee included in a consumer contract pursuant to this section may not be imposed until 15 days after the date the bill was rendered for the goods or services provided.

(ii) If a bill is not rendered, a late fee included in a consumer contract pursuant to this section may not be imposed until 15 days after the payment amount becomes due.

(g) A late fee imposed under this section is subject to any additional limitations or conditions prescribed by any federal, State, or local regulatory agency or authority having jurisdiction over entities imposing late fees regulated by this section.

§14–1317.

(a) A person may not purchase or fraudulently receive from any person engaged in transporting coal, iron, lumber, merchandise, or property consigned to another:

(1) Without the consent of the owner of the property; and

(2) With knowledge that the property is consigned.

(b) (1) A person who violates subsection (a) of this section is liable to the owner of the property in a civil action for damages equal to double the value of the property.

(2) An action brought under this section may be brought in the name of either the consignor or consignee of the property.

§14–1318.

(a) (1) In this section, "payment device number" means any code, account number, or other means of account access, other than a check, draft, or similar paper instrument, that can be used to obtain money, goods, services, or anything of value, or

for purposes of initiating a transfer of funds.

(2) "Payment device number" includes a credit card number and a debit card number.

(b) (1) This section applies only to receipts that are electronically printed in connection with the purchase of consumer goods or consumer services.

(2) This section does not apply to receipts where the sole means of recording the payment device number is by handwriting, imprinting, or copying the payment device.

(c) A person that accepts a payment device number for the transaction of business may not print more than five digits of the payment device number or the expiration date of the payment device on a receipt that is provided to the holder of the payment device at the point of sale or transaction or retained by the person.

(d) (1) The Attorney General may initiate a civil action against a person that violates this section to recover for the State a civil penalty not exceeding $25 for each violation.

(2) For the purposes of this section, each instance in which a payment device number or expiration date is printed when prohibited by this section is a separate violation.

§14–1319.

(a) (1) In this section, "gift certificate" means a device constructed of paper, plastic, or any other material that is:

(i) Sold or issued by a person for a cash value that can be used to purchase goods or services; or

(ii) Issued as a store credit for returned goods.

(2) "Gift certificate" does not include:

(i) A prepaid telephone calling card;

(ii) A prepaid technical support card;

(iii) A prepaid card for Internet services;

(iv) A coupon for discounted goods or services;

(v) A gift certificate that is distributed to an individual under an awards, loyalty, or promotional program in which the recipient does not give money or value for the gift certificate; or

(vi) A gift card that:

1. Is processed through a national credit or debit card service; and

2. May be used to purchase goods or services from multiple unaffiliated sellers of goods or services.

(b) A person may not sell or issue a gift certificate that, within 4 years after the date of purchase, is subject to expiration or a fee or charge of any kind.

(c) Any term or condition concerning expiration or a fee or charge that takes effect more than 4 years after the date of purchase must be printed clearly in at least 10 point type in a visible place on:

(1) The front or back of the gift certificate;

(2) A sticker permanently affixed to the gift certificate; or

(3) An envelope containing the gift certificate.

(d) Unless the change benefits the consumer, a term or condition disclosed under subsection (c) of this section may not be changed after the date of purchase or issuance.

(e) A gift certificate that is sold or issued in violation of this section shall be considered valid and may not be subject to expiration or any fee or charge.

(f) A violation of any provision of this section:

(1) Is an unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Is subject to the enforcement and penalty provisions contained in Title 13 of this article, except § 13-411 of this article.

§14–1320.

(a) This section applies to a gift card that:

(1) Is processed through a national credit or debit card service; and

(2) May be used to purchase goods or services from multiple unaffiliated sellers of goods and services.

(b) A gift card may be subject to expiration or a postsale fee, including a service fee, dormancy fee, account maintenance fee, cash-out fee, gift card replacement fee, activation fee, or reactivation fee, if the following disclosures are printed clearly in a visible place on the front or back of the gift card in at least 10 point type:

(1) With respect to the expiration date, the date on which the gift card expires; and

(2) With respect to a postsale fee:

(i) The amount of the fee;

(ii) The circumstances under which the fee will be imposed;

(iii) The frequency with which the fee will be imposed; and

(iv) Whether the fee is triggered by inactivity.

(c) If the disclosures required under subsection (b) of this section are hidden by the packaging of the gift card, the seller or issuer shall give the purchaser a written statement of the disclosures before the gift card is sold or issued.

(d) In addition to printing the information required under subsection (b) of this section on a gift card:

(1) If a gift card is sold or issued by electronic means, the seller or issuer shall include a conspicuous written statement of the information in the electronic message offering the gift card; and

(2) If a gift card is sold or issued by telephonic means, the seller or issuer, before the gift card is sold, shall state the information to the purchaser.

(e) Unless the change benefits the consumer, a term or condition disclosed under subsection (b) of this section may not be changed after the date of purchase or issuance.

(f) A violation of any provision of this section:

(1) Is an unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Is subject to the enforcement and penalty provisions contained in Title 13 of this article, except § 13-411 of this article.

§14–1321.

(a) (1) In this section the following words have the meanings indicated.

(2) "Account" means:

(i) A credit card account;

(ii) A debit card account;

(iii) A bank account; or

(iv) Any other financial account.

(3) "Consumer goods" has the meaning stated in § 13–101 of this article.

(4) "Consumer services" has the meaning stated in § 13–101 of this article.

(5) "Merchant" has the meaning stated in § 13–101 of this article.

(b) A merchant that provides consumer goods or consumer services over the Internet under a contract with a consumer that requires the consumer to make periodic payments for the consumer goods or consumer services and allows the merchant to collect the payments directly from the consumer's account shall include in a prominent place on its Web site:

(1) A toll–free telephone number that a consumer may call to cancel the contract; or

(2) An address to which a consumer may write to cancel the contract.

(c) A violation of this section is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–1322.

(a) (1) In this section the following words have the meanings indicated.

(2) "Billing agent" means a person that submits charges for products or services to a telephone company or reseller on behalf of the person submitting the charges or on behalf of a third–party vendor.

(3) "Customer" means a customer of a telephone company or reseller.

(4) "Express authorization" means an express, affirmative act by an ordering customer in the form of:

(i) A written authorization;

(ii) An oral authorization verified and recorded by an independent party; or

(iii) A recorded electronic authorization.

(5) "Ordering customer" means a customer or another person ordering services that will appear on the customer's telephone bill.

(6) "Reseller" means a person that provides wireline telephone voice service by using the transmission facilities of another person.

(7) "Telephone company" means a person that provides wireline telephone voice services.

(8) "Third–party vendor" means an entity not affiliated with a telephone company or reseller that:

(i) Provides products or services to a customer; and

(ii) Seeks to charge the customer through third–party vendor billing.

(9) (i) "Third–party vendor billing" means the use of a telephone company's or reseller's billing system, either directly or through a billing agent, to charge a customer for products or services provided by a third–party vendor.

(ii) "Third–party vendor billing" does not include billing for:

1. Products or services offered by, or bundled with the products or services of, a telephone company, a reseller, or an affiliate of a telephone company or reseller;

2. Long distance services that a customer initiates by dialing 1+, 0+, 0–, or 1010XXX; or

3. Commercial mobile radio services.

(b) Unless the third–party vendor or billing agent first obtains an ordering customer's express authorization, a third–party vendor or billing agent may not submit charges to a telephone company or reseller.

(c) The express authorization required under subsection (b) of this section shall:

(1) Be separate from any solicitation material or entry forms for sweepstakes or contests; and

(2) Include:

(i) The name and telephone number of the ordering customer;

(ii) The date of authorization;

(iii) An explanation of:

1. The product or service offered; and

2. All applicable charges; and

(iv) An affirmation by the ordering customer that:

1. The ordering customer is at least 18 years of age and authorized to order services that will appear on the customer's telephone bill; and

2. Third–party vendor billing charges may be billed using the customer's telephone bill.

(d) A third–party vendor or billing agent shall retain a copy of the express authorization required under subsection (b) of this section for 2 years after the date of authorization.

(e) A customer is not liable for third–party vendor billing charges unless:

(1) The customer has been given notice that the telephone company or reseller may allow third–party vendor billing and that free blocking of certain third–party vendor billing may be available to the customer; and

(2) The customer is provided access to:

(i) An itemization of the third–party vendor billing charges identifying them separately from other charges; and

(ii) The name and telephone number of the third–party vendor or its billing agent.

(f) Unless the third–party vendor or billing agent provides a copy of the authorization required under subsection (b) of this section to the customer and to the telephone company or reseller, a customer is not liable for third–party vendor billing charges if the customer, in good faith and in a reasonably timely manner, but not outside the time period specified in subsection (d) of this section, disputes that the charges were authorized.

(g) An agreement for third–party vendor billing entered into by a telephone company or reseller and a third–party vendor or billing agent on or after October 1, 2010, is void and unenforceable to the extent that it does not require the third–party vendor to comply with subsection (b) of this section.

(h) A violation of this section by a third–party vendor or billing agent:

(1) Is an unfair or deceptive trade practice under Title 13 of this article; and

(2) Except for the provisions of § 13–411 of this article, is subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–1323.

(a) (1) In this section the following words have the meanings indicated.

(2) "Consumer" means a purchaser, lessee, or recipient of consumer goods, consumer services, or consumer credit.

(3) "Consumer credit", "consumer goods", and "consumer services" mean, respectively, credit, goods, and services that are primarily for personal, household, or family purposes.

(4) "Consumer credit contract" means a written agreement for the provision of consumer credit between a person and a consumer who resides in the State.

(5) "Prohibited risk factor" means the identity of:

(i) A person from whom a consumer lawfully obtains consumer credit, consumer goods, or consumer services; or

(ii) A person who makes or holds a mortgage loan on a consumer's home.

(b) A person may not include or enforce a provision in a consumer credit contract, without the consumer's prior written consent, that:

(1) Triggers a default under the consumer credit contract based on a prohibited risk factor; or

(2) Authorizes a party to the consumer credit contract to use a prohibited risk factor for the purpose of:

(i) Accelerating a payment owed under the consumer credit contract;

(ii) Increasing the interest rate payable under the consumer credit contract;

(iii) Reducing the credit limit available under the consumer credit contract; or

(iv) Altering a term of the consumer credit contract in any other manner adverse to the consumer.

(c) A provision included in a consumer credit contract in violation of subsection (b) of this section is void and unenforceable.

(d) Subsection (b) of this section does not prohibit a person from using information to detect or prevent fraudulent activity in connection with the provision of consumer credit.

(e) A violation of this section is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the penalty and enforcement provisions contained in Title 13 of this article.

§14–1324.

(a) This section applies to the operator of a Web site that charges a fee to remove an arrest or detention photograph or digital image.

(b) An individual may request an operator of a Web site to remove the individual's photograph or digital image from the operator's Web site if:

(1) The photograph or digital image was taken during the arrest or detention of the individual for a criminal or traffic charge or suspected violation of a criminal or traffic law; and

(2) (i) The court record or police record that contained the photograph or digital image was expunged under Title 10, Subtitle 1 of the Criminal Procedure Article;

(ii) The individual has successfully petitioned a court to have the court record or police record that contained the photograph or digital image shielded or otherwise removed from public inspection; or

(iii) The individual has successfully petitioned a court to vacate the judgment that resulted from the arrest or detention.

(c) An individual shall make a request for removal of a photograph or digital image under subsection (b) of this section by:

(1) Written request sent by certified mail; or

(2) Electronic mail using an electronic postmark if the operator makes available a secure electronic mail connection on the operator's Web site.

(d) An operator of a Web site shall remove the photograph or digital image of an individual within 30 days after receiving a request under subsection (c) of this section.

(e) Within 5 business days after removing a photograph or digital image of an individual, the operator of a Web site shall send a written confirmation of the removal to the individual.

(f) An operator of a Web site may not charge an individual for the removal of the individual's photograph or digital image under this section.

(g) A violation of this section is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–1401.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Adjustment program" means a program or policy:

(i) That expands or extends a warranty beyond its stated limit; or

(ii) Under which a manufacturer undertakes or offers to pay or reimburse a consumer, whether directly or indirectly, for all or a part of the cost of repairing a condition that may substantially affect the durability, reliability, or performance of a motor vehicle.

(2) "Adjustment program" does not include:

(i) Service provided under a safety or emissions related recall campaign; or

(ii) Adjustments made by a manufacturer on a case–by–case basis.

(c) "Consumer" means:

(1) The purchaser, other than for purposes of resale, of a new motor vehicle;

(2) A lessee of a motor vehicle;

(3) A person to whom a new motor vehicle is transferred during the duration of the warranty applicable to the motor vehicle; or

(4) A person who is entitled under the terms of the warranty to enforce its obligations.

(d) "Dealer" means a person who sells or leases motor vehicles under a retail agreement with a manufacturer or distributor, or an agent of a manufacturer or distributor.

(e) "Lessee" means a consumer who leases a motor vehicle under a written lease that provides that the lessee is responsible for repairs to the motor vehicle.

(f) "Manufacturer" means a person who:

(1) Manufactures or assembles new motor vehicles for sale or distribution; or

(2) Is engaged in the business of importing new motor vehicles for sale or distribution to dealers or through distributors or factory branches.

(g) "Motor vehicle" means a vehicle that:

(1) Is used for the private transportation of individuals and their personal belongings; and

(2) Has a maximum capacity of 10 individuals, including the driver.

§14–1402.

(a) A manufacturer of motor vehicles sold in the State shall establish procedures under which each consumer in the State who owns or leases a motor vehicle to which an adjustment program of the manufacturer applies:

(1) Is notified of the adjustment program;

(2) On request, is provided with a copy of any service bulletin or any other document issued by the manufacturer pertaining to an adjustment program or to a condition that may substantially affect motor vehicle durability, reliability, or performance; and

(3) Within 90 days after the establishment of a new adjustment program, is sent written notice by first–class mail of the terms and conditions of the adjustment program.

(b) (1) A manufacturer of motor vehicles sold in the State shall ensure that the purchaser of a new motor vehicle receives, at the time of purchase, a written notice describing the rights and remedies provided under this section.

(2) The written notice shall be considered sufficient if stated in substantially the following form:

"Sometimes (insert manufacturer's name) offers a special adjustment program to pay all or part of the cost of certain repairs beyond the terms of the warranty. Check with your dealer to determine whether any adjustment program is applicable to your motor vehicle."

(c) A manufacturer shall provide to its dealers information about each adjustment program of the manufacturer in a format that facilitates the disclosure of the terms and conditions of the adjustment program to a consumer seeking repairs at the dealer's repair facility.

(d) (1) A manufacturer that establishes an adjustment program shall

implement procedures to ensure reimbursement of each consumer who:

(i) Is eligible under the adjustment program; and

(ii) Incurs expenses for the repair of a condition subject to the adjustment program before the consumer knows about the adjustment program.

(2) Reimbursement under this subsection shall be consistent with the terms and conditions of the particular adjustment program.

(3) (i) A consumer shall make a claim for reimbursement under this subsection in writing to the manufacturer within the later of:

1. 2 years after the date of the consumer's payment for the repair of the condition; or

2. 1 year after the date the manufacturer sends the notice required under subsection (a)(3) of this section.

(ii) The manufacturer shall notify the consumer within 21 business days after receiving a claim for reimbursement whether the claim will be approved or denied.

(iii) If the claim is denied, the manufacturer shall state in writing the specific reasons for the denial.

§14–1403.

A violation of this subtitle is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–1501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means:

(1) The purchaser, other than for purposes of resale, of a new motor vehicle;

(2) Any person to whom a new motor vehicle is transferred during the duration of the warranty applicable to such motor vehicle; or

(3) Any other person who is entitled to enforce the obligations of the

warranty.

(c) "Dealer" has the meaning provided in § 15-101(c) of the Transportation Article.

(d) "Manufacturer, factory branch, or distributor" means a person, partnership, association, corporation, or entity engaged in the business of manufacturing or assembling motor vehicles or of distributing motor vehicles to motor vehicle dealers as defined in § 15-201(b), (c), and (e) of the Transportation Article.

(e) (1) "Manufacturer's warranty period" means the earlier of:

(i) The period of the motor vehicle's first 18,000 miles of operation; or

(ii) 24 months following the date of original delivery of the motor vehicle to the consumer.

(2) This subsection does not extend any manufacturer's express warranty.

(f) (1) "Motor vehicle" means a vehicle that is registered in this State as a:

(i) Class A (passenger) vehicle;

(ii) Class D (motorcycle) vehicle;

(iii) Class E (truck) vehicle with a 3/4 ton or less manufacturer's rated capacity; or

(iv) Class M (multipurpose) vehicle.

(2) "Motor vehicle" does not include a motor home. For the purpose of administering this subtitle, the Motor Vehicle Administration shall promulgate a regulation defining a motor home.

(g) "Warranty" means warranties as defined in §§ 2-312, 2-313, 2-314, and 2-315 of this article.

§14–1502.

(a) If the manufacturer's warranty period is to include those miles of operation when the new motor vehicle is in the possession of any person other than the consumer, the manufacturer shall state that fact in 12 point bold face type in the manufacturer's written warranty.

(b) (1) If a new motor vehicle does not conform to all applicable warranties during the warranty period, the consumer shall, during such period, report the nonconformity, defect, or condition by giving written notice to the manufacturer or factory branch by certified mail, return receipt requested. Notice of this procedure

shall be conspicuously disclosed to the consumer in writing at the time of sale or delivery of the motor vehicle.

(2) The consumer shall provide an opportunity for the manufacturer or factory branch, or its agent to cure the nonconformity, defect, or condition.

(3) The manufacturer or factory branch, its agent, or its authorized dealer shall correct the nonconformity, defect, or condition at no charge to the consumer, even if repairs are made after the expiration of the warranty period. The corrections shall be completed within 30 days of the manufacturer's receipt of the consumer's notification of the nonconformity, defect, or condition.

(c) (1) If, during the warranty period, the manufacturer or factory branch, its agent, or its authorized dealer is unable to repair or correct any defect or condition that substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer or factory branch, at the option of the consumer, shall:

(i) Replace the motor vehicle with a comparable motor vehicle acceptable to the consumer; or

(ii) Accept return of the motor vehicle from the consumer and refund to the consumer the full purchase price including all license fees, registration fees, and any similar governmental charges, less:

1. A reasonable allowance for the consumer's use of the vehicle not to exceed 15 percent of the purchase price; and

2. A reasonable allowance for damage not attributable to normal wear but not to include damage resulting from a nonconformity, defect, or condition.

(2) The manufacturer or factory branch shall make refunds under this section to the consumer and lienholder, if any, as their interests appear on the records of ownership maintained by the Motor Vehicle Administration.

(3) It is an affirmative defense to any claim under this section that the nonconformity, defect, or condition:

(i) Does not substantially impair the use and market value of the motor vehicle; or

(ii) Is the result of abuse, neglect, or unauthorized modifications or alterations of the motor vehicle.

(d) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable warranties if:

(1) The same nonconformity, defect, or condition has been subject to repair 4 or more times by the manufacturer or factory branch, or its agents or authorized dealers, within the warranty period but such nonconformity, defect, or condition continues to exist;

(2) The vehicle is out of service by reason of repair of 1 or more nonconformities, defects, or conditions for a cumulative total of 30 or more days during the warranty period; or

(3) A nonconformity, defect, or condition resulting in failure of the braking or steering system has been subject to the same repair at least once within the warranty period, and the manufacturer has been notified and given the opportunity to cure the defect, and the repair does not bring the vehicle into compliance with the motor vehicle safety inspection laws of the State.

(e) The term of any warranty, the warranty period, and the 30 day out of service period shall be extended by any time during which repair services are not available to the consumer by reason of war, invasion, strike, or fire, flood, or other natural disaster.

(f) (1) (i) It shall be the duty of a dealer to notify the manufacturer of the existence of a nonconformity, defect, or condition within 7 days when the motor vehicle is delivered to the same dealer for a fourth time for repair of the same nonconformity or when the vehicle is out of service by reason of repair of one or more nonconformities, defects, or conditions for a cumulative total of 20 days.

(ii) The notification shall be sent by certified mail and a copy of the notification shall be sent to the Motor Vehicle Administration; however, failure of the dealer to give the required notice required under this subsection shall not affect the consumer's right under this subtitle.

(2) If a motor vehicle is returned to a manufacturer or factory branch either under this subtitle, or by judgment, decree, arbitration award, or by voluntary agreement, the manufacturer or factory branch shall notify the Motor Vehicle Administration in writing within 15 days of the fact that the vehicle was returned.

(g) (1) (i) If a motor vehicle that is returned to the manufacturer under either this subtitle or by judgment, decree, arbitration award, settlement agreement, or by voluntary agreement in this or any other state and is then transferred to a dealer in Maryland, the manufacturer shall disclose this information to the dealer.

(ii) The manufacturer's disclosure under this paragraph shall be in writing on a separate piece of paper in 10 point all capital type and shall state in a clear and conspicuous manner:

1. That the motor vehicle was returned to the manufacturer or factory branch;

2. The nature of the defect, if any, that resulted in the return;

and

3. The condition of the motor vehicle at the time that it is transferred to the dealer.

(2) (i) If the returned vehicle is then made available for resale, the seller shall provide a copy of the manufacturer's disclosure form to the consumer prior to sale.

(ii) If the returned vehicle is sold, the seller shall send a copy of the manufacturer's disclosure form, signed by the consumer, to the Administration.

(h) This section does not limit the rights or remedies that are otherwise available to a consumer under any other law, including any implied warranties.

(i) (1) If a manufacturer or factory branch has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as amended, a consumer may resort to that procedure before subsection (c) of this section applies.

(2) A consumer who has resorted to an informal dispute settlement procedure may not be precluded from seeking the rights or remedies available by law.

(j) (1) Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in this section shall be void.

(2) The rights available to a consumer under this section shall inure to a subsequent transferee of a new motor vehicle for the duration of the applicable warranties.

(k) Any action brought under this section shall be commenced within 3 years of the date of original delivery of the motor vehicle to the consumer.

(l) (1) A court may award reasonable attorney's fees to a prevailing plaintiff under this section.

(2) If it appears to the satisfaction of the court that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay to the other party reasonable attorney's fees.

(m) This subtitle does not apply to a fleet purchase of five or more motor vehicles.

§14–1502.1.

(a) The Motor Vehicle Administration shall:

(1) Develop a notice that describes the rights provided to consumers under this subtitle;

(2) Make the notice available to all dealers that sell new motor vehicles in the State; and

(3) Adopt regulations as necessary to implement the provisions of this section.

(b) The notice shall:

(1) Be written in simple and readable plain language; and

(2) Contain sufficient detail to fully inform consumers about the rights and remedies available under this subtitle and the procedures to follow to enforce those rights and remedies.

(c) Each dealer that sells a new motor vehicle in the State shall provide to the purchaser, at the time of the sale or delivery of the motor vehicle, a copy of the notice developed by the Motor Vehicle Administration under this section.

§14–1503.

(a) (1) If a dealer, manufacturer, factory branch, or distributor is required under a judgment, decree, arbitration award, or settlement agreement to accept, or by voluntary agreement accepts, return of a motor vehicle from a consumer, the consumer shall be entitled to recover from the Motor Vehicle Administration the excise taxes originally paid by the consumer, subject to subsection (b) of this section.

(2) (i) If a dealer, manufacturer, factory branch, or distributor replaces a motor vehicle with a comparable motor vehicle under § 14-1502(c)(1)(i) of this subtitle, the Motor Vehicle Administration shall allow a credit against the excise tax imposed for the replacement vehicle in the amount of the excise taxes originally paid by the consumer for the returned vehicle, subject to subsection (b) of this section.

(ii) 1. If the excise tax on the replacement vehicle exceeds the credit allowed under subparagraph (i) of this paragraph, the dealer shall collect only that portion of excise tax due; or

2. If the excise tax on the vehicle being replaced exceeds the excise tax on the replacement vehicle, the consumer shall be entitled to recover from the Motor Vehicle Administration the excess of the excise tax paid.

(b) The excise taxes that a consumer is entitled to recover under this section shall be calculated based on the amount of the purchase price or any portion of the purchase price of the motor vehicle that the dealer, manufacturer, factory branch, or distributor refunds to the consumer.

(c) A dealer, manufacturer, factory branch, or distributor who is required under a judgment, decree, arbitration award, or settlement agreement to accept, or who accepts, by voluntary agreement, return of a motor vehicle shall notify the

consumer in writing that the consumer is entitled to recover the excise taxes from the Motor Vehicle Administration.

§14–1504.

(a) A violation of this subtitle shall be an unfair or deceptive trade practice under Title 13 of this article.

(b) In addition to any other remedies that may be available under this subtitle, if a manufacturer, factory branch, or distributor is found to have acted in bad faith, the court may award the consumer damages of up to $10,000.

§14–1601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Official rating" means an official rating of the Motion Picture Association of America.

(c) "Person" means an individual, corporation, partnership, or any other legal or commercial entity.

(d) "Video movie" means a videotape or video disc copy of a motion picture film.

§14–1602.

(a) A person may not sell at retail or rent, or attempt to sell at retail or rent, a video movie in this State unless the official rating of the motion picture from which it is copied is clearly displayed on the outside of any cassette, case, jacket, or other covering of the video movie.

(b) Subsection (a) of this section does not apply to any video movie of a motion picture which:

(1) Has not been given an official rating; or

(2) Has been altered in any way subsequent to receiving an official rating.

§14–1602.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Member" means a person who has a membership in a video club.

(3) (i) "Membership" means an agreement between a video club and a member that enables the member to buy or rent a video or video equipment from the video club under circumstances specified in a membership contract.

(ii) "Membership" does not include sales by mail.

(4) (i) "Video" means a videotape or video disc copy of a motion picture film, television show, or recording of a live event.

(ii) "Video" includes a video movie as defined in § 14–1601(d) of this subtitle.

(5) "Video club" means a person, corporation, partnership, or any commercial entity that is in the business of selling at retail or renting videos or video equipment.

(6) "Video equipment" includes a videotape or video disc player or recorder.

(b) Any agreement or contract for membership in a video club that requires a member to leave a signed credit card authorization with the video club shall include provisions that:

(1) Specify the maximum amount and type of fees that the video club may charge to a member on the member's signed credit card authorization without the member's approval, as each fee is charged; and

(2) State the maximum length of time, which may be no longer than 6 months, that the video club may charge fees to a member under paragraph (1) of this subsection before the video club shall renew the member's credit card authorization.

§14–1603.

Any person who sells or rents, or attempts to sell or rent, a video movie in violation of this subtitle shall be guilty of a misdemeanor and subject to a fine not to exceed $25 for each violation.

§14–1701.

(a) In this subtitle the following terms have the meanings indicated.

(b) (1) "Adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.

(2) "Adverse action" does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(c) "File" means file as defined in § 14-1201(g) of this title.

(d) "Lender" or "credit grantor" means:

(1) Any lender or credit grantor regulated under Title 12 of this article; or

(2) A credit union making a loan under § 6-601(e) of the Financial Institutions Article.

§14–1702.

(a) Notwithstanding any other provision of this article, within 30 days after receipt of a completed application for credit, a lender or credit grantor shall notify the applicant of its action on the application.

(b) Notwithstanding any other provision of this article, if the lender or credit grantor has acted adversely against or denied an application for credit by a consumer, that lender must furnish the consumer with a written statement.

§14–1703.

The written statement required by § 14-1702 of this subtitle shall disclose to the applicant:

(1) The applicant's right to a statement of reasons within 30 days after receipt by the lender or credit grantor of a request made within 60 days after notification, made under § 14-1702(a) of this subtitle;

(2) The identity of the person or office from which the statement of reasons may be obtained; and

(3) The right of the applicant to have the statement of reasons confirmed in writing on written request.

§14–1704.

The written statement of reasons only meets the requirements of this subtitle if it contains the specific reasons for any adverse action taken.

§14–1705.

Notwithstanding any other provisions of this subtitle, compliance with Subchapter IV of the federal Consumer Credit Protection Act and regulations promulgated thereunder shall constitute compliance with this subtitle.

§14–1706.

(a) If a written complaint for violation of any provision of this subtitle or any other law of this State regulating loans or other extensions of credit is filed with the Commissioner of Financial Regulation, the Commissioner may investigate the complaint and hold a hearing on it in accordance with § 11-413 of the Financial Institutions Article.

(b) (1) The Commissioner shall give to the credit grantor against whom a

complaint is filed written notice of the complaint and the time and place of any hearing.

(2) The notice shall:

(i) Be in writing; and

(ii) Be sent by certified mail, return receipt requested, to the credit grantor's principal place of business at least 10 days prior to the date of the hearing.

(c) (1) If, after the hearing, the Commissioner finds that the credit grantor has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the person to cease and desist from the act or practice.

(2) The order of the Commissioner shall comply with the Administrative Procedure Act.

(d) (1) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order becomes final after a final decision of a court affirming the order or dismissing the appeal.

(e) For the purposes of this section, the Commissioner's order may not apply to any:

(1) Incorporated bank, savings institution, or trust company;

(2) Savings and loan association; or

(3) Federal or State credit union.

§14–1801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" has the same meaning as that term has in Title 13 of this article.

(c) "Dealer" means a person who engages in the business of selling or leasing household goods to consumers residing in Maryland.

(d) "Estimated delivery date" means the date established under § 14-1802 or § 14-1803 of this subtitle on which the dealer reasonably anticipates to deliver the ordered household good to the consumer.

(e) (1) "Household good" means any article or set of articles used to furnish or supply a residential dwelling such as a sofa, cabinet, rug, carpeting, washing machine, refrigerator, television, dining room set, or range.

(2) "Household good" does not include:

(i) Any article taken by the consumer on the date the article was ordered;

(ii) Any article ordered by mail; or

(iii) Any permanent fixture.

§14–1802.

(a) Notwithstanding any other provision of this article, when a consumer orders a household good, the dealer shall provide to the consumer:

(1) An estimated delivery date written clearly and conspicuously on any document evidencing the agreement of sale or lease for the household good; and

(2) A statement that is part of or accompanies the document evidencing the agreement of sale or lease for the household good and is in boldface type of a minimum size of 10 points which is in substantially the following form:

If the dealer fails to provide you, the buyer, with an estimated delivery date or fails to deliver the ordered household good within 2 weeks of the estimated delivery date, you may (1) cancel the contract and receive a full refund or credit equal to your deposit, (2) modify the contract by selecting another household good, or (3) negotiate with the dealer a new delivery date. The dealer is not required to allow you to exercise these rights if the dealer cannot cancel the order with the manufacturer or supplier.

(b) The estimated delivery date shall take into account the manufacturer's or supplier's instructions, recent delivery experience with the manufacturer or supplier, and the dealer's own delivery schedules.

§14–1803.

(a) Notwithstanding any other provision of this article, if the dealer fails to provide the consumer with any estimated date required by this subtitle or fails to deliver the household good to the consumer within 2 weeks of the latest estimated delivery date properly established under this subtitle, the consumer may:

(1) Cancel the contract and receive a full refund;

(2) Cancel the contract and receive a credit equal to the deposit;

(3) Negotiate with the dealer a new delivery date; or

(4) Modify the contract by selecting other household goods.

(b) (1) If a consumer cancels a contract and requests a full refund or credit, the dealer shall provide to the consumer the full refund or credit within 2 weeks of the

consumer's request.

(2) At the dealer's option, the dealer may, immediately following the consumer's request for a full refund or credit, require the consumer to sign a written request for the full refund or credit on a dealer's self-addressed postcard or a form which shall include a dealer's self-addressed envelope, to be supplied to the consumer by the dealer.

(c) The provisions of this section do not apply if:

(1) Due primarily to the conduct of the consumer, a delivery prearranged between the dealer and the consumer was unsuccessful and, following the unsuccessful attempt to deliver, the dealer provided written or oral notice of the attempted delivery to the consumer;

(2) The delay in delivery is caused by a work stoppage or an act of God; or

(3) The dealer's inability to deliver by the estimated date is due to the manufacturer's or supplier's failure to deliver to the dealer in a timely manner the household goods as ordered, and where:

(i) Despite good faith efforts to cancel the contract with the manufacturer, the dealer is liable to the manufacturer or supplier to complete the purchase under applicable law; and

(ii) The dealer's liability to the manufacturer or supplier is not caused by the dealer's delay in canceling the order when requested by the consumer.

(d) (1) If oral notice is given under subsection (c)(1) of this section, the dealer shall record in writing, the date and time of the notification and the signature of the person who made the notification.

(2) In the event that paragraph (2) or (3) of subsection (c) of this section is applicable, the dealer shall promptly inform the consumer of the delay and provide the consumer written notice of a new estimated delivery date which may not exceed any delay caused by a work stoppage, act of God, or manufacturer's delay.

§14–1804.

It shall be an unfair or deceptive trade practice under Title 13 of this article if a dealer:

(1) Fails to comply with the requirements of § 14–1802 of this subtitle; or

(2) Denies a consumer the remedies provided by § 14–1803 of this subtitle.

§14–1805.

(a) In any action brought to enforce this subtitle, a court may award reasonable attorney's fees to a prevailing plaintiff, other than the Attorney General.

(b) If it appears to the satisfaction of the court that an action is brought in bad faith or is of a frivolous nature, the court may order the offending plaintiff to pay to the defendant reasonable attorney's fees.

§14–1806.

Nothing in this subtitle shall limit any remedies otherwise available under Maryland law.

§14–1901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Commissioner" means the Commissioner of Financial Regulation of the Department of Labor, Licensing, and Regulation.

(c) "Consumer" means any individual who is solicited to purchase or who purchases for personal, family, or household purposes the services of a credit services business.

(d) "Consumer reporting agency", "consumer report", "investigative consumer report", and "file" shall have the meaning ascribed to each under § 14-1201 of this title.

(e) (1) "Credit services business" means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform, any of the following services in return for the payment of money or other valuable consideration:

(i) Improving a consumer's credit record, history, or rating or establishing a new credit file or record;

(ii) Obtaining an extension of credit for a consumer; or

(iii) Providing advice or assistance to a consumer with regard to either subparagraph (i) or (ii) of this paragraph.

(2) "Credit services business" includes a person who sells or attempts to sell written materials containing information that the person represents will enable a consumer to establish a new credit file or record.

(3) "Credit services business" does not include:

(i) Any person authorized to make loans or extensions of credit under the laws of this State or the United States who is actively engaged in the

business of making loans or other extensions of credit to residents of this State;

(ii) Any bank, trust company, savings bank, or savings and loan association whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or any credit union organized and chartered under the laws of this State or the United States;

(iii) Any nonprofit organization exempt from taxation under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));

(iv) Any person licensed as a real estate broker, an associate real estate broker, or a real estate salesperson by this State where the person is acting within the course and scope of that license;

(v) Any person licensed as a mortgage lender by this State;

(vi) An individual admitted to the Bar of the Court of Appeals of Maryland when the individual renders services within the course and scope of practice by the individual as a lawyer and does not engage in the credit services business on a regular and continuing basis;

(vii) Any broker–dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission where the broker–dealer is acting within the course and scope of that regulation;

(viii) Any consumer reporting agency as defined in the federal Fair Credit Reporting Act (15 U.S.C. §§ 1681 – 1681t) or in § 14–1201(e) of this title;

(ix) An individual licensed by the Maryland Board of Public Accountancy when the individual renders services within the course and scope of practice by the individual as a certified public accountant and does not engage in the credit services business on a regular and continuing basis; or

(x) Beginning July 1, 2013, a mortgage assistance relief service provider regulated under Title 7, Subtitle 5 of the Real Property Article.

(f) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.

(g) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, statutory trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, and any other legal or commercial entity.

§14–1902.

A credit services business, its employees, and independent contractors who sell or

attempt to sell the services of a credit services business shall not:

(1) Receive any money or other valuable consideration from the consumer, unless the credit services business has secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article;

(2) Receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit extended to the consumer is substantially the same terms as those available to the general public;

(3) Make, or assist or advise any consumer to make, any statement or other representation that is false or misleading, or which by the exercise of reasonable care should be known to be false or misleading, to a consumer reporting agency, government agency, or person to whom the consumer applies or intends to apply for an extension of credit, regarding a consumer's creditworthiness, credit standing, credit capacity, or true identity;

(4) Make or use any false or misleading representations in the offer or sale of the services of a credit services business;

(5) Engage, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with the offer or sale of the services of a credit services business;

(6) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit services business has agreed to perform for or on behalf of the consumer;

(7) Charge or receive any money or other valuable consideration in connection with an extension of credit that, when combined with any interest charged on the extension of credit, would exceed the interest rate permitted for the extension of credit under the applicable title of this article;

(8) Create, assist a consumer to create, or provide a consumer with information on how to create, a new consumer report, credit file, or credit record by obtaining and using a different name, address, telephone number, Social Security number, or employer tax identification number; or

(9) Assist a consumer to obtain an extension of credit at a rate of interest which, except for federal preemption of State law, would be prohibited under Title 12 of this article.

§14–1903.

(a) Notwithstanding any election of law or designation of situs in any contract, this subtitle applies to any contract for credit services if:

(1) The credit services business offers or agrees to sell, provide, or perform any services to a resident of this State;

(2) A resident of this State accepts or makes the offer in this State to purchase the services of the credit services business; or

(3) The credit services business makes any verbal or written solicitation or communication that originates either inside or outside of this State but is received in the State by a resident of this State.

(b) A credit services business is required to be licensed under this subtitle and is subject to the licensing, investigatory, enforcement, and penalty provisions of this subtitle and Title 11, Subtitle 3 of the Financial Institutions Article.

(c) A license required by this subtitle shall be issued by the Commissioner.

(d) A person not included within the definition of a credit services business as provided in § 14-1901(e)(3) of this subtitle is exempt from licensure requirements under this subtitle.

§14–1903.1.

A person who advertises a service described in § 14-1901(e)(1) of this subtitle, whether or not a credit services business, shall clearly and conspicuously state in each advertisement the number of:

(1) The license issued under § 14-1903 of this subtitle; or

(2) If not required to be licensed, the exemption provided by the Commissioner.

§14–1904.

(a) Before either the execution of a contract or agreement between a consumer and a credit services business or the receipt by the credit services business of any money or other valuable consideration, the credit services business shall provide the consumer with a written information statement containing all of the information required under § 14-1905 of this subtitle.

(b) The credit services business shall maintain on file for a period of 2 years from the date of the consumer's acknowledgment a copy of the information statement signed by the consumer acknowledging receipt of the information statement.

§14–1905.

(a) The information statement required under § 14-1904 of this subtitle shall include:

(1) An accurate statement of the consumer's right to review any file on the consumer maintained by any consumer reporting agency, and the right of the consumer to receive a copy of a consumer report containing all information in that file as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681g) and under § 14-1206 of this title;

(2) A statement that a copy of the consumer report containing all information in the consumer's file will be furnished free of charge by the consumer reporting agency if requested by the consumer within 30 days of receiving a notice of a denial of credit as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681j) and under § 14-1209 of this title;

(3) A statement that a nominal charge not to exceed $5 may be imposed on the consumer by the consumer reporting agency for a copy of the consumer report containing all the information in the consumer's file, if the consumer has not been denied credit within 30 days from receipt of the consumer's request;

(4) A complete and accurate statement of the consumer's right to dispute the completeness or accuracy of any item on the consumer contained in any file that is maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act (15 U.S.C. § 1681i) and under § 14-1208 of this title;

(5) A complete and detailed description of the services to be performed by the credit services business for or on behalf of the consumer, and the total amount the consumer will have to pay for the services; and

(6) A statement that accurately reported information may not be permanently removed from the file of a consumer reporting agency.

(b) A credit services business required to obtain a license pursuant to § 14-1902 of this subtitle shall include in the information statement required under § 14-1904 of this subtitle:

(1) A statement of the consumer's right to file a complaint pursuant to § 14-1911 of this subtitle;

(2) The address of the Commissioner where such complaints should be filed; and

(3) A statement that a bond exists and the consumer's right to proceed against the bond under the circumstances and in the manner set forth in § 14-1910 of this subtitle.

§14–1906.

(a) Every contract between a consumer and a credit services business for the purchase of the services of the credit services business shall be in writing, dated, signed by the consumer, and shall include:

(1) A conspicuous statement in size equal to at least 10-point bold type, in immediate proximity to the space reserved for the signature of the consumer as follows:

"You, the buyer, may cancel this contract at any time prior to midnight of the third business day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit services business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit services business expects to have modified and the estimated date by which each modification will occur; and

(4) The principal business address of the credit services business and the name and address of its agent in this State authorized to receive service of process.

(b) The contract shall be accompanied by a form completed in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract and easily detachable, and which shall contain in at least 10-point bold type the following statement:

"NOTICE OF CANCELLATION

You may cancel this contract, without any penalty or obligation, at any time prior to midnight of the third business day after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, to.....

(Name of seller)

At.....

(Address of seller)

.....

(Place of business)

Not later than midnight .....

(Date)

I hereby cancel this transaction.

.....

(Date) (Buyer's signature)"

(c) A copy of the completed contract and all other documents the credit services business requires the consumer to sign shall be given by the credit services business to the consumer at the time they are signed.

§14–1907.

(a) Any breach by a credit services business of a contract under this subtitle, or of any obligation arising under it, shall constitute a violation of this subtitle.

(b) Any contract for services from a credit services business that does not comply with the applicable provisions of this subtitle shall be void and unenforceable as contrary to the public policy of this State.

(c) (1) Any waiver by a consumer of any of the provisions of this subtitle shall be deemed void and unenforceable by a credit services business as contrary to the public policy of this State; and

(2) Any attempt by a credit services business to have a consumer waive rights given by this subtitle shall constitute a violation of this subtitle.

(d) In any proceeding involving this subtitle, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

§14–1908.

A credit services business is required to obtain a surety bond pursuant to Title 11, Subtitle 3 of the Financial Institutions Article.

§14–1909.

The surety bond shall be issued by a surety company authorized to do business in this State.

§14–1910.

(a) Any person claiming against the surety bond for a violation of this subtitle may maintain an action against the credit services business and against the surety.

(b) The surety shall be liable only for actual damages and not for the punitive damages permitted under § 14-1912 of this subtitle.

(c) The aggregate liability of the surety to all persons damaged by a credit services business's violation of this subtitle may not exceed the amount of the surety bond.

§14–1911.

(a) Any consumer who has reason to believe that this subtitle has been violated by any credit services business or by any other person may file a written complaint setting forth the details of the alleged violation with the Commissioner.

(b) After receiving the complaint, the Commissioner may inspect the pertinent books, records, letters and contracts of any credit services business, and of any person who has furnished information to the credit services business relating to the specific written complaint.

(c) The Commissioner may investigate the complaint and hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article.

(d) The Commissioner may:

(1) Hold a hearing on the complaint at a time and place in this State reasonably convenient to the parties involved;

(2) Subpoena witnesses;

(3) Take depositions of witnesses residing without the State, in the manner provided for witnesses in civil actions in courts of record;

(4) Administer oaths;

(5) Issue orders for compliance with this subtitle; and

(6) Issue cease and desist orders, after finding a pattern and practice of violation of this subtitle.

(e) (1) The Commissioner shall give to the credit services business, or the salesperson, agent, representative, or independent contractor acting on behalf of the credit services business against whom a complaint is filed, written notice of the complaint and the time and place of any hearing.

(2) The notice shall:

(i) Be in writing; and

(ii) Be sent by certified mail, to the principal place of business of the credit services business or the principal place of business or residence address of the salesperson, agent, representative, or independent contractor acting on behalf of the credit services business, at least 10 days prior to the date of the hearing.

(f) (1) If, after the hearing, the Commissioner finds that the credit services business, or the salesperson, agent, representative, or independent contractor acting on behalf of the credit services business, has engaged or is engaging in any act or practice

prohibited by this subtitle, the Commissioner shall order the credit services business or the person or both to cease and desist from the act or practice and may order that restitution be paid to an aggrieved consumer.

(2) The order of the Commissioner shall comply with the Administrative Procedure Act.

(g) (1) If an appeal is not filed, the order of the Commissioner becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's orders.

(2) If an appeal is filed, the order of the Commissioner becomes final after a final decision of a court affirming the order or dismissing the appeal.

(h) If a credit services business or any other person fails to comply with any lawful order of the Commissioner pursuant to this subtitle or if any witness fails to appear and testify to any matter regarding which he may be lawfully interrogated, on petition of the Commissioner setting forth the facts, the circuit court of any county shall:

(1) Compel obedience to the requirements of the subpoena or order;

(2) Compel the production of contracts, forms, files, and other evidence; and

(3) Order compliance with any lawful order issued by the Commissioner under the provisions of subsection (d)(5) or (6) of this section.

(i) If the credit services business or any other person fails, refuses, or neglects to comply with the order of the court, the court may punish that person for contempt of court.

(j) The Administrative Procedure Act, including its provisions for judicial review of a final decision in a contested case, applies to proceedings before the Commissioner pursuant to this subtitle.

§14–1912.

(a) Any credit services business which willfully fails to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure;

(2) A monetary award equal to 3 times the total amount collected from the consumer, as ordered by the Commissioner;

(3) Such amount of punitive damages as the court may allow; and

(4) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Any credit services business which is negligent in failing to comply with any requirement imposed under this subtitle with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(1) Any actual damages sustained by the consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the cost of the action together with reasonable attorney's fees as determined by the court.

§14–1913.

(a) An action to enforce any liability created under this subtitle shall be brought within 2 years from the date the violation at issue occurred.

(b) Where a defendant has materially and willfully misrepresented any information required to be disclosed to a consumer by this subtitle and the information is material to establishing defendant's liability, the action may be brought at any time within 2 years of the discovery of the misrepresentation.

§14–1914.

(a) Each sale of the services of a credit services business that violates any provision of this subtitle is an unfair or deceptive trade practice under Title 13 of this article.

(b) If the Division of Consumer Protection of the Office of the Attorney General has reason to believe that any credit services business, or any salesperson, agent, representative, or independent contractor acting on behalf of a credit services business, has violated any provision of this subtitle, the Division may institute a proceeding under Title 13 of this article.

§14–1915.

(a) Except as provided in subsection (b) of this section, any person who violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $5,000 or imprisonment not exceeding 3 years or both, in addition to any civil penalties.

(b) A person may not be imprisoned for violation of any provision of an order of the Commissioner or of the Attorney General entered pursuant to this subtitle or Title

13 of this article.

§14–1916.

This subtitle may be cited as the "Maryland Credit Services Businesses Act".

§14–2001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Adjusted capitalized cost" means the amount which serves as the basis for determining the base lease payment, computed by subtracting from the capitalized cost any capitalized cost reduction.

(2) "Adjusted capitalized cost" is amortized during the lease term to the estimated residual value by the application of a portion of each scheduled lease payment.

(c) (1) "Capitalized cost" means the amount which, when reduced by the amount of the capitalized cost reduction, equals the adjusted capitalized cost.

(2) "Capitalized cost" shall include all items that are capitalized in the lease and, after the application of the capitalized cost reduction, amortized by the scheduled lease payments over the term of the lease.

(3) "Capitalized cost" shall include to the extent capitalized and amortized as set forth in paragraph (2) of this subsection:

(i) Taxes, registration, license, acquisition, administration, assignment, and other similar fees;

(ii) Charges for insurance, an extended warranty, mechanical repair contract, service contract, vehicle maintenance agreement, and any other similar charge;

(iii) Charges for a waiver of the contractual obligation to pay the gap amount;

(iv) Charges for accessories and installation of accessories;

(v) Charges for delivering, servicing, repairing, or improving the vehicle; and

(vi) Charges for other goods, services, and benefits incidental to the consumer lease transaction.

(4) "Capitalized cost" also shall include, to the extent capitalized and amortized as set forth in paragraph (2) of this subsection, with respect to a vehicle or other property traded–in in connection with a lease, the unpaid balance of any amount

financed under an outstanding vehicle loan agreement or vehicle retail installment contract or the unpaid portion of the early termination obligation under any lease or other obligation of the lessee.

(d) (1) "Capitalized cost reduction" means any payments made by cash, check, rebates, or similar means that are in the nature of down payments made by the lessee and any net trade–in allowance granted by the lessor at the inception of the consumer lease for the purpose of reducing the capitalized cost.

(2) "Capitalized cost reduction" does not include any base lease payments due at the inception of the lease or all of the lease payments if they are all paid at the inception of the lease.

(e) "Consumer Leasing Act" means that act of Congress codified at 15 U.S.C. §§ 1667 through 1667e, and regulations promulgated pursuant thereto, as amended.

(f) "Dealer" means a dealer as defined in § 15–101(c) of the Transportation Article.

(g) (1) "Lease" or "leasing" means a contract in the form of a bailment or lease for the use of a motor vehicle by an individual primarily for personal, family, or household purposes, for a period of time exceeding 4 months, including renewal periods, whether or not the lessee has the option to purchase or otherwise become the owner of the motor vehicle at the expiration of the lease.

(2) "Lease" does not include:

(i) A lease intended as security as defined in § 11–127.1(a) of the Transportation Article;

(ii) A lease which meets the definition of a credit sale in Federal Regulation Z, 12 C.F.R. § 226.2(A);

(iii) A lease for agricultural, business, or commercial purposes; or

(iv) A lease made to an organization.

(h) "Lessee" means an individual who leases under, or who is offered, a motor vehicle lease.

(i) (1) "Lessor" means a person who during any 12–month period leases or offers to lease five or more motor vehicles or who is assigned five or more leases.

(2) "Lessor" does not include the holder of a security interest in leases to secure an obligation or a holder of an interest in a trust that owns leases.

(j) "Manufacturer, factory branch, or distributor" means a person, partnership, association, corporation, or entity engaged in the business of manufacturing or

assembling motor vehicles or of distributing motor vehicles to motor vehicle dealers as defined in § 15–201(b), (c), and (e) of the Transportation Article.

(k) (1) "Motor vehicle" means a motor vehicle that is registered in this State as a:

(i) Class A (passenger) motor vehicle;

(ii) Class E (truck) motor vehicle with a 3/4 ton or less manufacturer's rated capacity; or

(iii) Class M (multipurpose) motor vehicle.

(2) "Motor vehicle" does not include a motor home as defined by the Motor Vehicle Administration.

(l) (1) "Original lessor" means the person identified in the lease as the lessor of the motor vehicle.

(2) "Original lessor" does not include any assignee of the lease.

(m) (1) "Warranty" means the written warranty, so labeled, of the manufacturer of a new motor vehicle including any terms or conditions precedent to the enforcement of obligations under that warranty and shall include any motor vehicle subject to a lease.

(2) "Warranty" includes any implied warranties provided for by federal or State law, including the federal Magnusson Moss Warranty Act and the Maryland Uniform Commercial Code.

(n) "Warranty period" means the earlier of:

(1) The period of the motor vehicle's first 15,000 miles of operation; or

(2) 15 months following the date of original delivery of the motor vehicle to the lessee.

§14–2002.

(a) A lease shall be in writing and signed by the lessor and the lessee.

(b) The printed portion of the lease, other than directions for completion of the lease and the text of any assignment between the original lessor and an assignee, shall be printed in a size equal to at least 8 point type. The lease shall contain the following items printed or written in a conspicuous manner:

(1) At the top of the lease, the words "Motor Vehicle Lease Agreement";

(2) If physical damage or liability insurance coverage for bodily injury and

property damage caused to others is not included in the lease, a notice substantially similar to the following: "No physical damage or liability insurance coverage for bodily injury or property damage caused to others is included in this lease";

(3) Directly above the acknowledgment permitted by subsection (c) of this section, a written notice substantially similar to the following: "Notice to the lessee: This is a lease. You have no ownership rights in the motor vehicle unless and until you exercise your option to purchase the motor vehicle, if this lease contains a purchase option. Do not sign this lease before you read it or if it contains any blank space. You are entitled to a completely filled in copy of this lease when you sign it";

(4) A statement substantially similar to the following: "Early termination may require you to pay a substantial amount"; and

(5) The following provision in at least 10 point boldface type:

"Notice

Any holder of this consumer lease is subject to all claims and defenses which the lessee could assert against the lessor of the motor vehicle. Recovery hereunder by the lessee shall not exceed amounts paid by the lessee under this lease."

(c) (1) The lessor shall deliver to the lessee, or mail to the lessee at the lessee's address shown on the lease, a copy of the lease signed by the lessor.

(2) Any acknowledgment by the lessee of delivery of a copy of the lease shall be conspicuous and shall appear directly above the space reserved for the lessee's signature.

(d) The lease shall state the names of the original lessor and lessee, the place of business of the original lessor, the residence of the lessee as specified by the lessee, and a description of the motor vehicle, including its make, model year, model, and, if known, the motor vehicle's identification number or marks.

(e) The lease shall contain:

(1) All items required to be disclosed by the Consumer Leasing Act;

(2) A disclosure of the capitalized cost; and

(3) A provision briefly describing the lessee's rights upon default.

(f) (1) If the lessee is obligated under the lease to maintain liability insurance or other insurance on the motor vehicle and if subsequent to execution of the lease the lessee fails to maintain the required insurance, if the lease permits, the lessor may procure insurance for either the interests of the lessee and the lessor or the interest of either of them insuring substantially the same risks required to be insured by the lease.

(2) The lease may also provide that the amount of the premium paid by the lessor may be the subject of a lease charge as though such amount was part of the capitalized cost, and shall be subject to the default provisions of the lease.

(3) Nothing in this subsection shall prevent the lessor from pursuing any other remedy for default set forth in the lease or provided by law.

(g) (1) If the lease permits, a lessor may impose on the lessee:

(i) A late or delinquency charge for payments or portions of payments that are in default under the lease;

(ii) A collection charge, which may include all court and other collection costs actually incurred by the lessor and, if the lease is referred for collection to an attorney who is not a salaried employee of the lessor, a reasonable attorney's fee; and

(iii) If any payment is made to the lessor with a check that is dishonored on the second presentment, a charge not to exceed $15.

(2) No more than one late or delinquency charge may be imposed for any single payment or portion of payment, regardless of the period during which it remains in default.

(h) (1) Except as permitted by paragraph (2) of this subsection, no lease shall be signed by any party if it contains blank spaces to be filled in after it has been signed.

(2) If delivery of the motor vehicle is not made at the time of execution of the lease, the motor vehicle's identifying numbers, marks, or similar information and the due date of the first payment may be filled in after execution of the lease.

(3) The lessee's written acknowledgment, conforming to the requirements of subsection (c) of this section, of delivery of a copy of the lease shall be conclusive proof of delivery of a copy of the consumer lease in any action or proceeding by or against an assignee of the lease without knowledge to the contrary at the time of the assignment.

(i) Notwithstanding any contrary provision of this subtitle or other laws of this State:

(1) Subject to the rights of the lessee under the lease, a lessor may sell a lease, a leased motor vehicle, or an interest in a lease on such terms and conditions and for such price as may be mutually agreed upon between the lessor and the lessor's assignee; and

(2) No filing of the assignment, no notice to the lessee of the assignment, and no requirement that the lessor be deprived of dominion over payments upon the lease or over the motor vehicle if repossessed by or returned to the lessor, shall be necessary to the validity of a written assignment of a lease as against creditors,

subsequent purchasers, pledgees, mortgagees, or encumbrancers of the lessor.

(j) (1) Until the lessee has notice of assignment of a lease, payment made by the lessee to the last known holder of the lease shall be binding upon all subsequent assignees.

(2) If requested by the lessee, the assignee shall furnish reasonable proof that the assignment has been made and the lessee may pay the original lessor until reasonable proof of the assignment has been furnished.

(3) The lessor shall provide the lessee with a written receipt for any payment made in cash.

(k) (1) Upon written request from a lessee, the lessor shall give or forward to the lessee a written statement of the dates and amounts of the payments that have been made under the lease and the amount of the lessee's remaining payments and any other amounts owed to the lessor as reflected on the lessor's books and records at the time of the notice.

(2) Upon written request from a lessee, the lessor shall give or forward to the lessee a written estimate of the lessee's total early termination liability under the lease.

(3) No charge may be imposed on the lessee for preparation of the statements provided for in paragraphs (1) and (2) of this subsection, except a lessor may impose a reasonable fee, not to exceed $5 per statement, if:

(i) The lessee requests more than one statement under paragraph (1) of this subsection or more than one statement under paragraph (2) of this subsection in any 12-month period; and

(ii) The charge is disclosed in the lease.

(l) A lease may not contain any provision by which:

(1) In the absence of the lessee's default, the lessor may, arbitrarily and without reasonable cause, accelerate maturity of any part or all of the amount owing under the lease;

(2) The lessor may accelerate maturity of any part or all of the amount owing under the lease solely because the lessor deems itself insecure;

(3) A power of attorney is given to confess judgment, or an assignment of wages is given;

(4) The lessor, or other person acting on behalf of the lessor, is given authority to enter upon the lessee's premises unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle;

(5) The lessee waives any right of action against the lessor, or other person acting on behalf of the lessor, for any illegal act committed in the collection of payments under the lease or in the repossession of the motor vehicle;

(6) The lessee executes a power of attorney appointing the lessor, or other person acting on behalf of the lessor, as the lessee's agent in collection of payments under the lease or in the repossession of the motor vehicle; provided, however, that this paragraph shall not prohibit the inclusion in a lease of a limited power of attorney or other provision authorizing the lessor to execute in the lessee's name any proofs of insurance claims or losses, to execute in the lessee's name any titling and registration documents, or to endorse the lessee's name on any insurance settlement or premium rebate draft or check the proceeds of which are applicable to the lessee's obligations under the lease;

(7) The lessor is relieved from liability for any legal remedy which the lessee may have against the lessor under the lease, or any separate instrument executed in connection therewith;

(8) The maturity of any part or all of the amount owing under the lease is accelerated where, following a default consisting solely of the failure to make timely payments, a lessee who has the right to redeem the lease makes timely payment of an amount sufficient to redeem the lease under § 14-2008(h) of this subtitle; or

(9) The lessee waives any right provided to the lessee by this subtitle.

(m) (1) Any clause or provision prohibited by subsection (l) of this section shall be unenforceable but shall not otherwise affect the lease's continuing validity and enforceability.

(2) The penalties provided in § 14-2007 of this subtitle or in § 13-408 of this article do not apply to violations of subsection (l) of this section unless a lessor attempts to enforce a provision prohibited by that subsection.

§14–2003.

(a) A person who leases vehicles to lessees may not:

(1) Make any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind that has the capacity, tendency, or effect of deceiving or misleading a consumer or lessee;

(2) By any means advertise or offer to the public any motor vehicle without intent to lease it as advertised or offered;

(3) Misrepresent a lease of a motor vehicle as a sale;

(4) Fail to include any dealer processing or freight charges in determining the adjusted capitalized cost used to calculate the base lease payment shown in an

advertisement for a leased vehicle; or

(5) Advertise to the general public a capitalized cost reduction to the lessee unless the capitalized cost reduction is offered to all potential lessees.

(b) (1) Except as allowed by paragraph (2) of this subsection, in offering to allow a lessee to cure a default by entering into a new lease for the same motor vehicle, a lessor may not include in the new lease any material provision that is less favorable to the lessee than the provisions of the original lease.

(2) A lessor may include in a lease under paragraph (1) of this subsection an increase in one or more of the following:

(i) The security deposit;

(ii) The down payment paid to the lessor; or

(iii) The lease payments, so long as the total of scheduled lease payments over the term of the new lease does not exceed the total of scheduled lease payments under the original lease.

§14–2004.

(a) To the extent that §§ 2-313 through 2-318, inclusive, of this article apply to the purchase of a motor vehicle, the rights and remedies provided for in those sections shall apply to the lease of a motor vehicle and may be exercised by any lessee.

(b) If the warranty period is to include those miles of operation when the new motor vehicle is in the possession of any person other than the lessee, the manufacturer shall state that fact in 12 point boldface type in the manufacturer's written warranty.

(c) (1) (i) If a new motor vehicle does not conform to all applicable warranties during the warranty period, the lessee shall, during the warranty period, report the nonconformity, defect, or condition by giving written notice to the manufacturer, factory branch, or lessor by certified mail, return receipt requested.

(ii) Notice of this procedure shall be conspicuously disclosed to the lessee in writing at the time of lease of the motor vehicle.

(2) The lessee shall provide an opportunity for the manufacturer or factory branch, its agent or authorized dealer, or the lessor or the lessor's agent to cure the nonconformity, defect, or condition.

(3) The manufacturer or factory branch, its agent or its authorized dealer, or the lessor or the lessor's agent shall correct the nonconformity, defect, or condition at no charge to the lessee, even if repairs are made after the expiration of the warranty period.

(d) (1) (i) If, during the warranty period, the manufacturer or factory branch, its agent or authorized dealer, or the lessor or the lessor's agent is unable to repair or correct any nonconformity, defect, or condition that substantially impairs the use and market value of the motor vehicle to the lessee after a reasonable number of attempts, the manufacturer or factory branch, at the option of the lessee shall:

1. Replace the motor vehicle with a comparable motor vehicle acceptable to the lessee; or

2. Accept return of the motor vehicle from the lessee and refund to the lessee all moneys paid by the lessee to repair the defect, condition, or nonconformity pursuant to a lease, including all excise tax, license fees, registration fees, and any similar governmental charges, less a reasonable allowance for the lessee's unimpaired use of the vehicle; and

(ii) In the event a motor vehicle is replaced under paragraph (1)(i)1 of this subsection and provided that the lessee meets the lessor's then current credit criteria with respect to the lease, the lessor shall:

1. Transfer the title of the defective motor vehicle to the manufacturer;

2. Accept title to the comparable replacement motor vehicle;

3. Transfer possession of the comparable replacement motor vehicle to the lessee; and

4. Execute a lease agreement with the lessee with the same time period, terms, and conditions of the original lease.

(2) (i) In the event a manufacturer accepts return of a motor vehicle, under paragraph (1)(i)2 of this subsection, the lessee shall be compensated by the manufacturer for any moneys paid during the period in which the motor vehicle was not available due to the defect, condition, or nonconformity and the lessor shall be paid by the manufacturer all amounts due to the lessor under the terms of the lease.

(ii) This subsection shall be construed to provide a mechanism through which the lessee and the lessor shall be made whole for losses incurred as a result of a motor vehicle's nonconformity, defect, or condition, and actions taken to conform the motor vehicle to applicable warranties.

(3) If a manufacturer, factory branch, dealer, or lessor accepts return of a motor vehicle as described under paragraph (1)(i) of this subsection, the lessee may not be obligated to pay any penalties, early termination fees, or other charges as a consequence of the return of the motor vehicle.

(e) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable warranties if:

(1) The same nonconformity, defect, or condition has been subject to repair 4 or more times by the manufacturer or factory branch, or its agents or authorized dealers, within the warranty period but such nonconformity, defect, or condition continues to exist;

(2) The motor vehicle is out of service by reason of repair of 1 or more nonconformities, defects, or conditions for a cumulative total of 30 or more days during the warranty period; or

(3) A nonconformity, defect, or condition resulting in failure of the braking or steering system has been subject to the same repair at least once within the warranty period, and the manufacturer has been notified and given the opportunity to cure the defect, and the repair does not bring the vehicle into compliance with the motor vehicle safety inspection laws of the State.

(f) The term of any warranty, the warranty period, and the 30-day out-of-service period shall be extended by any time during which repair services are not available to the lessee by reason of war, invasion, strike, or fire, flood, or other natural disaster.

(g) If a motor vehicle is returned to a manufacturer or factory branch under subsection (d)(1)(i) of this section, the manufacturer or factory branch shall notify the Motor Vehicle Administration of the fact that the vehicle was returned under this subtitle as defective.

(h) If a motor vehicle that is returned under this subtitle is then made available for resale or subsequent lease, the seller or lessor shall disclose prior to sale or lease in writing in a clear and conspicuous manner, on a separate piece of paper in 10 point all capital type, to a lessee or buyer the material fact that this motor vehicle was returned to the manufacturer or factory branch, the nature of the defect which resulted in the return, and the condition of the motor vehicle at the time of resale or subsequent lease.

§14–2005.

(a) Title 2A of this article shall not apply to motor vehicle leases governed by this subtitle.

(b) Except as provided in subsection (a) of this section, this subtitle does not limit the rights or remedies that are otherwise available to a lessee under any other law, including any implied warranties, including the federal Magnusson Moss Warranty Act and the Maryland Uniform Commercial Code.

(c) (1) If a manufacturer or factory branch has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as amended, a lessee need not resort to that procedure before § 14-2004(c) of this subtitle applies.

(2) A lessee who has resorted to an informal dispute settlement procedure

may not be precluded from seeking the rights or remedies available by law.

(d) Except as otherwise provided by this subtitle, any agreement entered into by a lessee for the lease of a new motor vehicle that waives, limits, or disclaims the rights set forth in this subtitle shall be void.

(e) (1) If a lessor permits the lessee to assign any interest in the lease or in the motor vehicle, upon such assignment the rights available to a lessee under this subtitle shall inure to an assignee of the lessee's rights under the lease or a subsequent transferee of the motor vehicle.

(2) Nothing in this subtitle shall be construed to permit a lessee to sublease a motor vehicle in violation of § 8-408 of the Criminal Law Article.

(f) (1) Any action brought under this subtitle may not be brought more than 1 year after termination of the lease.

(2) Notwithstanding the limitation in paragraph (1) of this subsection, a lessee at any time may assert a violation of this subtitle in an action to collect the debt as a matter of defense, by recoupment or setoff.

(g) (1) Except as provided in paragraph (2) of this subsection, a lessor may charge fees for excess wear and use or excess mileage if:

(i) The right to charge the fees and method for calculating the fees are disclosed in the lease in at least 8 point bold capital letters;

(ii) At the time the vehicle is returned, the lessor conducts a visual inspection of the vehicle and provides the lessee with a reasonable opportunity to be present at the inspection. If the lessee is present, in addition to the notice required by subparagraph (iii) of this paragraph, the lessor shall provide the lessee at the time of the inspection with a written statement of the mileage and of the excess wear to the motor vehicle identified through the visual inspection. If the lessee is not present at the inspection, the lessor is only required to provide the lessee with the notice required by subparagraph (iii) of this paragraph;

(iii) Within 30 days after obtaining possession of the motor vehicle, the lessor delivers or mails to the lessee at the lessee's last known address:

1. An itemized list of excess wear to the motor vehicle and the estimated or actual cost of repairing or replacing each item listed; and

2. A statement of the number of miles above the amount permitted by the lease and the total charge to the lessee for the excess mileage.

(2) A lessor may not charge fees for excess wear and use or excess mileage if the lessee exercises an option to purchase the leased motor vehicle.

§14–2006.

(a) (1) This subtitle applies only to the lease of a motor vehicle where the lessee has signed or been offered the lease in this State.

(2) This subtitle does not apply to a fleet lease of 5 or more motor vehicles.

(b) A lessor, manufacturer, factory branch, distributor, or dealer may not exclude or limit the operation of this subtitle.

§14–2007.

(a) Except as otherwise provided in this subtitle, a lessor who fails to comply with any requirement imposed by this subtitle with respect to a person shall be liable to the person for:

(1) Any actual damage sustained by the person as a result of the failure; and

(2) An amount equal to 25% of the total amount of monthly payments under the lease, but not less than $100 nor greater than $1,000.

(b) (1) A court may award reasonable attorney's fees to a prevailing party under this subtitle.

(2) If it appears to the satisfaction of the court that an action is brought in bad faith or is of a frivolous nature, the court may order the offending party to pay the other party reasonable attorney's fees.

(c) A violation of this subtitle shall be an unfair or deceptive trade practice within the meaning of Title 13 of this article, except that a person who recovers damages under this section for a violation of this subtitle shall not be entitled to recover damages for the same violation under § 13–408 of this article.

(d) A lessee may not recover damages in an action under this subtitle or under Title 13 of this article for any failure to comply with any provision of this subtitle if, within 60 days after discovering an error and prior to the institution of an action under this subtitle or under Title 13 of this article or the receipt of written notice of the error from the lessee, the lessor notifies the lessee of the error and makes whatever adjustments are necessary to correct the error.

(e) (1) If a complaint for violation of any provision of this subtitle is filed with the Commissioner of Financial Regulation, the Commissioner may investigate the complaint and hold a hearing on it in accordance with § 11-413 of the Financial Institutions Article.

(2) The Commissioner shall give to the person against whom a complaint is filed at least 10 days' written notice of the complaint and the time and place of any

hearing. The notice shall be in writing and sent by registered or certified mail to the person's principal place of business.

(3) (i) If, after the hearing, the Commissioner finds that a person has engaged or is engaging in any act or practice prohibited by this subtitle, the Commissioner shall order the person to cease and desist from the act or practice.

(ii) The order of the Commissioner shall comply with the Administrative Procedure Act.

(4) (i) If no appeal is filed, the order becomes final after expiration of the time allowed by the Administrative Procedure Act for appeals from the Commissioner's order.

(ii) If an appeal is filed, the order becomes final after final decision of the court affirming the order or dismissing the appeal.

(5) For purposes of this section, the Commissioner's order may not apply to any:

(i) Incorporated bank, savings institution, or trust company;

(ii) Savings and loan association; or

(iii) Federal credit union or state chartered credit union.

(f) (1) In this subsection, "notice" means the first to occur of the following:

(i) When the lessor receives a written notice from the lessee notifying the lessor of an error or violation;

(ii) When the lessor receives a written notice from the Commissioner of Financial Regulation or the appropriate regulatory authority notifying the lessor of an error or violation; or

(iii) When the lessor receives service of process in a civil action for an error or violation instituted by a lessee in a court of competent jurisdiction.

(2) The penalty provided under subsection (a)(2) of this section does not apply where a lessor:

(i) Unintentionally and in good faith fails to comply with this subtitle; and

(ii) Corrects the error or violation and makes the lessee whole for all losses, including reasonable attorney's fees and interest, where appropriate, within 10 days after the lessor receives notice of the error or violation.

(3) The burden shall be on the lessor to show that the lessor's failure to

comply with this subtitle was unintentional and in good faith.

(4) A lessor who knowingly violates any provision of this subtitle shall be liable to the lessee for 3 times the amount of fees and charges collected in excess of that authorized by this subtitle.

§14–2008.

(a) (1) A lessor may repossess a leased motor vehicle if the lessee is in default or a law enforcement agency has seized the motor vehicle and will not unconditionally return the motor vehicle to the lessor.

(2) The lessor may repossess the leased motor vehicle from a lessee only by:

(i) Legal process; or

(ii) Self-help, without use of force.

(b) Nothing in this section authorizes a violation of criminal law.

(c) (1) At least 10 days before a lessor repossesses any leased motor vehicle, the lessor may serve a written notice on the lessee of the intention to repossess the motor vehicle.

(2) The notice shall:

(i) State the default and any period at the end of which the leased motor vehicle will be repossessed; and

(ii) Briefly state the rights of the lessee in case the leased motor vehicle is repossessed.

(d) The notice may be delivered to the lessee personally or sent to the lessee at the lessee's last known address by registered or certified mail.

(e) Within 5 days after the lessor repossesses the leased motor vehicle, the lessor shall deliver to the lessee personally or send to the lessee at the lessee's last known address by registered or certified mail a written notice which states:

(1) The right of the lessee to redeem the leased motor vehicle and the amount payable for it;

(2) The rights of the lessee as to a sale of the motor vehicle and the lessee's liability for a deficiency; and

(3) The exact location where the leased motor vehicle is stored and the address where any payment is to be made.

(f) For 15 days after the lessor gives the notice required by subsection (e) of this section, the lessor shall retain the repossessed motor vehicle.

(g) During the period provided for in subsection (f) of this section, the lessee may:

(1) Redeem and retake possession of the motor vehicle; and

(2) Resume the performance of the lease.

(h) To redeem the leased motor vehicle, the lessee shall:

(1) Tender the amount due under the lease at the time of redemption, without giving effect to any provision which allows acceleration of any amounts otherwise payable after that time;

(2) Tender performance of any other promise for the breach of which the motor vehicle was repossessed; and

(3) If the discretionary notice provided for in subsection (c) of this section was given, pay the actual and reasonable expenses of retaking and storing the motor vehicle.

(i) This section does not apply, and the lessor shall have the right to enforce the lease according to its terms, including the default and early termination provisions of the lease and any provision that requires the lessee to pay an amount due at early termination, if:

(1) The date of the default under the lease that led to the present repossession occurred within 18 months after the last repossession; or

(2) The lessee was guilty of fraudulent conduct, intentionally and wrongfully concealed, removed, damaged, or destroyed the motor vehicle, or attempted to do so, and the motor vehicle was repossessed because of that conduct.

§14–2009.

(a) This section applies if the lease provides that the motor vehicle is to be sold after repossession and the lessee is to be responsible for any deficiency arising from the sale of the motor vehicle.

(b) (1) The lessor shall sell the motor vehicle that was repossessed at:

(i) Subject to subsection (c) of this section, a private sale; or

(ii) A public auction.

(2) At least 10 days before the sale, the lessor shall notify the lessee in writing of the time and place of the sale, by certified mail, return receipt requested,

sent to the lessee's last known address.

(3) Any sale of a repossessed motor vehicle must be accomplished in a commercially reasonable manner.

(c) In all cases of a private sale of a repossessed motor vehicle under this section, a full accounting shall be made to the lessee in writing. This accounting shall contain the following information:

(1) The unpaid balance at the time the motor vehicle was repossessed;

(2) The refund credit of unearned insurance premiums, if any;

(3) The remaining net balance;

(4) The proceeds of the sale of the motor vehicle;

(5) The remaining deficiency balance, if any, or the amount due to the lessee; and

(6) All expenses incurred as a result of the sale.

(d) The Commissioner of Financial Regulation may make a determination concerning any private sale that the sale was not accomplished in a commercially reasonable manner. Upon that determination, the Commissioner may enter an order disallowing any claim for a deficiency balance.

(e) (1) The proceeds of a sale to which this section applies shall be applied, in the following order, to:

(i) The actual and reasonable costs of the sale;

(ii) The actual and reasonable costs of retaking and storing the property; and

(iii) The unpaid balance owing under the lease agreement at the time the property was repossessed.

(2) The lessor shall furnish to the lessee a written statement which shows the distribution of the proceeds.

(3) If the provisions of this subtitle, including the requirement of furnishing a notice following repossession, are not followed, the lessor shall not be entitled to any deficiency judgment to which it would be entitled under the lease agreement.

§14–2010.

Any penalties or charges set forth in the lease or claimed by the lessor in the

event of early termination or default must comply with the standards set forth in the Consumer Leasing Act.

§14–2101.

(a) (1) In this section the following words have the meanings indicated.

(2) "Collision damage waiver" means any contract, whether separate from or part of a rental agreement, in which the lessor agrees, for a charge, to waive all or part of any claims against the lessee for damages to the rental motor vehicle during the term of the rental agreement.

(3) "Lessee" means any person obtaining the use of a rental motor vehicle from a lessor under the terms of a rental agreement.

(4) "Lessor" means any person in the business of providing rental motor vehicles to the public.

(5) "Passenger car" means any motor vehicle that is a Class A (passenger) vehicle under § 13-912 of the Transportation Article, or any motor vehicle that is a Class M (multipurpose) vehicle under § 13-937 of the Transportation Article if the vehicle is used primarily for transporting passengers.

(6) "Rental agreement" means a written agreement setting forth the terms and conditions governing the use of a rental motor vehicle by a lessee for a period of less than 180 days.

(7) "Rental motor vehicle" means a passenger car which, on execution of a rental agreement, is made available to a lessee for the lessee's use.

(b) The Division shall develop a form for collision damage waivers, and shall make it available to all lessors in the State.

(c) The form shall meet the requirements specified in subsection (e) of this section.

(d) A lessor may not deliver or issue for delivery in this State a rental motor vehicle agreement containing a collision damage waiver, unless the lessor uses a separate collision damage waiver form provided by the Division that meets the requirements specified in subsection (e) of this section.

(e) The collision damage waiver form shall contain the following requirements:

(1) The collision damage waiver shall be understandable and written in simple and readable plain language;

(2) The terms of the collision damage waiver, including, but not limited to, any conditions or exclusions applicable to the collision damage waiver, shall be

prominently displayed;

(3) All restrictions, conditions, or provisions in, or endorsed on, the collision damage waiver are printed in type at least as large as Brevier or 10 point type;

(4) The collision damage waiver shall include a statement of the total charge for the anticipated rental period or the anticipated total daily charge;

(5) The agreement containing the collision damage waiver shall display the following notice on the face of the agreement, set apart and in boldface type, and in type at least as large as 10 point type:

"Notice:

This contract offers, for an additional charge, a collision damage waiver to cover your responsibility for damage to the vehicle. Before deciding whether to purchase the collision damage waiver, you may wish to determine whether your own automobile insurance affords you coverage for damage to the rental vehicle and the amount of the deductible under your own insurance coverage. The purchase of this collision damage waiver is not mandatory and may be waived. Maryland law requires that all Maryland residents' insurance policies with collision coverage automatically extend that collision coverage to passenger cars rented by the insureds named in the policy for a period of 30 days or less."; and

(6) Any additional information that the Division considers reasonable and necessary to carry out the provisions of this subtitle.

(f) A failure by a lessor to comply with subsection (d) of this section is an unfair or deceptive trade practice within the meaning of Title 13, Subtitle 3 of this article.

§14–2201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means an actual or prospective purchaser, lessee, or recipient of consumer goods, consumer services, or consumer realty.

(c) (1) "Consumer goods", "consumer realty", and "consumer services" mean, respectively, goods, real property, and services which are primarily for personal, household, family, or agricultural purposes.

(2) (i) Subject to subparagraph (ii) of this paragraph, "consumer services" does not include financial services or securities sales.

(ii) "Consumer services" includes any solicitation offering credit services where:

1. The consumer is required to call a telephone number;

2. The consumer is charged a separate toll fee for the call; and

3. The person making the solicitation receives any portion of the separate telephone toll fee paid by the consumer.

(d) "Credit services" means providing or offering to provide any service in return for the payment of money or other consideration, where the service is held out to provide assistance to a consumer with regard to:

(1) Improving the consumer's credit history, credit rating, or credit record; or

(2) Obtaining an extension of credit for the consumer.

(e) (1) "Merchant" means a person who, directly or indirectly, offers or makes available to consumers any consumer goods, consumer services, or consumer realty.

(2) "Merchant" does not include a person who is exempt under § 13-104 of this article.

(f) "Telephone solicitation" means the attempt by a merchant to sell or lease consumer goods, services, or realty to a consumer located in this State that is:

(1) Made entirely by telephone; and

(2) Initiated by the merchant.

§14–2202.

(a) The provisions of this subtitle do not apply to a transaction:

(1) Made in accordance with prior negotiations in the course of a visit by the consumer to a merchant operating a retail business establishment which has a fixed permanent location and where consumer goods are displayed or offered for sale on a continuing basis;

(2) In which the person making the solicitation or the business enterprise for which the person is calling:

(i) Has made a previous sale to the consumer; or

(ii) Has a preexisting business relationship with the consumer;

(3) Which is covered by the provisions of Subtitle 3 of this title;

(4) In which:

(i) The consumer may obtain a full refund for the return of undamaged and unused goods to the seller within 7 days of receipt by the consumer; and

(ii) The seller will process the refund within 30 days of receipt of the returned merchandise by the consumer;

(5) In which the consumer purchases goods or services pursuant to an examination of a television, radio, or print advertisement or a sample, brochure, catalogue, or other mailing material of the merchant that contains:

(i) The name, address, and telephone number of the merchant;

(ii) A description of the goods or services being sold; and

(iii) Any limitations or restrictions that apply to the offer; or

(6) In which the merchant is a bona fide charitable organization as defined in § 6-101 of the Business Regulation Article.

(b) Notwithstanding subsection (a) of this section, this subtitle applies to any solicitation offering credit services where:

(1) The consumer is required to call a telephone number;

(2) The consumer is charged a separate toll fee for the call; and

(3) The person making the solicitation receives any portion of the separate telephone toll fee paid by the consumer.

§14–2203.

(a) A contract made pursuant to a telephone solicitation is not valid and enforceable against a consumer unless made in compliance with this subtitle.

(b) A contract made pursuant to a telephone solicitation:

(1) Shall be reduced to writing and signed by the consumer;

(2) Shall comply with all other applicable laws and regulations;

(3) Shall match the description of goods or services as that principally used in the telephone solicitation;

(4) Shall contain the name, address, and telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold;

(5) Shall contain, in at least 12 point type, immediately preceding the

signature, the following statement:

"You are not obligated to pay any money unless you sign this contract and return it to the seller."; and

(6) May not exclude from its terms any oral or written representations made by the merchant to the consumer in connection with the transaction.

§14–2204.

A merchant engaging in a telephone solicitation may not make or submit any charge to the consumer's credit account until after the merchant receives from the consumer a copy of the contract which complies with this subtitle.

§14–2205.

In addition to any remedies otherwise available at law, a violation of this subtitle shall be:

(1) An unfair or deceptive trade practice under Title 13, Subtitle 3 of this article; and

(2) If the violation involves a solicitation offering credit services, a violation of the Maryland Credit Services Businesses Act.

§14–2301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Aftermarket crash parts" means crash parts:

(1) Manufactured by a person other than the original manufacturer of the motor vehicle to be repaired; and

(2) For which the original manufacturer of the motor vehicle has not authorized the use of its name or trademark by the manufacturer of the crash parts.

(c) "Body shop" means any person that removes, replaces, reconditions, or repairs sheet metal or fiberglass motor vehicle crash parts.

(d) "Crash parts" means exterior or interior sheet metal or fiberglass panels and parts which form the superstructure or body of a motor vehicle including but not limited to fenders, bumpers, quarter panels, door panels, hoods, grills, firewalls, permanent roofs, wheelwells, and front and rear lamp display panels.

(e) "Genuine crash parts" means crash parts:

(1) Manufactured by or for the original manufacturer of the motor vehicle to be repaired; and

(2) Which are authorized to carry the name or trademark of the original manufacturer of the motor vehicle.

(f) (1) "Motor vehicle" means a passenger car as defined under § 11-144.1 of the Transportation Article.

(2) "Motor vehicle" does not include a motor home, as defined by the Motor Vehicle Administration.

§14–2302.

(a) Before beginning repair work on crash parts, a body shop shall:

(1) Provide a list to the vehicle owner of the replacement crash parts that the body shop intends to use in making repairs; and

(2) Specify whether the replacement parts are genuine crash parts.

(b) If the replacement crash parts to be used by the body shop in the repair work are aftermarket crash parts, the body shop shall include with its estimate the following written statement: "This estimate has been prepared based on the use of aftermarket crash parts that are not manufactured by the original manufacturer of the vehicle or by a manufacturer authorized by the original manufacturer to use its name or trademark. The use of certain aftermarket crash parts may modify the original manufacturer's warranty on the crash parts being replaced. Upon request of the customer, the body shop shall provide, if available, a copy of any warranty for an aftermarket crash part used."

(c) The notices and statements required under this section shall be made in writing in a clear and conspicuous manner in 10 point capital type.

(d) This section may not be construed to replace or alter any provisions of law under Subtitle 10 of this title.

§14–2303.

This subtitle does not:

(1) Prohibit a person from filing an action for damages against a body shop; or

(2) Require a person first to exhaust any administrative remedy he may have.

§14–2304.

A violation of any provision of this subtitle is an unfair or deceptive practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty

provisions contained in Title 13.

§14–2401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Purchaser" means a person who has contracted to acquire a vacation club membership.

(c) (1) "Sales agent" means a person who has contracted to sell a vacation club membership.

(2) "Sales agent" includes the developer of a vacation club membership plan.

(d) "Vacation accommodation" means a place of lodging and related facilities over which the user does not have permanent exclusive control.

(e) (1) "Vacation club membership" means an interest in a vacation club membership plan that entitles the purchaser to the use or occupancy of a vacation accommodation on a recurring basis, whether or not the exercise of the right to use or occupy depends on the availability of a vacation accommodation.

(2) "Vacation club membership" includes an interest in a club that provides or arranges for the use or occupancy of campgrounds, condominiums, or other vacation accommodations.

(3) "Vacation club membership" does not include a time-share defined under Title 11A of the Real Property Article.

(f) "Vacation club membership plan" means a plan in which the purchaser has the right to the use or occupancy of any number of vacation accommodations on a recurring basis.

§14–2402.

(a) Within 10 calendar days after the execution of the contract to purchase a vacation club membership, either party may cancel the contract without penalty by mailing or delivering a notice of cancellation to the other party at the address specified in the contract.

(b) (1) Cancellation of a vacation club membership shall entitle the purchaser to a refund of the entire consideration paid for the contract, including the cost of financing.

(2) The sales agent shall deliver the refund to the purchaser at the address specified in the contract within 15 business days after receipt of the notice of cancellation.

(c) The right of cancellation may not be waived or otherwise surrendered.

(d) (1) A contract to purchase a vacation club membership shall contain the following statement:

"You may cancel this contract without penalty or obligation within 10 days from the date of this contract. If you decide to cancel this contract, you must provide notice of the cancellation in writing to (the sales agent) at (address of sales agent). Any attempt to obtain a waiver of your cancellation rights is unlawful. Cancellation entitles you to a refund of all moneys within 15 business days after receipt of notice of cancellation."

(2) The statement required under this subsection shall:

(i) Be in at least 14 point bold–faced type; and

(ii) Appear immediately before and on the same page as the space designated for signature of the purchaser.

(e) (1) This subtitle applies to vacation club membership plans that provide accommodations in time–share units.

(2) The requirements of this section do not apply to a time–share estate, time–share plan, or time–share exchange program or any renewal thereof that is:

(i) Required to provide a consumer with a 10–day right to cancel under § 11A–114 of the Real Property Article; or

(ii) Regulated under Title 11A of the Real Property Article.

§14–2403.

(a) It is a deceptive trade practice for a sales agent to violate any requirement of this subtitle.

(b) If the sales agent violates any provision of this subtitle, the purchaser:

(1) May cancel the contract by notifying the seller in any manner, by any means, and at any time of the purchaser's intention to cancel; and

(2) Is entitled to a refund of:

(i) All moneys paid; and

(ii) Until the refund is made, interest of 1% for each month after the date of cancellation.

§14–2501.

In this subtitle, "hearing aid" means:

(1) Any instrument or device that is designed for or represented as being capable of improving or correcting impaired human hearing; or

(2) Any part or accessory of the instrument or device.

§14–2502.

The provisions of this subtitle are in addition to any other provision of law.

§14–2502.1.

(a) The seller of a hearing aid must bill any fee for diagnostic tests separately from any charges for the purchase and fitting of a hearing aid.

(b) A separately billed fee for a diagnostic test is not subject to refund under § 14-2503 of this subtitle.

§14–2503.

(a) Within 30 days of the date of delivery, a purchaser of a hearing aid may cancel the purchase for any reason, by mailing or delivering a notice of cancellation to the seller of the hearing aid at the address specified in the contract.

(b) (1) Cancellation of the purchase entitles the purchaser to a refund of the entire consideration paid, less 10 percent for services and payments made for diagnostic tests.

(2) If the actual documented expenses incurred by the seller for the fitting, delivery, and return of the hearing aid to the manufacturer are in excess of 10 percent of the purchase price, the seller may retain an amount equal to these expenses only if:

(i) The amount is conspicuously identified as "nonrefundable" on the contract or bill of sale for the hearing aid; and

(ii) The total amount retained does not exceed 20 percent of the purchase price of the hearing aid.

(3) The seller shall deliver the refund to the purchaser if:

(i) The purchase is made at a place other than the place of business of the seller, within 30 days after the receipt of the notice of cancellation; and

(ii) The purchase agreement is made at the place of business of the seller, within 30 days after the return of the hearing aid.

(4) If a hearing aid is sold in a hospital or related institution, the seller must initiate a refund request with the accounting department of the selling hospital or related institution within 10 days after receiving the notice of cancellation from the purchaser.

(c) After cancellation of the purchase, if the hearing aid has been delivered to the purchaser, the purchaser must make the hearing aid available to the seller in substantially as good condition as when received.

(d) The right of cancellation may not be waived or otherwise surrendered.

(e) (1) The contract or bill of sale for the purchase of a hearing aid shall contain the following statement:

> "You may cancel this purchase for any reason, at any time within 30 days after the date of delivery of the hearing aid. To cover the costs of dispensing the hearing aid, the seller may withhold from the refund 10 percent of the purchase price or the seller's actual costs up to 20 percent of the purchase price."

(2) The statement required under this subsection shall:

(i) Be in bold and conspicuous type of at least 10 point type; and

(ii) Appear on the same page as and above the space for the purchaser's signature.

(f) (1) The seller shall provide to the purchaser at the time of delivery of the hearing aid a notice of cancellation that states the total refundable amount and contains the following information:

"Notice of Cancellation

You may cancel this purchase of a hearing aid within 30 days from the date of delivery of the hearing aid.

If you decide to cancel this contract:

1. You must provide notice of the cancellation in writing, within 30 days of the date of delivery of the hearing aid, to (the seller) at address of seller; and

2. You must make the hearing aid available to the seller, in substantially as good condition as when you received it.

The seller may not attempt to obtain a waiver of your rights to cancel."

(2) If the hearing aid is sold at the seller's place of business and the seller is not located within a hospital or other related institution, the notice shall contain the following statement:

"Cancellation entitles you to a refund of all money you paid, less (choose either 10 percent or the actual cost to the seller as provided in this section), within 30 days after you return the hearing aid to the seller."

(3) If the hearing aid is sold by a seller affiliated with a hospital or other related institution, the notice shall contain the following statement:

"Cancellation entitles you to a refund of all money you paid, less (choose either 10 percent or the actual cost to the seller as provided in this section). The seller must initiate a request for the refund from the selling institution's accounting department within 10 days after you return the hearing aid to the seller."

(4) If the hearing aid is sold at a place other than the seller's place of business the notice shall contain the following statement:

"Cancellation entitles you to a refund of all money you paid less (choose either 10 percent or the actual cost to the seller as provided in this section) within 30 days after the seller receives your notice of cancellation."

(5) The notice of cancellation shall be in 10 point type.

(g) At the time of delivery, the seller shall complete the notice of cancellation by including the date of delivery and the date by which cancellation must be made.

§14–2504.

It is a deceptive trade practice for a seller of hearing aids to:

(1) Misrepresent in any way the purchaser's right to cancel;

(2) Fail to inform a purchaser in writing at the time of the purchase, and at the time of delivery of the right to cancel the contract at any time up to 30 days after the hearing aid has been delivered;

(3) Before furnishing the "Notice of Cancellation" to the purchaser, fail to complete the notice by entering:

(i) The name of the seller;

(ii) The address of the seller's place of business;

(iii) The date of delivery; and

(iv) The date, not earlier than 30 days after the date of delivery, by which the purchaser may give notice of cancellation;

(4) Include in any sales contract or receipt any confession of judgment or waiver of any right to which the purchaser is entitled under this subtitle, including specifically the right to cancel the sale in accordance with the provisions of this subtitle;

(5) Fail to honor a valid notice of cancellation;

(6) Within 30 days of receiving a purchaser's notice of cancellation, fail to notify the purchaser whether the seller intends to repossess or to abandon the delivered hearing aid; or

(7) Fail to refund all payments, less 10 percent or the amount allowed under § 14-2503(b)(2) of this subtitle and payments made for diagnostic tests, made under the purchase agreement within 30 days after:

(i) Receipt of the notice of cancellation if the purchaser's agreement to purchase is made at a place other than the place of business of the seller; or

(ii) Return of the hearing aid, if the purchaser's agreement to purchase is made at the place of business of the seller.

§14–2505.

(a) If a seller violates any provision of this subtitle, the buyer may cancel the sale by notifying the seller, in any manner and by any means, of the buyer's intention to cancel.

(b) If a seller fails to refund all payments in the time required, after the purchase complies with the requirements of the notice of cancellation a purchaser is entitled to payment of an additional 1 percent for each month or part of a month that the refund is not paid.

§14–2506.

Violation of this subtitle is:

(1) An unfair or deceptive trade practice; and

(2) Subject to the provisions of Title 13 of this article.

§14–25A–01.

(a) A distributor of telephone equipment, receivers, or components may not sell, rent, lease, or install telephones that include equipment, receivers, or components preventing the effective use of hearing aid devices unless the distributor notifies the customer that the equipment is incompatible with hearing aid devices.

(b) A person who willfully violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500 or imprisonment not exceeding 6 months or both.

§14–2601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means a natural person.

(c) "Disclosure statement" means a written statement that includes the following information:

(1) A statement that a copy of the current financial statement of the individual or organization on whose behalf the solicitation is made is available on request; and

(2) The name of the individual or organization on whose behalf the solicitation is made and the address and telephone number where requests for a copy of the financial statement should be directed.

(d) (1) "Door-to-door solicitation" means a single or multiple request, directly or indirectly, for money or other valuable consideration or for a pledge or subsequent contribution of money or other valuable consideration, whether or not it is made in exchange for any tangible or intangible item:

(i) That promotes the programs or goals of the organization on whose behalf the solicitation is made;

(ii) That is made in person by the solicitor; and

(iii) Where the consumer's payment, pledge, or promise is made at the consumer's home or residence.

(2) "Door-to-door solicitation" does not include a transaction that:

(i) Is subject to:

1. The consumer debt collection law, Subtitle 2 of this title;

2. The Door-to-Door Sales Act, Subtitle 3 of this title; or

3. The Telephone Solicitation Act, Subtitle 22 of this title;

(ii) Is made in the regular course of business by any person licensed or regulated under:

1. The Insurance Article;

2. Title 11 of this article; or

3. The Business Occupations and Professions Article;

(iii) Is made in the regular course of business by:

1. Any person defined as a financial institution under the Financial Institutions Article;

2. A corporation regulated by the Maryland Public Service Commission; or

3. A broker-dealer or investment advisor registered with the Securities and Exchange Commission or the Maryland Securities Commissioner; or

(iv) Is a solicitation by or on behalf of:

1. A charitable organization, as defined in § 6-101 of the Business Regulation Article, that is exempt from federal income taxation; or

2. A fraternal organization of fire fighters, rescue or ambulance personnel, or police or other law enforcement organization soliciting for charitable purposes.

(e) "Organization" means any group, trust fund, foundation, association, corporation, society, or any combination of entities and includes an entity that is affiliated with an organization that is organized or has its principal place of business outside the State.

(f) "Solicitor" means the individual making a door-to-door solicitation.

§14–2602.

(a) A person making a door-to-door solicitation for any purpose shall comply with this subtitle.

(b) Violation of this subtitle shall be an unfair or deceptive trade practice.

(c) Any payment, pledge, or promise made as a result of a solicitation made in violation of this subtitle is voidable by the consumer.

§14–2603.

(a) (1) When making a door-to-door solicitation, a solicitor may not accept or receive, at the time the solicitation is made, any money, check, or other negotiable instrument, or any other consideration.

(2) This section does not apply to any door-to-door solicitation resulting in the acceptance or receipt by the solicitor, at the time the solicitation is made, of less

than $200 in any money or any other consideration, including the amount of a pledge or promise of subsequent contribution of any money or any other consideration.

(b) When making a door-to-door solicitation, the solicitor shall:

(1) Give the consumer a pledge form;

(2) Inform the consumer of the consumer's right to rescind a pledge made pursuant to a door-to-door solicitation at any time after the door-to-door solicitation and that a pledge to contribute is not an enforceable contract;

(3) Notify the consumer that the solicitor may not accept or receive, at the time the door-to-door solicitation is made, any money, or any other consideration, including the amount of a pledge or promise of subsequent contribution of any money or other consideration, that equals or exceeds $200;

(4) Inform the consumer of the consumer's right to a refund or return of any contribution made pursuant to a door-to-door solicitation if requested within 30 days after the contribution is made;

(5) Provide a disclosure statement to the consumer prior to accepting a door-to-door solicitation; and

(6) Mail within 30 days of a request by a consumer pursuant to a door-to-door solicitation a current financial statement of the individual or organization on whose behalf the solicitation is made at no charge to the person who requested it.

(c) The pledge form given to the consumer shall contain the following information:

(1) The name of the solicitor;

(2) The name and address of the individual or organization on whose behalf the solicitor has made the door-to-door solicitation;

(3) A statement of the general purpose or purposes for which the contribution will be used;

(4) A disclosure statement, as specified in § 14-2601(c) of this subtitle;

(5) The date and amount of the door-to-door solicitation;

(6) The name and address of the consumer;

(7) A statement that the consumer has a right to rescind the pledge at any time after the date of the door-to-door solicitation and that the pledge to contribute is not an enforceable contract; and

(8) A statement that the consumer has a right to a refund or return of any

contribution made pursuant to a door-to-door solicitation, if a request for a refund or return is made in writing within 30 days after the contribution is made, and is delivered by certified mail, return receipt requested.

(d) Within 30 days after receiving a request, a solicitor shall mail a current financial statement at no charge to the person who requested it. The financial statement shall include:

(1) The name, address, and telephone number of the individual or organization on whose behalf the solicitation is made;

(2) (i) The amount of gross revenue received from contributions and the amount and percentage of gross revenue used by the individual or organization on whose behalf the solicitation is made for its management and general expenses, fund-raising expenses, and program service expenses during the preceding fiscal year; or

(ii) If the organization on whose behalf the solicitation is made is newly organized, the estimated percentage of contributions being sought that will be used for its management and general expenses, fund-raising expenses, and program service expenses.

(e) A pledge to contribute under this section is not an enforceable contract.

(f) (1) (i) To receive a refund or return of a contribution made pursuant to a door-to-door solicitation, the consumer must request the refund or return in writing within 30 days after the contribution is made.

(ii) The request must be delivered by certified mail, return receipt requested.

(2) The consumer's contribution shall be refunded or returned to the consumer within 10 days after receipt of a request for a refund or return of the consumer's contribution.

§14–2701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device used for mobility assistance.

(c) "Consumer" means any of the following:

(1) The purchaser of a motorized wheelchair, if the motorized wheelchair was purchased from a motorized wheelchair dealer or manufacturer for purposes other than resale;

(2) A person to whom the motorized wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the motorized wheelchair;

(3) A person who may enforce the warranty; or

(4) A person who leases a motorized wheelchair from a motorized wheelchair lessor under a written lease.

(d) "Demonstrator" means a motorized wheelchair used primarily for the purpose of demonstration to the public.

(e) (1) "Early termination cost" means any expense or obligation that a motorized wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under § 14-2703(c)(3) of this subtitle.

(2) Early termination cost includes a penalty for prepayment under a finance arrangement.

(f) (1) "Early termination savings" means any expense or obligation that a motorized wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in that lease and the return of a motorized wheelchair to a manufacturer under § 14-2703(c)(3) of this subtitle.

(2) Early termination savings includes an interest charge that the motorized wheelchair lessor would have paid to finance the motorized wheelchair or, if the motorized wheelchair lessor does not finance the motorized wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(g) (1) "Manufacturer" means a person who manufactures motorized wheelchairs, and any warrantors of the manufacturer's motorized wheelchairs.

(2) "Manufacturer" does not include a motorized wheelchair dealer.

(h) "Motorized wheelchair" means any motor-driven wheelchair, scooter, or other wheeled device that is designed to provide mobility assistance for an individual with a disability, including a demonstrator, that a consumer purchases or accepts transfer of in the State.

(i) "Motorized wheelchair dealer" means a person who is in the business of selling motorized wheelchairs.

(j) "Motorized wheelchair lessor" means a person who leases a motorized wheelchair to a consumer, or who holds the lessor's rights, under a written lease.

(k) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a motorized wheelchair or any of its component parts, and that is covered by an express warranty applicable to the motorized wheelchair or to a component of the motorized wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the motorized wheelchair by a consumer.

(l) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new motorized wheelchair or within 1 year after first delivery of the motorized wheelchair to a consumer, whichever is sooner:

(1) The same nonconformity with the warranty is subject to repair at least four times by the manufacturer, motorized wheelchair lessor, or any of the manufacturer's authorized motorized wheelchair dealers and the nonconformity continues; or

(2) The motorized wheelchair is out of service for an aggregate of at least 30 days because of warranty nonconformities.

§14–2702.

(a) A manufacturer who sells a new motorized wheelchair to a consumer, either directly or through a motorized wheelchair dealer, shall furnish the consumer with an express written warranty for the new motorized wheelchair warranting parts and performance.

(b) The duration of the express written warranty may not be less than 1 year after first delivery of the new motorized wheelchair to the consumer.

(c) If a manufacturer fails to furnish an express written warranty as required by this section, the new motorized wheelchair shall be covered by an express warranty, as if the manufacturer had furnished an express written warranty to the consumer as required by this section.

§14–2703.

(a) If a new motorized wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the motorized wheelchair lessor, or to any of the manufacturer's authorized motorized wheelchair dealers, and makes the motorized wheelchair available for repair before 1 year after first delivery of the motorized wheelchair to a consumer, the nonconformity shall be repaired at the manufacturer's expense to correct the nonconformity regardless of whether the repairs are made after expiration of the warranty rights period.

(b) If in any subsequent proceeding it is determined that the consumer's repair did not qualify for repair under this article, and the manufacturer was not otherwise obligated to repair the motorized wheelchair, the consumer shall be liable to the manufacturer for costs of repair.

(c) (1) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall carry out the requirement under paragraph (2) or (3) of this subsection, whichever is appropriate.

(2) At the direction of the consumer, except a consumer who leases a motorized wheelchair, the manufacturer shall do one of the following:

(i) Accept return of the motorized wheelchair or any of its component parts and replace it with a comparable new motorized wheelchair or any of its component parts and refund any collateral costs.

(ii) Accept return of the motorized wheelchair and refund to the consumer and to any holder of a perfected security interest in the consumer's motorized wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. The reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the motorized wheelchair by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the motorized wheelchair was driven before the consumer first reported the nonconformity to the motorized wheelchair dealer.

(3) At the direction of a consumer who leases a motorized wheelchair, the manufacturer shall:

(i) Accept return of the motorized wheelchair;

(ii) Refund to the motorized wheelchair lessor and to any holder of a perfected security interest in the motorized wheelchair, as their interest may appear, the current value of the written lease as defined in subsection (d) of this section; and

(iii) Refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use as defined in subsection (e) of this section.

(d) The current value of the written lease equals the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination plus the motorized wheelchair dealer's early termination costs and the value of the motorized wheelchair at the lease expiration date if the lease sets forth that value, less the motorized wheelchair lessor's early termination savings.

(e) A reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is 1,825 and the numerator of which is the number of days that the consumer drove the motorized wheelchair before first reporting the nonconformity to the manufacturer, motorized wheelchair lessor, or motorized wheelchair dealer.

(f) To receive a comparable new motorized wheelchair or a refund due under

subsection (c)(1) or (2) of this section, a consumer, except a consumer who leases a motorized wheelchair, shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the consumer with a comparable new motorized wheelchair or a refund. When the manufacturer provides the new motorized wheelchair or refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer, along with any endorsements necessary to transfer legal possession to the manufacturer.

(g) (1) To receive a refund due under subsection (c)(3) of this section, a consumer who leases a motorized wheelchair shall offer to return the motorized wheelchair having the nonconformity to the manufacturer of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return the motorized wheelchair having the nonconformity to the manufacturer.

(2) To receive a refund due under subsection (c)(3) of this section, a motorized wheelchair lessor shall offer to transfer possession of the motorized wheelchair having the nonconformity to the manufacturer of that motorized wheelchair. No later than 30 days after that offer, the manufacturer shall provide the refund to the motorized wheelchair lessor. When the manufacturer provides the refund, the motorized wheelchair lessor shall provide any endorsements necessary to transfer legal possession to the manufacturer.

(3) A person may not enforce the lease against the consumer after the consumer receives a refund due under subsection (c)(3) of this section.

(h) A motorized wheelchair returned by a consumer or motorized wheelchair lessor in this State under subsection (c) of this section, or by a consumer or motorized wheelchair lessor in another state under a similar law of that state, may not be sold or leased again in this State unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

§14–2704.

(a) (1) This subtitle may not be deemed to limit rights or remedies available to a consumer under any other law or contract.

(2) A consumer's rights under this subtitle may not be limited by the provisions of Title 2A of the Uniform Commercial Code.

(b) Any waiver by a consumer of rights under this subtitle is void.

§14–2705.

(a) A violation of this subtitle shall be an unfair or deceptive trade practice under Title 13 of this article.

(b) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this subtitle. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss together with costs, disbursements, and reasonable attorney fees and any equitable relief that the court determines is appropriate.

§14–2706.

This subtitle may be cited as "The Motorized Wheelchair Warranty Enforcement Act".

§14–2801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Blind" means that an individual's visual acuity:

(1) Does not exceed 20/200 in the better eye with correcting lenses; or

(2) Exceeds 20/200 but with a field of vision that at the widest diameter subtends an angle not greater than 20 degrees.

(c) (1) "Direct labor hours" includes all hours spent in the manufacture and assembly of a product made by blind individuals.

(2) "Direct labor hours" do not include time spent in the administration, supervision, shipping, and inspection of a product made by blind individuals.

(d) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Product made by the blind" means a product if not less than 75% of the total personnel engaged in the direct labor hours in the manufacture and assembly of the product are blind workers.

§14–2802.

This subtitle does not authorize the identification of products as made by blind individuals if the direct labor performed by blind individuals in connection with the products consists solely of the packaging or packing of the products, and not the manufacture and assembly of the products.

§14–2803.

A person may not sell or offer for sale any product falsely represented to be a product made by the blind.

§14–2804.

(a) This section does not apply to:

(1) The offer to sell or sale of products known as "blinds"; or

(2) An individual whose given name is "blind".

(b) A person that has products for sale may not use the word "blind" in the name or title of the person, association, or corporation unless the person limits its sales to products made by the blind.

§14–2805.

(a) This section does not apply to products made and sold by self-employed blind individuals who reside in the State.

(b) Products made by the blind may not be sold without a mark on the products that:

(1) Identifies the products as made by the blind; and

(2) Identifies the organization that made the products.

§14–2806.

(a) Each person that is engaged in the State in the business of telephone solicitation or door-to-door sales of products made by the blind shall:

(1) Register with Blind Industries and Services of Maryland; and

(2) Obtain a permit for each person selling or soliciting the sale of products made by the blind.

(b) A product made by the blind may not be sold in the State unless the seller holds a valid permit issued under this section.

(c) Unless earlier revoked for good cause shown, a permit issued under this section is valid for 1 year.

(d) The fee for each permit and each renewal of a permit shall be:

(1) 50 cents for a person that resides or has its main office in the State; and

(2) $5.00 for a person that does not reside or have its main office in the State.

(e) (1) Blind Industries and Services of Maryland shall investigate, under

rules and regulations that it adopts for the administration of this subtitle, each application filed under this section to ensure that the applicant actually is engaged in the manufacture or distribution of products made by the blind.

(2) Blind Industries and Services of Maryland may register, without investigation, nonresident persons and out-of-state associations and corporations on proof that the persons, associations, or corporations are recognized and approved by the state of their residence or organization under a law of that state that imposes requirements substantially similar to those prescribed under this subtitle.

(f) A person that violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 or imprisonment not exceeding 30 days or both.

§14–2807.

(a) A person that violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) A fine not exceeding $100 and the costs of prosecution; or

(2) In default of payment of the amount provided in item (1) of this subsection, imprisonment not exceeding 30 days.

(b) Each sale of, or offer to sell, products in violation of this subtitle is a separate offense.

§14–2901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertise" means:

(1) To publish, circulate, disseminate, or place before the public in any way or through any medium for the purpose of selling merchandise; and

(2) Advertising by:

(i) Exterior or interior signs, including neon or other electrical signs;

(ii) Radio, telephone, or television; and

(iii) Newspaper, magazine, book, notice, or any other method or material.

(c) "Person" includes an association, firm, partnership, corporation, or an agent or employee of any of these entities.

(d) "Property", as used in § 14-2902(a) through (c) of this subtitle, includes:

(1) Merchandise;

(2) Real estate;

(3) Securities;

(4) Employment;

(5) A loan made at interest;

(6) Any contract relating to real estate, securities, service, employment, or the making of loans at interest; or

(7) Anything else of value.

§14–2902.

(a) For the purpose of purchasing, selling, or disposing of property or a service, a person may not advertise a statement containing a representation of fact that the person knows, or by the exercise of reasonable care should know, to be untrue, deceptive, or misleading.

(b) A person may not offer for sale repossessed, reconditioned, rebuilt, or secondhand property, knowing the property to be repossessed, reconditioned, rebuilt, or secondhand, unless:

(1) The property is identified clearly as repossessed, reconditioned, rebuilt, or secondhand; or

(2) The circumstances of the sale make it clear to a reasonable purchaser that the property is repossessed, reconditioned, rebuilt, or secondhand.

(c) A person may not knowingly advertise for sale property or a service that the person does not possess or control for the purpose of inducing or increasing the sale of other property or service that the person possesses or controls.

(d) (1) A person who issues, sells, or offers to sell a passenger ticket to board a vessel may not omit reference to the country of registry of the vessel in any advertisement or any other similar printed paper or notice, written or oral, regarding:

(i) The voyage or the ticket that entitles or purports to entitle its owner, purchaser, or holder to the voyage;

(ii) The vessel for which the voyage is sold or offered;

(iii) The line that the vessel is part of; or

(iv) If applicable, that the person is an agent for the line or vessel.

(2) Reference in a printed advertisement to the country of registry of the vessel shall be no less prominently displayed than the balance of the material appearing in the advertisement.

(e) A person may not advertise for sale property subject to a ground rent at a stated price or on terms stating the amount of any installment payments without also stating the amount of the annual ground rent for the property.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $1,000 or both.

§14–2903.

(a) A person may not advertise for sale merchandise, commodities, or service through an advertisement describing the merchandise, commodities, or service:

(1) As part of a plan or scheme with the intent not to sell the merchandise, commodity, or service at the advertised price; or

(2) With the intent not to sell the merchandise, commodity, or service.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding $500 or both.

§14–3001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Commercial electronic mail" means electronic mail that advertises real property, goods, or services for sale or lease.

(2) "Commercial electronic mail" does not include electronic mail to which an interactive computer service provider has attached an advertisement in exchange for free use of an electronic mail account.

(c) (1) "Interactive computer service provider" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer service.

(2) "Interactive computer service provider" includes a service or system that provides access to the Internet and systems operated or services offered by a library or educational institution.

§14–3002.

(a) This section does not apply to an interactive computer service provider or a

telecommunication utility to the extent that the interactive computer service provider or the telecommunication utility merely handles, retransmits, or carries a transmission of commercial electronic mail.

(b) A person may not initiate the transmission, conspire with another person to initiate the transmission, or assist in the transmission of commercial electronic mail that:

(1) Is from a computer in the State or is sent to an electronic mail address that the sender knows or should have known is held by a resident of the State; and

(2) (i) Uses a third party's Internet domain name or electronic mail address without the permission of the third party;

(ii) Contains false or misleading information about the origin or the transmission path of the commercial electronic mail; or

(iii) Contains false or misleading information in the subject line that has the capacity, tendency, or effect of deceiving the recipient.

(c) A person is presumed to know that the intended recipient of commercial electronic mail is a resident of the State if the information is available on request from the registrant of the Internet domain name contained in the recipient's electronic mail address.

(d) An interactive computer service provider:

(1) May block the receipt or transmission through its interactive computer service of commercial electronic mail that it reasonably believes is or will be sent in apparent violation of this section; and

(2) May not be held liable for an action under item (1) of this subsection that is voluntarily taken in good faith.

§14–3003.

A person who violates this subtitle is liable for reasonable attorney's fees and for damages:

(1) To the recipient of commercial electronic mail, in an amount equal to the greater of $500 or the recipient's actual damages;

(2) To the third party without whose permission the third party's Internet domain name or electronic mail address was used, in an amount equal to the greater of $500 or the third party's actual damages; and

(3) To an interactive computer service provider, in an amount equal to the greater of $1,000 or the interactive computer service provider's actual damages.

§14–3101.

(a) In this subtitle the following words have the meanings indicated.

(b) "Carrier's lien" means a lien established under § 7-307 of this article.

(c) "Consumer" has the meaning stated in § 13-101 of this article.

(d) "Household goods" means goods used primarily for personal, family, or household purposes.

(e) "Household goods mover" means a person who provides household goods moving services.

(f) (1) "Household goods moving services" means the loading, packing, moving, transporting, storing while in transit, unloading, or otherwise taking possession or control from a consumer of household goods for the purpose of moving them to another location at the direction of the consumer for a fee.

(2) "Household goods moving services" does not include moving household goods for disposal or destruction.

§14–3102.

A household goods mover may not enforce or threaten to enforce a carrier's lien against, or refuse to deliver, a consumer's household goods when providing household goods moving services for an intrastate move.

§14–3103.

(a) In this section, "excess charges" means an amount, in excess of the estimate provided to a consumer, charged by a household goods mover for additional services that:

(1) Are provided before or during an intrastate move; and

(2) Are necessary because of circumstances that:

(i) Are beyond the control of the household goods mover; and

(ii) Could not have been reasonably anticipated by the household goods mover.

(b) Subject to subsection (e) of this section, a household goods mover shall provide a written estimate to a consumer before providing household goods moving services for an intrastate move.

(c) The written estimate shall:

(1) Separately identify each household goods moving service that the household goods mover will provide and the price of each service;

(2) Separately identify each fee that the consumer will or may be required to pay;

(3) State the estimated total price;

(4) State the time and method of payment for the household goods moving services; and

(5) Indicate clearly whether the estimate is binding on the consumer and household goods mover.

(d) (1) A consumer who receives a binding estimate from a household goods mover may not be required to pay more than the estimated total price stated in the estimate for the household goods moving services described in the estimate.

(2) A consumer who receives a nonbinding estimate from a household goods mover may not be required to pay more than 125% of the estimated total price stated in the estimate for the household goods moving services described in the estimate, plus any applicable excess charges.

(e) A consumer may waive the right to receive a written estimate under subsection (a) of this section if the waiver is made voluntarily and without coercion by the household goods mover.

§14–3104.

On completion of household goods moving services for an intrastate move for a consumer, a household goods mover shall provide the consumer with a written receipt that states:

(1) The household goods mover's legal name; and

(2) The address and telephone number of:

(i) The household goods mover's resident agent in the State; or

(ii) If the household goods mover does not have a resident agent in the State, the household goods mover's principal place of business.

§14–3105.

(a) A violation of this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty provisions contained in Title 13 of this article.

(b) In addition to being subject to the enforcement and penalty provisions

contained in Title 13 of this article, a household goods mover that violates this subtitle is subject to any other civil or criminal action provided by law.

§14–3106.

This subtitle may be cited as the Maryland Household Goods Movers Act.

§14–3201.

A person may not violate:

(1) The Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 through 6108, as implemented by the Federal Trade Commission in the Telemarketing Sales Rule (16 C.F.R. Part 310); or

(2) The Telephone Consumer Protection Act, 47 U.S.C. § 227, as implemented by the Federal Communications Commission in the Restrictions on Telemarketing and Telephone Solicitations Rule (47 C.F.R. Part 64, Subpart L).

§14–3202.

(a) A violation of this subtitle is an unfair or deceptive trade practice within the meaning of Title 13 of this article and is subject to the enforcement and penalty provisions contained in Title 13 of this article.

(b) In addition to the remedies provided in § 13-408 of this article, an individual who is affected by a violation of this subtitle may bring an action against a person that violates this subtitle to recover:

(1) Reasonable attorney's fees; and

(2) Damages in the amount of the greater of:

(i) $500 for each violation; or

(ii) Actual damages sustained as a result of the violation.

(c) For purposes of this section, each prohibited telephone solicitation and each prohibited practice during a telephone solicitation is a separate violation.

§14–3301.

(a) In this subtitle the following words have the meanings indicated.

(b) "Client" means a noncitizen or any person seeking to sponsor a noncitizen for whom an immigration consultant performs or offers to perform a service relating to the noncitizen's immigration status.

(c) "Immigration consultant" means a person that provides nonlegal advice,

guidance, information, or services to a client on an immigration matter for a fee.

(d) "Immigration matter" means any legal proceeding, filing, or action that:

(1) Affects the immigration status of a noncitizen; and

(2) Arises under:

(i) Any immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(ii) An action of the United States Department of Homeland Security, the United States Department of Labor, the United States Department of State, the United States Department of Justice, or the United States Department of Commerce.

(e) (1) "Legal services" means the legal representation of an individual.

(2) "Legal services" includes providing forms to an individual, completing forms on behalf of an individual, filing forms on behalf of an individual, advising an individual to file forms, or applying for a benefit on behalf of an individual.

(f) "Secretarial services" means:

(1) Writing, typing, or copying information as provided by an individual; or

(2) Translating documents into English for an individual.

§14–3302.

This subtitle does not apply to:

(1) An attorney licensed to practice law in the State;

(2) An individual authorized to represent individuals in immigration matters under 8 C.F.R. § 292.1;

(3) A nonprofit organization that has been recognized under 8 C.F.R. § 292.2;

(4) A representative of a nonprofit organization that has been recognized under 8 C.F.R. § 292.2; or

(5) A clinic affiliated with a law school in the State.

§14–3303.

An immigration consultant may not:

(1) Provide legal advice or legal services concerning an immigration matter;

(2) Make a misrepresentation or false statement to influence, persuade, or encourage a client to use services provided by the immigration consultant;

(3) Make a statement that the immigration consultant can or will obtain special favors from or has special influence with the United States Department of Homeland Security, the United States Department of Labor, the United States Department of State, the United States Department of Justice, or the United States Department of Commerce;

(4) Collect any fees or other compensation for services not yet performed;

(5) Refuse to return documents supplied by, prepared by, or paid for by a client, at the client's request; or

(6) Represent, advertise, or communicate in any manner that the immigration consultant possesses titles or credentials that would qualify the immigration consultant to provide legal advice or legal services.

§14–3304.

(a) Before providing any assistance, an immigration consultant shall execute a written contract with the client that includes:

(1) A detailed explanation of the services to be performed;

(2) An itemization of all fees to be charged to the client;

(3) A statement that the client has the right to consult an attorney before signing the contract;

(4) A statement that the client has the right to rescind the contract within 72 hours of signing;

(5) The statement, "I am not an attorney licensed to practice law in Maryland, and may not provide legal forms, provide legal advice, or provide legal services", which shall be conspicuously placed in the contract in at least 12 point type; and

(6) The statement, "I cannot accept a fee for referring a client to another person for services that I cannot or will not perform", which shall be conspicuously placed in the contract in at least 12 point type.

(b) The written contract shall be in English and in each language in which the immigration consultant provides services.

(c) The immigration consultant shall provide a copy of the contract to the client on execution.

(d) The immigration consultant shall return any documents provided by the client at the client's request, even in the event of a fee dispute.

§14–3305.

An immigration consultant shall post, in a conspicuous location at each place of business at which the immigration consultant provides immigration consulting services, a sign that states, "I am not an attorney licensed to practice law in Maryland, and may not provide legal forms, provide legal advice, or provide legal services."

§14–3306.

(a) An immigration consultant that violates this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both, in addition to any civil penalties imposed under subsection (b) of this section.

(b) An individual injured by a violation of any provision of this subtitle may bring an action to recover:

(1) Any fees or other compensation paid to the immigration consultant; and

(2) Reasonable attorney's fees in an amount equal to the greater of:

(i) $2,000;

(ii) One-third of the amount obtained under item (1) of this subsection; or

(iii) One-third of the amount obtained under subsection (c) of this section, if applicable.

(c) The court may award up to three times the amount of damages authorized under subsection (b)(1) of this section.

§14–3401.

(a) In this subtitle the following words have the meanings indicated.

(b) "Interactive computer service provider" means an entity that provides a service that provides or enables computer access via the Internet by multiple users to a computer server or similar device used for the storage of images, information, or data.

(c) (1) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or

common interest, or any other commercial entity.

(2) "Person" does not include a unit of State or local government.

(d) "Publicly post or display" means to intentionally communicate or otherwise make available to the general public.

§14–3402.

(a) Except as otherwise provided in this subtitle, a person may not:

(1) Publicly post or display an individual's Social Security number;

(2) Print an individual's Social Security number on a card required for the individual to access products or services provided by the person;

(3) Require an individual to transmit the individual's Social Security number over the Internet unless the connection is secure or the individual's Social Security number is encrypted;

(4) Initiate the transmission of an individual's Social Security number over the Internet unless the connection is secure or the Social Security number is encrypted;

(5) Require an individual to use the individual's Social Security number to access an Internet Web site, unless a password, unique personal identification number, or other authentication device is also required to access the Web site; or

(6) Unless required by State or federal law:

(i) Print an individual's Social Security number on any material that is mailed to the individual;

(ii) Include an individual's Social Security number in any material that is electronically transmitted to the individual, unless the connection is secure or the individual's Social Security number is encrypted; or

(iii) Include an individual's Social Security number in any material that is transmitted by facsimile to the individual.

(b) This section does not apply to:

(1) The collection, release, or use of an individual's Social Security number as required by State or federal law;

(2) The inclusion of an individual's Social Security number in an application, form, or document sent by mail, electronically transmitted, or transmitted by facsimile:

(i) As part of an application or enrollment process;

(ii) To establish, amend, or terminate an account, contract, or policy; or

(iii) To confirm the accuracy of the individual's Social Security number;

(3) The use of an individual's Social Security number for internal verification or administrative purposes; or

(4) An interactive computer service provider's or a telecommunications provider's transmission or routing of, or intermediate temporary storage or caching of, an individual's Social Security number.

(c) This section does not impose a duty on an interactive computer service provider or a telecommunications provider actively to monitor its service or affirmatively to seek evidence of the transmission of Social Security numbers on its service.

§14–3501.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Business" means a sole proprietorship, partnership, corporation, association, or any other business entity, whether or not organized to operate at a profit.

(2) "Business" includes a financial institution organized, chartered, licensed, or otherwise authorized under the laws of this State, any other state, the United States, or any other country, and the parent or subsidiary of a financial institution.

(c) "Encrypted" means the transformation of data through the use of an algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key.

(d) (1) "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when the name or the data elements are not encrypted, redacted, or otherwise protected by another method that renders the information unreadable or unusable:

(i) A Social Security number;

(ii) A driver's license number;

(iii) A financial account number, including a credit card number or debit card number, that in combination with any required security code, access code,

or password, would permit access to an individual's financial account; or

(iv) An Individual Taxpayer Identification Number.

(2) "Personal information" does not include:

(i) Publicly available information that is lawfully made available to the general public from federal, State, or local government records;

(ii) Information that an individual has consented to have publicly disseminated or listed; or

(iii) Information that is disseminated or listed in accordance with the federal Health Insurance Portability and Accountability Act.

(e) "Records" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§14–3502.

(a) In this section, "customer" means an individual residing in the State who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(b) When a business is destroying a customer's records that contain personal information of the customer, the business shall take reasonable steps to protect against unauthorized access to or use of the personal information, taking into account:

(1) The sensitivity of the records;

(2) The nature and size of the business and its operations;

(3) The costs and benefits of different destruction methods; and

(4) Available technology.

§14–3503.

(a) To protect personal information from unauthorized access, use, modification, or disclosure, a business that owns or licenses personal information of an individual residing in the State shall implement and maintain reasonable security procedures and practices that are appropriate to the nature of the personal information owned or licensed and the nature and size of the business and its operations.

(b) (1) A business that uses a nonaffiliated third party as a service provider to perform services for the business and discloses personal information about an individual residing in the State under a written contract with the third party shall require by contract that the third party implement and maintain reasonable security procedures and practices that:

(i) Are appropriate to the nature of the personal information disclosed to the nonaffiliated third party; and

(ii) Are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction.

(2) This subsection shall apply to a written contract that is entered into on or after January 1, 2009.

§14–3504.

(a) In this section:

(1) "Breach of the security of a system" means the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of the personal information maintained by a business; and

(2) "Breach of the security of a system" does not include the good faith acquisition of personal information by an employee or agent of a business for the purposes of the business, provided that the personal information is not used or subject to further unauthorized disclosure.

(b) (1) A business that owns or licenses computerized data that includes personal information of an individual residing in the State, when it discovers or is notified of a breach of the security of a system, shall conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information of the individual has been or will be misused as a result of the breach.

(2) If, after the investigation is concluded, the business determines that misuse of the individual's personal information has occurred or is reasonably likely to occur as a result of a breach of the security of a system, the business shall notify the individual of the breach.

(3) Except as provided in subsection (d) of this section, the notification required under paragraph (2) of this subsection shall be given as soon as reasonably practicable after the business conducts the investigation required under paragraph (1) of this subsection.

(4) If after the investigation required under paragraph (1) of this subsection is concluded, the business determines that notification under paragraph (2) of this subsection is not required, the business shall maintain records that reflect its determination for 3 years after the determination is made.

(c) (1) A business that maintains computerized data that includes personal information that the business does not own or license shall notify the owner or licensee of the personal information of a breach of the security of a system if it is likely that the breach has resulted or will result in the misuse of personal information of an individual residing in the State.

(2) Except as provided in subsection (d) of this section, the notification required under paragraph (1) of this subsection shall be given as soon as reasonably practicable after the business discovers or is notified of the breach of the security of a system.

(3) A business that is required to notify an owner or licensee of personal information of a breach of the security of a system under paragraph (1) of this subsection shall share with the owner or licensee information relative to the breach.

(d) (1) The notification required under subsections (b) and (c) of this section may be delayed:

(i) If a law enforcement agency determines that the notification will impede a criminal investigation or jeopardize homeland or national security; or

(ii) To determine the scope of the breach of the security of a system, identify the individuals affected, or restore the integrity of the system.

(2) If notification is delayed under paragraph (1)(i) of this subsection, notification shall be given as soon as reasonably practicable after the law enforcement agency determines that it will not impede a criminal investigation and will not jeopardize homeland or national security.

(e) The notification required under subsections (b) and (c) of this section may be given:

(1) By written notice sent to the most recent address of the individual in the records of the business;

(2) By electronic mail to the most recent electronic mail address of the individual in the records of the business, if:

(i) The individual has expressly consented to receive electronic notice; or

(ii) The business conducts its business primarily through Internet account transactions or the Internet;

(3) By telephonic notice, to the most recent telephone number of the individual in the records of the business; or

(4) By substitute notice as provided in subsection (f) of this section, if:

(i) The business demonstrates that the cost of providing notice would exceed $100,000 or that the affected class of individuals to be notified exceeds 175,000; or

(ii) The business does not have sufficient contact information to give

notice in accordance with item (1), (2), or (3) of this subsection.

(f) Substitute notice under subsection (e)(4) of this section shall consist of:

(1) Electronically mailing the notice to an individual entitled to notification under subsection (b) of this section, if the business has an electronic mail address for the individual to be notified;

(2) Conspicuous posting of the notice on the Web site of the business, if the business maintains a Web site; and

(3) Notification to statewide media.

(g) The notification required under subsection (b) of this section shall include:

(1) To the extent possible, a description of the categories of information that were, or are reasonably believed to have been, acquired by an unauthorized person, including which of the elements of personal information were, or are reasonably believed to have been, acquired;

(2) Contact information for the business making the notification, including the business' address, telephone number, and toll–free telephone number if one is maintained;

(3) The toll–free telephone numbers and addresses for the major consumer reporting agencies; and

(4) (i) The toll–free telephone numbers, addresses, and Web site addresses for:

1. The Federal Trade Commission; and

2. The Office of the Attorney General; and

(ii) A statement that an individual can obtain information from these sources about steps the individual can take to avoid identity theft.

(h) Prior to giving the notification required under subsection (b) of this section and subject to subsection (d) of this section, a business shall provide notice of a breach of the security of a system to the Office of the Attorney General.

(i) A waiver of any provision of this section is contrary to public policy and is void and unenforceable.

(j) Compliance with this section does not relieve a business from a duty to comply with any other requirements of federal law relating to the protection and privacy of personal information.

§14–3505.

The provisions of this subtitle are exclusive and shall preempt any provision of local law.

§14–3506.

(a) If a business is required under § 14–3504 of this subtitle to give notice of a breach of the security of a system to 1,000 or more individuals, the business also shall notify, without unreasonable delay, each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a(p), of the timing, distribution, and content of the notices.

(b) This section does not require the inclusion of the names or other personal identifying information of recipients of notices of the breach of the security of a system.

§14–3507.

(a) In this section, "affiliate" means a company that controls, is controlled by, or is under common control with a business described in subsection (c)(1) of this section.

(b) A business that complies with the requirements for notification procedures, the protection or security of personal information, or the destruction of personal information under the rules, regulations, procedures, or guidelines established by the primary or functional federal or State regulator of the business shall be deemed to be in compliance with this subtitle.

(c) (1) A business that is subject to and in compliance with § 501(b) of the federal Gramm–Leach–Bliley Act, 15 U.S.C. § 6801, § 216 of the federal Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681w, the federal Interagency Guidelines Establishing Information Security Standards, and the federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, and any revisions, additions, or substitutions, shall be deemed to be in compliance with this subtitle.

(2) An affiliate that complies with § 501(b) of the federal Gramm–Leach–Bliley Act, 15 U.S.C. § 6801, § 216 of the federal Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681w, the federal Interagency Guidelines Establishing Information Security Standards, and the federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice, and any revisions, additions, or substitutions, shall be deemed to be in compliance with this subtitle.

§14–3508.

A violation of this subtitle:

(1) Is an unfair or deceptive trade practice within the meaning of Title 13

of this article; and

(2) Is subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–3601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Advertisement" has the meaning stated in § 13–101 of this article.

(c) "Disclosure statement" means the form provided by the Attorney General for the purpose of disclosing to consumers practices relating to the preparation, handling, and sale of any unpackaged food represented to be halal.

(d) "Division" means the Division of Consumer Protection of the Office of the Attorney General.

(e) (1) "Food" or "food product" means any food, food product, or food preparation, whether:

(i) Raw, solid, or liquid; or

(ii) Prepared for human consumption.

(2) "Food" or "food product" includes:

(i) Any meat, meat product, or meat preparation; and

(ii) Any poultry or poultry product.

(f) "Halal" means prepared or processed in accordance with Islamic religious requirements.

(g) "Meat" includes any meat product or meat preparation.

(h) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(i) (1) "Represents to the public" means any direct or indirect statement, oral or written, and any letter, word, sign, emblem, insignia, or mark which could reasonably lead a consumer to believe that a representation is being made that the final food product sold to the consumer is halal.

(2) "Represents to the public" includes an advertisement.

§14–3602.

(a) (1) A person that represents to the public that any unpackaged food that is sold or served is halal shall prominently and conspicuously display on the premises on which the food is sold or served a complete disclosure statement.

(2) The Division shall:

(i) Develop a form for disclosure statements; and

(ii) Make the form available to any person on request.

(3) The disclosure statement shall:

(i) Be understandable and written in simple and readable plain language;

(ii) Disclose to the public the basis for a representation that any unpackaged food sold or served is halal, including a specification of practices relating to the preparation, handling, and sale of the food; and

(iii) Contain any additional information or conform to any additional requirements that the Division considers reasonable and necessary to carry out the provisions of this subtitle.

(4) A person that displays a disclosure statement in accordance with this section shall:

(i) Retain a copy of the disclosure statement, and any amendment to the disclosure statement, for at least 3 years from the date on which the person no longer represents to the public that any unpackaged food that is sold or served on the premises is halal; and

(ii) Provide a copy of the disclosure statement to the Division within 2 business days after the person's receipt of a request from the Division for a copy of the disclosure statement.

(5) A person shall conform its practices with respect to the sale or serving of unpackaged food that is represented to the public as halal to the standard displayed in the disclosure statement.

(b) A person may not sell or offer for sale any food represented to the public as halal, whether for consumption in the person's place of business or elsewhere, if, in the same place of business, the person also offers for sale any food, not represented to the public as halal, unless the person includes on each window sign and display advertisement in block letters at least 4 inches high the words "halal and nonhalal food sold here" or, as to the sale of meat alone, "halal and nonhalal meat sold here".

(c) A person may not sell or offer for sale any food product, whether for consumption in the person's place of business or elsewhere, and falsely represent it to the public as halal.

(d) A person may not falsely represent, with intent to defraud, any food product or the contents of any package or container to be halal, by having or permitting to be inscribed on the package or container the word "halal" in English.

(e) A person may not display for sale, with intent to defraud, any food represented to the public as halal, whether for consumption in the person's place of business or elsewhere, if, in the same show window or other location on or in the place of business, the person also displays any food not represented to the public as halal, unless the person displays over the halal and nonhalal food signs that read, in block letters at least 4 inches high, "halal food" and "nonhalal food", respectively, or, as to the display of meat alone, "halal meat" and "nonhalal meat", respectively.

(f) (1) In this subsection, "Arabic character" means:

(i) Any Arabic word or letter; or

(ii) Any symbol, emblem, sign, insignia, or other mark that simulates an Arabic word or letter.

(2) In connection with any place of business that sells or offers for sale any food, a person may not display, whether in a window, door, or other location on or in the place of business, in any handbill or other printed matter distributed in or outside of the place of business, or otherwise in any advertisement, any Arabic characters, or any other representation to the public that the place of business sells or offers for sale halal food or meat, unless the person also displays in conjunction with the Arabic characters or other representation, in English, letters of at least the same size as the Arabic characters, the words "we sell halal meat and food only", "we sell nonhalal meat and food only", or "we sell both halal and nonhalal meat and food", as appropriate.

(g) Possession of nonhalal food in any place of business advertising the sale of halal food only is presumptive evidence that the person in possession offers the nonhalal food for sale with intent to defraud.

§14–3603.

A person may not:

(1) Willfully mark, stamp, tag, brand, label, or in any other way or by any other means of identification represent, or cause to be marked, stamped, tagged, branded, labeled, or represented, as halal a food product that is not halal;

(2) Willfully remove, deface, obliterate, cover, alter, or destroy, or cause to be removed, defaced, obliterated, covered, altered, or destroyed, the original slaughterhouse plumba or any other mark, stamp, tag, brand, label, or any other

means of identification affixed to food products to indicate that those food products are halal; or

(3) Knowingly sell, dispose of, or have in the person's possession, for the purpose of resale to another person as halal:

(i) Any food product not having affixed to the food product the original slaughterhouse plumba or any other mark, stamp, tag, brand, label, or other means of identification employed to indicate that the food product is halal; or

(ii) Any food product to which the slaughterhouse plumba, mark, stamp, tag, brand, label, or other means of identification has been fraudulently affixed.

§14–3604.

A violation of this subtitle is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of this article.

§14–3701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Child" means an individual under the age of 18 years.

(c) "Computer network" means the computer network commonly known as the Internet and any other local, regional, or global computer network that is similar to or is a predecessor of or successor to the Internet.

(d) "Internet" means the international computer network of both federal and nonfederal interoperable packet–switched data networks.

(e) (1) "Internet access provider" means a provider that offers directly to residential customers an interactive computer service to obtain access to the Internet in exchange for consideration, such as through a paid subscription or through an agreement to view specific advertising or other content.

(2) "Internet access provider" does not include a library or educational institution that operates or offers an interactive computer service to obtain access to the Internet.

(f) (1) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer service.

(2) "Interactive computer service" includes a service or system that provides access to the Internet and systems operated or services offered by a library or educational institution.

(g) "Parental control" means a product or service to control the access of a child to the Internet.

§14–3702.

It is the intent of the General Assembly that this subtitle promote the dissemination of qualifying parental controls for the protection of children in the State subject to appropriate and beneficial oversight by their parents and families.

§14–3703.

This subtitle applies to an Internet access provider that knows or has reason to know that a subscriber currently resides in the State.

§14–3704.

(a) (1) Subject to paragraph (2) of this subsection, an Internet access provider shall make a parental control that satisfies the requirements of this section available to each subscriber in the State.

(2) The Internet access provider may not be required to provide a parental control that is not reasonably and commercially available for the technology that the subscriber uses to obtain access to the Internet.

(b) A parental control shall allow the subscriber, in a commercially reasonable manner, to:

(1) Block all access to the Internet; and

(2) (i) Block a child's access to Web sites by specifying prohibited Web sites or by selecting a category of sites to block;

(ii) Restrict a child's access exclusively to Web sites that the subscriber approves or a category of Web sites that the subscriber approves;

(iii) Restrict a child's access to Web sites that the parental control provider designates; or

(iv) Monitor a child's use of the Internet by providing a report to the subscriber indicating:

1. Each specific Web site that the child has attempted to visit but was unable to view because the subscriber blocked or restricted access to the Web site; or

2. Each specific Web site that the child has visited.

§14–3705.

(a) The Internet access provider shall make available to the subscriber, at or near the time of subscription, a parental control that satisfies the requirements of § 14–3704 of this subtitle.

(b) The Internet access provider may make the parental control available to the subscriber either directly or through a link to a third party.

(c) The Internet access provider or third party may charge for the parental control.

§14–3706.

This subtitle may be cited as the Online Child Safety Act.

§14–3801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer" means an individual who, individually or in conjunction with another individual, is solicited for, applies for, or receives a refund anticipation loan or refund anticipation check.

(c) "Creditor" means a person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.

(d) (1) "Facilitator" means a person who, individually or in conjunction or cooperation with another person:

(i) Processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check;

(ii) Services or collects on a refund anticipation loan or refund anticipation check; or

(iii) Facilitates the making of a refund anticipation loan or refund anticipation check.

(2) "Facilitator" does not include:

(i) A bank, savings and loan association, or credit union;

(ii) An affiliate or subsidiary of a bank, savings and loan association, or credit union that, in connection with refund anticipation loans or refund anticipation checks, acts solely as a servicer for the financial institution with which it is affiliated or of which it is a subsidiary; or

(iii) A person who acts solely as an intermediary and does not deal with the public in the making of a refund anticipation loan or refund anticipation check.

(e) "Refund anticipation check" means a check, stored value card, or other payment mechanism:

(1) That represents the proceeds of a consumer's tax refund;

(2) That was issued by a depository institution or other person that received a direct deposit of the consumer's tax refund; and

(3) For which the consumer has paid a fee or other consideration.

(f) (1) "Refund anticipation loan" means a loan arranged to be paid directly or indirectly from the proceeds of a consumer's tax refund.

(2) "Refund anticipation loan" includes a sale, assignment, or purchase of a consumer's tax refund at a discount or for a fee, whether or not the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer's tax refund.

(g) (1) "Refund anticipation loan fee" means any charge, fee, or other consideration charged or imposed directly or indirectly for the making of or in connection with a refund anticipation loan.

(2) "Refund anticipation loan fee" includes a charge, fee, or other consideration for a deposit account that is used for receipt of a consumer's tax refund to repay the amount owed on a refund anticipation loan.

§14–3802.

Unless the facilitator has complied with this subtitle, a facilitator, or an officer, agent, employee, or representative of a facilitator, individually or in conjunction or cooperation with another person, may not:

(1) Solicit the execution of, process, receive, or accept an application or agreement for a refund anticipation loan or refund anticipation check; or

(2) Facilitate the making of a refund anticipation loan or refund anticipation check.

§14–3803.

(a) A facilitator shall display, in a prominent place at each business location of the facilitator, a schedule of the fees charged for facilitating refund anticipation loans and refund anticipation checks.

(b) A facilitator shall include on each fee schedule the following:

(1) Examples of the annual percentage rate charged for refund anticipation loans in the amounts of:

(i) $250;

(ii) $500;

(iii) $1,000; and

(iv) $2,500;

(2) A legend, centered and in bold capital letters in at least 14 point type, stating:

"NOTICE CONCERNING REFUND ANTICIPATION LOANS"; and

(3) The following statement:

"When you take out a refund anticipation loan, you are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the refund anticipation loan. If your tax refund is delayed, you may have to pay additional costs. You usually can get your tax refund in 8 to 15 days without paying any extra fees for a refund anticipation loan. You can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a refund anticipation loan or paying fees for an extra product.".

(c) The fee schedule and disclosures required under subsections (a) and (b) of this section shall be printed in at least 14 point type on a sign not less than 16 by 20 inches.

(d) A facilitator may not charge any fee to a consumer for facilitating a refund anticipation loan or refund anticipation check that is not disclosed on or is different from the fee shown on the schedule required under this section.

§14–3804.

(a) At the time a consumer applies through a facilitator for a refund anticipation loan, the facilitator shall disclose to the consumer, on a form that is separate from the application, in 14 point type, the following:

(1) The fee for the refund anticipation loan, including any fee for tax preparation or other fees charged to the consumer;

(2) The annual percentage rate payable on the refund anticipation loan;

(3) The time within which the proceeds of the refund anticipation loan will be paid to the consumer if the refund anticipation loan is approved;

(4) A legend, centered and in bold capital letters in 18 point type, stating:

"NOTICE"; and

(5) The statement:

"This is a loan. You are borrowing money against your tax refund. If your tax refund is less than expected, you will still owe the entire amount of the loan. If your tax refund is delayed, you may have to pay additional costs. You usually can get your tax refund in 8 to 15 days without getting a loan or paying extra fees. You can have your tax return filed electronically and your tax refund direct deposited into your bank account without obtaining a loan or other paid product.".

(b) The annual percentage rate for a refund anticipation loan shall be calculated using the guidelines established under the federal Truth in Lending Act.

(c) At the time a consumer applies through a facilitator for a refund anticipation check, the facilitator shall disclose to the consumer, on a form that is separate from the application, in 14 point type, the following:

(1) The fee for the refund anticipation check, including any fee for tax preparation or other fees charged to the consumer;

(2) The time within which the proceeds of the refund anticipation check will be paid to the consumer;

(3) A legend, centered and in bold capital letters in 18 point type, stating:

"NOTICE"; and

(4) The statement:

"You are paying (amount of refund anticipation check fee) to get your tax refund check through (name of issuer of the refund anticipation check). You can avoid this fee and still receive your tax refund in the same amount of time by having your tax refund direct deposited into your bank account. You also can wait for the Internal Revenue Service to mail you a tax refund check.".

(d) Before completing a refund anticipation loan or refund anticipation check transaction, a facilitator shall provide to a consumer, in a form that can be retained by the consumer, the following:

(1) The disclosures required by this section;

(2) A copy of the completed refund anticipation loan or refund anticipation check application and agreement; and

(3) For a refund anticipation loan, the disclosures required by the federal

Truth in Lending Act.

(e) The disclosures required by this section shall be provided in English and in the language primarily used for oral communication between the facilitator and the consumer.

§14–3805.

(a) At the time a consumer applies through a facilitator for a refund anticipation loan, the facilitator orally shall inform the consumer:

(1) That the product is a loan that lasts 1 to 2 weeks;

(2) That if the consumer's tax refund is less than expected, the consumer is liable for the full amount of the refund anticipation loan and must repay any difference;

(3) The amount of the refund anticipation loan fee; and

(4) The annual percentage rate payable on the refund anticipation loan.

(b) At the time a consumer applies through a facilitator for a refund anticipation check, the facilitator orally shall inform the consumer:

(1) Of the amount of the refund anticipation check; and

(2) That the consumer may receive a tax refund in the same amount of time without paying a fee if the consumer's tax return is filed electronically and the consumer direct deposits the tax refund into the consumer's own bank account.

(c) The disclosures required by this section shall be provided in the language primarily used for oral communication between the facilitator and the consumer.

§14–3806.

(a) A facilitator may not:

(1) Require a consumer to enter into a loan agreement in order to complete a tax return;

(2) Charge any fee to a consumer or require any other consideration for making or facilitating a refund anticipation loan or refund anticipation check other than the fee imposed by the creditor or other person that provides the refund anticipation loan or refund anticipation check;

(3) Engage in a transaction, practice, or course of business that operates a fraud on a consumer in connection with a refund anticipation loan or refund anticipation check, including making oral statements that contradict any of the information required to be disclosed under this subtitle;

(4) Arrange, directly or indirectly, for any third party to charge any interest or fee related to a refund anticipation loan or refund anticipation check, other than the refund anticipation loan or refund anticipation check fee imposed by the creditor, including charges for insurance, attorney's fees, collection costs, or check cashing;

(5) Misrepresent a material fact or condition of a refund anticipation loan or refund anticipation check; or

(6) Fail to process an application for a refund anticipation loan promptly after the consumer applies for the refund anticipation loan.

(b) Subsection (a)(2) of this section does not prohibit a charge or fee, including a fee for tax return preparation, that is imposed by a facilitator on all of its customers if the same charge or fee, in the same amount, is imposed on customers who do not receive refund anticipation loans, refund anticipation checks, or other tax–related financial products.

§14–3807.

(a) A violation of this subtitle is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of this article.

(b) In addition to the remedies provided under Title 13 of this article, a facilitator who willfully fails to comply with any provision of this subtitle is liable to the consumer for:

(1) Actual and consequential damages;

(2) Statutory damages in the amount of $1,000; and

(3) Reasonable attorney's fees and costs.

§14–3901.

(a) In this subtitle the following words have the meanings indicated.

(b) "Arbitration activity" means the initiation, conduct, sponsorship, or administration of, or the appointment of an arbitrator in, a consumer arbitration.

(c) "Arbitration organization" means a nongovernmental association, agency, board, commission, corporation, or other entity that performs arbitration activities.

(d) "Consumer" means an individual who is:

(1) A resident of the State; and

(2) An actual or prospective purchaser or lessee of any goods, services, real property, or credit primarily for personal, family, or household purposes.

(e) (1) "Consumer arbitration" means a binding arbitration conducted in accordance with a consumer arbitration agreement.

(2) "Consumer arbitration" does not include:

(i) A binding arbitration conducted in accordance with the provisions of a policy of property insurance, casualty insurance, or surety insurance, as those terms are defined in § 1–101 of the Insurance Article;

(ii) An arbitration governed by rules adopted by a securities self–regulatory organization and approved by the United States Securities and Exchange Commission under federal law; or

(iii) An arbitration between a consumer and a related institution that is licensed by the Department of Health and Mental Hygiene, if the consumer arbitration agreement between the consumer and the related institution is not mandated as a condition of admission of the consumer to the related institution.

(f) (1) "Consumer arbitration agreement" means a standardized contract that:

(i) Is between a consumer and another person who is not a consumer;

(ii) Provides for the sale or lease of any goods, services, real property, or credit primarily for personal, family, or household purposes; and

(iii) Requires that disputes arising under the contract be submitted to binding arbitration.

(2) "Consumer arbitration agreement" does not include a public or private sector collective bargaining agreement.

(g) "Related institution" has the meaning stated in § 19–301 of the Health – General Article.

§14–3902.

This subtitle applies to an arbitration organization that performs an arbitration activity related to 50 or more consumer arbitrations during a 5–year period.

§14–3903.

(a) An arbitration organization subject to this subtitle shall collect, publish, and make available to the public the following information regarding each consumer

arbitration for which it performed an arbitration activity during the preceding 5–year period:

(1) If the nonconsumer party is a corporation or other business entity, the name of that party;

(2) Whether the dispute involved goods, services, real property, or credit;

(3) The type of claim or cause of action alleged;

(4) Whether the consumer or nonconsumer party was the prevailing party;

(5) The number of times during the reporting period that the nonconsumer party has been a party in a consumer arbitration for which the arbitration organization performed an arbitration activity;

(6) Whether the consumer party was represented by an attorney and, if so, the name of the attorney;

(7) The date the arbitration organization received the demand for the consumer arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization;

(8) If known, the type of disposition of the dispute, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing;

(9) The amount of the claim, the amount of the award, and any other relief granted;

(10) The name of the arbitrator, the arbitrator's total fee for conducting the consumer arbitration, and the percentage of the arbitrator's fee allocated to each party; and

(11) The address of the premises where the consumer arbitration was conducted.

(b) (1) The information required under subsection (a) of this section:

(i) Shall be reported beginning on the first day of the month immediately following the month an arbitration organization becomes subject to this subtitle; and

(ii) Shall be updated at least quarterly thereafter.

(2) An arbitration organization that becomes subject to this subtitle before July 1, 2016, shall report the information required under subsection (a) of this section to the extent it is available.

(c) The information required under subsection (a) of this section shall be made available to the public:

(1) In a computer–searchable format that:

(i) Is accessible at the Internet Web site of the arbitration organization; and

(ii) May be downloaded without a fee; and

(2) In writing:

(i) On request; and

(ii) At a fee that does not exceed the actual cost to the arbitration organization of copying the information.

§14–3904.

The information provided by an arbitration organization under § 14–3903 of this subtitle may be considered in determining whether a consumer arbitration agreement is unconscionable or otherwise unenforceable under law.

§14–3905.

(a) An arbitration organization is not liable for collecting, publishing, or distributing the information required under § 14–3903 of this subtitle.

(b) Failure to comply with § 14–3903 of this subtitle:

(1) May not be the sole reason to refuse to enforce an award made in a consumer arbitration; and

(2) May be considered as a factor in determining whether a consumer arbitration agreement is unconscionable or otherwise unenforceable under law.

(c) (1) A consumer or the Attorney General may seek an injunction to prohibit an arbitration organization that has engaged in or is engaging in a violation of § 14–3903 of this subtitle from continuing or engaging in the violation.

(2) The arbitration organization is liable to the person bringing the action for an injunction for the person's reasonable attorney's fees and costs if:

(i) The court issues the injunction; or

(ii) The arbitration organization voluntarily complies with § 14–3903 of this subtitle after the action is filed.

§14–4001.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Entertainment event" means:

(i) A performance;

(ii) A recreation;

(iii) An amusement;

(iv) A diversion;

(v) A spectacle;

(vi) A show; or

(vii) Any similar event.

(2) "Entertainment event" includes:

(i) A theatrical or musical performance;

(ii) A concert;

(iii) A film;

(iv) A game;

(v) A ride; and

(vi) A sporting event.

(c) "Ticket" means a ticket for admission to an entertainment event.

§14–4002.

A person may not intentionally sell or use software to circumvent a security measure, an access control system, or any other control or measure on a ticket seller's Web site that is used to ensure an equitable ticket buying process.

§14–4003.

A violation of this subtitle is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of this article; and

(2) Subject to the enforcement and penalty provisions contained in Title

13 of this article.

§15–101.

(a) (1) For purposes of this section the following words, as used in federal bankruptcy laws, have the meanings indicated.

(2) "The case" means the assignment for the benefit of creditors proceeding or the receivership proceeding, whichever is applicable;

(3) "Commencement of the case" means commencement of the assignment for the benefit of creditors proceeding or receivership proceeding;

(4) "The court" means the court in which the assignment for the benefit of creditors proceeding or receivership proceeding is filed;

(5) "Date of the filing of the petition" means the date of the commencement of the assignment for the benefit of creditors proceeding or receivership proceeding;

(6) "Debtor" means the insolvent as that term is defined in subsection (b) of this section;

(7) (i) "The estate" means the estate that is created when an assignee for the benefit of creditors or a receiver of the assets of an insolvent is appointed;

(ii) "The estate" includes all property, assets, interests, and rights with respect to which the assignee or receiver is acting as a fiduciary;

(8) "Order for relief" means the order appointing the assignee for the benefit of creditors or the receiver of the assets of an insolvent;

(9) "Petition" means the pleading filed to commence the assignment for the benefit of creditors proceeding or receivership proceeding;

(10) "Trustee" means the assignee for the benefit of creditors or receiver of the assets of an insolvent; and

(11) Other words, including "insolvent" and "insider", when used in federal bankruptcy law shall have the meanings set forth in the definition section of the federal bankruptcy law or as interpreted by the federal courts applying federal bankruptcy law.

(b) (1) In this section the following words have the meanings indicated.

(2) "Insolvent" means the assignor in an assignment for the benefit of creditors proceeding or the insolvent with respect to whose affairs a receiver has been appointed.

(3) "Judicial lien" means a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(c) Any assignee for the benefit of creditors or receiver of the assets of an insolvent shall be vested with full title to all the property and assets of the insolvent and with full power to enforce obligations or liabilities in favor of the insolvent.

(d) All preferences, payments, transfers, and obligations made or suffered by the insolvent which are fraudulent, void, or voidable under any act of the Congress of the United States relating to bankruptcy are fraudulent, void, or voidable, respectively, under this subtitle to the same extent that they would be fraudulent, void, or voidable under applicable federal bankruptcy law.

(e) Any assignee for the benefit of creditors or receiver of the assets of an insolvent may set aside any:

(1) Fraudulent conveyance as defined in Subtitle 2 of this title; and

(2) Preference, payment, transfer, or obligation that is fraudulent, void, or voidable under subsection (d) of this section.

(f) Any assignee for the benefit of creditors or receiver of the assets of an insolvent has, as of the date of the commencement of the proceeding, the rights:

(1) Of a creditor that extends credit to the insolvent at the time of the commencement of the proceeding and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) Of a creditor that extends credit to the insolvent at the time of the commencement of the proceeding and obtains, at such time and with respect to such credit, an execution against the insolvent that is returned unsatisfied at such time, whether or not such a creditor exists;

(3) Of a bona fide purchaser of real property, other than fixtures, from the insolvent, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the proceeding, whether or not such a purchaser exists; and

(4) To avoid any preference, payment, transfer, or obligation that is fraudulent, void, or voidable under subsection (d) of this section.

§15–102.

(a) (1) In this section the following words have the meanings indicated.

(2) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Wages" means all remuneration paid to any employee for his

employment, including the cash value of all remuneration paid in any medium other than cash.

(b) The property of an insolvent who makes an assignment for the benefit of creditors or who has his property taken by a receiver under a decree of a court in an insolvency proceeding shall be applied to the following, in the order stated:

(1) Costs and expenses of the administration of the trust or insolvency proceeding which the court approves;

(2) Wages of an employee and health, welfare, and pension contributions contracted for in place of wages, earned not more than three months before the assignment or institution of the insolvency proceeding;

(3) Lien claims of the State, a county, municipal corporation, or other political subdivision of the State perfected or recorded before the assignment or institution of the insolvency proceeding, and claims of persons having judicial liens on property of the insolvent recorded more than four months before the assignment or institution of the insolvency proceeding;

(4) Unsecured claims of individuals, to the extent of $900 for each individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of the individuals, that were not delivered or provided;

(5) Rent for any interest in real property in the State due not more than three months before the execution of the assignment or institution of the insolvency proceeding;

(6) Charges in connection with the transportation of goods advanced by one common carrier to another on behalf of a consignor or consignee not more than three months before the assignment or institution of the insolvency proceeding;

(7) Taxes not included in paragraph (3) of this subsection; and

(8) Claims of unsecured creditors.

(c) For the purpose of subsection (b)(1) of this section, the landlord's claim for rent for any interest in real property in this State due not more than three months before the execution of the assignment or institution of the insolvency proceeding shall be considered a perfected lien on the distrainable property of the insolvent to the same extent as if distress for rent was levied by the landlord before the assignment or the institution of the insolvency proceeding.

§15–103.

(a) Title to property may not pass to an assignee for the benefit of creditors until

the assignee files a bond as required by the Maryland Rules. If the assignee makes a sale before filing a bond, the sale is not valid and does not pass title to the property sold.

(b) If all other legal requirements were met, a conveyance made by an assignee for the benefit of creditors when two sureties on the bond were required is valid even though a bond was given with only one surety.

(c) A sale by an assignee for the benefit of creditors is not valid unless ratified by the court.

§15–201.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Assets" means property of a debtor not exempt from liability for his debts.

(2) "Assets" includes any property to the extent that the property is liable for any debts of a debtor.

(c) "Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage, or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

(d) "Creditor" means a person who has any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

(e) "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent.

§15–202.

(a) A person is insolvent if the present fair market value of his assets is less than the amount required to pay his probable liability on his existing debts as they become absolute and matured.

(b) In determining if a partnership is insolvent, there shall be added to the partnership property:

(1) The present fair market value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors; and

(2) The amount of any unpaid subscription to the partnership of each limited partner, if the present fair market value of the assets of the limited partner is probably sufficient to pay his debts, including the unpaid subscription.

§15–203.

Fair consideration is given for property or an obligation, if:

(1) In exchange for the property or obligation, as a fair equivalent for it and in good faith, property is conveyed or an antecedent debt is satisfied; or

(2) The property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

§15–204.

Every conveyance made and every obligation incurred by a person who is or will be rendered insolvent by it is fraudulent as to creditors without regard to his actual intent, if the conveyance is made or the obligation is incurred without a fair consideration.

§15–205.

Every conveyance made without fair consideration when the person who makes it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and other persons who become creditors during the continuance of the business or transaction without regard to his actual intent.

§15–206.

Every conveyance made and every obligation incurred without fair consideration when the person who makes the conveyance or who enters into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

§15–207.

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud present or future creditors, is fraudulent as to both present and future creditors.

§15–208.

(a) Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be rendered insolvent by it, is fraudulent as to partnership creditors, if the conveyance is made or the obligation is incurred to:

(1) A partner, whether with or without a promise by him to pay partnership debts, unless the conveyance or obligation represents fair and reasonable compensation for services provided or to be provided by the partner to the partnership and the services are provided or will be provided within 120 days before or after the

date the conveyance is made or the obligation is incurred; or

(2) A person not a partner, without fair consideration to the partnership as distinguished from consideration to the individual partners.

(b) Every conveyance of limited liability company property and every limited liability company obligation incurred when the limited liability company is or will be rendered insolvent by it, is fraudulent as to creditors of the limited liability company, if the conveyance is made or the obligation is incurred to:

(1) A member, whether with or without a promise by him to pay the limited liability company's debts, unless the conveyance or obligation represents fair and reasonable compensation for services provided or to be provided by the member to the limited liability company and the services are provided or will be provided within 120 days before or after the date the conveyance is made or the obligation is incurred; or

(2) A person not a member, without fair consideration to the limited liability company as distinguished from consideration to the individual members.

§15–209.

(a) If a conveyance or obligation is fraudulent as to a creditor whose claim has matured, the creditor, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase or one who has derived title immediately or immediately from such a purchaser, may:

(1) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy the claim; or

(2) Levy on or garnish the property conveyed as if the conveyance were not made.

(b) In an action to have a conveyance set aside or an obligation annulled, it is not necessary as a condition to the granting of relief that the creditor first obtain judgment on the claim.

(c) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation may retain the property or obligation as security for repayment.

§15–210.

(a) If a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured, he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured.

(b) In the proceeding, the court may:

(1) Restrain the defendant from disposing of his property;

(2) Appoint a receiver to take charge of the property;

(3) Set aside the conveyance or annul the obligation; or

(4) Enter any order which the circumstances of the case require.

§15–210.1.

A conveyance is not fraudulent as to a creditor if, conducted in accordance with applicable law, the conveyance results from:

(1) A foreclosure sale;

(2) A sale to enforce a statutory lien;

(3) A judicial sale; or

(4) A sale of property under levy.

§15–211.

In any case not provided for in this subtitle, the rules of law and equity, including the law merchant, the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

§15–212.

This subtitle shall be interpreted and construed to effectuate its general purpose to make uniform the law of the states which enact it.

§15–213.

This subtitle does not repeal the law relating to:

(1) Fraudulent conveyances from one spouse to the other, as provided in §§ 4-205, 4-206, and 4-301 of the Family Law Article;

(2) Priorities and preferences in insolvency, as provided in Subtitle 1 of this title; or

(3) Bulk transfers, as defined in Title 6 of this article.

§15–214.

This subtitle may be cited as the Maryland Uniform Fraudulent Conveyance Act.

§15–301.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Assignment" includes every transfer, sale, pledge, mortgage, or hypothecation, however made or attempted, of the wages of a person or any interest in them.

(2) "Assignment" does not include an authorization by a borrower or his guarantor or surety for payroll deductions to repay a loan made by a state or federally chartered credit union to a credit union member.

(c) "County" includes Baltimore City.

(d) "Court" means the District Court for the county where an assignor resides.

(e) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Wages" means all remuneration paid to any employee for his employment, including the cash value of all remuneration paid in any medium other than cash.

§15–302.

(a) An assignment of wages is not valid unless:

(1) The assignment is:

(i) In writing;

(ii) Signed and acknowledged by the assignor before a notary public in and for the county where he resides; and

(iii) Entered the same day on the docket of the court by the clerk; and

(2) Within three days from the execution and acknowledgment of the assignment, a copy of the assignment with the certificate of acknowledgment is served on the assignor's employer in the same manner as the Maryland Rules provide for service of a summons.

(b) An assignment of wages by a married person is not valid unless also executed and acknowledged by the assignor's spouse in the manner required by subsection (a) of this section.

(c) An assignment of wages to be earned in whole or in part more than six months after the making of the assignment is void.

§15–303.

(a) Proof of the service made in accordance with § 15-302(a)(2) of this subtitle shall be by written admission of the assignor's employer on the original assignment.

(b) Within two days from the date of service, the original assignment with the employer's written admission shall be filed with the clerk of the court.

§15–304.

The assignor's acknowledgment of assignment shall include his affidavit stating that he has not paid and will not pay directly or indirectly on any sum borrowed, an effective rate of simple interest, as defined in § 12-101 of this article, of more than 6 percent per annum.

§15–305.

(a) If an assignee files or threatens to file an action to enforce any assignment of wages which does not comply with any provision of this subtitle, on petition of the assignor or his employer, a court of equity may enjoin the threatened or attempted enforcement of the assignment.

(b) The fact that a petitioner has a complete and adequate remedy at law does not constitute a defense to the maintenance of an action in equity to enjoin the threatened or attempted enforcement of the assignment.

§15–401.

If a surety in any bond or other obligation for the payment of money or a promissory note, or the endorser of a protested draft, pays or tenders the money due on it in full, he is entitled to an assignment of it and, by virtue of the assignment, may maintain an action in his name against the principal debtor.

§15–402.

(a) Subject to the provisions of subsection (d) of this section, the assignee of a bond or other obligation under seal which was assigned under the assignor's signature and seal, may maintain an action in his name against the obligor named in the bond or other obligation.

(b) Except as provided in subsection (c) of this section, if the assignee cannot recover the debt from the obligor because the obligor is unable to pay it or cannot be found, or for any other reason, the assignee may maintain an action against the obligee, unless the assignee is a surety in the bond or other obligation.

(c) If because of the negligence or default of the assignee, he cannot recover the debt from the obligor, the assignee may not maintain an action against the obligee.

(d) An action may not be maintained by the assignee against the obligor unless the obligee certifies before a notary public, in writing on the bond or other obligation, that at the time of the assignment the obligor still owed the amount for which the action is filed.

§15–501.

(a) It is unlawful for a creditor who is a citizen of the State to assign or transfer a claim against a resident of the State:

(1) For the purpose of having the claim collected by attachment in a court outside the State; or

(2) With the intent to deprive the debtor of his rights under the laws of the State which exempt his wages or property from execution.

(b) The provisions of this section do not apply if the creditor, the debtor, or the person owing the money to be attached is not within the jurisdiction of the courts of this State.

§15–502.

(a) If the creditor assigns or transfers the debt to a nonresident in violation of § 15-501 of this subtitle and the debt is collected by the assignee outside the State, the creditor is liable to the debtor for the full amount of the debt including collected interest and costs. In addition, the creditor forfeits his right to exempt his own wages or property from execution if a writ of execution is issued against him for collection of these amounts.

(b) Proof of the fact of the assignment or transfer, whether or not for value, to a nonresident assignee is prima facie evidence of the creditor's intent to deprive the debtor of his rights under the laws of the State which exempt his wages or property from execution.

§15–503.

Any creditor who violates any provision of § 15-501 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50.

§15–601.

(a) In this subtitle the following words have the meanings indicated.

(b) "Employee" includes an employee whether he is a resident or nonresident of the State.

(c) "Wages" means all monetary remuneration paid to any employee for his employment.

§15–601.1.

(a) In this section, "disposable wages" means the part of wages that remain after deduction of any amount required to be withheld by law.

(b) The following are exempt from attachment:

(1) Except as provided in item (2) of this subsection, the greater of:

(i) The product of $145 multiplied by the number of weeks in which the wages due were earned; or

(ii) 75 percent of the disposable wages due;

(2) In Caroline, Kent, Queen Anne's, and Worcester counties, for each workweek, the greater of:

(i) 75 percent of the disposable wages due; or

(ii) 30 times the federal minimum hourly wages under the Fair Labor Standards Act in effect at the time the wages are due; and

(3) Any medical insurance payment deducted from an employee's wages by the employer.

(c) The amount subject to attachment shall be calculated per pay period.

§15–602.

(a) When an attachment is levied against the wages of a judgment debtor, it shall constitute a lien on all attachable wages that are payable at the time the attachment is served or which become payable until the judgment, interest, and costs, as specified in the attachment, are satisfied.

(b) Any waiver of the limitations contained in § 15-601.1(b)(1) and (2) of this subtitle is void.

§15–603.

(a) While the attachment remains a lien, the employer/garnishee shall withhold all attachable wages payable to the judgment debtor and remit the amount withheld to the judgment creditor or his legal representative within 15 days after the close of the last pay period in each month.

(b) If the employer/garnishee is served with more than one attachment against the same judgment debtor, then the attachments shall be satisfied in the order in which they were served, and each prior attachment must be satisfied before any effect can be given to a subsequent attachment.

§15–604.

If a judgment debtor resigns or is dismissed from his employment while an attachment upon his wages is wholly or partly unsatisfied, the attachment shall lapse and no further deduction may be made unless the judgment debtor is reinstated or reemployed within 90 days of the resignation or dismissal.

§15–605.

(a) Within 15 days after the end of each month, the judgment creditor shall furnish the employer/garnishee and the judgment debtor a written statement showing all payments that were credited to the account of the judgment debtor during that month. However, this subsection shall not apply if no payments were received by the judgment creditor during that month.

(b) The judgment creditor shall within 15 days after the satisfaction of the judgment, interest, and costs notify in writing the employer/garnishee and the clerk of the court of the satisfaction.

(c) All payments received by a judgment creditor shall be credited first against the accrued interest on the unpaid balance of the judgment, if any, second upon the principal amount of the judgment, and third upon those attorney's fees and costs actually assessed in the cause.

(d) If the judgment creditor fails to comply with the obligations imposed by this section, then the court may set aside the attachment and order the judgment creditor to pay reasonable attorney's fees and costs of the party seeking to set aside the attachment.

§15–606.

(a) An employer may not discharge his employee because the employee's wages are subjected to attachment for any one indebtedness within a calendar year.

(b) Any employer who willfully violates the provisions of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding one year or both.

§15–607.

(a) Wages, due from or payable by the State, or a county, municipal corporation, or other political subdivision, and the public officers of the State or a county, municipal corporation, or other political subdivision to an individual, are subject to attachment process brought for the enforcement of the private legal obligations of the individual in the same manner and to the same extent as if the State, county, municipal corporation, or other political subdivision, and their respective public officers, were a private person.

(b) The State, or a county, municipal corporation, or other political subdivision,

and their respective public officers, may deduct and retain from the individual's wages an additional $2 for each deduction made under the attachment process of this subtitle or under Title 31, U.S.C. § 3720D.

§15–701.

(a) In this subtitle the following words have the meanings indicated.

(b) "Consumer debt" means any debt arising from a transaction for consumer goods as defined in § 9-109 of this article.

(c) "Offset" means the seizure by a bank of personal property, belonging to a customer, in the bank's possession or under its control on deposit to settle delinquent debts.

§15–702.

For the purposes of this article, a bank or financial institution may not offset any property in its possession or money from a customer's savings or checking account for the settlement of a delinquent consumer debt unless:

(1) The offset is authorized in writing by the customer; or

(2) A court order is obtained to permit the offset.

§15–801.

(a) In this subtitle the following words have the meanings indicated.

(b) "Check" has the meaning provided in § 3-104(f) of this article.

(c) "Dishonor" has the meaning provided in § 3-502 of this article.

(d) "Drawer" has the meaning provided in § 3-103(a)(3) of this article.

(e) "Holder" has the meaning provided in § 1-201(20) of this article.

(f) "Holder in due course" has the meaning provided in § 3-302 of this article.

(g) "Instrument" has the meaning provided in § 3-104(b) of this article.

(h) "Issue" has the meaning provided in § 3-105 of this article.

(i) "Maker" has the meaning provided in § 3-103(a)(5) of this article.

(j) "Negotiation" has the meaning provided in § 3-201 of this article.

(k) "Notice of dishonor" has the meaning provided in § 3-503 of this article.

(l) "Stop payment order" has the meaning provided in § 4-403 of this article.

§15–802.

(a) When a check or other instrument has been dishonored by nonacceptance or nonpayment and has not been paid within 10 days, the holder to whom the check or other instrument was issued or negotiated may send a notice of dishonor to the maker or drawer as provided under this section.

(b) If a check or other instrument has not been paid within 30 days after the holder has sent a notice of dishonor to the maker or drawer, the maker or drawer of a check or other instrument that has been dishonored shall be liable for:

(1) The amount of the check or instrument;

(2) A collection fee of up to $35; and

(3) An amount up to 2 times the amount of the check, but not more than $1,000.

(c) (1) (i) The holder of a check or other instrument that has been dishonored may seek the damages provided under this section in the District Court of Maryland 30 days after a notice of dishonor has been sent by mail to the last known address of the maker or drawer.

(ii) For each notice sent by the holder under subparagraph (i) of this paragraph, the holder shall:

1. Obtain a certificate of mailing from the U.S. Postal Service; or

2. Execute an affidavit that attests to the mailing of the notice in compliance with subparagraph (i) of this paragraph.

(2) A notice of dishonor sent by a holder under this section to a maker or drawer of a dishonored check or other instrument shall substantially comply with the form prescribed in § 15-803 of this subtitle.

(d) A holder may not recover any damages under subsection (b)(3) of this section if:

(1) The holder has demanded of, and received from, the maker or drawer:

(i) Collection costs in excess of the collection fee provided under subsection (b)(2) of this section; or

(ii) Collection costs within 30 days after the mailing of the notice of dishonor, under subsection (c) of this section; or

(2) The dishonored check or other instrument provides for the payment of collection costs in the event of dishonor.

(e) (1) It shall be a complete defense to any action brought under this section by any holder of a dishonored check or other instrument that, within 30 days from the mailing of the notice of dishonor, the maker or drawer has paid to the holder the full amount of the check or other instrument and collection costs of not more than $35.

(2) It shall be a complete defense to any action brought under this section by a holder to whom a dishonored check or other instrument was issued that the dishonor of the check or other instrument was due to a justifiable stop payment order or to the attachment of the account.

(3) In any action brought under this section by a holder or holder in due course to whom a dishonored check or other instrument was negotiated, the action is subject to all valid defenses that may be raised by the maker or drawer against the holder or holder in due course under Title 3 of this article.

§15–803.

(a) A notice of dishonor sent by a holder to a maker or drawer under § 15–802 of this subtitle shall substantially comply with the following form:

"NOTICE OF DISHONORED CHECK

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law hereby notified that a check or instrument numbered _____ and dated _____, drawn on the _____ bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because of _____

Within 30 days from the mailing of this notice, you must pay or tender to _____

_____

(Holder)

sufficient money to pay such check or instrument in full and a collection fee of $_____ (not more than $35). If payment of the above amounts is not made within 30 days of the mailing of this notice of dishonor, you shall be liable under § 15–802 of the Commercial Law Article, in addition to the amount of the check or instrument and a collection fee of up to $35, for an amount up to 2 times the amount of the check or instrument, but not more than $1,000. In addition, you may be prosecuted under Title 8, Subtitle 1 of the Criminal Law Article of Maryland and subject to the following penalties:

(1) If the property or services has a value of at least $1,000 but less than $10,000, a fine not exceeding $10,000 or imprisonment not exceeding 10 years, or both;

(2) If the property or services has a value of at least $10,000 but less than $100,000, a fine not exceeding $15,000 or imprisonment not exceeding 15 years, or both;

(3) If the property or services has a value of $100,000 or more, a fine not exceeding $25,000 or imprisonment not exceeding 25 years, or both;

(4) If the property or services has a value of less than $1,000, a fine not exceeding $500 or imprisonment not exceeding 18 months, or both.

It shall be a complete defense to any action brought by any holder under § 15–802 of the Commercial Law Article that, within 30 days from the mailing of the "Notice of Dishonored Check", the maker or drawer has paid the holder the full amount of the check or instrument and collection costs of not more than $35. A holder may not recover any damages if the holder has demanded of, and received from, the maker or drawer collection costs exceeding $35.

It shall be a complete defense to any action brought under § 15–802 of the Commercial Law Article by a holder to whom a dishonored check or other instrument was issued that the dishonor of the check or other instrument was due to a justifiable stop payment order or to the attachment of the account.

In any action brought under § 15–802 of the Commercial Law Article by a holder or holder in due course to whom a dishonored check or other instrument was negotiated, the action is subject to all valid defenses that may be raised by the maker or drawer against the holder or holder in due course under Title 3 of the Commercial Law Article."

(b) The holder to whom a check or other instrument is issued or negotiated may post a clearly conspicuous notice at or near the point of receipt stating the liability of the maker or drawer for the collection fee and damages provided in § 15-802 of this subtitle and criminal penalties provided in §§ 8-106 and 8-107 of the Criminal Law Article.

§15–804.

(a) Notwithstanding any other provisions of this article, §§ 15-802 and 15-803 of this subtitle do not apply to any check:

(1) Tendered by a maker or drawer in complete or partial satisfaction of a preexisting credit or loan obligation incurred by the maker or drawer under Title 12 of this article; or

(2) That is not a bad check as described under § 8-103 of the Criminal Law

Article.

(b) Notwithstanding any other provision of this article, §§ 15-802 and 15-803 of this subtitle shall be construed to grant any holder to whom the check or other instrument was issued or negotiated a right of recourse which is alternative to any other right of recourse granted to that holder under Title 3 of this article.

§16–101.

(a) In this title the following words have the meanings indicated.

(b) "County" includes Baltimore City.

(c) "Owner" includes a person lawfully in possession.

(d) "Person" includes the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

§16–201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Aircraft" includes any part of an aircraft.

(c) "Boat" includes any part of a boat.

(d) "Clerk of the court" means the clerk of the circuit court of a county.

(e) "Mobile home" has the meaning stated in § 8A–101(c) of the Real Property Article.

(f) (1) "Motor vehicle" has the meaning stated in Title 11 of the Transportation Article.

(2) "Motor vehicle" includes any part of a motor vehicle.

(g) "Park owner" has the meaning stated in § 8A–101(f) of the Real Property Article.

(h) "Property" means any aircraft, boat, mobile home, or motor vehicle.

(i) "Resident" has the meaning stated in § 8A–101(j) of the Real Property Article.

§16–202.

(a) (1) Any person who, with the consent of the owner, has custody of an

aircraft and who, at the request of the owner, provides a service to or materials for the aircraft, has a lien on the aircraft for any charge incurred for any:

(i) Inspection, maintenance, repair, servicing, or rebuilding;

(ii) Storage, parking, handling, or tiedown; or

(iii) Parts, accessories, materials, or supplies.

(2) The operator of any airport on which an aircraft lands or which is otherwise used by an aircraft has a lien on the aircraft for any landing fee, flight fee, or other charge so incurred.

(3) A lien is created under this subsection when any charges giving rise to the lien are incurred.

(b) (1) Any person who, with the consent of the owner, has custody of a boat and who, at the request of the owner, provides a service to or materials for the boat, has a lien on the boat for any charge incurred for any:

(i) Repair, rebuilding, maintenance, servicing, or wet or dry wharfage;

(ii) Storage; or

(iii) Parts or accessories.

(2) A lien is created under this subsection when any charges giving rise to the lien are incurred.

(c) (1) Any person who, with the consent of the owner, has custody of a motor vehicle and who, at the request of the owner, provides a service to or materials for the motor vehicle, has a lien on the motor vehicle for any charge incurred for any:

(i) Repair or rebuilding;

(ii) Storage; or

(iii) Tires or other parts or accessories.

(2) A lien is created under this subsection when any charges set out under paragraph (1) of this subsection giving rise to the lien are incurred.

(d) (1) A park owner has a lien against a resident's mobile home, if the park owner obtains a judgment against the resident under Title 8A, Subtitle 17 of the Real Property Article, and the resident fails to yield and render possession of the premises as ordered by the court.

(2) A lien under this subtitle shall be:

(i) Stayed if the resident files an appeal in accordance with Title 8A, Subtitle 17 of the Real Property Article; and

(ii) Extinguished if the resident redeems the premises in accordance with Title 8A, Subtitle 17 of the Real Property Article.

(3) A lien is created under this subsection when the resident fails to yield and render possession of the premises as ordered by the court.

§16–203.

(a) The lienor may retain possession of the property subject to the lien until:

(1) The charges which give rise to the lien are paid; or

(2) The lien is otherwise discharged in accordance with this subtitle.

(b) (1) (i) Except as provided in subparagraph (ii) of this paragraph, within 30 days after the creation of a lien under this subtitle, including a lien created under § 16-207(c) of this subtitle, the lienor shall send notice of the lien by registered or certified mail to all holders of perfected security interests in the property who:

1. Are known to the lienor; or

2. Can be identified through a search of the public records where filings are made to perfect security interests in the property.

(ii) For a lien created under § 16-202(b) of this subtitle, the lienor shall send the notice required under subparagraph (i) of this paragraph within 45 days after the creation of the lien.

(2) (i) Subject to subparagraph (ii) of this paragraph, the notice required under paragraph (1) of this subsection shall be sent to the address shown on the document that creates or otherwise gives notice of the perfected security interest.

(ii) For a lien created under this subtitle in a motor vehicle registered in this State, the notice required under paragraph (1) of this subsection may be sent to the addresses of all holders of perfected security interests in the motor vehicle that are listed in the certified records issued to the lienor by the Motor Vehicle Administration.

(3) The lienor shall send the notice required under paragraph (1) of this subsection prior to publishing and sending the notice required under § 16-207(b) of this subtitle.

§16–204.

Surrender or delivery of the property subject to the lien discharges that lien against a third person who is without notice of the lien, but does not discharge the lien

against the owner or against a third party who has notice of the lien.

§16–205.

(a) An aircraft lien is subordinate only to the rights of the holder of any of the following instruments relating to the aircraft, executed and recorded with the Federal Aviation Administration before the time the lien becomes effective:

(1) Bill of sale;

(2) Contract of conditional sale;

(3) Conveyance; or

(4) Mortgage or assignment of mortgage.

(b) A motor vehicle lien is subordinate only to a security interest perfected as required by law, except in the case of a motor vehicle sold under § 16-207 of this subtitle.

(c) (1) In this subsection, "preferred ship mortgage" means a preferred mortgage as defined in 46 U.S.C. § 31322 on a vessel of the United States that is filed in accordance with 46 U.S.C. §§ 31321 through 31330.

(2) (i) A boat lien is subordinate to a preferred ship mortgage that is filed with the Secretary of Transportation before the boat is sold under § 16-207 of this subtitle.

(ii) Except in the case of a boat sold under § 16-207 of this subtitle, a boat lien is subordinate to a security interest perfected as required by law.

(d) A mobile home lien is subordinate only to a security interest perfected as required by law, except in the case of a mobile home sold under § 16-207 of this subtitle.

§16–206.

(a) (1) If the owner of property subject to a lien disputes any part of the charge for which the lien is claimed, he may institute appropriate judicial proceedings.

(2) Institution of the proceedings stays execution under the lien until a final judicial determination of the dispute.

(b) (1) If the owner of property subject to a lien disputes any part of the charge for which the lien is claimed, he immediately may repossess his property by filing a corporate bond for double the amount of the charge claimed.

(2) The bond shall be filed with and is subject to the approval of the clerk of the court of the county where the services or materials for which the lien is claimed were provided.

(3) The bond shall be conditioned on:

(i) Full payment of the final judgment of the claim, together with interest;

(ii) All costs incident to the bringing of suit; and

(iii) All cost and expenses which result from the enforcement of the lien and are incurred before the lienor was notified that the bond was filed.

(4) Filing of the bond stays execution under the lien until final judicial determination of the dispute.

(5) If service of process by a lienor on the owner is returned non est after filing of a bond, service may be made by publication as in the case of a suit against a nonresident.

(6) If suit is not instituted by the lienor within six months after the bond is filed, the bond is discharged.

§16–207.

(a) If the charges which give rise to a lien are due and unpaid for 30 days and the lienor is in possession of the property subject to the lien, the lienor may sell the property to which the lien attaches at public sale. The sale shall be in a location convenient and accessible to the public and shall be held between the hours of 10 a.m. and 6 p.m.

(b) (1) The lienor shall publish notice of the time, place, and terms of the sale and a full description of the property to be sold once a week for the two weeks immediately preceding the sale in one or more newspapers of general circulation in the county where the sale is to be held.

(2) In addition, the lienor shall send the notice by registered or certified mail at least 10 days before the sale to:

(i) The owner of the property, all holders of perfected security interests in the property and, in the case of a sale of a motor vehicle or mobile home, the Motor Vehicle Administration;

(ii) The person who incurred the charges which give rise to the lien, if the address of the owner is unknown and cannot be ascertained by the exercise of reasonable diligence; or

(iii) "General delivery" at the post office of the city or county where the business of the lienor is located, if the address of both the owner and the person who incurred the charges is unknown and cannot be ascertained by the exercise of reasonable diligence.

(c) If a motor vehicle or mobile home which is subject to a lien is delivered by the lienor to the possession of a third party for storage, and the charges for storage are due and unpaid for 30 days or more, the third party holder is deemed to hold a perfected security interest in the motor vehicle or mobile home notwithstanding § 13–202 of the Transportation Article and may sell the motor vehicle or mobile home in the same manner as the lienor under this section if he has first published and sent notice as required of the lienor under this subtitle.

(d) (1) Except as provided in § 13–110 of the Transportation Article, the Motor Vehicle Administration shall issue a title, free and clear of any lien, to the purchaser of any motor vehicle or mobile home sold under this section, if the holder of the lien on the motor vehicle or mobile home submits to the Motor Vehicle Administration a completed application for a certificate of title with:

(i) A copy of the newspaper publication required by subsection (b) of this section;

(ii) A copy of the registered or certified letter required under subsection (b) of this section to be sent to holders of perfected security interests in the motor vehicle or mobile home and the Motor Vehicle Administration, and the return card;

(iii) A copy of the registered or certified letters required by subsection (b) of this section to be sent to the owner of the motor vehicle or mobile home, and the return card;

(iv) If applicable, a written statement from the lienor that the lienor stored the vehicle in accordance with an agreement with an insurer;

(v) An auctioneer's receipt;

(vi) If applicable, certification by holders of perfected security interests;

(vii) In the case of mobile homes manufactured after 1976 and motor vehicles, a pencil tracing of the vehicle identification number or a statement certifying the vehicle identification number; and

(viii) Any other reasonable information required in accordance with regulations adopted by the Administration.

(2) The Department of Natural Resources shall issue a title, free and clear of any liens, to the purchaser of any boat sold under this section.

(e) (1) If the notice required under § 16–203(b) of this subtitle was sent, the proceeds of a sale under this section shall be applied, in the following order, to:

(i) The expenses of giving notice and holding the sale, including

reasonable attorney's fees;

(ii) Subject to subsection (f) of this section, storage fees of the third party holder;

(iii) The amount of the lien claimed exclusive of any storage fees except as provided in subsection (f)(2) of this section;

(iv) A purchase money security interest; and

(v) Any remaining secured parties of record who shall divide the remaining balance equally if there are insufficient funds to completely satisfy their respective interests, but not to exceed the amount of a security interest.

(2) Except as provided in paragraph (3) of this subsection, if the notice required under § 16–203(b) of this subtitle was not sent, the proceeds of a sale under this section shall be applied, in the following order, to:

(i) A purchase money security interest;

(ii) All additional holders of perfected security interests in the property;

(iii) The expenses of giving notice and holding the sale, including reasonable attorney's fees;

(iv) Subject to subsection (f) of this section, storage fees of the third party holder;

(v) The amount of the lien claimed exclusive of any storage fees except as provided in subsection (f)(2) of this section; and

(vi) Any remaining secured parties of record who shall divide the remaining balance equally if there are insufficient funds to completely satisfy their respective interest, but not to exceed the amount of a security interest.

(3) For a motor vehicle lien created under this subtitle, if the notice required under § 16–203(b) of this subtitle was not sent:

(i) The proceeds of a sale under this section shall be applied in the order described in paragraph (1) of this subsection; and

(ii) The amount of the lien claimed in paragraph (1)(iii) of this subsection may not include any amount for storage charges incurred or imposed by the lienor.

(4) After application of the proceeds in accordance with paragraph (1) or (2) of this subsection, any remaining balance shall be paid to the owner of the property.

(f) (1) If property is stored, storage fees of the third party holder may not exceed $5 per day or a total of $300.

(2) The exclusion or limitation of any storage fees as provided in subsection (e)(1)(iii) of this section and paragraph (1) of this subsection does not apply to any person who conducts auctions as a business in this State, and is required to maintain records under § 15–113 of the Transportation Article, and that person is also exempt from the maximum storage fee limits under this subsection.

(3) The notice requirements of § 16–203(b) of this subtitle do not apply when:

(i) The lienor conducts auctions as a business in this State and is required to maintain records under § 15–113 of the Transportation Article; and

(ii) The lien arises out of that business.

§16–208.

(a) If the owner of property subject to a lien institutes an action of replevin and establishes a right to the issuance of a writ but for the defendant's alleged lien under this subtitle, the court shall issue the writ.

(b) (1) In the trial of the replevin action, the court shall determine:

(i) The amount of the lien claim, if any; and

(ii) The amount of any expenses properly incurred or accrued before the trial, including storage and advertising.

(2) If judgment is for the defendant:

(i) It may include reasonable attorney's fees; and

(ii) It shall be either for the property replevied or for the amounts determined in accordance with paragraph (1) of this subsection.

(3) The defendant has the burden of proof to establish his lien claim to the same extent as if he were a plaintiff in an action to secure judgment on an open account.

§16–209.

The remedies provided in this subtitle for enforcing a lien do not:

(1) Preclude use of any other remedy allowed by law for enforcement of a lien against personal property; or

(2) Bar a right to recover any part of the lienor's claim that is not paid by proceeds from the sale of the property subject to the lien.

§16–301.

In this subtitle, "artisan" includes any laborer, mechanic, repairman, tradesman, dry cleaner, and launderer.

§16–302.

(a) Any artisan who, with the consent of the owner, has possession of goods for repair, mending, improving, dry cleaning, laundering, or other work which includes storage of goods in the case of a dry cleaner or launderer, has a lien on the goods for the costs of the work done.

(b) If the costs which give rise to the lien are due and unpaid 90 days after the work is completed or in the case of a dry cleaner or launderer goods are due to be retrieved from storage, the artisan may sell the goods to which the lien attaches at public or private sale. The artisan, launderer, or dry cleaner shall post a notice in a conspicuous place on the premises to the effect that clothing must be retrieved in 90 days or it will be subject to sale, after notice.

(c) The artisan shall give at least 30 days notice before any sale or disposal to the owner by mailing the notice to the owner at his last known address. If the owner's address is unknown, the notice may be given by:

(1) Posting it on the door of the courthouse or on a bulletin board in the immediate vicinity of the door of the courthouse of the county in which the work was done;

(2) Publishing it once a week for two successive weeks in one or more newspapers of general circulation in the county in which the work was done; or

(3) (i) Posting it at the artisan's place of business in a plain and prominent manner, provided that the notice is imprinted on a sign that is clearly visible and states that the goods may be sold on or after 90 days from the day the work is completed; and

(ii) Imprinting the notice on the receipt or invoice given to the owner or the owner's agent.

(d) (1) The proceeds of the sale shall be applied, in the following order, to:

(i) The expenses of the sale; and

(ii) The amount of the lien claim.

(2) After application of the proceeds in accordance with paragraph (1) of this subsection, any remaining balance shall be paid to the owner of the goods.

(e) As an alternative to (b) and (c) above, if the costs which give rise to the

lien are due and unpaid 6 months after dry-cleaned or laundered goods are due to be retrieved from storage, the dry cleaner or launderer may dispose of the goods in any manner. The artisan, launderer, or dry cleaner shall post a notice in a conspicuous place on the premises to the effect that clothing must be retrieved in 6 months or the goods may be disposed of.

§16–401.

(a) The owner or operator of a livery stable or other establishment who gives care or custody to any livestock has a lien on the livestock for any reasonable charge incurred for:

(1) Board and custody;

(2) Training;

(3) Veterinarians' and blacksmiths' services; and

(4) Other proper maintenance expenses.

(b) If the charges which give rise to the lien are due and unpaid for 30 days and the lienor is in possession of the livestock, the lienor may sell the livestock to which the lien attaches at public sale.

(c) (1) The lienor shall publish notice of the sale once a week for two successive weeks in one or more newspapers of general circulation in the county where the livestock is located.

(2) In addition, the lienor shall send notice by registered or certified mail at least 30 days before the sale to the owner of the livestock at his last known address. If the owner's address is unknown, the notice may be given by posting it on the door of the courthouse or on a bulletin board in the immediate vicinity of the door of the courthouse of the county where the livestock is located.

(d) (1) The proceeds of the sale shall be applied, in the following order, to:

(i) The expenses of the sale; and

(ii) The amount of the lien claim.

(2) After application of the proceeds in accordance with paragraph (1) of this subsection, any remaining balance shall be paid to the owner of the livestock.

§16–501.

In this subtitle, "hotel" includes any ordinary, inn, boarding house, hotel, or motel.

§16–502.

(a) A hotel keeper has a lien on the baggage or other property in the hotel which belong to or are under the control of a guest for any charge due or to become due to the hotel keeper for:

(1) The price or value of food or accommodation;

(2) The amount of any loan or advance; or

(3) The amount provided by cashing a check, draft, or otherwise.

(b) The hotel keeper may retain possession of the property to which the lien attaches until all charges due or to become due to him are paid.

(c) If the charges which give rise to the lien are unpaid 15 days after they become due, the hotel keeper may sell the property to which the lien attaches at public sale.

(d) The hotel keeper shall publish notice of the time, place, and terms of the sale at least twice in one or more newspapers of general circulation in the county where the hotel is located. The first publication of notice shall be at least 10 days before the sale.

(e) (1) The proceeds of the sale shall be applied, in the following order, to:

(i) The expenses of the sale; and

(ii) The amount of the lien claim.

(2) After application of the proceeds in accordance with paragraph (1) of this subsection, any remaining balance shall be paid to the owner of the property.

§16–503.

(a) Any person who takes boarders or lodgers into his house has a lien on the furniture or other property which the boarder or lodger has on the person's premises for the contract price due or to become due for the room or board furnished.

(b) The person may retain possession of the property to which the lien attaches until all charges due or to become due to him are paid.

(c) If the charges which give rise to the lien are unpaid after they become due, the person may sell the property to which the lien attaches at public or private sale.

(d) The person shall give at least 10 days reasonable notice of the sale to the boarder or lodger.

(e) (1) The proceeds of the sale shall be applied, in the following order, to:

(i) The expenses of the sale; and

(ii) The amount of the lien claim.

(2) After application of the proceeds in accordance with paragraph (1) of this subsection, any remaining balance shall be paid to the boarder or lodger.

§16–601.

(a) A hospital which furnishes medical or other services to a patient injured in an accident not covered by the Maryland Workers' Compensation Act has a lien on 50 percent of the recovery or sum which the patient or, in case of death, the heirs or personal representative of the patient collect in judgment, settlement, or compromise of the patient's claim against another for damages on account of the injuries.

(b) (1) The lien secures the reasonable and necessary charges of the hospital for treatment, care, and maintenance provided to the patient.

(2) However, the charges secured may not exceed those allowed by the State Workers' Compensation Commission for medical services rendered to individuals coming under the Maryland Workers' Compensation Act.

(c) A hospital's lien is subordinate only to an attorney's lien for professional services for collecting or obtaining damages.

§16–602.

(a) A lien is not effective under this subtitle unless, before payment of any money to the patient, his attorney, heirs, or personal representative as compensation for the injuries, the hospital:

(1) Files a notice of lien with the clerk of the circuit court of the county where the medical or other services were provided; and

(2) Sends a copy of the notice of lien and a statement of the date of its filing by registered or certified mail to the person alleged to be liable for the injuries received by the patient.

(b) The notice of lien shall be in writing and shall contain:

(1) The name and address of the injured patient;

(2) The date of the accident;

(3) The name and location of the hospital;

(4) The amount claimed; and

(5) The name of the person alleged to be liable for the injuries received.

(c) The hospital also shall send a copy of the notice of lien by registered or certified mail to any insurance carrier known to insure the person alleged to be liable for the injuries received by the patient.

§16–603.

After the filing and mailing of the notice of lien, if any person makes any payment to the patient, his attorney, heirs, or personal representative as compensation for the injuries, without paying the hospital the amount of the lien as provided in § 16-601 of this subtitle or as much of the lien as may be satisfied by any money due under any final judgment or under any compromise or settlement agreement after paying the amount of any prior lien, he is liable to the hospital for a period of one year from the date of making payment to the patient, his attorney, heirs, or personal representative.

§16–604.

Any person who is legally liable for or against whom a claim is asserted by a patient for compensation for injuries shall be permitted to inspect the records of the hospital in order to evaluate the basis of the hospital's lien and to ascertain the itemized hospital departmental charges for the period of the patient's confinement. Notice of the inspection shall be mailed to the patient.

§16–605.

(a) The clerk of the circuit court shall provide a hospital lien docket. On the filing of a notice of lien under the provisions of this subtitle, the clerk shall enter in the hospital lien docket:

(1) The name of the injured patient;

(2) The name of the person alleged to be liable for the patient's injuries;

(3) The date of the accident; and

(4) The name of the hospital making the claim.

(b) The clerk shall index the hospital lien under the name of the injured patient.

(c) On presentation of a release of a lien, the clerk shall note in the docket the date when the release was filed and shall note on the release that it was recorded. A release bearing a note that it was recorded or a notation in the docket showing the release constitutes prima facie evidence of the release of the lien.

(d) The clerk shall collect not more than $2 for the filing, recording, and indexing of each lien. He also shall collect not more than $2 for filing a release of the lien and for noting the filing of the release in the docket and on the release.

§16–701.

(a) (1) If a qualified veterinarian, as defined in the Agriculture Article, or a commercial boarding kennel operator gives care or custody to any animal or performs medical or other services necessary and incidental to their professions to any animal under care or custody, the veterinarian or commercial boarding kennel operator may notify the owner after the animal is ready for delivery that the animal is ready.

(2) Notice may be given in person or by registered or certified mail or, if the owner's address is unknown, by posting the notice for 10 days on the door of the courthouse or on a bulletin board in the immediate vicinity of the courthouse of the county where the animal is located.

(b) If the animal is not claimed and taken by the owner from the veterinarian or the boarding kennel within 10 days of the date the notice is given or posted, the owner forfeits his title to the animal and the veterinarian or the commercial boarding kennel operator may:

(1) Sell the animal at public sale, except for purposes of experimentation or vivisection;

(2) Turn the animal over to an animal welfare agency serving the county in which the animal is located or, if there is no animal welfare agency in that county, to the nearest animal welfare agency; or

(3) Turn the animal over to a responsible private individual in the county.

(c) If the veterinarian or commercial boarding kennel operator gives notice to the owner of the animal as provided in subsection (a) of this section, the veterinarian, commercial boarding kennel operator, and any custodian to whom the animal may be given are relieved of any further liability for disposal.

(d) (1) The proceeds of any sale under subsection (b)(1) of this section shall be applied, in the following order, to:

(i) The expenses of the sale; and

(ii) The amount of the indebtedness of the owner of the animal.

(2) After application of the proceeds in accordance with paragraph (1) of this subsection, any balance shall be held for 30 days for the benefit of the owner of the animal. If the balance is unclaimed after 30 days, the veterinarian or commercial boarding kennel operator shall turn the balance over to the local board of education.

(e) The exercise of any right provided in this section does not prevent a subsequent action at law for the collection of any money remaining due and unpaid to the veterinarian or commercial boarding kennel operator.

§17–101.

(a) In this title the following words have the meanings indicated.

(b) (1) "Abandoned property" means personal property that is considered abandoned under this title.

(2) "Abandoned property" includes property in the custody of the federal government that is classified as "unclaimed property" under federal law.

(c) "Administrator" means the State Comptroller.

(d) "Banking organization" means any bank, trust company, savings bank, land bank, and any other similar organization engaged in business in the State.

(e) "Business association" means any corporation, joint stock company, business trust, statutory trust, partnership, or any association for business purposes of two or more individuals.

(f) "County" includes Baltimore City.

(g) "Federal government" includes any of its agencies or instrumentalities.

(h) "Financial organization" means any savings and loan association or credit union engaged in business in the State.

(i) "Holder" means any person who is:

(1) In possession of property subject to this title belonging to another;

(2) A trustee, in the case of a trust; or

(3) Indebted to another on an obligation subject to this title.

(j) "Insurance corporation" means any association or corporation transacting in the State the business of insurance on the lives of persons or insurance pertaining to life insurance, including endowments and annuities, disability, accident and health insurance, and property, casualty, and surety insurance, as these terms are defined in the Insurance Article.

(k) "Owner" means:

(1) In the case of a deposit, a depositor or a person entitled to receive the funds as reflected on the records of the bank or financial organization;

(2) In the case of a trust, a beneficiary;

(3) In the case of other choses in action, a creditor, claimant, or payee;

(4) In the case of abandoned property in federal custody, the person who is defined as the owner by any applicable federal law; or

(5) Any person who has a legal or equitable interest in property subject to this title, or the legal representative of that person.

(l) "Person" includes the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, an individual, business association, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(m) "Personal property" does not include:

(1) A gift certificate;

(2) Credits in connection with the sale of consumer goods to a wholesaler or retailer in the ordinary course of business;

(3) Outstanding checks or credits issued to vendors or commercial customers in the ordinary course of business, other than property described in § 17-301(a) of this title held by a banking organization or financial organization;

(4) Credit balances in vendor or commercial customer accounts that occur in the ordinary course of business, other than property described in § 17-301(a) of this title held by a banking organization or financial organization; or

(5) Purchase price rebates issued to customers in the ordinary course of business.

(n) "Service charge" means any type of deduction or charge made by a holder on property presumed abandoned under this title.

(o) "Utility" means any person who owns or operates in the State, for public use, any plant, equipment, property, franchise, or license for the transmission of communications, for the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas, or for the transportation of persons or property.

§17–102.

(a) The Administrator shall create a division of the office, to be known as the abandoned property office, for the purpose of administering the provisions of this title.

(b) An appropriation shall be made annually for the maintenance of the office and to provide sufficient staff to adequately enforce the provisions of this title.

(c) Other divisions of the office of the Administrator, as well as every State officer and employee generally, shall assist in the enforcement of this title in connection

with the performance of their normal duties.

§17–103.

(a) The Administrator may adopt the necessary rules and regulations to carry out the provisions of this title.

(b) The Administrator may continue to regulate the imposition of service charges on property during the period of time giving rise to the presumption of abandonment by adopting rules and regulations relating to service charges.

§17–104.

This title does not apply to any property that has been presumed abandoned or escheated under the laws of another state before June 1, 1966.

§17–105.

(a) A requirement in this title that a document be under oath means that the document shall be supported by a signed statement made under the penalties of perjury that the contents of the document are true to the best of the knowledge, information, and belief of the individual making the statement.

(b) The oath or affirmation shall be made:

(1) Before an individual authorized to administer oaths, who shall certify in writing to have administered the oath or taken the affirmation; or

(2) By a signed statement that:

(i) Is in the document or attached to and made part of the document; and

(ii) Is expressly made under the penalties for perjury.

(c) If the procedures provided in subsection (b)(2) of this section are used, the affidavit subjects the individual making it to the penalties for perjury to the same extent as an oath or affirmation made before an individual authorized to administer oaths.

(d) A document made under oath shall be signed:

(1) For a corporation, by an officer of the corporation authorized to do so;

(2) For a sole proprietorship, by its owner; or

(3) For a partnership, by a partner authorized to do so.

§17–201.

The Administrator shall:

(1) Attempt to discover abandoned property in federal custody that is unclaimed by an owner who is presumed to have an address in this State; and

(2) Institute proceedings for a judicial determination of this State's rights to receive custody of any abandoned property in federal custody.

§17–202.

(a) The Administrator shall endeavor to enter into an agreement with the federal government concerning abandoned property in federal custody.

(b) The agreement shall provide:

(1) Unless federal law provides otherwise, that tangible abandoned property in federal custody that was initially acquired in this State shall be delivered to the Administrator;

(2) That if the last known address of any owner of intangible abandoned property in federal custody is in this State:

(i) The situs of the abandoned property is in this State, and the abandoned property shall be delivered to the Administrator; and

(ii) That the address of any other owner of the abandoned property in federal custody is determined by federal law;

(3) For payment of the State's proportionate share of costs incurred by the federal government in:

(i) Investigating records of abandoned property;

(ii) Reporting information about abandoned property to the Administrator; and

(iii) Delivering the abandoned property to the Administrator;

(4) The manner and times of payment, including a provision that payments may be made at stated times over a period of years;

(5) That this State indemnifies the federal government against any claim made as a result of the delivery of abandoned property to this State under the agreement; and

(6) That the Attorney General of this State shall intervene in any action or proceeding brought against the federal government as a result of action taken in

accordance with the agreement.

§17–203.

As to any claim made because of action taken in accordance with an agreement made under this subtitle:

(1) This State consents to suit by any claimant against the federal government; and

(2) Any defense of the federal government is available to this State.

§17–204.

(a) The Governor shall certify to the federal government the provisions of an agreement made under this subtitle.

(b) The certification shall be made on the thirtieth of June next following the effective date of the agreement as provided by federal law.

§17–205.

(a) When the federal government reports abandoned property to the Administrator under the agreement, the Administrator shall forward a copy of the report to the clerk of the circuit court for each county in the State.

(b) Each clerk of the circuit court shall post the report of abandoned property in federal custody at the court house for the county for 60 days.

§17–206.

(a) Any person who asserts an interest in abandoned property in federal custody:

(1) May elect to claim against the federal government; or

(2) Within 90 days of the posting of the report of abandoned property in federal custody, shall notify the Administrator of the asserted interest and intent to claim.

(b) If the Administrator receives notice under this section, the abandoned property in question shall be omitted from any claim by this State until a final judicial determination is made of the claim.

§17–207.

If a judicial determination is made against a claimant of abandoned property in federal custody, the claimant may not assert a claim against this State.

§17–208.

The expiration of any limitations period set by statute or court order does not affect the right of this State to acquire possession of abandoned property in federal custody.

§17–209.

This subtitle shall be construed to effect its general purpose to make uniform the laws of those states which enact it.

§17–301.

(a) The following property held by a banking or financial organization, or business association is presumed abandoned:

(1) Any demand, savings, or matured time deposit account made with a banking organization, together with any interest or dividend on it, excluding any charges that lawfully may be withheld, unless, within 3 years, the owner has:

(i) Increased or decreased the amount of the deposit;

(ii) Presented evidence of the deposit for the crediting of interest;

(iii) Corresponded in writing with the banking organization concerning the deposit;

(iv) Engaged in any credit, trust, or other deposit transaction with the banking organization; or

(v) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization;

(2) Any funds paid toward the purchase of shares or other interest in a financial organization, or any deposit made with these funds, and any interest or dividends on these, excluding any charges that lawfully may be withheld, unless, within 3 years, the owner has:

(i) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends;

(ii) Corresponded in writing with the financial organization concerning the funds or deposit;

(iii) Engaged in any credit, share, or other deposit transaction with the financial organization; or

(iv) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization;

(3) Any sum payable on a check certified in this State or on a written instrument issued in this State on which a banking or financial organization or business association is directly liable, including any certificate of deposit, draft, traveler's check, and money order, that has been outstanding for more than 3 years from the date it was payable (or 15 years in the case of a traveler's check) or, if payable on demand, from the date of its issuance, unless, within 3 years or 15 years in the case of a traveler's check, the owner has:

(i) Corresponded in writing with the banking or financial organization or business association concerning it; or

(ii) Otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association; and

(4) Any property removed from a safekeeping repository on which the lease or rental period has expired or any surplus amounts arising from the sale of the property pursuant to law, that have been unclaimed by the owner for more than 3 years from the date on which the lease or rental period expired.

(b) Nothing in this section shall be construed to apply to any demand, savings, or matured time deposits that are designated subject to the order of any court of this State.

(c) Property is subject to the custody of this State as unclaimed property if the conditions raising a presumption of abandonment under this section are met and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(i) The last known address of the person entitled to the property is in this State; or

(ii) The holder is a domiciliary or a government or governmental subdivision or agency of this State and has not previously paid or delivered the property to the State of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision

or agency of this State;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this State; or

(6) The transaction out of which the property arose occurred in this State and:

(i) The last known address of the apparent owner or other person entitled to the property is unknown or the last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property; and

(ii) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property.

§17–302.

(a) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than 3 years after the funds become due and payable as established from the records of the insurance company holding or owing the funds.

(b) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(c) For purposes of this subtitle, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(1) The company knows that the insured or annuitant has died; or

(2) (i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in item (i) of this paragraph; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding 3 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or

otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(d) (1) "Unclaimed funds", as defined in paragraph (2) of this subsection, held by a fire, casualty, or surety insurance corporation, shall be presumed abandoned if the last known address of the person entitled to the funds, according to the records of the corporation, is in this State. If a person other than the insured, the principal, or the claimant is entitled to the funds and the address of the person is not known to the corporation or if it is not definite and certain from the records of the corporation which person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal, or the claimant according to the records of the corporation.

(2) "Unclaimed funds", as used in this subsection, means all money held by any fire, casualty, or surety insurance corporation unclaimed and unpaid for more than 3 years after the money becomes due and payable, as established from the records of the corporation, either to an insured, a principal, or a claimant under any fire, casualty, or surety insurance policy or contract.

(e) Money otherwise payable according to the records of the corporation is considered due and payable although the policy or contract has not been surrendered as required.

§17–303.

The following funds held by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in the State, less any lawful deduction, that has remained unclaimed by the person who appears on the records of the utility as entitled to it for more than 3 years after the termination of the services for which the deposit or advance payment was made;

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in the State, together with any interest on it, less any lawful deduction, that has remained unclaimed by the person appearing on the records of the utility as entitled to it for more than 3 years after the date it became payable in accordance with the final determination or order providing for the refund; and

(3) Any sum paid to a utility for a utility service, which service has not been rendered within 3 years of the payment.

§17–304.

(a) Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held by a business association for or to a shareholder, certificate holder, member, bondholder or other

security holder, or participating patron of a cooperative, who has not claimed it or corresponded in writing with the business association concerning it within 3 years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held by a business association organized under the laws of or created in this State;

(2) It is held by a business association doing business in this State but not organized under the laws of this State, and the records of the business association indicate that the last known address of the person entitled to it is in this State; or

(3) It is held by a business association not doing business in this State and not organized under the laws of this State, but the records of the business association indicate that the last known address of the person entitled to it is in this State.

(b) This section shall apply to the stock or other certificate of ownership on, for or from which the amounts described in subsection (a) of this section have been presumed abandoned if the owner of said underlying stock or certificate has not, within the 3-year period giving rise to the presumption of abandonment:

(1) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(2) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(c) At the expiration of a 3-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least 3 dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If 3 dividends, distributions, or other sums are paid during the 3-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If 3 dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been 3 dividends, distributions, or other sums that have not been claimed by the owner.

(d) The running of the 3-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (b) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(e) At the time an interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of

the interest, and not previously presumed abandoned, is presumed abandoned.

(f) This section does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the Administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within 3 years communicated in any manner described in subsection (b) of this section.

(g) The holder of an interest under this section shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the Administrator. Upon delivery of a duplicate certificate to the Administrator, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with the provision of § 17-313 of this subtitle to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the Administrator, for any losses or damages resulting to any person by the issuance and delivery to the Administrator of the duplicate certificate.

§17–305.

All tangible or intangible personal property distributable on forfeiture of the charter or voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of this State, that is unclaimed by the owner 60 days after the date of final distribution, is presumed abandoned.

§17–306.

All intangible personal property and any income or increment on it, held in a fiduciary capacity for the benefit of another person, is presumed abandoned unless, within 3 years after it becomes payable or distributable, the owner has increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

§17–307.

All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this State or any political subdivision of it that has remained unclaimed by the owner for more than 3 years is presumed abandoned.

§17–307.1.

The balance of the proceeds from the sale of personal property stored at a self–service storage facility that is unclaimed after the expiration of the 1 year period specified in § 18–504(e) of this article is presumed abandoned.

§17–308.

(a) All unclaimed wages or outstanding payroll checks held or owing in the ordinary course of the holder's business, that have remained unclaimed by the owner for more than 3 years after they became payable, are presumed abandoned.

(b) All intangible personal property, not otherwise covered by this title, including any income or increment on it and deducting any lawful charges, that is held or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than 3 years after it became payable or distributable, is presumed abandoned.

(c) Property is payable or distributable for the purpose of this title notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(d) Property is reportable to this State under subsection (b) of this section under the priority rules established under § 17–301(c) of this subtitle.

§17–308.1.

(a) A holder may not impose any charges on a dormant or inactive account or cease payment or accrual of any benefits, including dividends or interest on property during the period of time giving rise to the presumption of abandonment unless:

(1) The charges or cessation of any benefit are provided for in a valid, enforceable and written contract between the holder and the owner which specifies the amount or rate of the charges and that the benefit will cease;

(2) For property in excess of $2, the holder gives written notice to the owner at the owner's last known address before the proposed action; and

(3) The holder imposes charges or ceases accrual or payment of benefits on all dormant or inactive accounts, and does not reverse or otherwise cancel the charges or retroactively pay or accrue benefits with respect to those accounts.

(b) A holder may consider a money order dormant or inactive for purposes of imposing a service charge if the owner has taken none of the actions set forth in § 17–301(a)(3) of this subtitle for 1 year from the date of issuance of the money order.

(c) The notice required in this section is not required with respect to charges imposed or benefits that ceased prior to July 1, 1981.

§17–308.2.

Not more than 120 days or less than 30 days before the filing of the report required under § 17–310 of this subtitle, the holder in possession of presumed abandoned property shall send a written notice by first–class mail to the apparent

owner of presumed abandoned property valued at $100 or more to the owner's last known address informing the owner that:

(1) The holder is in possession of property subject to the provisions of this title; and

(2) The property will be considered abandoned unless the owner responds within 30 days of the notification to the holder.

§17–309.

If specific property which is subject to the provisions of this subtitle is held for an owner whose last known address is in another state, the specific property is not presumed abandoned in this State and is not subject to this subtitle if:

(1) It may be claimed as abandoned or escheated under the laws of the other state; and

(2) The laws of the other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by the other state when held for an owner whose last known address is in this State.

§17–310.

(a) Every person holding funds or other tangible or intangible property presumed abandoned under this subtitle shall report to the Administrator with respect to the property as provided in this section.

(b) The report shall be made under oath and shall include:

(1) The name, if known, and last known address, if any, of each person who appears from the records of the holder to be the owner of any property valued at $100 or more and presumed abandoned under this subtitle;

(2) In case of unclaimed funds of an insurance corporation, the full name of the insured, annuitant, principal, or claimant, and the last known address according to the insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount which appears from the records to be due, except that items valued at less than $100 each may be reported in the aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Any other information which the Administrator prescribes by rule as necessary for the administration of this title.

(c) If the person holding property presumed abandoned is a successor to any other person who previously held the property for the owner, or if the holder has changed his name while holding the property, the person shall file with the report all prior known names and addresses of each holder of the property.

(d) The report shall be for the period of July 1 through June 30 of each year and filed no later than October 31 of that year. However, the reporting period for an insurance corporation shall be from January 1 through December 31 of each year and the report shall be filed no later than April 30 of the following year. The Administrator may postpone the reporting date on the written request of any person required to file a report.

(e) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

§17–310.1.

(a) In case any banking or financial organization, insurance corporation, or utility neither holds nor owes any abandoned property specified in this title on June 30 of any year, it shall make a written report to the Administrator so stating as provided in this section.

(b) The report shall be signed by the holder who, by signing, attests to the veracity of the report.

(c) The report shall be made on a standard form and include information that the Administrator requires.

(d) (1) For banking or financial organizations, the report shall be for the period of July 1 through June 30 and shall be filed no later than October 31 of the same year.

(2) For insurance corporations, the report shall be for the period of January 1 through December 31 of each year, and shall be filed no later than April 30 of the following year.

§17–311.

(a) (1) Within 365 days from the filing of the report required by § 17-310 of this subtitle, the Administrator shall cause notice to be published in a newspaper of general circulation in the county in the State within which is located the last known address of any person to be named in the notice.

(2) If an address is not listed or if the address is outside the State, the notice shall be published in the county within which the person who held the abandoned property has the principal place of business in this State.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property" and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice in the county specified in this section;

(2) A statement that information concerning the amount or description of the property and the name and address of the person who held the property may be obtained by any person who possesses an interest in the property, by addressing an inquiry to the Administrator; and

(3) A statement that a proof of claim may be presented by the owner to the Administrator.

(c) The Administrator is not required to publish in the notice any item valued at less than $100 unless the Administrator considers the publication to be in the public interest.

(d) Within 120 days from the receipt of the report required by § 17-310 of this subtitle, the Administrator shall mail a notice to each person who has an address listed in the report who appears entitled to property valued at $100 or more and presumed abandoned under this subtitle.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the Administrator, property is being held to which the addressee appears entitled;

(2) The name and address of the person who held the property and any necessary information regarding any change of the name or address of the holder; and

(3) A statement that a proof of claim may be presented by the owner to the Administrator.

§17–312.

Every person who has filed a report as provided in § 17-310 of this subtitle, at the time of the filing of the report, shall pay or deliver to the Administrator all abandoned property specified in the report.

§17–313.

On the payment or delivery of any abandoned property under this title to the Administrator, the State shall assume custody and shall be responsible for its safekeeping. Any person who pays or delivers abandoned property to the Administrator under this title is relieved of all liability, to the extent of the value of the property paid or delivered, for any claim which exists or may arise with respect to the property. Any holder who has paid money to the Administrator under this title may make payment

to any person who appears to the holder to be entitled to it and, on proof of the payment and proof that the payee was entitled to it, the Administrator immediately shall reimburse the holder for the payment.

§17–315.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, may not:

(1) Prevent the money or property from being presumed abandoned property; or

(2) Affect any duty to file a report required by this subtitle or to pay or deliver abandoned property to the Administrator.

§17–316.

(a) Except as provided in this subsection, all abandoned property under this title, other than money delivered to the Administrator under this title, shall be offered for sale by the Administrator within 1 year of delivery. The sale shall be to the highest bidder at public sale in whatever place in the State affords the most favorable market for the property involved. The Administrator may decline the highest bid and reoffer the property for sale if the price bid is insufficient. The Administrator need not offer any property for sale if, the probable cost of sale exceeds the Administrator's estimation of the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice at least three weeks in advance of the sale in a newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the Administrator under this section shall receive title to the property purchased, free from every claim of the owner or prior holder of it and of every person who claims through or under them. The Administrator shall execute all documents necessary to complete the transfer of title.

(d) No action by any person may be brought or maintained against the State or any officer of the State for or on account of any transaction entered into pursuant to and in accordance with the provisions of this section.

§17–317.

(a) (1) All funds received under this title, including the proceeds of the sale of abandoned property under § 17–316 of this subtitle, shall be credited by the Administrator to a special fund. The Administrator shall retain in the special fund at the end of each fiscal year, from the proceeds received, an amount not to exceed $50,000, from which sum the Administrator shall pay any claim allowed under this title.

(2) After deducting all costs incurred in administering this title from the remaining net funds the Administrator shall distribute $1,500,000 to the Maryland Legal Services Corporation Fund established under § 11–402 of the Human Services Article.

(3) (i) Subject to subparagraph (ii) of this paragraph, the Administrator shall distribute all unclaimed money from judgments of restitution under Title 11, Subtitle 6 of the Criminal Procedure Article to the State Victims of Crime Fund established under § 11–916 of the Criminal Procedure Article to assist victims of crimes and delinquent acts to protect the victims' rights as provided by law.

(ii) If a victim entitled to restitution that has been treated as abandoned property under § 11–614 of the Criminal Procedure Article is located after the money has been distributed under this paragraph, the Administrator shall reduce the next distribution to the State Victims of Crime Fund by the amount recovered by the victim.

(4) After making the distributions required under paragraphs (2) and (3) of this subsection, the Administrator shall distribute the remaining net funds not retained under paragraph (1) of this subsection to the General Fund of the State.

(b) Before making the distribution, the Administrator shall record the name and last known address, if any, of the owners of funds so distributed and the type of property which the funds distributed represent. The record shall be available for public inspection during reasonable business hours by any person who claims a legal interest in any property held by the Administrator, provided that the person gives prior notice to the Administrator.

§17–318.

Any person who claims a legal interest in any property delivered to the State under this title must file a claim to the property or to the proceeds from its sale on the form prescribed by the Administrator.

§17–319.

(a) (1) The Administrator shall consider any claim filed under this title and may hold a hearing and receive evidence concerning it.

(2) If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the Administrator immediately shall make payment. The claim shall be paid without deduction for costs of notices or sale or for service charges.

(c) In satisfying a claim the Administrator shall pay the claimant an amount

equal to the sales price obtained at the public sale.

§17–320.

Any person aggrieved by a decision of the Administrator or as to whose claim the Administrator has failed to act within 90 days after the filing of the claim, may commence an action in the circuit court for the county to establish his claim. The proceeding shall be brought within 90 days after the decision of the Administrator or within 180 days from the filing of the claim if the Administrator fails to act.

§17–321.

After receiving reports of property presumed abandoned under this title, the Administrator may decline to receive any property reported which he considers to be valued at less than the cost of giving notice or of holding a sale. He may postpone taking possession until a sufficient sum accumulates, if he considers it desirable because of the small sum involved.

§17–322.

(a) At reasonable times and on reasonable notice, the Administrator may examine the records of any person if there is reason to believe that the person has failed to report property that should have been reported under this title. The Administrator may not examine the records of any person regarding abandoned property after 5 years from the date the person filed the report with the Administrator covering the period of time during which the property allegedly became abandoned, unless the Administrator finds that the person acted fraudulently or with gross negligence with respect to the report.

(b) If any person refuses to permit the examination of records, the Administrator may issue a subpoena to compel the person to testify and produce records. The subpoena shall be served by the sheriff of the county where the person resides or may be found. The person shall be entitled to the same per diem and mileage as witnesses appearing in a circuit court of the State, which shall be paid by the State.

(c) If any person refuses to obey any subpoena so issued or refuses to testify or produce records, the Administrator may present a petition to the circuit court of the county where the person is served with the subpoena or where the person resides. The court then shall issue an order to require the person to obey the subpoena or to show cause for failure to obey it. Unless the person shows sufficient cause for failing to obey the subpoena, the court immediately shall direct the person to obey and, on refusal to comply, adjudge the person to be in contempt of court and punished as the court may direct.

§17–323.

(a) Any person who fails to pay or deliver abandoned property to the Administrator as required by this title shall pay a penalty equal to 15 percent of the

value of the property. If any person fails to file any report or refuses to deliver property to the Administrator as required by this title, the Administrator may bring an action in a court of appropriate jurisdiction to require the filing of the report and to enforce delivery of the property.

(b) Any person who willfully fails to render any report or perform any other duty required by this subtitle is subject to a fine of $100 for each day the report is withheld, but not more than $5,000.

(c) In addition to the provisions of subsection (a) of this section, any person who willfully refuses to pay or deliver abandoned property to the Administrator as required by this subtitle is subject to a fine of not less than $500 nor more than $5,000 or imprisonment for not more than six months or both.

§17–324.

(a) The Administrator may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The Administrator by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(b) To avoid conflicts between the Administrator's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the Administrator, so far as is consistent with the purposes, policies, and provisions of this subtitle, before adopting, amending, or repealing rules, may advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(c) The Administrator may join with other states to seek enforcement of this subtitle against any person who is or may be holding property reportable under this Act.

§17–325.

All agreements to pay compensation to recover or assist in the recovery of property made within 24 months of the date the property is paid or delivered to the abandoned property office are unenforceable.

§17–326.

This title may be cited as the Maryland Uniform Disposition of Abandoned Property Act.

§18–101.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

(2) "Bill of lading" includes an airbill; that is, 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.

(c) "Conspicuous" has the meaning stated in § 1-201(10) of this article.

(d) "Goods" means all things which are treated as moveable for the purposes of a contract of storage or transportation.

(e) "Person" includes an individual, corporation, business trust, statutory trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

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

(g) "Warehouseman" means a person engaged in the business of storing goods for hire.

§18–201.

(a) A person or his agent or officer may not issue a bill of lading, receipt, acknowledgment, or voucher for transport of any goods if, at the time the instrument is issued, the person has not actually received the goods for transport.

(b) An officer, agent, or employee of a carrier may not issue or aid in issuing a bill of lading for any goods:

(1) With intent to defraud; and

(2) With knowledge that, at the time the bill of lading is issued, the goods:

(i) Have not been received by the carrier, its agent, or a connecting carrier; or

(ii) Are not under the carrier's control.

§18–202.

An officer, agent, or employee of a carrier may not issue or aid in issuing a duplicate or additional negotiable bill of lading for any goods in violation of § 7-402

of this article:

(1) With intent to defraud; and

(2) With knowledge that the original bill of lading for the goods is outstanding and uncancelled.

§18–203.

A person may not negotiate or transfer for value a bill of lading:

(1) With intent to defraud;

(2) With knowledge that any of the goods which appear by the terms of the bill of lading to have been received for transportation by the carrier which issued the bill of lading are not in the possession or control of the carrier or a connecting carrier; and

(3) Without disclosing the lack of possession and control.

§18–204.

A person may not secure the issuance by a carrier of a bill of lading by inducing an officer, agent, or employee of the carrier to believe falsely that the goods were received by the carrier or are under its control:

(1) With intent to defraud; and

(2) With knowledge that, at the time the bill of lading is issued, any of the goods described in the bill of lading as received for transportation:

(i) Have not been received by the carrier, its agent, or a connecting carrier; or

(ii) Are not under the carrier's control.

§18–205.

A person with intent to defraud may not issue or aid in issuing a nonnegotiable bill of lading without a conspicuous notation on its face of the words "not negotiable" or "nonnegotiable".

§18–206.

An officer, agent, or employee of a carrier may not issue or aid in issuing a bill of lading for goods:

(1) With intent to defraud; and

(2) With knowledge that it contains a false statement.

§18–207.

A person may not ship goods to which he has no title or on which there is a lien or security interest and transfer a negotiable bill of lading for the goods for value:

(1) With intent to defraud; and

(2) Without disclosing his lack of title or the existence of the lien or security interest.

§18–301.

(a) A person or his agent or officer may not issue any warehouse receipt, acceptance of an order, or other voucher for storage or deposit in the State of any goods if, at the time the instrument is issued, the goods are not:

(1) In his actual possession or custody;

(2) On his premises; or

(3) Under his absolute and exclusive control.

(b) A warehouseman or his officer, agent, or employee may not issue or aid in issuing a warehouse receipt for any goods with the knowledge that, at the time the warehouse receipt is issued, the goods:

(1) Have not been received by the warehouseman; or

(2) Are not under the control of the warehouseman.

§18–302.

Except as provided by § 7-601 of this article, a warehouseman or his officer, agent, or employee may not issue or aid in issuing a duplicate or additional negotiable warehouse receipt for any goods:

(1) Without a conspicuous notation on its face of the word "duplicate";

(2) With knowledge that the original warehouse receipt for the goods is outstanding and uncancelled.

§18–303.

A warehouseman or his officer, agent, or employee may not issue or aid in issuing a warehouse receipt for goods:

(1) With intent to defraud; and

(2) With the knowledge that it contains a false statement.

§18–304.

A warehouseman or his officer, agent, or employee, with the knowledge that any goods deposited with or held by the warehouseman are in fact goods of which the warehouseman, solely, jointly, or in common with others, is an owner, may not issue or aid in issuing a negotiable warehouse receipt for the goods which does not state that ownership.

§18–305.

Except as provided by § 7-601 of this article, a warehouseman or his officer, agent, or employee may not deliver goods out of the possession of the warehouseman:

(1) With knowledge that a negotiable warehouse receipt, the negotiation of which would transfer the right to the possession of the goods, is outstanding and uncancelled; and

(2) Without obtaining the possession of the warehouse receipt at or before the time of the delivery.

§18–306.

A person may not deposit goods to which he has no title or on which there is a lien or security interest and take a negotiable warehouse receipt for the goods and negotiate it for value:

(1) With intent to defraud; and

(2) Without disclosing his lack of title or the existence of the lien or security interest.

§18–307.

A bonded or distillery warehouse, as defined by the federal Tariff Act, located in the State is subject to all provisions of this subtitle not inconsistent with the Tariff Act.

§18–401.

(a) Any person who violates any provision of § 18-201(a) or § 18-301(a) of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000.

(b) Any person who violates any provision of §§ 18-201(b) through 18-205, § 18-301(b), or § 18-302 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000 or imprisonment not exceeding five years or both.

(c) Any person who violates any provision of § 18-206, § 18-207 or §§ 18-303

through 18-306 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding one year or both.

§18–501.

(a) In this subtitle the following words have the meanings indicated.

(b) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement.

(c) "Last known address" means that address or electronic mail address provided by the occupant in the rental agreement or the address or electronic mail address provided by the occupant in a subsequent written notice of a change of address.

(d) "Leased space" means the individual storage space at the self–service facility which is rented to an occupant pursuant to a rental agreement.

(e) "Occupant" means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self–service storage facility under a rental agreement.

(f) (1) "Operator" means the owner, operator, lessor, or sublessor of a self–service storage facility, an agent, or any other person authorized to manage the facility.

(2) "Operator" does not include a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored.

(g) (1) "Personal property" means movable property, not affixed to land.

(2) "Personal property" includes goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings.

(h) "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self–service storage facility.

(i) "Self–service storage facility" means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a "self–service" basis.

(j) "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

§18–502.

(a) An operator may not knowingly permit a leased space at a self-service storage facility to be used for residential purposes.

(b) An occupant may not use a leased space for residential purposes.

§18–503.

(a) The operator of a self–service storage facility has a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale, as provided in this subtitle.

(b) The rental agreement shall contain a statement, in bold type, advising the occupant:

(1) Of the existence of the lien;

(2) That personal property stored in the leased space may be sold to satisfy the lien if the occupant is in default;

(3) That personal property stored in the leased space may be towed or removed from the self–service storage facility if:

(i) The personal property is a motor vehicle or watercraft; and

(ii) The occupant is in default for more than 60 days; and

(4) That a sale of personal property stored in the leased space to satisfy the lien if the occupant is in default may be advertised:

(i) In a newspaper of general circulation in the jurisdiction where the sale is to be held;

(ii) By electronic mail; or

(iii) On an online Web site.

§18–504.

(a) (1) If the occupant is in default for a period of more than 60 days, the operator may enforce the lien by selling the personal property stored in the leased space at a public sale, for cash.

(2) Proceeds from the sale shall be applied to satisfy the lien, and any surplus shall be disbursed as provided in subsection (e) of this section.

(b) (1) Before conducting a sale under subsection (a) of this section, the operator shall, subject to paragraph (2) of this subsection, notify the occupant of the default by hand delivery, verified mail, or electronic mail at the occupant's last known address.

(2) (i) The operator may not notify the occupant of the default by electronic mail unless:

1. The rental agreement, or a written change to the rental agreement, specifies, in bold type, that notice may be given by electronic mail; and

2. The occupant provides the occupant's initials next to the statement in the rental agreement specifying that notice of default may be given by electronic mail.

(ii) If the operator notifies the occupant of the default by electronic mail at the occupant's last known address and does not receive a response or a confirmation of delivery sent from the occupant's electronic mail address, the operator shall send a second notice of default to the occupant by verified mail to the occupant's last known postal address.

(3) The notice shall include:

(i) A statement that the contents of the occupant's leased space are subject to the operator's lien;

(ii) A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;

(iii) A demand for payment of the charges due within a specified time, not less than 14 days after the date that the notice was mailed;

(iv) A statement that unless the claim is paid within the time stated, the contents of the occupant's space will be sold at a specified time and place; and

(v) The name, street address, and telephone number of the operator, or his designated agent, whom the occupant may contact to respond to the notice.

(4) (i) Subject to subparagraph (ii) of this paragraph, at least 3 days before conducting a sale under this section, the operator shall advertise the time, place, and terms of the sale:

1. In a newspaper of general circulation in the jurisdiction where the sale is to be held;

2. By electronic mail; or

3. On an online Web site.

(ii) The operator may not advertise the sale in the manner provided under subparagraph (i)2 or 3 of this paragraph unless the occupant provides the occupant's initials next to the statement in the rental agreement required under § 18–503(b)(4) of this subtitle.

(c) At any time before a sale under this section, the occupant may pay the

amount necessary to satisfy the lien and redeem the occupant's personal property.

(d) (1) A sale under this section shall be held at the self–service storage facility where the personal property is stored.

(2) A sale under this section shall be deemed to be held at the self–service storage facility where the personal property is stored if the sale is held on an online auction Web site.

(e) (1) If a sale is held under this section, the operator shall:

(i) Satisfy the lien from the proceeds of the sale; and

(ii) Mail the balance, if any, by certified mail to the occupant or any other recorded lienholder at the last known address of the occupant or lienholder.

(2) (i) If the balance is returned to the operator after the operator mailed the balance in the manner required under paragraph (1)(ii) of this subsection, the operator shall hold the balance for 1 year after the date of sale for delivery on demand to the occupant or any other recorded lienholder.

(ii) After expiration of the 1 year period, the balance is presumed abandoned under § 17–307.1 of this article.

(f) A purchaser in good faith of any personal property sold under this subtitle takes the property free and clear of any rights of:

(1) Persons against whom the lien was valid; and

(2) Other lienholders.

(g) If the operator complies with the provisions of this subtitle, the operator's liability:

(1) To the occupant shall be limited to the net proceeds received from the sale of the personal property; and

(2) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien.

(h) If an occupant is in default, the operator may deny the occupant access to the leased space.

(i) (1) (i) Notices sent to the operator shall be sent to the self–service storage facility where the occupant's personal property is stored by hand delivery or verified mail.

(ii) Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(2) Notices shall be deemed delivered when:

(i) Deposited with the United States Postal Service or a private delivery service, properly addressed as provided in subsection (b) of this section, with postage prepaid; or

(ii) Sent by electronic mail to the occupant's last known address.

(j) (1) If the occupant is in default for more than 60 days and the personal property stored in the leased space is a motor vehicle or watercraft, the operator may have the personal property towed or removed from the self–service storage facility in lieu of a sale authorized under subsection (a) of this section.

(2) The operator shall be immune from civil liability for any damage to the personal property towed or removed from the self–service storage facility under paragraph (1) of this subsection that occurs after the person that undertakes the towing or removal of the personal property takes possession of the personal property.

(k) If a rental agreement specifies a limit on the value of personal property that may be stored in the occupant's leased space, the limit shall be deemed to be the maximum value of the stored personal property.

(l) (1) The operator may charge the occupant a reasonable late fee for each month the occupant does not pay rent when due.

(2) A fee under this subsection may not be more than the greater of:

(i) $20 a month; or

(ii) 20% of the monthly rent for the leased space.

(3) The operator may not charge a fee under this subsection unless the operator discloses in the rental agreement:

(i) The amount of the fee; and

(ii) The timing for charging the fee.

(4) A fee under this subsection may be charged in addition to any other remedy provided by law or contract.

§18–505.

Unless the rental agreement specifically provides otherwise and until a lien sale under this subtitle, the exclusive care, custody, and control of all personal property stored in the leased self-service storage space remains vested in the occupant.

§18–506.

All rental agreements, entered into before July 1, 1983, which have not been extended or renewed after that date, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this State.

§19–101.

(a) In this title, unless the context requires otherwise, the following words have the meanings indicated.

(b) "Contract" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which:

(1) The dealer is granted the right to sell or distribute goods or services; or

(2) The dealer is granted the right to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

(c) "Current model" means a model listed in a wholesaler's, manufacturer's, or distributor's current sales manual or a supplement to the current sales manual.

(d) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the contract agreement is terminated, less any applicable discount allowed.

(e) (1) "Dealer" means a person engaged in the business of selling at retail construction, farm, utility, or industrial equipment, implements, machinery, attachments, outdoor power equipment, outdoor power sports equipment, or repair parts.

(2) "Dealer" includes a person engaged in the business of selling, on commission or at retail, commercial heating, ventilation, and air–conditioning equipment or repair parts.

(f) "Family member" means a spouse, sibling, parent, grandparent, child, grandchild, mother–in–law, father–in–law, daughter–in–law, son–in–law, stepparent, or stepchild, or a lineal descendant of the dealer or principal owner of the dealership.

(g) "Good cause" means failure by a dealer to comply with requirements imposed on the dealer by a contract if the requirements are not different from requirements imposed on other dealers similarly situated in the State.

(h) (1) "Inventory" means farm implements or machinery, construction, utility, and industrial equipment, consumer products, outdoor power equipment, outdoor power sports equipment, attachments, or repair parts.

(2) "Inventory" includes commercial heating, ventilation, and air–conditioning equipment or repair parts.

(i) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus the reasonable cost of assembly or disassembly performed by the dealer.

(j) "Outdoor power sports equipment" means the following vehicles and any attachments or repair parts for the following vehicles:

(1) A motor–assisted or motor–driven vehicle that:

(i) Is designed to carry only the operator of the vehicle on a seat or saddle designed to be straddled by the operator or is designed to carry only the operator of the vehicle and one passenger; and

(ii) Is commonly known as an all–terrain vehicle;

(2) A motorcycle that:

(i) Is designed for off–highway operation and is not eligible for registration as a Class D (motorcycle) vehicle under the Transportation Article; and

(ii) Is commonly known as a dirt bike; or

(3) A snowmobile.

(k) "Superseded part" means a part that will provide the same function as a currently available part as of the date of cancellation of a contract.

(l) "Supplier" means:

(1) A wholesaler, manufacturer, or distributor who enters into a contract with a dealer; or

(2) A purchaser of assets or stock of a surviving corporation resulting from a merger or liquidation, a receiver or assignee, or a trustee of the original manufacturer, wholesaler, or distributor who enters into a contract with a dealer.

(m) "Termination" means the termination, cancellation, nonrenewal, or noncontinuation of a contract.

(n) "Utility" and "industrial", when used to refer to equipment, implements, machinery, attachments, or repair parts, have the meanings commonly used and understood among dealers and suppliers of farm equipment as a usage of trade.

§19–102.

Good cause exists in any of the following circumstances:

(1) The filing of a petition against the dealer to commence:

(i) A receivership proceeding; or

(ii) A bankruptcy proceeding;

(2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;

(3) The dealer defaults under a chattel mortgage or other security agreement between the dealer and the supplier or the dealer revokes or discontinues a guarantee of a present or future obligation of the dealer to the supplier;

(4) The closeout or sale of a substantial part of the business of a dealer related to the handling of the products of the supplier;

(5) The commencement of procedures to dissolve or liquidate the dealer if the dealer is a partnership or corporation;

(6) A change, without the prior written approval of the supplier, that shall not be unreasonably withheld, in the location of the principal place of business of the dealer or additional locations set forth in the agreement;

(7) The withdrawal of an individual proprietor, partner, major shareholder, or manager of the dealership, or a substantial reduction in interest of a partner or major shareholder, without the prior written consent of the supplier;

(8) The revocation or discontinuance of any guarantee of the present or future obligations of the dealer to the supplier;

(9) The dealer fails to operate in the normal course of business for 7 consecutive business days or otherwise abandons the business;

(10) The guilty plea or conviction of a felony of a dealer affecting the relationship between the dealer and supplier; or

(11) The dealer transfers an interest in the dealership or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

§19–103.

(a) A supplier may not directly or through an officer, agent, or employee

terminate, cancel, fail to renew, or substantially change the competitive circumstances of a contract without good cause.

(b) (1) Except as provided in paragraph (2) of this subsection, a supplier who terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract with good cause is not required to provide any notice or the right to cure a deficiency to a dealer.

(2) If a supplier terminates, cancels, fails to renew, or substantially changes the competitive circumstances of a contract based upon the dealer's failure to capture the share of the market required in the contract and the supplier has worked with the dealer for a minimum of 12 months to gain the desired market share, the supplier shall provide a dealer with at least 90 days' written notice of the termination of the agreement and a 60 day right to cure.

(c) Notwithstanding any agreement to the contrary, a dealer who terminates a contract with a supplier shall notify the supplier of the termination within 90 days prior to the effective date of the termination.

(d) Each notification required under this section shall:

(1) Be in writing;

(2) Contain:

(i) A statement of intention to terminate the contract;

(ii) A statement of the reasons for the termination; and

(iii) The date on which the termination takes effect; and

(3) Be delivered to the supplier or dealer by:

(i) Certified mail; or

(ii) Personal delivery.

§19–201.

(a) (1) Subject to § 19-203 of this subtitle, whenever a dealer enters into a contract in which the dealer agrees to maintain inventory and the contract is terminated by either party, the supplier shall repurchase the dealer's inventory on the terms specified in § 19-202 of this subtitle unless the dealer chooses to keep the inventory.

(2) If the dealer has any outstanding debts to the supplier, the repurchase amount may be set off or credited to the dealer's account.

(b) (1) If a dealer enters into a contract in which the dealer agrees to maintain

inventory and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or is adjudicated incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person that succeeds to the stock of the majority stockholder if the dealer is a corporation, repurchase the inventory as if the contract had been terminated.

(2) An heir, personal representative, guardian, or succeeding stockholder has 1 year from the date of the death or adjudication of incompetency of the dealer or majority shareholder to exercise the option provided under this subsection.

§19–202.

(a) Within 90 days after termination of the contract the supplier shall repurchase from the dealer all inventory, previously purchased from the supplier, that remains unsold on the date the contract terminates.

(b) (1) The supplier shall pay the dealer:

(i) 100 percent of the current net price of all new, unused, unsold, undamaged, and complete farm, construction, utility, and industrial equipment, implements, machinery, outdoor power equipment, outdoor power sports equipment, and attachments;

(ii) 90 percent of the current net price of all new, unused, and undamaged repair parts and superseded parts;

(iii) 75 percent of the net cost of all specialized repair tools purchased in the previous 3 years and 50 percent of the net cost of all specialized repair tools purchased in the previous 4 through 6 years in accordance with the requirements of the supplier and held by the dealer on the date of termination, if the specialized repair tools are unique to the supplier's product line and are in complete and resalable condition;

(iv) The agreed depreciated value of farm implements, machinery, utility and industrial equipment, outdoor power equipment, and outdoor power sports equipment used in demonstrations, including equipment leased primarily for demonstration or lease; and

(v) At its amortized value, the price of any specific data processing hardware and software and telecommunications equipment that the supplier required the dealer to purchase within the past 5 years.

(2) (i) The supplier shall pay:

1. The cost of shipping the inventory from the dealer's location; and

2. The dealer 10 percent of the current net price of all new, unused, and undamaged repair parts returned to cover the cost of handling, packing,

and loading.

(ii) The supplier may perform the handling, packing, and loading of repair parts instead of paying the 10 percent for the services.

(iii) The dealer and the supplier may each furnish a representative to inspect all parts and certify the acceptability of any part when packed for shipment.

(c) (1) The supplier shall pay the full repurchase amount to the dealer not later than 30 days after receipt of the inventory.

(2) If the dealer has any outstanding debts to the supplier, the repurchase amount shall be credited to the dealer's account.

(d) (1) On payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier.

(2) At the end of each calendar year or after termination or cancellation of the contract, a supplier or lender may not debit the dealer's reserve account for recourse, retail sale, or lease contracts for any deficiency unless the dealer or the heirs of the dealer have been given at least 7 business days' notice by certified or registered United States mail, return receipt requested, of any proposed sale of the financed equipment and an opportunity to purchase the equipment.

(3) The former dealer or the heirs of the dealer shall be given quarterly status reports on any remaining outstanding recourse contracts.

(4) As the recourse contracts are reduced, any reserve account funds shall be returned to the dealer or the heirs of the dealer in direct proportion to the outstanding liabilities.

(e) (1) In the event of the death of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heir of the dealer or majority stockholder, repurchase the inventory from the heir of the dealer or majority stockholder as if the supplier had terminated the contract.

(2) Within 1 year after the date of the death of the dealer or majority stockholder, the heir shall exercise the heir's options under this section.

(3) Nothing in this section shall require the repurchase of any inventory if the heir and the supplier enter into a new contract to operate the retail dealership.

(f) (1) Within 90 days a supplier shall consider and make a determination on a request by a family member to enter into a new contract to operate the dealership.

(2) If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance.

(3) This section does not entitle an heir, personal representative, or family member to operate a dealership without the specific written consent of the supplier.

(g) Notwithstanding the provisions of this section, if a supplier and a dealer have executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, the agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor.

§19–203.

This title does not require the repurchasing from a dealer of:

(1) A repair part with a limited storage life or otherwise subject to deterioration, such as a gasket or battery, except for industrial "press on" industrial pneumatic tires;

(2) A single repair part that is priced as a set of two or more items;

(3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning;

(4) A repair part that is not in new, unused, and undamaged condition;

(5) An item of inventory for which a dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier;

(6) Any inventory that the dealer chooses to retain;

(7) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of a franchise agreement;

(8) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, outdoor power sports equipment, or attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that equipment that is used in demonstrations or leased under § 19–202 of this subtitle shall be considered new and unused;

(9) Any farm implements or machinery, construction, utility, or industrial equipment, outdoor power equipment, outdoor power sports equipment, or attachments that were purchased more than 36 months before notice of termination of the contract; or

(10) Any inventory that was acquired by the dealer from a source other than the supplier.

§19–204.

(a) This title does not affect a security interest of the supplier in the inventory of the dealer.

(b) Repurchase of inventory under this title is not subject to the bulk transfers provisions of Title 6 of this article.

(c) (1) The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment.

(2) Failure of the supplier to provide a representative within 60 days shall result in automatic acceptance by the supplier of all returned items.

§19–205.

(a) (1) When a supplier and a dealer enter into a contract, the supplier shall pay a warranty claim made by the dealer for warranty parts or service within 30 days after its approval.

(2) The supplier shall approve or disapprove a warranty claim within 30 days after its receipt.

(3) If a claim is disapproved, the manufacturer, wholesaler, or distributor shall notify the dealer within 30 days stating the specific grounds on which the disapproval is based.

(4) If a claim is not specifically disapproved in writing within 30 days after its receipt, the claim shall be considered approved and payment must follow within 30 days.

(b) When a supplier and a dealer enter into a contract, the supplier shall indemnify and hold harmless the dealer against any judgment for damages or a settlement agreed to by the supplier, including court costs and reasonable attorney's fees, arising out of a complaint, claim, or lawsuit including negligence, strict liability, misrepresentation, breach of warranty, or rescission of the sale, to the extent the judgment or settlement relates to the manufacture, assembly, or design of inventory, or other conduct of the supplier beyond the dealer's control.

(c) If, after termination of a contract, the dealer submits a claim to the manufacturer, wholesaler, or distributor for warranty work performed prior to the effective date of the termination of the contract, the manufacturer, wholesaler, or distributor shall accept or reject the claim within 30 days of receipt of the claim.

(d) If a claim is not paid within the time allowed under this section, interest shall accrue at the maximum lawful interest rate.

(e) (1) Warranty work performed by the dealer shall be compensated in

accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions.

(2) The cost of the work shall be computed by multiplying the time required to complete the work by the dealer's established customer hourly retail labor rate.

(3) The dealer shall inform the manufacturer, wholesaler, or distributor for whom the dealer is performing warranty work of the dealer's established customer hourly retail labor rate before the dealer performs any work.

(f) Expenses expressly excluded under the warranty of the manufacturer, wholesaler, or distributor to the customer may not be included or required to be paid for warranty work performed, even if the dealer requests compensation for the work performed.

(g) (1) The dealer shall be paid for all parts used by the dealer in performing warranty work.

(2) Payment shall be in an amount equal to the dealer's net price for the parts, plus a minimum of 15 percent.

(h) The manufacturer, wholesaler, or distributor may adjust compensation for errors discovered during an audit and may adjust claims paid in error.

(i) The dealer shall have the right to accept the reimbursement terms and conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and conditions of this section.

§19–301.

A supplier may not:

(1) Coerce a dealer to accept delivery of equipment, parts, or accessories that the dealer has not ordered voluntarily unless the parts or accessories are safety parts or accessories required by the supplier;

(2) Condition the sale of additional equipment to a dealer on a requirement that the dealer also purchase other goods or services, except that a supplier may require the dealer to purchase parts that are reasonably necessary to maintain the quality of operation in the field of the equipment used in the trade area;

(3) Coerce a dealer into refusing to purchase equipment manufactured by another supplier; or

(4) Terminate, cancel, or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of any circumstance beyond the dealer's control, including a natural disaster such as a

sustained drought, high unemployment in the dealer market area, or a labor dispute.

§19–302.

If a supplier fails or refuses to repurchase, in accordance with § 19-202 of this title, any inventory covered under the provisions of this title within the time periods established, the supplier is civilly liable for:

(1) 100 percent of the current net price of the inventory;

(2) The amount the dealer paid for freight costs from the supplier's location to the dealer's location;

(3) The dealer's reasonable attorney's fees and court costs; and

(4) Interest on the current net price of the inventory computed from the 91st day after termination of the contract at the legal rate of interest.

§19–303.

Notwithstanding an agreement to the contrary, and in addition to any other available legal remedies, a person who suffers monetary loss due to a violation of this title or who refuses to accede to a proposal for an arrangement that, if consummated, would be in violation of this title may bring a civil action to enjoin further violations and to recover damages and the costs of the action, including reasonable attorney's fees.

§19–304.

A civil action commenced under the provisions of this title shall be brought within 4 years after the violation complained of is or reasonably should have been discovered, whichever occurs first.

§19–305.

If any provision of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§20–101.

A contract, conveyance, release, or sale may be made to or by two or more persons acting jointly, and one or more, but less than all, of these persons, acting either by himself or themselves or with other persons.

§20–102.

No contract shall be discharged because after its formation the obligation and the

right under the contract become vested in the same person acting in different capacities as to the right and the obligation.

§20–103.

Nothing in this title shall validate a transaction that is actually or constructively fraudulent.

§20–104.

This title does not apply to conveyances, releases, sales, or contracts made prior to June 1, 1931.

§20–105.

This title shall be interpreted and construed to effectuate its general purpose to make uniform the laws of those states that enact it.

§20–106.

This title may be cited as the Maryland Uniform Interparty Agreement Act.

§21–101.

(a) In this title the following words have the meanings indicated.

(b) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(c) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course of forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(d) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(e) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic

records or performances in whole or in part, without review or action by an individual.

(h) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(i) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(j) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, unit, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(k) "Information" includes data, text, images, sounds, codes, computer programs, software, and databases.

(l) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(m) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(n) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(o) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(p) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(q) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

§21–102.

(a) Except as otherwise provided in subsections (b) and (c) of this section, this title applies to electronic records and electronic signatures relating to a transaction.

(b) This title does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) The Maryland Uniform Commercial Code, other than §§ 1-107 and 1-206 and Titles 2 and 2A;

(3) The Uniform Computer Information Transactions Act;

(4) A law or regulation governing notice of:

(i) The cancellation or termination of utility services, including water, heat, and power;

(ii) Default, acceleration, repossession, foreclosure, eviction, or the right to cure, under a credit agreement, mortgage, or a rental agreement for a primary residence of an individual;

(iii) The cancellation or termination of health insurance, health insurance benefits, or life insurance benefits, excluding annuities; or

(iv) Recall of a product, or material failure of a product, that risks endangering health or safety; and

(5) A law governing adoption, divorce, or other family law matters.

(c) This title does not apply to:

(1) Court orders, notices, or official court documents, except as provided in the Maryland Rules; or

(2) Documents required to accompany transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

(d) This title applies to an electronic record or electronic signature otherwise excluded from the application of this title under subsection (b) of this section to the extent it is governed by a law other than those specified in subsection (b) of this section.

(e) A transaction subject to this title is also subject to other applicable substantive law.

(f) The provisions of this title may not modify, limit, or supersede the provisions of the federal Electronic Signatures in Global and National Commerce Act as it relates to use of an electronic record to provide or make available information that is required to be provided or made available in writing to a consumer.

§21–103.

This title applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this title.

§21–104.

(a) This title does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) (1) This title applies only to transactions between parties, each of which has agreed to conduct transactions by electronic means.

(2) Whether the parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) Except for a separate and optional agreement the primary purpose of which is to authorize a transaction to be conducted by electronic means, a provision to conduct a transaction electronically may not be contained in a standard form contract unless that provision is conspicuously displayed and separately consented to.

(4) An agreement to conduct a transaction electronically may not be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase warranty.

(5) This subsection may not be varied by agreement.

(c) (1) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.

(2) The right granted by this subsection may not be waived by agreement.

(d) (1) Except as otherwise provided in this title, the effect of any of its provisions may be varied by agreement.

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

(e) Whether an electronic record or electronic signature has legal consequences is determined by this title and other applicable law.

§21–105.

This title must be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this title among states enacting it.

§21–106.

(a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

§21–107.

(a) (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered in an electronic record capable of retention by the recipient at the time of receipt.

(2) An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this title requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

(1) The record must be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in subsection (d)(2) of this section, the record must be sent, communicated, or transmitted by the method specified in the other law; and

(3) The record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic

record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) To the extent a law other than this title requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) of this section that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this title to send, communicate, or transmit a record by registered or certified mail, postage prepaid, or by regular mail, may be varied by agreement to the extent permitted by the other law or by § 21-118.1 of this title.

§21–108.

(a) (1) An electronic record or electronic signature is attributable to a person if it was the act of the person.

(2) The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) of this section is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

§21–109.

If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(i) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other

person;

(ii) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(iii) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither item (1) nor item (2) of this section applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Items (2) and (3) of this section may not be varied by agreement.

§21–110.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

§21–111.

(a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) Accurately reflects the information set forth in the record at the time it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) of this section does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) of this section by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a) of this section.

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check

in accordance with subsection (a) of this section.

(f) A record retained as an electronic record in accordance with subsection (a) of this section satisfies a law requiring a person to retain a record for evidentiary, audit, or similar purposes, unless a law enacted after the effective date of this title specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

§21–112.

In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

§21–113.

In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(3) The terms of the contract are determined by the substantive law applicable to it.

§21–114.

(a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which

is under the control of the recipient.

(b) Unless otherwise agreed between the sender and the recipient, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) of this section applies even if the place where the information processing system is located is different from the place where the electronic record is deemed to be received under subsection (d) of this section.

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(e) An electronic record is received under subsection (b) of this section even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) of this section establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) (1) If a person is aware that an electronic record purportedly sent under subsection (a) of this section, or purportedly received under subsection (b) of this section, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law.

(2) Except to the extent allowed by the other law, the requirements of this subsection may not be varied by agreement.

§21–115.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Title 3 of this article or a document under Title

7 of this article if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system employed for evidencing the transfer of interests in the transferable record satisfies subsection (b) of this section, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in items (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(i) The person to which the transferable record was issued; or

(ii) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) (1) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § 1-201(20) of this article, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Maryland Uniform Commercial Code, including, if the applicable statutory requirements under § 3-302(a), § 7-501, or § 9-308 of this article are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively.

(2) Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Maryland Uniform Commercial Code.

(f) (1) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record.

(2) Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

§21–116.

Each governmental agency of this State shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

§21–117.

(a) Except as otherwise provided in § 21-111(f) of this title, each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent a governmental agency uses electronic records and electronic signatures under subsection (a) of this section, the governmental agency, giving due consideration to security, may specify:

(1) The manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) The electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in § 21-111(f) of this title, this title does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures.

§21–118.

(a) A governmental agency of this State that adopts standards in accordance with § 21-117 of this title may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this State, other states, the federal government, and nongovernmental persons interacting with governmental agencies of this State.

(b) If appropriate, those standards may specify differing levels of standards from which governmental agencies of this State may choose in implementing the most appropriate standard for a particular application.

(c) Standards adopted by units of State government shall be consistent with those specified in the State Information Technology Master Plan.

§21–118.1.

(a) (1) In this section the following words have the meanings indicated.

(2) "Electronic postmark certificate" means evidentiary proof, provided to the sender or recipient of an electronic record, that the electronic record:

(i) Was postmarked by a postal authority with a valid electronic postmark on the date and time indicated;

(ii) Was transmitted in a certain form on a specific date and time; and

(iii) Was sent by the person indicated, to the person indicated, and on the date and time indicated.

(3) "Postal authority" means:

(i) The United States Postal Service or other national public or private mail delivery service that provides electronic postmarks; or

(ii) A public or private entity that has the regulatory authority or legal responsibility for providing electronic postmarks.

(b) Subject to § 21-117 of this title, a requirement under a law other than this title to send, communicate, or transmit a record by registered or certified mail, postage prepaid, or by regular mail is satisfied by an electronic record that:

(1) Is addressed properly or otherwise directed properly to an information

processing system that the recipient has designated;

(2) (i) Enters an information processing system that is outside the control of the sender; or

(ii) Enters a region of an information processing system that is under the control of the recipient;

(3) Is postmarked by a postal authority with an electronic postmark; and

(4) Is authenticated by an electronic postmark certificate.

(c) An electronic record is subject to the same legal protections as the United States mail if:

(1) The electronic record meets the requirements of subsection (b) of this section; and

(2) The postal authority that postmarked the electronic record under subsection (b)(3) of this section is the United States Postal Service.

(d) This section does not authorize the use of an electronic postmark or electronic postmark certificate for the service of a summons, complaint, or other papers for the purpose of obtaining jurisdiction over a defendant in a lawsuit.

§21–119.

If any provision of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§21–120.

This title may be cited as the Maryland Uniform Electronic Transactions Act.

§22–101.

This title may be cited as the Maryland Uniform Computer Information Transactions Act.

§22–102.

(a) In this title:

(1) "Access contract" means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.

(2) "Access material" means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.

(3) "Aggrieved party" means a party entitled to a remedy for breach of contract.

(4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this title.

(5) "Attribution procedure" means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.

(6) "Authenticate" means:

(A) To sign; or

(B) With the intent to sign a record, otherwise to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with that record.

(7) "Automated transaction" means a transaction in which a contract is formed in whole or part by electronic actions of one or both parties which are not previously reviewed by an individual in the ordinary course.

(8) "Cancellation" means the ending of a contract by a party because of breach of contract by another party.

(9) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(10) "Computer information" means information in electronic form which is obtained from or through the use of a computer or which is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.

(11) "Computer information transaction" means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under § 22–612 of this title. The term does not include a transaction merely because the parties' agreement provides that their communications about the transaction will be in the form of computer information.

(12) "Computer program" means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) "Consequential damages":

(A) Resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty;

(B) Resulting from wrongful use of electronic self–help as defined in § 22–816 of this title includes any loss resulting from general or particular requirements and needs of which the party exercising electronic self–help at the time of the exercise had reason to know and which could not reasonably be prevented; and

(C) Does not include direct damages or incidental damages.

(14) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. Conspicuous terms include the following:

(A) With respect to a person:

(i) A heading in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding text;

(ii) Language in the body of a record or display in larger or other contrasting type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the language; and

(iii) A term prominently referenced in an electronic record or display which is readily accessible or reviewable from the record or display; and

(B) With respect to a person or an electronic agent, a term or reference to a term that is so placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term or reference.

(15) "Consumer" means an individual who is a licensee of information or informational rights that the individual at the time of contracting intended to be used primarily for personal, family, or household purposes. The term does not include an individual who is a licensee primarily for professional or commercial purposes, including agriculture, business management, and investment management other than

management of the individual's personal or family investments.

(16) "Consumer contract" means a contract between a merchant licensor and a consumer.

(17) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this title and other applicable law.

(18) "Contract fee" means the price, fee, rent, or royalty payable in a contract under this title or any part of the amount payable.

(19) "Contractual use term" means an enforceable term that defines or limits the use, disclosure of, or access to licensed information or informational rights, including a term that defines the scope of a license.

(20) "Copy" means the medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.

(21) "Course of dealing" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(22) "Course of performance" means repeated performances, under a contract that involves repeated occasions for performance, which are accepted or acquiesced in without objection by a party having knowledge of the nature of the performance and an opportunity to object to it.

(23) "Court" includes an arbitration or other dispute–resolution forum if the parties have agreed to use of that forum or its use is required by law.

(24) "Delivery", with respect to a copy, means the voluntary physical or electronic transfer of possession or control.

(25) "Direct damages" means compensation for losses measured by § 22–808(b)(1) or § 22–809(a)(1) of this title. The term does not include consequential damages or incidental damages.

(26) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(27) "Electronic agent" means a computer program, or electronic or other automated means, used by a person to initiate an action, or to respond to electronic messages or performances, on the person's behalf without review or action by an individual at the time of the action or response to the message or performance.

(28) "Electronic message" means a record or display that is stored, generated, or transmitted by electronic means for the purpose of communication to

another person or electronic agent.

(29) "Financial accommodation contract" means an agreement under which a person extends a financial accommodation to a licensee and which does not create a security interest governed by Title 9 of this article. The agreement may be in any form, including a license or lease.

(30) "Financial services transaction" means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) A deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) An instrument or other item;

(C) A payment order, credit card transaction, debit card transaction, funds transfer, automated clearinghouse transfer, or similar wholesale or retail transfer of funds;

(D) A letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) Related identifying, verifying, access–enabling, authorizing, or monitoring information.

(31) "Financier" means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee's use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) "Goods" means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by § 2–107 of this article. The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter–of–credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) "Incidental damages" resulting from breach of contract:

(A) Means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to:

(i) Inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach;

(ii) Stopping delivery, shipment, or transmission;

(iii) Effecting cover or retransfer of copies or information after the breach;

(iv) Other efforts after the breach to minimize or avoid loss resulting from the breach; and

(v) Matters otherwise incident to the breach; and

(B) Does not include consequential damages or direct damages.

(35) "Information" means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) "Informational content" means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) "Informational rights" include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person's use of or access to the information on the basis of the rights holder's interest in the information.

(39) "Insurance services transaction" means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) An insurance policy, contract, or certificate; or

(B) A right to payment under an insurance policy, contract, or certificate.

(40) "Knowledge", with respect to a fact, means actual knowledge of the fact.

(41) "License" means a contract that authorizes access to, or use,

distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by Title 9 of this article.

(42) "Licensee" means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this title applies. A licensor is not a licensee with respect to rights reserved to it under the agreement.

(43) "Licensor" means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to which this title applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

(44) "Mass–market license" means a standard form used in a mass–market transaction.

(45) "Mass–market transaction" means a transaction that is:

(A) A consumer contract; or

(B) Any other transaction with an end–user licensee if:

(i) The transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;

(ii) The licensee acquires the information or informational rights in a retail transaction under terms consistent with an ordinary transaction in a retail market; and

(iii) The transaction is not:

1. A contract for redistribution or for public performance or public display of a copyrighted work;

2. A transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other than minor customization using a capability of the information intended for that purpose;

3. A site license; or

4. An access contract.

(46) "Merchant" means a person:

(A) That deals in information or informational rights of the kind involved in the transaction;

(B) That by the person's occupation holds itself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or

(C) To which the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person's employment of an agent or broker or other intermediary that by its occupation holds itself out as having the knowledge or skill.

(47) "Nonexclusive license" means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

(48) "Notice" of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.

(49) "Notify", or "give notice", means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

(50) "Party" means a person that engages in a transaction or makes an agreement under this title.

(51) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

(52) "Published informational content" means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is:

(A) Customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise; or

(B) Provided in a special relationship of reliance between the provider and the recipient.

(53) "Receipt" means:

(A) With respect to a copy, taking delivery; or

(B) With respect to a notice:

(i) Coming to a person's attention; or

(ii) Being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system:

1. Being delivered at the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or

2. In the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

(54) "Receive" means to take receipt.

(55) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(56) "Release" means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party's use of the information or informational rights. The term includes a waiver of informational rights.

(57) "Return", with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) In the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it was paid or from another person that offers to reimburse that fee, on:

(i) Submission of proof of purchase; and

(ii) Proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;

(B) In the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:

(i) A right to reimbursement of any portion of the aggregate

contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on:

1. Rejection of the record before or during the initial use of the bundled product;

2. Proper redelivery of all computer information products in the bundled whole and all copies of them within a reasonable time after initial delivery of the information to the licensee; and

3. Submission of proof of purchase; or

(ii) A right to reimbursement of any separate contract fee identified by the licensor in the initial transaction as charged to the licensee for the separate information product to which the rejected record applies, on:

1. Submission of proof of purchase; and

2. Proper redelivery of that computer information product and all copies within a reasonable time after initial delivery of the information to the licensee; or

(C) In the case of a licensor that rejects a record proposed by the licensee, a right to proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the rejected record, subject to recoupment and setoff.

(58) "Scope", with respect to terms of a license, means:

(A) The licensed copies, information, or informational rights involved;

(B) The use or access authorized, prohibited, or controlled;

(C) The geographic area, market, or location; or

(D) The duration of the license.

(59) "Seasonable", with respect to an act, means taken within the time agreed or, if no time is agreed, within a reasonable time.

(60) "Send" means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially reasonable carrier, to deliver a record for transmission to or re–creation in another location or information processing system, or to take the steps necessary to initiate transmission to or re–creation of a record

in another location or information processing system. In addition, with respect to an electronic message, the message must be in a form capable of being processed by or perceived from a system of the type the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper sending.

(61) "Standard form" means a record or a group of related records containing terms prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change of terms by individuals except to set the price, quantity, method of payment, selection among standard options, or time or method of delivery.

(62) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(63) "Term", with respect to an agreement, means that portion of the agreement which relates to a particular matter.

(64) "Termination" means the ending of a contract by a party pursuant to a power created by agreement or law otherwise than because of breach of contract.

(65) "Transfer":

(A) With respect to a contractual interest, includes an assignment of the contract, but does not include an agreement merely to perform a contractual obligation or to exercise contractual rights through a delegate or sublicensee; and

(B) With respect to computer information, includes a sale, license, or lease of a copy of the computer information and a license or assignment of informational rights in computer information.

(66) "Usage of trade" means any practice or method of dealing that has 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.

(b) The following definitions in this article apply to this title:

(1) "Burden of establishing" § 1-201.

(2) "Document of title" § 1-201.

(3) "Financial asset" § 8-102(a)(9).

(4) "Funds transfer" § 4A-104.

(5) "Identification" to the contract § 2-501.

(6) "Instrument" § 9-102(a)(47).

(7) "Investment property" § 9-102(a)(49).

(8) "Item" § 4-104.

(9) "Letter of credit" § 5-102.

(10) "Payment order" § 4A-103.

(11) "Sale" § 2-106.

§22–103.

(a) This title applies to computer information transactions.

(b) Except as otherwise provided in subsection (d) of this section and § 22-104 of this subtitle, if a computer information transaction includes subject matter other than computer information, the following rules apply:

(1) If a transaction includes computer information and goods, this title applies to the part of the transaction involving computer information, informational rights in it, and creation or modification of it. However, if a copy of a computer program is contained in and sold or leased as part of goods, this title applies to the copy and the computer program only if:

(A) The goods are a computer or computer peripheral; or

(B) Giving the buyer or lessee of the goods access to or use of the program is ordinarily a material purpose of transactions in goods of the type sold or leased.

(2) Subject to subsection (d)(3)(A) of this section, if a transaction includes an agreement for creating or for obtaining rights to create computer information and a motion picture, this title does not apply to the agreement if the dominant character of the agreement is for creating or obtaining rights to create a motion picture. In all other such agreements, this title does not apply to the part of the agreement that involves a motion picture excluded under subsection (d)(3) of this section, but does apply to the computer information.

(3) In all other cases, this title applies to the entire transaction if the computer information and informational rights, or access to them, is the primary subject matter, but otherwise applies only to the part of the transaction involving computer information, informational rights in it, and creation or modification of it.

(c) To the extent of a conflict between this title and Title 9 of this article, Title 9 governs.

(d) This title does not apply to:

(1) A financial services transaction;

(2) An insurance services transaction;

(3) An agreement to create, perform or perform in, include information in, acquire, use, distribute, modify, reproduce, have access to, adapt, make available, transmit, license, or display:

(A) A motion picture or audio or visual programming, other than in (i) a mass-market transaction or (ii) a submission of an idea or information or release of informational rights that may result in making a motion picture or a similar information product; or

(B) A sound recording, musical work, or phonorecord as defined or used in Title 17 of the United States Code as of July 1, 1999, or an enhanced sound recording;

(4) A compulsory license;

(5) A contract of employment of an individual, other than an individual hired as an independent contractor to create or modify computer information, unless such independent contractor is a freelancer in the news reporting industry as that term is commonly understood in that industry;

(6) A contract that does not require that information be furnished as computer information or in which under the agreement the form of the information as computer information is otherwise insignificant with respect to the primary subject matter of the part of the transaction pertaining to the information; or

(7) Subject matter within the scope of Title 3, 4, 4A, 5, 6, 7, or 8 of this article.

(e) As used in subsection (d)(3)(B) of this section, "enhanced sound recording" means a separately identifiable product or service the dominant character of which consists of recorded sounds but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of those sounds or (ii) other information so long as recorded sounds constitute the dominant character of the product or service despite the inclusion of the other information.

(f) As used in this section, "motion picture" means "motion picture" as defined in Title 17 of the United States Code as of July 1, 1999, or a separately identifiable product or service the dominant character of which consists of a linear motion picture, but which includes (i) statements or instructions whose purpose is to allow or control the perception, reproduction, or communication of the motion picture or (ii) other information so long as the motion picture constitutes the dominant character of the product or service despite the inclusion of the other information.

(g) As used in this section, "audio or visual programming" means audio or visual programming that is provided by broadcast, satellite, or cable as defined in the Federal Communications Act of 1934 and related regulations as they existed on July 1, 1999, or by similar methods of delivery.

§22–104.

The parties may agree that this title, including contract-formation rules, governs the transaction, in whole or part, or that other law governs the transaction and this title does not apply, if a material part of the subject matter to which the agreement applies is computer information or informational rights in it that are within the scope of this title, or is subject matter within this title under § 22-103(b) of this subtitle, or is subject matter excluded by § 22-103(d)(1), (2), or (3) of this subtitle. However, any agreement to do so is subject to the following rules:

(1) An agreement that this title governs a transaction does not alter the applicability of any statute, rule, regulation, or procedure that may not be varied by agreement of the parties or that may be varied only in a manner specified by the statute, rule, regulation, or procedure, including a consumer protection statute or regulation. In addition, in a mass-market transaction, the agreement does not alter the applicability of a law applicable to a copy of information in printed form.

(2) An agreement that this title does not govern a transaction:

(A) Does not alter the applicability of § 22-214 of this title or the limitations of § 22-816 of this title if the parties have agreed to permit the use of electronic self-help; and

(B) In a mass-market transaction, does not alter the applicability under this title of the doctrine of unconscionability or fundamental public policy or the obligation of good faith.

(3) In a mass-market transaction, any term under this section which changes the extent to which this title governs the transaction must be conspicuous.

(4) A copy of a computer program contained in and sold or leased as part of goods and which is excluded from this title by § 22-103(b)(1) of this subtitle cannot provide the basis for an agreement under this section that this title governs the transaction.

§22–105.

(a) (1) A provision of this title which is preempted by federal law is unenforceable to the extent of the preemption.

(2) A contract term is unenforceable to the extent that it would vary a statute, rule, regulation, or procedure that may not be varied by agreement under the federal copyright law, including provisions of the federal copyright law related to fair

use.

(b) If a term of a contract violates a fundamental public policy, the court may refuse to enforce the contract, enforce the remainder of the contract without the impermissible term, or limit the application of the impermissible term so as to avoid a result contrary to public policy, in each case to the extent that the interest in enforcement is clearly outweighed by a public policy against enforcement of the term.

(c) Except as otherwise provided in subsection (d) of this section, if this title or a term of a contract under this title conflicts with a consumer protection statute or regulation, including Title 13 of this article, the consumer protection statute or regulation governs.

(d) If a law of this State in effect on the effective date of this title applies to a transaction governed by this title, the following rules apply:

(1) A requirement that a term, waiver, notice, or disclaimer be in a writing is satisfied by a record.

(2) A requirement that a record, writing, or term be signed is satisfied by an authentication.

(3) A requirement that a term be conspicuous, or the like, is satisfied by a term that is conspicuous under this title.

(4) A requirement of consent or agreement to a term is satisfied by a manifestation of assent to the term in accordance with this title.

§22–106.

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

(1) Support and facilitate the realization of the full potential of computer information transactions;

(2) Clarify the law governing computer information transactions;

(3) Enable expanding commercial practice in computer information transactions by commercial usage and agreement of the parties;

(4) Promote uniformity of the law with respect to the subject matter of this title among states that enact it; and

(5) Permit the continued expansion of commercial practices in the excluded transactions through custom, usage, and agreement of the parties.

(b) Except as otherwise provided in § 22-113(a) of this subtitle, the use of

mandatory language or the absence of a phrase such as "unless otherwise agreed" in a provision of this title does not preclude the parties from varying the effect of the provision by agreement.

(c) The fact that a provision of this title imposes a condition for a result does not by itself mean that the absence of that condition yields a different result.

(d) To be enforceable, a term need not be conspicuous, negotiated, or expressly assented or agreed to, unless required by applicable law.

§22–107.

(a) A record or authentication may not be denied legal effect or enforceability solely because it is in electronic form.

(b) This title does not require that a record or authentication be generated, stored, sent, received, or otherwise processed by electronic means or in electronic form.

(c) In any transaction, a person may establish requirements regarding the type of authentication or record acceptable to it.

(d) A person that uses an electronic agent that it has selected for making an authentication, performance, or agreement, including manifestation of assent, is bound by the operations of the electronic agent, even if no individual was aware of or reviewed the agent's operations or the results of the operations.

§22–108.

(a) Authentication may be proven in any manner, including a showing that a party made use of information or access that could have been available only if it engaged in conduct or operations that authenticated the record or term.

(b) Compliance with a commercially reasonable attribution procedure agreed to or adopted by the parties or established by law for authenticating a record authenticates the record as a matter of law.

§22–109.

(a) The parties in their agreement may choose the applicable law.

(b) In the absence of an enforceable agreement on choice of law, the following rules determine which jurisdiction's law governs in all respects for purposes of contract law:

(1) An access contract or a contract providing for electronic delivery of a copy is governed by the law of the jurisdiction in which the licensor was located when the agreement was entered into.

(2) A mass market transaction is governed by the law of Maryland.

(3) In all other cases, the contract is governed by the law of the jurisdiction having the most significant relationship to the transaction.

(c) In cases governed by subsection (b) of this section, if the jurisdiction whose law governs is outside the United States, the law of that jurisdiction governs only if it provides substantially similar protections and rights to a party not located in that jurisdiction as are provided under this title. Otherwise, the law of the state that has the most significant relationship to the transaction governs.

(d) For purposes of this section, a party is located at its place of business if it has one place of business, at its chief executive office if it has more than one place of business, or at its place of incorporation or primary registration if it does not have a physical place of business. Otherwise, a party is located at its primary residence.

§22–110.

(a) (1) The parties in their agreement may choose an exclusive judicial forum unless the choice is unreasonable or unjust.

(2) In a mass market transaction, the enforceability of a choice of forum term shall be decided by a Maryland court.

(b) A judicial forum specified in an agreement is not exclusive unless the agreement expressly so provides.

(c) Notwithstanding the provisions of this section or a contrary term in an agreement, the parties to a computer information transaction that is for the creation of computer information may, by mutual consent, choose an alternative dispute resolution mechanism, including mediation, arbitration, or other nonjudicial dispute resolution process, as the means for resolving a dispute under the agreement.

§22–111.

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

(b) If it is claimed or appears to the court that a contract or term thereof may be unconscionable, the parties must be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose, and effect to aid the court in making the determination.

§22–112.

(a) A person manifests assent to a record or term if the person, acting with

knowledge of, or after having an opportunity to review the record or term or a copy of it:

(1) Authenticates the record or term with intent to adopt or accept it; or

(2) Intentionally engages in conduct or makes statements with reason to know that the other party or its electronic agent may infer from the conduct or statement that the person assents to the record or term.

(b) An electronic agent manifests assent to a record or term if, after having an opportunity to review it, the electronic agent:

(1) Authenticates the record or term; or

(2) Engages in operations that in the circumstances indicate acceptance of the record or term.

(c) If this title or other law requires assent to a specific term, a manifestation of assent must relate specifically to the term.

(d) Conduct or operations manifesting assent may be proved in any manner, including a showing that a person or an electronic agent obtained or used the information or informational rights and that a procedure existed by which a person or an electronic agent must have engaged in the conduct or operations in order to do so. Proof of compliance with subsection (a)(2) of this section is sufficient if there is conduct that assents and subsequent conduct that reaffirms assent by electronic means.

(e) With respect to an opportunity to review, the following rules apply:

(1) A person has an opportunity to review a record or term only if it is made available in a manner that ought to call it to the attention of a reasonable person and permit review.

(2) An electronic agent has an opportunity to review a record or term only if it is made available in manner that would enable a reasonably configured electronic agent to react to the record or term.

(3) If a record or term is available for review only after a person becomes obligated to pay or begins its performance, the person has an opportunity to review only if it has a right to a return if it rejects the record. However, a right to a return is not required if:

(A) The record proposes a modification of contract or provides particulars of performance under § 22-305 of this title; or

(B) The primary performance is other than delivery or acceptance of a copy, the agreement is not a mass-market transaction, and the parties at the time of contracting had reason to know that a record or term would be presented after

performance, use, or access to the information began.

(4) The right to a return under paragraph (3) of this subsection may arise by law or by agreement.

(f) The effect of provisions of this section may be modified by an agreement setting out standards applicable to future transactions between the parties.

§22–113.

(a) The effect of any provision of this title, including an allocation of risk or imposition of a burden, may be varied by agreement of the parties. However, the following rules apply:

(1) Obligations of good faith, diligence, reasonableness, and care imposed by this title may not be disclaimed by agreement, but the parties by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(2) The limitations on enforceability imposed by unconscionability under § 22-111 of this subtitle and fundamental public policy under § 22-105(b) of this subtitle may not be varied by agreement.

(3) Limitations on enforceability of, or agreement to, a contract, term, or right expressly stated in the sections of this title listed in the following subparagraphs may not be varied by agreement except to the extent provided in each section:

(A) The limitations on agreed choice of law in § 22-109(a);

(B) The limitations on agreed choice of forum in § 22-110;

(C) The requirements for manifesting assent and opportunity for review in § 22-112;

(D) The limitations on enforceability in § 22-201;

(E) The limitations on a mass-market license in § 22-209;

(F) The consumer defense arising from an electronic error in § 22-214;

(G) The requirements for an enforceable term in §§ 22-303(b), 22-307(g), 22-406(b) and (c), and 22-804(a);

(H) The limitations on a financier in §§ 22-507 through 22-511;

(I) The restrictions on altering the period of limitations in § 22-805(a) and (b); and

(J) The limitations on self-help repossession in §§ 22-815(b) and 22-816.

(b) Any usage of trade of which the parties are or should be aware and any course of dealing or course of performance between the parties are relevant to determining the existence or meaning of an agreement.

§22–114.

(a) Unless displaced by this title, principles of law and equity, including the law merchant and the common law of this State relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and other validating or invalidating cause, supplement this title. Among the laws supplementing and not displaced by this title are trade secret laws and unfair competition laws.

(b) Every contract or duty within the scope of this title imposes an obligation of good faith in its performance or enforcement.

(c) Whether a term is conspicuous or is unenforceable under § 22–105(a) or (b) or § 22–111 of this subtitle or § 22–209(a) of this title and whether an attribution procedure is commercially reasonable or effective under § 22–108 of this subtitle or § 22–212 or § 22–213 of this title are questions to be determined by the court.

(d) Whether an agreement has legal consequences is determined by this title.

(e) Whenever this title requires any action to be taken within a reasonable time, the following rules apply:

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

(2) Any time that is not manifestly unreasonable may be fixed by agreement.

(f) A person has reason to know a fact if the person has knowledge of the fact or, from all the facts and circumstances known to the person without investigation, the person should be aware that the fact exists.

§22–201.

(a) Except as otherwise provided in this section, a contract requiring payment of a contract fee of $5,000 or more is not enforceable by way of action or defense unless:

(1) The party against which enforcement is sought authenticated a record sufficient to indicate that a contract has been formed and which reasonably identifies the copy or subject matter to which the contract refers; or

(2) The agreement is a license for an agreed duration of one year or less or

which may be terminated at will by the party against which the contract is asserted.

(b) A record is sufficient under subsection (a) of this section even if it omits or incorrectly states a term, but the contract is not enforceable under that subsection beyond the number of copies or subject matter shown in the record.

(c) A contract that does not satisfy the requirements of subsection (a) of this section is nevertheless enforceable under that subsection if:

(1) A performance was tendered or the information was made available by one party and the tender was accepted or the information accessed by the other; or

(2) The party against which enforcement is sought admits in court, by pleading or by testimony or otherwise under oath, facts sufficient to indicate a contract has been made, but the agreement is not enforceable under this paragraph beyond the number of copies or the subject matter admitted.

(d) Between merchants, if, within a reasonable time, a record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, the record satisfies subsection (a) of this section against the party receiving it unless notice of objection to its contents is given in a record within a reasonable time after the confirming record is received.

(e) An agreement that the requirements of this section need not be satisfied as to future transactions is effective if evidenced in a record authenticated by the person against which enforcement is sought.

(f) A transaction within the scope of this title is not subject to a statute of frauds contained in another law of this State.

§22–202.

(a) A contract may be formed in any manner sufficient to show agreement, including offer and acceptance or conduct of both parties or operations of electronic agents which recognize the existence of a contract.

(b) If the parties so intend, an agreement sufficient to constitute a contract may be found even if the time of its making is undetermined, one or more terms are left open or to be agreed on, the records of the parties do not otherwise establish a contract, or one party reserves the right to modify terms.

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

(d) In the absence of conduct or performance by both parties to the contrary, a contract is not formed if there is a material disagreement about a material term, including a term concerning scope.

(e) If a term is to be adopted by later agreement and the parties intend not to be bound unless the term is so adopted, a contract is not formed if the parties do not agree to the term. In that case, each party shall deliver to the other party, or with the consent of the other party destroy, all copies of information, access materials, and other materials received or made, and each party is entitled to a return with respect to any contract fee paid for which performance has not been received, has not been accepted, or has been redelivered without any benefit being retained. The parties remain bound by any contractual use term only with respect to information or copies received or made from copies received pursuant to the agreement, but the contractual use term does not apply to information or copies properly received or obtained from another source.

§22–203.

Unless otherwise unambiguously indicated by the language or the circumstances:

(1) An offer to make a contract invites acceptance in any manner and by any medium reasonable under the circumstances.

(2) An order or other offer to acquire a copy for prompt or current delivery invites acceptance by either a prompt promise to ship or a prompt or current shipment of a conforming or nonconforming copy. However, a shipment of a nonconforming copy is not an acceptance if the licensor seasonably notifies the licensee that the shipment is offered only as an accommodation to the licensee.

(3) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror that is not notified of acceptance or performance within a reasonable time may treat the offer as having lapsed before acceptance.

(4) If an offer in an electronic message evokes an electronic message accepting the offer, a contract is formed:

(A) When an electronic acceptance is received; or

(B) If the response consists of beginning performance, full performance, or giving access to information, when the performance is received or the access is enabled and necessary access materials are received.

§22–204.

(a) In this section, an acceptance materially alters an offer if it contains a term that materially conflicts with or varies a term of the offer or that adds a material term not contained in the offer.

(b) Except as otherwise provided in § 22-205 of this subtitle, a definite and seasonable expression of acceptance operates as an acceptance, even if the acceptance contains terms that vary from the terms of the offer, unless the acceptance materially alters the offer.

(c) If an acceptance materially alters the offer, the following rules apply:

(1) A contract is not formed unless:

(A) A party agrees, such as by manifesting assent, to the other party's offer or acceptance; or

(B) All the other circumstances, including the conduct of the parties, establish a contract.

(2) If a contract is formed by the conduct of both parties, the terms of the contract are determined under § 22-210 of this subtitle.

(d) If an acceptance varies from but does not materially alter the offer, a contract is formed based on the terms of the offer. In addition, the following rules apply:

(1) Terms in the acceptance which conflict with terms in the offer are not part of the contract.

(2) An additional nonmaterial term in the acceptance is a proposal for an additional term. Between merchants, the proposed additional term becomes part of the contract unless the offeror gives notice of objection before, or within a reasonable time after, it receives the proposed terms.

§22–205.

(a) In this section, an offer or acceptance is conditional if it is conditioned on agreement by the other party to all the terms of the offer or acceptance.

(b) Except as otherwise provided in subsection (c) of this section, a conditional offer or acceptance precludes formation of a contract unless the other party agrees to its terms, such as by manifesting assent.

(c) If an offer and acceptance are in standard forms and at least one form is conditional, the following rules apply:

(1) Conditional language in a standard term precludes formation of a contract only if the actions of the party proposing the form are consistent with the conditional language, such as by refusing to perform, refusing to permit performance, or refusing to accept the benefits of the agreement, until its proposed terms are accepted.

(2) A party that agrees, such as by manifesting assent, to a conditional offer that is effective under paragraph (1) of this subsection adopts the terms of the offer under § 22-208 or § 22-209 of this subtitle, except a term that conflicts with an expressly agreed term regarding price or quantity.

§22–206.

(a) A contract may be formed by the interaction of electronic agents. If the interaction results in the electronic agents' engaging in operations that under the circumstances indicate acceptance of an offer, a contract is formed, but a court may grant appropriate relief if the operations resulted from fraud, electronic mistake, or the like.

(b) A contract may be formed by the interaction of an electronic agent and an individual acting on the individual's own behalf or for another person. A contract is formed if the individual takes an action or makes a statement that the individual can refuse to take or say and that the individual has reason to know will:

(1) Cause the electronic agent to perform, provide benefits, or allow the use or access that is the subject of the contract, or send instructions to do so; or

(2) Indicate acceptance, regardless of other expressions or actions by the individual to which the individual has reason to know the electronic agent cannot react.

(c) The terms of a contract formed under subsection (b) of this section are determined under § 22-208 or § 22-209 of this subtitle but do not include a term provided by the individual if the individual had reason to know that the electronic agent could not react to the term.

§22–207.

(a) A release is effective without consideration if it is:

(1) In a record to which the releasing party agrees, such as by manifesting assent, and which identifies the informational rights released; or

(2) Enforceable under estoppel, implied license, or other law.

(b) A release continues for the duration of the informational rights released if the release does not specify its duration and does not require affirmative performance after the grant of the release by:

(1) The party granting the release; or

(2) The party receiving the release, except for relatively insignificant acts.

(c) In cases not governed by subsection (b) of this section, the duration of a release is governed by § 22-308 of this title.

§22–208.

Except as otherwise provided in § 22-209 of this subtitle, the following rules apply:

(1) A party adopts the terms of a record, including a standard form, as the

terms of the contract if the party agrees to the record, such as by manifesting assent.

(2) The terms of a record may be adopted pursuant to paragraph (1) of this section after beginning performance or use if the parties had reason to know that their agreement would be represented in whole or part by a later record to be agreed on and there would not be an opportunity to review the record or a copy of it before performance or use begins. If the parties fail to agree to the later terms and did not intend to form a contract unless they so agreed, § 22-202(e) of this subtitle applies.

(3) If a party adopts the terms of a record, the terms become part of the contract without regard to the party's knowledge or understanding of individual terms in the record, except for a term that is unenforceable because it fails to satisfy another requirement of this title.

§22–209.

(a) A party adopts the terms of a mass-market license for purposes of § 22-208 of this subtitle only if the party agrees to the license, such as by manifesting assent, before or during the party's initial performance or use of or access to the information. A term is not part of the license if:

(1) The term is unconscionable;

(2) The term is unenforceable, after weighing fundamental public policies, including fundamental public policies concerning competition or innovation, under § 22-105(a) or (b) of this title;

(3) Subject to § 22-301 of this title, the term conflicts with a term to which the parties to the license have expressly agreed; or

(4) The term is not available for viewing before and after assent:

(A) In a printed license; or

(B) In electronic form that:

(i) Can be printed or stored for archival and review purposes by the licensee; or

(ii) Is made available by a licensor to a licensee, at no cost to the licensee, in a printed form on the request of a licensee that is unable to print or store the license for archival and review purposes.

(b) If a mass-market license or a copy of the license is not available in a manner permitting an opportunity to review by the licensee before the licensee becomes obligated to pay and the licensee does not agree, such as by manifesting assent, to the license after having an opportunity to review, the licensee is entitled to a return under § 22-112 of this title and, in addition, to:

(1) Reimbursement of any reasonable expenses incurred in complying with the licensor's instructions for returning or destroying the computer information or, in the absence of instructions, expenses incurred for return postage or similar reasonable expense in returning the computer information; and

(2) Compensation for any reasonable and foreseeable costs of restoring the licensee's information processing system to reverse changes in the system caused by the installation, if:

(A) The installation occurs because information must be installed to enable review of the license; and

(B) The installation alters the system or information in it but does not restore the system or information after removal of the installed information because the licensee rejected the license.

(c) In a mass-market transaction, if the licensor does not have an opportunity to review a record containing proposed terms from the licensee before the licensor delivers or becomes obligated to deliver the information, and if the licensor does not agree, such as by manifesting assent, to those terms after having that opportunity, the licensor is entitled to a return.

(d) A term in a mass-market license that limits the duration of the license shall be conspicuous.

§22–210.

(a) Except as otherwise provided in subsection (b) of this section and subject to § 22-301 of this title, if a contract is formed by conduct of the parties, the terms of the contract are determined by consideration of the terms and conditions to which the parties expressly agreed, course of performance, course of dealing, usage of trade, the nature of the parties' conduct, the records exchanged, the information or informational rights involved, and all other relevant circumstances. If a court cannot determine the terms of the contract from the foregoing factors, the supplementary principles of this title apply.

(b) This section does not apply if the parties authenticate a record of the contract or a party agrees, such as by manifesting assent, to the record containing the terms of the other party.

§22–211.

This section applies to a licensor that makes its computer information available to a licensee by electronic means from its Internet or similar electronic site. In such a case, the licensor affords an opportunity to review the terms of a standard form license which opportunity satisfies § 22-112(e) of this title with respect to a licensee that acquires the information from that site, if the licensor:

(1) Makes the standard terms of the license readily available for review by the licensee before the information is delivered or the licensee becomes obligated to pay, whichever occurs first, by:

(A) Displaying prominently and in close proximity to a description of the computer information, or to instructions or steps for acquiring it, the standard terms or a reference to an electronic location from which they can be readily obtained; or

(B) Disclosing the availability of the standard terms in a prominent place on the site from which the computer information is offered and promptly furnishing a copy of the standard terms on request before the transfer of the computer information; and

(2) Does not take affirmative acts to prevent printing or storage of the standard terms for archival or review purposes by the licensee.

§22–212.

The efficacy, including the commercial reasonableness, of an attribution procedure is determined by the court. In making this determination, the following rules apply:

(1) An attribution procedure established by law is effective for transactions within the coverage of the statute or rule.

(2) Except as otherwise provided in paragraph (1) of this section, commercial reasonableness and effectiveness is determined in light of the purposes of the procedure and the commercial circumstances at the time the parties agreed to or adopted the procedure.

(3) An attribution procedure may use any security device or method that is commercially reasonable under the circumstances.

§22–213.

(a) An electronic authentication, display, message, record, or performance is attributed to a person if it was the act of the person or its electronic agent, or if the person is bound by it under agency or other law. The party relying on attribution of an electronic authentication, display, message, record, or performance to another person has the burden of establishing attribution.

(b) The act of a person may be shown in any manner, including a showing of the efficacy of an attribution procedure that was agreed to or adopted by the parties or established by law.

(c) The effect of an electronic act attributed to a person under subsection (a) of this section is determined from the context at the time of its creation, execution, or

adoption, including the parties' agreement, if any, or otherwise as provided by law.

(d) If an attribution procedure exists to detect errors or changes in an electronic authentication, display, message, record, or performance, and was agreed to or adopted by the parties or established by law, and one party conformed to the procedure but the other party did not, and the nonconforming party would have detected the change or error had that party also conformed, the effect of noncompliance is determined by the agreement but, in the absence of agreement, the conforming party may avoid the effect of the error or change.

§22–214.

(a) In this section, "electronic error" means an error in an electronic message created by a consumer using an information processing system if a reasonable method to detect and correct or avoid the error was not provided.

(b) In an automated transaction, a consumer is not bound by an electronic message that the consumer did not intend and which was caused by an electronic error, if the consumer:

(1) Promptly on learning of the error:

(A) Notifies the other party of the error; and

(B) Causes delivery to the other party or, pursuant to reasonable instructions received from the other party, delivers to another person or destroys all copies of the information; and

(2) Has not used, or received any benefit or value from, the information or caused the information or benefit to be made available to a third party.

(c) If subsection (b) of this section does not apply, the effect of an electronic error is determined by other law.

§22–215.

(a) Receipt of an electronic message is effective when received even if no individual is aware of its receipt.

(b) Receipt of an electronic acknowledgment of an electronic message establishes that the message was received but by itself does not establish that the content sent corresponds to the content received.

§22–216.

(a) The following rules apply to a submission of an idea or information for the creation, development, or enhancement of computer information which is not made pursuant to an existing agreement requiring the submission:

(1) A contract is not formed and is not implied from the mere receipt of an unsolicited submission;

(2) Engaging in a business, trade, or industry that by custom or practice regularly acquires ideas is not in itself an express or implied solicitation of the information; and

(3) If the recipient seasonably notifies the person making the submission that the recipient maintains a procedure to receive and review submissions, a contract is formed only if:

(A) The submission is made and accepted pursuant to that procedure; or

(B) The recipient expressly agrees to terms concerning the submission.

(b) An agreement to disclose an idea creates a contract enforceable against the receiving party only if the idea as disclosed is confidential, concrete, and novel to the business, trade, or industry, or the party receiving the disclosure otherwise expressly agreed.

§22–301.

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

(1) Course of performance, course of dealing, or usage of trade; and

(2) Evidence of consistent additional terms, unless the court finds the record to have been intended as a complete and exclusive statement of the terms of the agreement.

§22–302.

(a) The express terms of an agreement and any course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. However, if that construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

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

(c) Evidence of a relevant course of performance, course of dealing, or usage of trade offered by one party in a proceeding is not admissible unless and until the party offering the evidence has given the other party notice that the court finds sufficient to prevent unfair surprise.

(d) The existence and scope of a usage of trade must be proved as facts.

§22–303.

(a) An agreement modifying a contract subject to this title needs no consideration to be binding.

(b) An authenticated record that precludes modification or rescission except by an authenticated record may not otherwise be modified or rescinded. In a standard form supplied by a merchant to a consumer, a term requiring an authenticated record for modification of the contract is not enforceable unless the consumer manifests assent to the term.

(c) A modification of a contract and the contract as modified must satisfy the requirements of §§ 22–201(a) of this title and 22–307(g) of this subtitle if the contract as modified is within those provisions.

(d) An attempt at modification or rescission which does not satisfy subsection (b) or (c) of this section may operate as a waiver if § 22–702 of this title is satisfied.

§22–304.

(a) Terms of an agreement involving successive performances apply to all performances, even if the terms are not displayed or otherwise brought to the attention of a party with respect to each successive performance, unless the terms are modified in accordance with this title or the contract.

(b) If a contract provides that terms may be changed as to future performances by compliance with a described procedure, a change proposed in good faith pursuant to that procedure becomes part of the contract if the procedure:

(1) Reasonably notifies the other party of the change; and

(2) In a mass-market transaction, permits the other party to terminate the contract as to future performance if the change alters a material term and the party in good faith determines that the modification is unacceptable.

(c) The parties by agreement may determine the standards for reasonable

notice unless the agreed standards are manifestly unreasonable in light of the commercial circumstances.

(d) The enforceability of changes made pursuant to a procedure that does not comply with subsection (b) of this section is determined by the other provisions of this title or other law.

§22–305.

An agreement that is otherwise sufficiently definite to be a contract is not invalid because it leaves particulars of performance to be specified by one of the parties. If particulars of performance are to be specified by a party, the following rules apply:

(1) Specification must be made in good faith and within limits set by commercial reasonableness.

(2) If a specification materially affects the other party's performance but is not seasonably made, the other party:

(A) Is excused for any resulting delay in its performance; and

(B) May perform, suspend performance, or treat the failure to specify as a breach of contract.

§22–306.

A performance obligation of a party that cannot be determined from the agreement or from other provisions of this title requires the party to perform in a manner and in a time that is reasonable in light of the commercial circumstances existing at the time of agreement.

§22–307.

(a) A license grants:

(1) The contractual rights that are expressly described; and

(2) A contractual right to use any informational rights within the licensor's control at the time of contracting which are necessary in the ordinary course to exercise the expressly described rights.

(b) If a license expressly limits use of the information or informational rights, use in any other manner is a breach of contract. In all other cases, a license contains an implied limitation that the licensee will not use the information or informational rights otherwise than as described in subsection (a) of this section. However, use inconsistent with this implied limitation is not a breach if it is permitted under applicable law in the absence of the implied limitation.

(c) An agreement that does not specify the number of permitted users permits a number of users which is reasonable in light of the informational rights involved and the commercial circumstances existing at the time of the agreement.

(d) Unless otherwise agreed, a party is not entitled to any rights in new versions of, or improvements or modifications to, information made by the other party. A licensor's agreement to provide new versions, improvements, or modifications requires that the licensor provide them as developed and made generally commercially available from time to time by the licensor.

(e) Unless otherwise agreed, neither party is entitled to receive copies of source code, schematics, master copy, design material, or other information used by the other party in creating, developing, or implementing the information.

(f) Terms concerning scope must be construed under ordinary principles of contract interpretation in light of the informational rights and the commercial context. In addition, the following rules apply:

(1) A grant of "all possible rights and for all media" or "all rights and for all media now known or later developed", or a grant in similar terms, includes all rights then existing or later created by law and all uses, media, and methods of distribution or exhibition, whether then existing or developed in the future and whether or not anticipated at the time of the grant.

(2) A grant of an "exclusive license", or a grant in similar terms, means that:

(A) For the duration of the license, the licensor will not exercise, and will not grant to any other person, rights in the same information or informational rights within the scope of the exclusive grant; and

(B) The licensor affirms that it has not previously granted those rights in a contract in effect when the licensee's rights may be exercised.

(g) The rules in this section may be varied only by a record that is sufficient to indicate that a contract has been made and which is:

(1) Authenticated by the party against which enforcement is sought; or

(2) Prepared and delivered by one party and adopted by the other under § 22-208 or § 22-209 of this title.

§22–308.

If an agreement does not specify its duration, to the extent allowed by other law, the following rules apply:

(1) Except as otherwise provided in paragraph (2) of this section, the

agreement is enforceable for a time reasonable in light of the licensed subject matter and commercial circumstances but may be terminated as to future performances at will by either party during that time on giving seasonable notice to the other party.

(2) The duration of contractual rights to use licensed subject matter is a time reasonable in light of the licensed informational rights and the commercial circumstances. However, subject to cancellation for breach of contract, the duration of the license is perpetual as to the contractual rights and contractual use terms if:

(A) The license is of a computer program that does not include source code and the license:

(i) Transfers ownership of a copy; or

(ii) Delivers a copy for a contract fee the total amount of which is fixed at or before the time of delivery of the copy; or

(B) The license expressly grants the right to incorporate or use the licensed information or informational rights with information or informational rights from other sources in a combined work for public distribution or public performance.

§22–309.

(a) Except as otherwise provided in subsection (b) of this section, an agreement that provides that the performance of one party is to be to the satisfaction or approval of the other party requires performance sufficient to satisfy a reasonable person in the position of the party that must be satisfied.

(b) Performance must be to the subjective satisfaction of the other party if:

(1) The agreement expressly so provides, such as by stating that approval is in the "sole discretion" of the party, or words of similar import; or

(2) The agreement is for informational content to be evaluated in reference to subjective characteristics such as aesthetics, appeal, suitability to taste, or subjective quality.

§22–401.

(a) A licensor of information that is a merchant regularly dealing in information of the kind warrants that the information will be delivered free of the rightful claim of any third person by way of infringement or misappropriation, but a licensee that furnishes detailed specifications to the licensor and the method required for meeting the specifications holds the licensor harmless against any such claim that arises out of compliance with either the required specification or the required method except for a claim that results from the failure of the licensor to adopt, or notify the licensee of, a noninfringing alternative of which the licensor had reason to know.

(b) A licensor warrants:

(1) For the duration of the license, that no person holds a rightful claim to, or interest in, the information which arose from an act or omission of the licensor, other than a claim by way of infringement or misappropriation, which will interfere with the licensee's enjoyment of its interest; and

(2) As to rights granted exclusively to the licensee, that within the scope of the license:

(A) To the knowledge of the licensor, any licensed patent rights are valid and exclusive to the extent exclusivity and validity are recognized by the law under which the patent rights were created; and

(B) In all other cases, the licensed informational rights are valid and exclusive for the information as a whole to the extent exclusivity and validity are recognized by the law applicable to the licensed rights in a jurisdiction to which the license applies.

(c) The warranties in this section are subject to the following rules:

(1) If the licensed informational rights are subject to a right of privileged use, collective administration, or compulsory licensing, the warranty is not made with respect to those rights.

(2) The obligations under subsections (a) and (b)(2) of this section apply solely to informational rights arising under the laws of the United States or a state, unless the contract expressly provides that the warranty obligations extend to rights under the laws of other countries. Language is sufficient for this purpose if it states "The licensor warrants 'exclusivity', 'noninfringement', 'in specified countries', 'worldwide'", or words of similar import. In that case, the warranty extends to the specified country or, in the case of a reference to "worldwide" or the like, to all countries within the description, but only to the extent the rights are recognized under a treaty or international convention to which the country and the United States are signatories.

(3) The warranties under subsections (a) and (b)(2) of this section are not made by a license that merely permits use, or covenants not to claim infringement because of the use, of rights under a licensed patent.

(d) Except as otherwise provided in subsection (e) of this section, a warranty under this section may be disclaimed or modified only by specific language or by circumstances that give the licensee reason to know that the licensor does not warrant that competing claims do not exist or that the licensor purports to grant only the rights it may have. In an automated transaction, language is sufficient if it is conspicuous. Otherwise, language in a record is sufficient if it states "There is no warranty against interference with your enjoyment of the information or against infringement", or words of similar import.

(e) Between merchants, a grant of a "quitclaim", or a grant in similar terms, grants the information or informational rights without an implied warranty as to infringement or misappropriation or as to the rights actually possessed or transferred by the licensor.

§22–402.

(a) Subject to subsection (c) of this section, an express warranty by a licensor is created as follows:

(1) An affirmation of fact or promise made by the licensor to its licensee, including by advertising, which relates to the information and becomes part of the basis of the bargain creates an express warranty that the information to be furnished under the agreement will conform to the affirmation or promise.

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

(3) Any sample, model, or demonstration of a final product which is made part of the basis of the bargain creates an express warranty that the performance of the information will reasonably conform to the performance of the sample, model, or demonstration, taking into account differences that would appear to a reasonable person in the position of the licensee between the sample, model, or demonstration and the information as it will be used.

(b) It is not necessary to the creation of an express warranty that the licensor use formal words, such as "warranty" or "guaranty", or state a specific intention to make a warranty. However, an express warranty is not created by:

(1) An affirmation or prediction merely of the value of the information or informational rights;

(2) A display or description of a portion of the information to illustrate the aesthetics, appeal, suitability to taste, subjective quality, or the like of informational content; or

(3) A statement purporting to be merely opinion or commendation of the information or informational rights.

(c) An express warranty or similar express contractual obligation, if any, exists with respect to published informational content covered by this title to the same extent that it would exist if the published informational content had been published in a form that placed it outside this title. However, if the warranty or similar express contractual obligation is breached, the remedies of the aggrieved party are those under this title and the agreement.

§22–403.

(a) Unless the warranty is disclaimed or modified, a licensor that is a merchant with respect to computer programs of the kind warrants:

(1) To the end user that the computer program is fit for the ordinary purposes for which such computer programs are used;

(2) To the distributor that:

(A) The program is adequately packaged and labeled as the agreement requires; and

(B) In the case of multiple copies, the copies are within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and

(3) That the program conforms to any promises or affirmations of fact made on the container or label.

(b) Unless disclaimed or modified, other implied warranties with respect to computer programs may arise from course of dealing or usage of trade.

(c) No warranty is created under this section with respect to informational content, but an implied warranty may arise under § 22-404 of this subtitle.

§22–404.

(a) Unless the warranty is disclaimed or modified, a merchant that, in a special relationship of reliance with a licensee, collects, compiles, processes, provides, or transmits informational content warrants to that licensee that there is no inaccuracy in the informational content caused by the merchant's failure to perform with reasonable care.

(b) A warranty does not arise under subsection (a) of this section with respect to:

(1) Published informational content; or

(2) A person that acts as a conduit or provides no more than editorial services in collecting, compiling, distributing, processing, providing, or transmitting informational content that under the circumstances can be identified as that of a third person.

(c) The warranty under this section is not subject to the preclusion in § 22-113(a)(1) of this title on disclaiming obligations of diligence, reasonableness, or care.

§22–405.

(a) Unless the warranty is disclaimed or modified, if a licensor at the time of contracting has reason to know any particular purpose for which the computer information is required and that the licensee is relying on the licensor's skill or judgment to select, develop, or furnish suitable information, the following rules apply:

(1) Except as otherwise provided in paragraph (2), there is an implied warranty that the information is fit for that purpose.

(2) If from all the circumstances it appears that the licensor was to be paid for the amount of its time or effort regardless of the fitness of the resulting information, the warranty under paragraph (1) is that the information will not fail to achieve the licensee's particular purpose as a result of the licensor's lack of reasonable effort.

(b) There is no warranty under subsection (a) of this section with regard to:

(1) The aesthetics, appeal, suitability to taste, or subjective quality of informational content; or

(2) Published informational content, but there may be a warranty with regard to the licensor's selection among published informational content from different providers if the selection is made by an individual acting as or on behalf of the licensor.

(c) If an agreement requires a licensor to provide or select a system consisting of computer programs and goods, and the licensor has reason to know that the licensee is relying on the skill or judgment of the licensor to select the components of the system, there is an implied warranty that the components provided or selected will function together as a system.

(d) The warranty under this section is not subject to the preclusion in § 22-113(a)(1) of this title on disclaiming diligence, reasonableness, or care.

§22–406.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to disclaim or modify an express warranty must be construed wherever reasonable as consistent with each other. Subject to § 22-301 of this title with regard to parol or extrinsic evidence, the disclaimer or modification is inoperative to the extent that such construction is unreasonable.

(b) Except as otherwise provided in subsections (c), (d), and (e) of this section, to disclaim or modify an implied warranty or any part of it, but not the warranty in § 22-401 of this subtitle, the following rules apply:

(1) Except as otherwise provided in this subsection:

(A) To disclaim or modify the implied warranty arising under §

22-403 of this subtitle, language must mention "merchantability" or "quality" or use words of similar import and, if in a record, must be conspicuous.

(B) To disclaim or modify the implied warranty arising under § 22-404 of this subtitle, language in a record must mention "accuracy" or use words of similar import.

(2) Language to disclaim or modify the implied warranty arising under § 22-405 of this subtitle must be in a record and be conspicuous. It is sufficient to state "There is no warranty that this information, our efforts, or the system will fulfill any of your particular purposes or needs", or words of similar import.

(3) Language in a record is sufficient to disclaim all implied warranties if it individually disclaims each implied warranty or, except for the warranty in § 22-401 of this subtitle, if it is conspicuous and states "Except for express warranties stated in this contract, if any, this 'information'/'computer program' is provided with all faults, and the entire risk as to satisfactory quality, performance, accuracy, and effort is with the user", or words of similar import.

(4) A disclaimer or modification sufficient under Title 2 or Title 2A of this article to disclaim or modify an implied warranty of merchantability is sufficient to disclaim or modify the warranties under §§ 22-403 and 22-404 of this subtitle. A disclaimer or modification sufficient under Title 2 or Title 2A of this article to disclaim or modify an implied warranty of fitness for a particular purpose is sufficient to disclaim or modify the warranties under § 22-405 of this subtitle.

(c) Unless the circumstances indicate otherwise, all implied warranties, but not the warranty under § 22-401 of this subtitle, are disclaimed by expressions like "as is" or "with all faults" or other language that in common understanding calls the licensee's attention to the disclaimer of warranties and makes plain that there are no implied warranties.

(d) If a licensee before entering into a contract has examined the information or the sample or model as fully as it desired or has refused to examine the information, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed to the licensee.

(e) An implied warranty may also be disclaimed or modified by course of performance, course of dealing, or usage of trade.

(f) If a contract requires ongoing performance or a series of performances by the licensor, language of disclaimer or modification which complies with this section is effective with respect to all performances under the contract.

(g) Remedies for breach of warranty may be limited in accordance with this title with respect to liquidation or limitation of damages and contractual modification of remedy.

(h) The provisions of subsections (a) through (g) of this section do not apply to a consumer contract.

(i) (1) Any oral or written language used in a consumer contract, which attempts to exclude or modify any implied warranties of merchantability of a computer program created under § 22-403 of this subtitle, or implied warranties of fitness for a particular purpose under § 22-405 of this subtitle, or exclude or modify the consumer's remedies for a breach of those warranties, is unenforceable.

(2) A merchant may recover from a manufacturer or a licensor that caused the breach any damages resulting from the breach of implied warranties of merchantability or fitness for a particular purpose that could not be disclaimed or modified under this section.

(j) Any oral or written language used in a consumer contract which attempts to limit or modify a consumer's remedies for breach of a merchant's, licensor's, or manufacturer's express warranties is unenforceable unless the merchant, licensor, or manufacturer provides reasonable and expeditious means of performing the warranty obligations.

(k) The provisions of §§ 22-403 and 22-405 of this subtitle do not apply to:

(1) Computer information or a computer program provided for no fee, unless the computer information or computer program is provided in conjunction with the sale or lease of goods, services, other computer information, or another computer program; or

(2) Computer information or a computer program provided as a beta test or similar experimental version of the computer information or computer program.

(l) The provisions of § 22-403 of this subtitle do not apply to a computer program provided under a license that does not impose a license fee for the right to the source code, to make copies, to modify, and to distribute the computer program.

§22–407.

A licensee that modifies a computer program, other than by using a capability of the program intended for that purpose in the ordinary course, does not invalidate any warranty regarding performance of an unmodified copy but does invalidate any warranties, express or implied, regarding performance of the modified copy. A modification occurs if a licensee alters code in, deletes code from, or adds code to the computer program.

§22–408.

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:

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

(2) A sample displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty under § 22-405(a) of this subtitle.

§22–409.

(a) Except for published informational content, a warranty to a licensee extends to persons for whose benefit the licensor intends to supply the information or informational rights and which rightfully use the information in a transaction or application of a kind in which the licensor intends the information to be used.

(b) A warranty to a consumer extends to each individual consumer in the licensee's immediate family or household if the individual's use would have been reasonably expected by the licensor.

(c) A contractual term that excludes or limits the persons to which a warranty extends is effective except as to individuals described in subsection (b) of this section.

(d) A disclaimer or modification of a warranty or remedy which is effective against the licensee is also effective against third persons to which a warranty extends under this section.

§22–501.

(a) If an agreement provides for conveyance of ownership of informational rights in a computer program, ownership passes at the time and place specified by the agreement but does not pass until the program is in existence and identified to the contract. If the agreement does not specify a different time, ownership passes when the program and the informational rights are in existence and identified to the contract.

(b) Transfer of a copy does not transfer ownership of informational rights.

§22–502.

(a) In a license:

(1) Title to a copy is determined by the license;

(2) A licensee's right under the license to possession or control of a copy is governed by the license and does not depend solely on title to the copy; and

(3) If a licensor reserves title to a copy, the licensor retains title to that copy and any copies made of it, unless the license grants the licensee a right to make

and sell copies to others, in which case the reservation of title applies only to copies delivered to the licensee by the licensor.

(b) If an agreement provides for transfer of title to a copy, title passes:

(1) At the time and place specified in the agreement; or

(2) If the agreement does not specify a time and place:

(A) With respect to delivery of a copy on a tangible medium, at the time and place the licensor completed its obligations with respect to tender of the copy; or

(B) With respect to electronic delivery of a copy, if a first sale occurs under federal copyright law, at the time and place at which the licensor completed its obligations with respect to tender of the copy.

(c) If the party to which title passes under the contract refuses delivery of the copy or rejects the terms of the agreement, title revests in the licensor.

§22–503.

The following rules apply to a transfer of a contractual interest:

(1) A party's contractual interest may be transferred unless the transfer:

(A) Is prohibited by other law; or

(B) Except as otherwise provided in paragraph (3) of this subsection, would materially change the duty of the other party, materially increase the burden or risk imposed on the other party, or materially impair the other party's property or its likelihood or expectation of obtaining return performance.

(2) Except as otherwise provided in paragraph (3) of this subsection and § 22-508(a)(1)(B) of this subtitle, a term prohibiting transfer of a party's contractual interest is enforceable, and a transfer made in violation of that term is a breach of contract and is ineffective to create contractual rights in the transferee against the nontransferring party, except to the extent that:

(A) The contract is a license for incorporation or use of the licensed information or informational rights with information or informational rights from other sources in a combined work for public distribution or public performance and the transfer is of the completed, combined work; or

(B) The transfer is of a right to payment arising out of the transferor's due performance of less than its entire obligation and the transfer would be enforceable under paragraph (1) in the absence of the term prohibiting transfer.

(3) A right to damages for breach of the whole contract or a right to payment arising out of the transferor's due performance of its entire obligation may be transferred notwithstanding an agreement otherwise.

(4) A term that prohibits transfer of a contractual interest under a mass-market license by the licensee must be conspicuous.

§22–504.

(a) A transfer of "the contract" or of "all my rights under the contract", or a transfer in similar general terms, is a transfer of all contractual interests under the contract. Whether the transfer is effective is determined by §§ 22-503 and 22-508(a)(1)(B) of this subtitle.

(b) The following rules apply to a transfer of a party's contractual interests:

(1) The transferee is subject to all contractual use terms.

(2) Unless the language or circumstances otherwise indicate, as in a transfer as security, the transfer delegates the duties of the transferor and transfers its rights.

(3) Acceptance of the transfer is a promise by the transferee to perform the delegated duties. The promise is enforceable by the transferor and any other party to the original contract.

(4) The transfer does not relieve the transferor of any duty to perform, or of liability for breach of contract, unless the other party to the original contract agrees that the transfer has that effect.

(c) A party to the original contract, other than the transferor, may treat a transfer that conveys a right or duty of performance without its consent as creating reasonable grounds for insecurity and, without prejudice to the party's rights against the transferor, may demand assurances from the transferee under § 22-708 of this title.

§22–505.

(a) A party may perform its contractual duties or exercise its contractual rights through a delegate or a subcontract unless:

(1) The contract prohibits delegation or subcontracting; or

(2) The other party has a substantial interest in having the original promisor perform or control the performance.

(b) Delegating or subcontracting performance does not relieve the delegating party of a duty to perform or of liability for breach.

(c) An attempted delegation that violates a term prohibiting delegation is not effective.

§22–506.

(a) If all or any part of a licensee's interest in a license is transferred, voluntarily or involuntarily, the transferee does not acquire an interest in information, copies, or the contractual or informational rights of the licensee unless the transfer is effective under § 22-503 or § 22-508(a)(1)(B) of this subtitle. If the transfer is effective, the transferee takes subject to the terms of the license.

(b) Except as otherwise provided under trade secret law, a transferee acquires no more than the contractual interest or other rights that the transferor was authorized to transfer.

§22–507.

If a financier does not become a licensee in connection with its financial accommodation contract, the following rules apply:

(1) The financier does not receive the benefits or burdens of the license.

(2) The licensee's rights and obligations with respect to the information and informational rights are governed by:

(A) The license;

(B) Any rights of the licensor under other law; and

(C) To the extent not inconsistent with subparagraphs (A) and (B) of this paragraph, any financial accommodation contract between the financier and the licensee, which may add additional conditions to the licensee's right to use the licensed information or informational rights.

§22–508.

(a) If a financier becomes a licensee in connection with its financial accommodation contract and then transfers its contractual interest under the license, or sublicenses the licensed computer information or informational rights, to a licensee receiving the financial accommodation, the following rules apply:

(1) The transfer or sublicense to the accommodated licensee is not effective unless:

(A) The transfer or sublicense is effective under § 22-503 of this subtitle; or

(B) The following conditions are fulfilled:

(i) Before the licensor delivered the information or granted the license to the financier, the licensor received notice in a record from the financier giving the name and location of the accommodated licensee and clearly indicating that the license was being obtained in order to transfer the contractual interest or sublicense the licensed information or informational rights to the accommodated licensee;

(ii) The financier became a licensee solely to make the financial accommodation; and

(iii) The accommodated licensee adopts the terms of the license, which terms may be supplemented by the financial accommodation contract, to the extent the terms of the financial accommodation contract are not inconsistent with the license and any rights of the licensor under other law.

(2) A financier that makes a transfer that is effective under subparagraph (1)(B) of this paragraph may make only the single transfer or sublicense contemplated by the notice unless the licensor consents to a later transfer.

(b) If a financier makes an effective transfer of its contractual interest in a license, or an effective sublicense of the licensed information or informational rights, to an accommodated licensee, the following rules apply:

(1) The accommodated licensee's rights and obligations are governed by:

(A) The license;

(B) Any rights of the licensor under other law; and

(C) To the extent not inconsistent with subparagraphs (A) and (B) of this paragraph, the financial accommodation contract, which may impose additional conditions to the licensee's right to use the licensed information or informational rights.

(2) The financier does not make warranties to the accommodated licensee other than the warranty under § 22-401(b)(1) of this title and any express warranties in the financial accommodation contract.

§22–509.

Unless the accommodated licensee is a consumer, a term in a financial accommodation contract providing that the accommodated licensee's obligations to the financier are irrevocable and independent is enforceable. The obligations become irrevocable and independent upon the licensee's acceptance of the license or the financier's giving of value, whichever occurs first.

§22–510.

(a) Except as otherwise provided in subsection (b) of this section, on material breach of a financial accommodation contract by the accommodated licensee, the

following rules apply:

(1) The financier may cancel the financial accommodation contract.

(2) Subject to paragraphs (3) and (4) of this subsection, the financier may pursue its remedies against the accommodated licensee under the financial accommodation contract.

(3) If the financier became a licensee and made a transfer or sublicense that was effective under § 22-508 of this subtitle, it may exercise the remedies of a licensor for breach, including the rights of an aggrieved party under § 22-815 of this title, subject to the limitations of § 22-816 of this title.

(4) If the financier did not become a licensee or did not make a transfer that was effective under § 22-508 of this subtitle, it may enforce a contractual right contained in the financial accommodation contract to preclude the licensee's further use of the information. However, the following rules apply:

(A) The financier has no right to take possession of copies, use the information or informational rights, or transfer any contractual interest in the license.

(B) If the accommodated licensee agreed to transfer possession of copies to the financier in the event of material breach of the financial accommodation contract, the financier may enforce that contractual right only if permitted to do so under subsection (b)(1) of this section and § 22-503 of this subtitle.

(b) The following additional limitations apply to a financier's remedies under subsection (a) of this section:

(1) A financier described in subsection (a)(3) of this section which is entitled under the financial accommodation contract to take possession or prevent use of information, copies, or related materials may do so only if the licensor consents or if doing so would not result in a material adverse change of the duty of the licensor, materially increase the burden or risk imposed on the licensor, disclose or threaten to disclose trade secrets or confidential material of the licensor, or materially impair the licensor's likelihood or expectation of obtaining return performance.

(2) The financier may not otherwise exercise control over, have access to, or sell, transfer, or otherwise use the information or copies without the consent of the licensor unless the financier or transferee is subject to the terms of the license and:

(A) The licensee owns the licensed copy, the license does not preclude transfer of the licensee's contractual rights, and the transfer complies with federal copyright law for the owner of a copy to make the transfer; or

(B) The license is transferable by its express terms and the financier fulfills any conditions to, or complies with any restrictions on, transfer.

(3) The financier's remedies under the financial accommodation contract are subject to the licensor's rights and the terms of the license.

§22–511.

(a) The creation of a financier's interest does not place any obligations on or alter the rights of a licensor.

(b) A financier's interest does not attach to any intellectual property rights of the licensor unless the licensor expressly consents to such attachment in a license or another record.

§22–601.

(a) A party shall perform in a manner that conforms to the contract.

(b) If an uncured material breach of contract by one party precedes the aggrieved party's performance, the aggrieved party need not perform except with respect to contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source. In addition, the following rules apply:

(1) The aggrieved party may refuse a performance that is a material breach as to that performance or a performance that may be refused under § 22–704(b) of this title.

(2) The aggrieved party may cancel the contract only if the breach is a material breach of the whole contract or the agreement so provides.

(c) Except as otherwise provided in subsection (b) of this section, tender of performance by a party entitles the party to acceptance of that performance. In addition, the following rules apply:

(1) A tender of performance occurs when the party, with manifest present ability and willingness to perform, offers to complete the performance.

(2) If a performance by the other party is due at the time of the tendered performance, tender of the other party's performance is a condition to the tendering party's obligation to complete the tendered performance.

(3) A party shall pay or render the consideration required by the agreement for a performance it accepts. A party that accepts a performance has the burden of establishing a breach of contract with respect to the accepted performance.

(d) Except as otherwise provided in §§ 22–603 and 22–604 of this subtitle, in the case of a performance with respect to a copy, this section is subject to §§ 22–606 through 22–610 of this subtitle and §§ 22–704 through 22–707 of this title.

§22–602.

(a) In this section, "enable use" means to grant a contractual right or permission with respect to information or informational rights and to complete the acts, if any, required under the agreement to make the information available to the licensee.

(b) A licensor shall enable use by the licensee pursuant to the contract. The following rules apply to enabling use:

(1) If nothing other than the grant of a contractual right or permission is required to enable use, the licensor enables use when the contract becomes enforceable.

(2) If the agreement requires delivery of a copy, enabling use occurs when the copy is tendered to the licensee.

(3) If the agreement requires delivery of a copy and steps authorizing the licensee's use, enabling use occurs when the last of those acts occurs.

(4) In an access contract, enabling use requires tendering all access material necessary to enable the agreed access.

(5) If the agreement requires a transfer of ownership of informational rights and a filing or recording is allowed by law to establish priority of the transferred ownership, on request by the licensee, the licensor shall execute and tender a record appropriate for that purpose.

§22–603.

If an agreement requires that submitted information be to the satisfaction of the recipient, the following rules apply:

(1) §§ 22–606 through 22–610 of this subtitle and §§ 22–704 through 22–707 of this title do not apply to the submission.

(2) If the information is not satisfactory to the recipient and the parties engage in efforts to correct the deficiencies in a manner and over a time consistent with the ordinary standards of the business, trade, or industry, neither the efforts nor the passage of time required for the efforts is an acceptance or a refusal of the submission.

(3) Except as otherwise provided in paragraph (4), neither refusal nor acceptance occurs unless the recipient expressly refuses or accepts the submitted information, but the recipient may not use the submitted information before acceptance.

(4) Silence and a failure to act in reference to a submission beyond a commercially reasonable time to respond entitle the submitting party to demand, in a record delivered to the recipient, a decision on the submission. If the recipient fails to respond within a reasonable time after receipt of the demand, the submission is

deemed to have been refused.

§22–604.

If a performance involves delivery of information or services which, because of their nature, may provide a licensee, immediately on performance or delivery, with substantially all the benefit of the performance or with other significant benefit that cannot be returned, the following rules apply:

(1) §§ 22–607 through 22–610 of this subtitle and §§ 22–704 through 22–707 of this title do not apply.

(2) The rights of the parties are determined under § 22–601 of this subtitle and the ordinary standards of the business, trade, or industry.

(3) Before tender of the performance, a party entitled to receive the tender may inspect the media, labels, or packaging but may not view the information or otherwise receive the performance before completing any performance of its own that is then due.

§22–605.

(a) In this section, "automatic restraint" means a program, code, device, or similar electronic or physical limitation the intended purpose of which is to restrict use of information.

(b) A party entitled to enforce a limitation on use of information may include an automatic restraint in the information or a copy of it and use that restraint if:

(1) A conspicuous term of the agreement authorizes use of the restraint;

(2) The restraint prevents a use that is inconsistent with the agreement;

(3) The restraint prevents use after expiration of the stated duration of the contract or a stated number of uses; or

(4) The restraint prevents use after the contract terminates, other than on expiration of a stated duration or number of uses, and the licensor gives reasonable notice to the licensee before further use is prevented.

(c) This section does not authorize an automatic restraint that affirmatively prevents or makes impracticable a licensee's access to its own information or information of a third party, other than the licensor, if that information is in the possession of the licensee or a third party and accessed without use of the licensor's information or informational rights.

(d) A party that includes or uses an automatic restraint consistent with subsection (b) or (c) of this section is not liable for any loss caused by the use of the

restraint.

(e) This section does not preclude electronic replacement or disabling of an earlier copy of information by the licensor in connection with delivery of a new copy or version under an agreement to replace or disable the earlier copy by electronic means with an upgrade or other new information.

(f) This section does not authorize use of an automatic restraint to enforce remedies in the event of breach of contract or of cancellation for breach.

§22–606.

(a) Delivery of a copy must be at the location designated by agreement. In the absence of a designation, the following rules apply:

(1) The place for delivery of a copy on a tangible medium is the tendering party's place of business or, if it has none, its residence. However, if the parties know at the time of contracting that the copy is located in some other place, that place is the place for delivery.

(2) The place for electronic delivery of a copy is an information processing system designated or used by the licensor.

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

(b) Tender of delivery of a copy requires the tendering party to put and hold a conforming copy at the other party's disposition and give the other party any notice reasonably necessary to enable it to obtain access to, control, or possession of the copy. Tender must be at a reasonable hour and, if applicable, requires tender of access material and other documents required by the agreement. The party receiving tender shall furnish facilities reasonably suited to receive tender. In addition, the following rules apply:

(1) If the contract requires delivery of a copy held by a third person without being moved, the tendering party shall tender access material or documents required by the agreement.

(2) If the tendering party is required or authorized to send a copy to the other party and the contract does not require the tendering party to deliver the copy at a particular destination, the following rules apply:

(A) In tendering delivery of a copy on a tangible medium, the tendering party shall put the copy in the possession of a carrier and make a contract for its transportation that is reasonable in light of the nature of the information and other circumstances, with expenses of transportation to be borne by the receiving party.

(B) In tendering electronic delivery of a copy, the tendering party shall initiate or cause to have initiated a transmission that is reasonable in light of the nature of the information and other circumstances, with expenses of transmission to be borne by the receiving party.

(3) If the tendering party is required to deliver a copy at a particular destination, the tendering party shall make a copy available at that destination and bear the expenses of transportation or transmission.

§22–607.

(a) If performance requires delivery of a copy, the following rules apply:

(1) The party required to deliver need not complete a tendered delivery until the receiving party tenders any performance then due.

(2) Tender of delivery is a condition of the other party's duty to accept the copy and entitles the tendering party to acceptance of the copy.

(b) If payment is due on delivery of a copy, the following rules apply:

(1) Tender of delivery is a condition of the receiving party's duty to pay and entitles the tendering party to payment according to the contract.

(2) All copies required by the contract must be tendered in a single delivery, and payment is due only on tender.

(c) If the circumstances give either party the right to make or demand delivery in lots, the contract fee, if it can be apportioned, may be demanded for each lot.

(d) If payment is due and demanded on delivery of a copy or on delivery of a document of title, the right of the party receiving tender to retain or dispose of the copy or document, as against the tendering party, is conditioned on making the payment due.

§22–608.

(a) Except as otherwise provided in §§ 22-603 and 22-604 of this subtitle, if performance requires delivery of a copy, the following rules apply:

(1) Except as otherwise provided in this section, the party receiving the copy has a right before payment or acceptance to inspect the copy at a reasonable place and time and in a reasonable manner to determine conformance to the contract.

(2) The party making the inspection shall bear the expenses of inspection.

(3) A place or method of inspection or an acceptance standard fixed by the parties is presumed to be exclusive. However, the fixing of a place, method, or standard

does not postpone identification to the contract or shift the place for delivery, passage of title, or risk of loss. If compliance with the place or method becomes impossible, inspection must be made as provided in this section unless the place or method fixed by the parties was an indispensable condition the failure of which avoids the contract.

(4) A party's right to inspect is subject to existing obligations of confidentiality.

(b) If a right to inspect exists under subsection (a) of this section but the agreement is inconsistent with an opportunity to inspect before payment, the party does not have a right to inspect before payment.

(c) If a contract requires payment before inspection of a copy, nonconformity in the tender does not excuse the party receiving the tender from making payment unless:

(1) The nonconformity appears without inspection and would justify refusal under § 22-704 of this title; or

(2) Despite tender of the required documents, the circumstances would justify an injunction against honor of a letter of credit under Title 5 of this article.

(d) Payment made under circumstances described in subsection (b) or (c) of this section is not an acceptance of the copy and does not impair a party's right to inspect or preclude any of the party's remedies.

§22–609.

(a) Acceptance of a copy occurs when the party to which the copy is tendered:

(1) Signifies, or acts with respect to the copy in a manner that signifies, that the tender was conforming or that the party will take or retain the copy despite the nonconformity;

(2) Does not make an effective refusal;

(3) Commingles the copy or the information in a manner that makes compliance with the party's duties after refusal impossible;

(4) Obtains a substantial benefit from the copy and cannot return that benefit; or

(5) Acts in a manner inconsistent with the licensor's ownership, but the act is an acceptance only if the licensor elects to treat it as an acceptance and ratifies the act to the extent it was within contractual use terms.

(b) Except in cases governed by subsection (a)(3) or (4) of this section, if there is a right to inspect under § 22-608 of this subtitle or the agreement, acceptance of a copy occurs only after the party has had a reasonable opportunity to inspect the copy.

(c) If an agreement requires delivery in stages involving separate portions that taken together comprise the whole of the information, acceptance of any stage is conditional until acceptance of the whole.

§22–610.

(a) A party accepting a copy shall pay or render the consideration required by the agreement for the copy it accepts. Acceptance of a copy precludes refusal and, if made with knowledge of a nonconformity in a tender, may not be revoked because of the nonconformity unless acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance by itself does not impair any other remedy for nonconformity.

(b) A party accepting a copy has the burden of establishing a breach of contract with respect to the copy.

(c) If a copy has been accepted, the accepting party shall:

(1) Except with respect to claims of a type described in § 22-805(d)(1) of this title, within a reasonable time after it discovers or should have discovered a breach of contract, notify the other party of the breach or be barred from any remedy for the breach; and

(2) If the claim is for breach of a warranty regarding noninfringement and the accepting party is sued by a third party because of the breach, notify the warrantor within a reasonable time after receiving notice of the litigation or be precluded from any remedy over for the liability established by the litigation.

§22–611.

(a) If an access contract provides for access over a period of time, the following rules apply:

(1) The licensee's rights of access are to the information as modified and made commercially available by the licensor from time to time during that period.

(2) A change in the content of the information is a breach of contract only if the change conflicts with an express term of the agreement.

(3) Unless it is subject to a contractual use term, information obtained by the licensee is free of any use restriction other than a restriction resulting from the informational rights of another person or other law.

(4) Access must be available:

(A) At times and in a manner conforming to the express terms of the agreement; and

(B) To the extent not expressly stated in the agreement, at times and in a manner reasonable for the particular type of contract in light of the ordinary standards of the business, trade, or industry.

(b) In an access contract that gives the licensee a right of access at times substantially of its own choosing during agreed periods, an occasional failure to have access available during those times is not a breach of contract if it is:

(1) Consistent with ordinary standards of the business, trade, or industry for the particular type of contract; or

(2) Caused by:

(A) Scheduled downtime;

(B) Reasonable needs for maintenance;

(C) Reasonable periods of failure of equipment, computer programs, or communications; or

(D) Events reasonably beyond the licensor's control, and the licensor exercises such commercially reasonable efforts as the circumstances require.

§22–612.

(a) If a person agrees to provide services regarding the correction of performance problems in computer information, other than an agreement to cure its own existing breach of contract, the following rules apply:

(1) If the services are provided by a licensor of the information as part of a limited remedy, the licensor undertakes that its performance will provide the licensee with information that conforms to the agreement to which the limited remedy applies.

(2) In all other cases, the person:

(A) Shall perform at a time and place and in a manner consistent with the express terms of the agreement and, to the extent not stated in the express terms, at a time and place and in a manner that is reasonable in light of ordinary standards of the business, trade, or industry; and

(B) Does not undertake that its services will correct performance problems unless the agreement expressly so provides.

(b) Unless required to do so by an express or implied warranty, a licensor is not required to provide instruction or other support for the licensee's use of information or access. A person that agrees to provide support shall make the support available in a manner and with a quality consistent with express terms of the support agreement and, to the extent not stated in the express terms, at a time and place and in a manner

that is reasonable in light of ordinary standards of the business, trade, or industry.

§22–613.

(a) In this section:

(1) "Dealer" means a merchant licensee that receives information directly or indirectly from a licensor for sale or license to end users.

(2) "End user" means a licensee that acquires a copy of the information from a dealer by delivery on a tangible medium for the licensee's own use and not for sale, license, transmission to third persons, or public display or performance for a fee.

(3) "Publisher" means a licensor, other than a dealer, that offers a license to an end user with respect to information distributed by a dealer to the end user.

(b) In a contract between a dealer and an end user, if the end user's right to use the information or informational rights is subject to a license by the publisher and there was no opportunity to review the license before the end user became obligated to pay the dealer, the following rules apply:

(1) The contract between the end user and the dealer is conditioned on the end user's agreement to the publisher's license.

(2) If the end user does not agree, such as by manifesting assent, to the terms of the publisher's license, the end user has a right to a return from the dealer. A right under this paragraph is a return for purposes of §§ 22-112, 22-208, and 22-209 of this title.

(3) The dealer is not bound by the terms, and does not receive the benefits, of an agreement between the publisher and the end user unless the dealer and end user adopt those terms as part of the agreement.

(c) If an agreement provides for distribution of copies on a tangible medium or in packaging provided by the publisher or an authorized third party, a dealer may distribute those copies and documentation only:

(1) In the form as received; and

(2) Subject to the terms of any license that the publisher provides to the dealer to be furnished to end users.

(d) A dealer that enters into an agreement with an end user is a licensor with respect to the end user under this title.

§22–614.

(a) Except as otherwise provided in this section, the risk of loss as to a copy that

is to be delivered to a licensee, including a copy delivered by electronic means, passes to the licensee upon its receipt of the copy.

(b) If an agreement requires or authorizes a licensor to send a copy on a tangible medium by carrier, the following rules apply:

(1) If the agreement does not require the licensor to deliver the copy at a particular destination, the risk of loss passes to the licensee when the copy is duly delivered to the carrier, even if the shipment is under reservation.

(2) If the agreement requires the licensor to deliver the copy at a particular destination and the copy is duly tendered there in the possession of the carrier, the risk of loss passes to the licensee when the copy is tendered at that destination.

(3) If a tender of delivery of a copy or a shipping document fails to conform to the contract, the risk of loss remains with the licensor until cure or acceptance.

(c) If a copy is held by a third party to be delivered or reproduced without being moved or a copy is to be delivered by making access available to a third party resource containing a copy, the risk of loss passes to the licensee upon:

(1) The licensee's receipt of a negotiable document of title or other access materials covering the copy;

(2) Acknowledgment by the third party to the licensee of the licensee's right to possession of or access to the copy; or

(3) The licensee's receipt of a record directing the third party, pursuant to an agreement between the licensor and the third party, to make delivery or authorizing the third party to allow access.

§22–615.

(a) Unless a party has assumed a different obligation, delay in performance by a party, or nonperformance in whole or part by a party, other than of an obligation to make payments or to conform to contractual use terms, is not a breach of contract if the delay or nonperformance is of a performance that has been made impracticable by:

(1) The occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made; or

(2) Compliance in good faith with any foreign or domestic statute, governmental rule, regulation, or order, whether or not it later proves to be invalid.

(b) A party claiming excuse under subsection (a) of this section shall seasonably notify the other party that there will be delay or nonperformance.

(c) If an excuse affects only a part of a party's capacity to perform an obligation

for delivery of copies, the party claiming excuse shall allocate performance among its customers in any manner that is fair and reasonable and notify the other party of the estimated quota to be made available. In making the allocation, the party claiming excuse may include the requirements of regular customers not then under contract and its own requirements.

(d) A party that receives notice pursuant to subsection (b) of this section of a material or indefinite delay in delivery of copies or of an allocation under subsection (c) of this section, by notice in a record, may:

(1) Terminate and thereby discharge any executory portion of the contract; or

(2) Modify the contract by agreeing to take the available allocation in substitution.

(e) If, after receipt of notice under subsection (b) of this section, a party does not modify the contract within a reasonable time not exceeding 30 days, the contract lapses with respect to any performance affected.

§22–616.

(a) Except as otherwise provided in subsection (b) of this section, on termination all obligations that are still executory on both sides are discharged.

(b) The following survive termination:

(1) A right based on previous breach or performance of the contract;

(2) An obligation of confidentiality, nondisclosure, or noncompetition to the extent enforceable under other law;

(3) A contractual use term applicable to any licensed copy or information received from the other party, or copies made of it, which are not returned or returnable to the other party;

(4) An obligation to deliver, or dispose of information, materials, documentation, copies, records, or the like to the other party, an obligation to destroy copies, or a right to obtain information from an escrow agent;

(5) A choice of law or forum;

(6) An obligation to arbitrate or otherwise resolve disputes by alternative dispute resolution procedures;

(7) A term limiting the time for commencing an action or for giving notice;

(8) An indemnity term or a right related to a claim of a type described in

§ 22-805(d)(1) of this title;

(9) A limitation of remedy or modification or disclaimer of warranty;

(10) An obligation to provide an accounting and make any payment due under the accounting; and

(11) Any term that the agreement provides will survive.

§22–617.

(a) Except as otherwise provided in subsection (b) of this section, a party may not terminate a contract except on the happening of an agreed event, such as the expiration of the stated duration, unless the party gives reasonable notice of termination to the other party.

(b) An access contract may be terminated without giving notice. However, except on the happening of an agreed event, termination requires giving reasonable notice to the licensee if the access contract pertains to information owned and provided by the licensee to the licensor.

(c) A term dispensing with a notice required under this section is invalid if its operation would be unconscionable. However, a term specifying standards for giving notice is enforceable if the standards are not manifestly unreasonable.

§22–618.

(a) On termination of a license, a party in possession or control of information, copies, or other materials that are the property of the other party, or are subject to a contractual obligation to be delivered to that party on termination, shall use commercially reasonable efforts to deliver or hold them for disposal on instructions of that party. If any materials are jointly owned, the party in possession or control shall make them available to the joint owners.

(b) Termination of a license ends all right under the license for the licensee to use or access the licensed information, informational rights, or copies. Continued use of the licensed copies or exercise of terminated rights is a breach of contract unless authorized by a term that survives termination.

(c) Each party may enforce its rights under subsections (a) and (b) of this section by acting pursuant to § 22-605 of this subtitle or by judicial process, including obtaining an order that the party or an officer of the court take the following actions with respect to any licensed information, documentation, copies, or other materials to be delivered:

(1) Deliver or take possession of them;

(2) Without removal, render unusable or eliminate the capability to exercise contractual rights in or use of them;

(3) Destroy or prevent access to them; and

(4) Require that the party or any other person in possession or control of them make them available to the other party at a place designated by that party which is reasonably convenient to both parties.

(d) In an appropriate case, a court of competent jurisdiction may grant injunctive relief to enforce the parties' rights under this section.

§22–701.

(a) Whether a party is in breach of contract is determined by the agreement or, in the absence of agreement, this title. A breach occurs if a party without legal excuse fails to perform an obligation in a timely manner, repudiates a contract, or exceeds a contractual use term, or otherwise is not in compliance with an obligation placed on it by this title or the agreement. A breach, whether or not material, entitles the aggrieved party to its remedies. Whether a breach of a contractual use term is an infringement or a misappropriation is determined by applicable informational property rights law.

(b) A breach of contract is material if:

(1) The contract so provides;

(2) The breach is a substantial failure to perform a term that is an essential element of the agreement; or

(3) The circumstances, including the language of the agreement, the reasonable expectations of the parties, the standards and practices of the business, trade, or industry, and the character of the breach, indicate that:

(A) The breach caused or is likely to cause substantial harm to the aggrieved party; or

(B) The breach substantially deprived or is likely substantially to deprive the aggrieved party of a significant benefit it reasonably expected under the contract.

(c) The cumulative effect of nonmaterial breaches may be material.

§22–702.

(a) A claim or right arising out of a breach of contract may be discharged in whole or part without consideration by a waiver in a record to which the party making the waiver agrees after breach, such as by manifesting assent, or which the party making the waiver authenticates and delivers to the other party.

(b) A party that accepts a performance with knowledge that the performance constitutes a breach of contract and, within a reasonable time after acceptance, does

not notify the other party of the breach waives all remedies for the breach, unless acceptance was made on the reasonable assumption that the breach would be cured and it has not been seasonably cured. However, a party that seasonably notifies the other party of a reservation of rights does not waive the rights reserved.

(c) A party that refuses a performance and fails to identify a particular defect that is ascertainable by reasonable inspection waives the right to rely on that defect to justify refusal only if:

(1) The other party could have cured the defect if it were identified seasonably; or

(2) Between merchants, the other party after refusal made a request in a record for a full and final statement of all defects on which the refusing party relied.

(d) Waiver of a remedy for breach of contract in one performance does not waive any remedy for the same or a similar breach in future performances unless the party making the waiver expressly so states.

(e) A waiver may not be retracted as to the performance to which the waiver applies.

(f) Except for a waiver in accordance with subsection (a) of this section or a waiver supported by consideration, a waiver affecting an executory portion of a contract may be retracted by seasonable notice received by the other party that strict performance will be required in the future, unless the retraction would be unjust in view of a material change of position in reliance on the waiver by that party.

§22–703.

(a) A party in breach of contract may cure the breach at its own expense if:

(1) The time for performance has not expired and the party in breach seasonably notifies the aggrieved party of its intent to cure and, within the time for performance, makes a conforming performance;

(2) The party in breach had reasonable grounds to believe the performance would be acceptable with or without monetary allowance, seasonably notifies the aggrieved party of its intent to cure, and provides a conforming performance within a further reasonable time after performance was due; or

(3) In a case not governed by paragraph (1) or (2) of this subsection, the party in breach seasonably notifies the aggrieved party of its intent to cure and promptly provides a conforming performance before cancellation by the aggrieved party.

(b) In a license other than in a mass-market transaction, if the agreement required a single delivery of a copy and the party receiving tender of delivery was

required to accept a nonconforming copy because the nonconformity was not a material breach of contract, the party in breach shall promptly and in good faith make an effort to cure if:

(1) The party in breach receives seasonable notice of the specific nonconformity and a demand for cure of it; and

(2) The cost of the effort to cure does not disproportionately exceed the direct damages caused by the nonconformity to the aggrieved party.

(c) A party may not cancel a contract or refuse a performance because of a breach of contract that has been seasonably cured under subsection (a) of this section. However, notice of intent to cure does not preclude refusal or cancellation for the uncured breach.

§22–704.

(a) Subject to subsection (b) of this section and § 22-705 of this subtitle, tender of a copy that is a material breach of contract permits the party to which tender is made to:

(1) Refuse the tender;

(2) Accept the tender; or

(3) Accept any commercially reasonable units and refuse the rest.

(b) In a mass-market transaction that calls for only a single tender of a copy, a licensee may refuse the tender if the tender does not conform to the contract.

(c) Refusal of a tender is ineffective unless:

(1) It is made before acceptance;

(2) It is made within a reasonable time after tender or completion of any permitted effort to cure; and

(3) The refusing party seasonably notifies the tendering party of the refusal.

(d) Except in a case governed by subsection (b) of this section, a party that rightfully refuses tender of a copy may cancel the contract only if the tender was a material breach of the whole contract or the agreement so provides.

§22–705.

If an agreement grants a right in or permission to use informational rights which precedes or is otherwise independent of the delivery of a copy, the following rules apply:

(1) A party may refuse a tender of a copy which is a material breach as to that copy, but refusal of that tender does not cancel the contract.

(2) In a case governed by paragraph (1) of this subsection, the tendering party may cure the breach by seasonably providing a conforming copy before the breach becomes material as to the whole contract.

(3) A breach that is material with respect to a copy allows cancellation of the contract only if the breach cannot be seasonably cured and is a material breach of the whole contract.

§22–706.

(a) Except as otherwise provided in this section, after rightful refusal or revocation of acceptance of a copy, the following rules apply:

(1) If the refusing party rightfully cancels the contract, § 22-802 of this title applies and all contractual use terms continue.

(2) If the contract is not canceled, the parties remain bound by all contractual obligations.

(b) On rightful refusal or revocation of acceptance of a copy, the following rules apply to the extent consistent with § 22-802 of this title:

(1) Any use, sale, display, performance, or transfer of the copy or information it contains, or any failure to comply with a contractual use term, is a breach of contract. The licensee shall pay the licensor the reasonable value of any use. However, use for a limited time within contractual use terms is not a breach, and is not an acceptance under § 22-609(a)(5) of this title, if it:

(A) Occurs after the tendering party is seasonably notified of refusal;

(B) Is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) Is not contrary to instructions concerning disposition of the copy received from the party in breach.

(2) A party that refuses a copy shall:

(A) Deliver the copy and all copies made of it, all access materials, and documentation pertaining to the refused information to the tendering party or hold them with reasonable care for a reasonable time for disposal at that party's instructions; and

(B) Follow reasonable instructions of the tendering party for returning or delivering copies, access material, and documentation, but instructions

are not reasonable if the tendering party does not arrange for payment of or reimbursement for reasonable expenses of complying with the instructions.

(3) If the tendering party does not give instructions within a reasonable time after being notified of refusal, the refusing party, in a reasonable manner to reduce or avoid loss, may store the copies, access material, and documentation for the tendering party's account or ship them to the tendering party and is entitled to reimbursement for reasonable costs of storage and shipment.

(4) Both parties remain bound by all contractual use terms that would have been enforceable had the performance not been refused.

(5) In complying with this section, the refusing party shall act in good faith. Conduct in good faith under this section is not acceptance or conversion and may not be a ground for an action for damages under the contract.

§22–707.

(a) A party that accepts a nonconforming tender of a copy may revoke acceptance only if the nonconformity is a material breach of contract and the party accepted it:

(1) On the reasonable assumption that the nonconformity would be cured, and the nonconformity was not seasonably cured;

(2) During a continuing effort by the party in breach at adjustment and cure, and the breach was not seasonably cured; or

(3) Without discovery of the nonconformity, if acceptance was reasonably induced either by the other party's assurances or by the difficulty of discovery before acceptance.

(b) Revocation of acceptance is not effective until the revoking party notifies the other party of the revocation.

(c) Revocation of acceptance of a copy is precluded if:

(1) It does not occur within a reasonable time after the party attempting to revoke discovers or should have discovered the ground for it;

(2) It occurs after a substantial change in condition not caused by defects in the information, such as after the party commingles the information in a manner that makes its return impossible; or

(3) The party attempting to revoke received a substantial benefit or value from the information, and the benefit or value cannot be returned.

(d) A party that rightfully revokes has the same duties and is under the same

restrictions as if the party had refused tender of the copy.

§22–708.

(a) A contract imposes an obligation on each party not to impair the other's expectation of receiving due performance. If reasonable grounds for insecurity arise with respect to the performance of either party, the aggrieved party may:

(1) Demand in a record adequate assurance of due performance; and

(2) Until that assurance is received, if commercially reasonable, suspend any performance, other than with respect to contractual use terms, for which the agreed return performance has not been received.

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

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

(d) After receipt of a justified demand under subsection (a) of this section, failure, within a reasonable time not exceeding 30 days, to provide assurance of due performance which is adequate under the circumstances of the particular case is a repudiation of the contract under § 22-709 of this subtitle.

§22–709.

(a) If a party to a contract repudiates a performance not yet due and the loss of performance will substantially impair the value of the contract to the other party, the aggrieved party may:

(1) Await performance by the repudiating party for a commercially reasonable time or resort to any remedy for breach of contract, even if it has urged the repudiating party to retract the repudiation or has notified the repudiating party that it would await its performance; and

(2) In either case, suspend its own performance or proceed in accordance with § 22-812 or § 22-813 of this title, as applicable.

(b) Repudiation includes language that one party will not or cannot make a performance still due under the contract or voluntary, affirmative conduct that reasonably appears to the other party to make a future performance impossible.

§22–710.

(a) A repudiating party may retract its repudiation until its next performance is due unless the aggrieved party, after the repudiation, has canceled the contract, materially changed its position, or otherwise indicated that it considers the repudiation

final.

(b) A retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform the contract. However, a retraction must contain any assurance justifiably demanded under § 22-708 of this subtitle.

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

§22–801.

(a) The remedies provided in this title are cumulative, but a party may not recover more than once for the same loss.

(b) Except as otherwise provided in §§ 22-803 and 22-804 of this subtitle, if a party is in breach of contract, whether or not the breach is material, the aggrieved party has the remedies provided in the agreement or this title, but the aggrieved party shall continue to comply with any contractual use terms with respect to information or copies received from the other party, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

(c) Rescission or a claim for rescission of the contract, or refusal of the information, does not preclude and is not inconsistent with a claim for damages or other remedy.

§22–802.

(a) An aggrieved party may cancel a contract if there is a material breach that has not been cured or waived or the agreement allows cancellation for the breach.

(b) Cancellation is not effective until the canceling party gives notice of cancellation to the party in breach, unless a delay required to notify the party would cause or threaten material harm or loss to the aggrieved party. The notification may be in any form reasonable under the circumstances. However, in an access contract, a party may cancel rights of access without notice.

(c) On cancellation, the following rules apply:

(1) If a party is in possession or control of licensed information, documentation, materials, or copies of licensed information, the following rules apply:

(A) A party that has rightfully refused a copy shall comply with § 22-706(b) of this title as to the refused copy.

(B) A party in breach of contract which would be subject to an obligation to deliver under § 22-618 of this title shall deliver all information, documentation, materials, and copies to the other party or hold them with reasonable care for a reasonable time for disposal at that party's instructions. The party in breach

of contract shall follow any reasonable instructions received from the other party.

(C) Except as otherwise provided in subparagraphs (A) and (B) of this paragraph, the party shall comply with § 22-618 of this title.

(2) All obligations that are executory on both sides at the time of cancellation are discharged, but the following survive:

(A) Any right based on previous breach or performance; and

(B) The rights, duties, and remedies described in § 22-616(b) of this title.

(3) Cancellation of a license by the licensor ends any contractual right of the licensee to use the information, informational rights, copies, or other materials.

(4) Cancellation of a license by the licensee ends any contractual right to use the information, informational rights, copies, or other materials, but the licensee may use the information for a limited time after the license has been canceled if the use:

(A) Is within contractual use terms;

(B) Is not for distribution and is solely part of measures reasonable under the circumstances to avoid or reduce loss; and

(C) Is not contrary to instructions received from the party in breach concerning disposition of them.

(5) The licensee shall pay the licensor the reasonable value of any use after cancellation permitted under paragraph (4) of this subsection.

(6) The obligations under this subsection apply to all information, informational rights, documentation, materials, and copies received by the party and any copies made therefrom.

(d) A term providing that a contract may not be canceled precludes cancellation but does not limit other remedies.

(e) Unless a contrary intention clearly appears, an expression such as "cancellation", "rescission", or the like may not be construed as a renunciation or discharge of a claim in damages for an antecedent breach.

§22–803.

(a) Except as otherwise provided in this section and in § 22-804 of this subtitle:

(1) An agreement may provide for remedies in addition to or in substitution for those provided in this title and may limit or alter the measure of

damages recoverable under this title or a party's other remedies under this title, such as by precluding a party's right to cancel for breach of contract, limiting remedies to returning or delivering copies and repayment of the contract fee, or limiting remedies to repair or replacement of the nonconforming copies; and

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

(b) Subject to subsection (c) of this section, if performance of an exclusive or limited remedy causes the remedy to fail of its essential purpose, the aggrieved party may pursue other remedies under this title.

(c) Failure or unconscionability of an agreed exclusive or limited remedy makes a term disclaiming or limiting consequential or incidental damages unenforceable unless the agreement expressly makes the disclaimer or limitation independent of the agreed remedy.

(d) Consequential damages and incidental damages may be excluded or limited by agreement unless the exclusion or limitation is unconscionable. Exclusion or limitation of consequential damages for personal injury in a consumer contract for a computer program that is subject to this title and is contained in consumer goods is prima facie unconscionable, but exclusion or limitation of damages for a commercial loss is not unconscionable.

§22–804.

(a) Damages for breach of contract by either party may be liquidated by agreement in an amount that is reasonable in light of:

(1) The loss anticipated at the time of contracting;

(2) The actual loss; or

(3) The actual or anticipated difficulties of proving loss in the event of breach.

(b) If a term liquidating damages is unenforceable under this subsection, the aggrieved party may pursue the remedies provided in this title, except as limited by other terms of the contract.

(c) If a party justifiably withholds delivery of copies because of the other party's breach of contract, the party in breach is entitled to restitution for any amount by which the sum of the payments it made for the copies exceeds the amount of the liquidated damages payable to the aggrieved party in accordance with subsection (a) of this section. The right to restitution is subject to offset to the extent that the aggrieved party establishes:

(1) A right to recover damages other than under subsection (a) of this

section; and

(2) The amount or value of any benefits received by the party in breach, directly or indirectly, by reason of the contract.

(d) A term that does not liquidate damages, but that limits damages available to the aggrieved party, must be evaluated under § 22-803 of this subtitle.

§22–805.

(a) Except as otherwise provided in subsection (b) of this section, an action for breach of contract must be commenced within the later of four years after the right of action accrues or one year after the breach was or should have been discovered, but not later than five years after the right of action accrues.

(b) If the original agreement of the parties alters the period of limitations, the following rules apply:

(1) The parties may reduce the period of limitation to not less than one year after the right of action accrues but may not extend it.

(2) In a mass-market transaction, the period of limitation may not be reduced.

(c) Except as otherwise provided in subsection (d) of this section, a right of action accrues when the act or omission constituting a breach of contract occurs, even if the aggrieved party did not know of the breach. A right of action for breach of warranty accrues when tender of delivery of a copy pursuant to § 22-606 of this title, or access to the information, occurs. However, if the warranty expressly extends to future performance of the information or a copy, the right of action accrues when the performance fails to conform to the warranty, but not later than the date the warranty expires.

(d) In the following cases, a right of action accrues on the later of the date the act or omission constituting the breach of contract occurred or the date on which it was or should have been discovered by the aggrieved party, but not earlier than the date for delivery of a copy if the claim relates to information in the copy:

(1) A breach of warranty against third-party claims for:

(A) Infringement or misappropriation; or

(B) Libel, slander, or the like;

(2) A breach of contract involving a party's disclosure or misuse of confidential information; or

(3) A failure to provide an indemnity or to perform another obligation to

protect or defend against a third-party claim.

(e) If an action commenced within the period of limitation is so concluded as to leave available a remedy by another action for the same breach of contract, the other action may be commenced after expiration of the period of limitation if the action is commenced within six months after conclusion of the first action, unless the action was concluded as a result of voluntary discontinuance or dismissal for failure or neglect to prosecute.

(f) This section does not alter the law on tolling of the statute of limitations and does not apply to a right of action that accrued before the effective date of this title.

§22–806.

Remedies for material misrepresentation or fraud include all remedies available under this title for nonfraudulent breach of contract.

§22–807.

(a) Except as otherwise provided in the contract, an aggrieved party may not recover compensation for that part of a loss which could have been avoided by taking measures reasonable under the circumstances to avoid or reduce loss. The burden of establishing a failure of the aggrieved party to take measures reasonable under the circumstances is on the party in breach of contract.

(b) A party may not recover:

(1) Consequential damages for losses resulting from the content of published informational content unless the agreement expressly so provides; or

(2) Damages that are speculative.

(c) The remedy for breach of contract for disclosure or misuse of information that is a trade secret or in which the aggrieved party has a right of confidentiality includes as consequential damages compensation for the benefit obtained as a result of the breach.

(d) For purposes of this title, market value is determined as of the date of breach of contract and the place for performance.

(e) Damages or expenses that relate to events after the date of entry of judgment must be reduced to their present value as of that date. In this subsection, "present value" means the amount, as of a date certain, of one or more sums payable in the future or the value of one or more performances due in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties in their agreement unless that rate was manifestly unreasonable when the agreement was entered into. Otherwise, the discount is determined by a commercially reasonable rate that takes into account the circumstances of each case when the agreement was

entered into.

§22–808.

(a) In this section, "substitute transaction" means a transaction by the licensor which would not have been possible except for the licensee's breach and which transaction is for the same information or informational rights with the same contractual use terms as the transaction to which the licensee's breach applies.

(b) Except as otherwise provided in § 22-807 of this subtitle, a breach of contract by a licensee entitles the licensor to recover the following compensation for losses resulting in the ordinary course from the breach, less expenses avoided as a result of the breach, to the extent not otherwise accounted for under this subsection:

(1) Damages measured in any combination of the following ways but not to exceed the contract fee and the market value of other consideration required under the contract for the performance that was the subject of the breach:

(A) The amount of accrued and unpaid contract fees and the market value of other consideration earned but not received for:

(i) Any performance accepted by the licensee; and

(ii) Any performance to which § 22-604 of this title applies;

(B) For performances not governed by subparagraph (A) of this paragraph, if the licensee repudiated or wrongfully refused the performance or the licensor rightfully canceled and the breach makes possible a substitute transaction, the amount of loss as determined by contract fees and the market value of other consideration required under the contract for the performance less:

(i) The contract fees and market value of other consideration received from an actual and commercially reasonable substitute transaction entered into by the licensor in good faith and without unreasonable delay; or

(ii) The market value of a commercially reasonable hypothetical substitute transaction;

(C) For performances not governed by subparagraph (A) of this paragraph, if the breach does not make possible a substitute transaction, lost profit, including reasonable overhead, that the licensor would have realized on acceptance and full payment for performance that was not delivered to the licensee because of the licensee's breach; or

(D) Damages calculated in any reasonable manner; and

(2) Consequential and incidental damages.

§22–809.

(a) Subject to subsection (b) of this section and except as otherwise provided in § 22-807 of this subtitle, a breach of contract by a licensor entitles the licensee to recover the following compensation for losses resulting in the ordinary course from the breach or, if appropriate, as to the whole contract, less expenses avoided as a result of the breach to the extent not otherwise accounted for under this section:

(1) Damages measured in any combination of the following ways, but not to exceed the market value of the performance that was the subject of the breach plus restitution of any amounts paid for performance not received and not accounted for within the indicated recovery:

(A) With respect to performance that has been accepted and the acceptance not rightfully revoked, the value of the performance required less the value of the performance accepted as of the time and place of acceptance;

(B) With respect to performance that has not been rendered or that was rightfully refused or acceptance of which was rightfully revoked:

(i) The amount of any payments made and the value of other consideration given to the licensor with respect to that performance and not previously returned to the licensee;

(ii) The market value of the performance less the contract fee for that performance; or

(iii) The cost of a commercially reasonable substitute transaction less the contract fee under the breached contract, if the substitute transaction was entered into by the licensee in good faith and without unreasonable delay for substantially similar information with the same contractual use terms; or

(C) Damages calculated in any reasonable manner; and

(2) Incidental and consequential damages.

(b) The amount of damages must be reduced by any unpaid contract fees for performance by the licensor which has been accepted by the licensee and as to which the acceptance has not been rightfully revoked.

§22–810.

(a) Except as otherwise provided in subsection (b) of this section, an aggrieved party, upon notifying the party in breach of contract of its intention to do so, may deduct all or any part of the damages resulting from the breach from any payments still due under the same contract.

(b) If a breach of contract is not material with reference to the particular

performance, an aggrieved party may exercise its rights under subsection (a) of this section only if the agreement does not require further affirmative performance by the other party and the amount of damages deducted can be readily liquidated under the agreement.

§22–811.

(a) Specific performance may be ordered:

(1) If the agreement provides for that remedy, other than an obligation for the payment of money;

(2) If the contract was not for personal services and the agreed performance is unique; or

(3) In other proper circumstances.

(b) An order for specific performance may contain any conditions considered just and must provide adequate safeguards consistent with the contract to protect the confidentiality of information, information, and informational rights of both parties.

§22–812.

(a) On breach of contract by a licensee, the licensor may:

(1) Identify to the contract any conforming copy not already identified if, at the time the licensor learned of the breach, the copy was in its possession;

(2) In the exercise of reasonable commercial judgment for purposes of avoiding loss and effective realization on effort or investment, complete the information and identify it to the contract, cease work on it, relicense or dispose of it, or proceed in any other commercially reasonable manner; and

(3) Pursue any remedy for breach that has not been waived.

(b) On breach by a licensee, both parties remain bound by all contractual use terms, but the contractual use terms do not apply to information or copies properly received or obtained from another source.

§22–813.

On breach of contract by a licensor, the following rules apply:

(1) A licensee that has not canceled the contract may continue to use the information and informational rights under the contract. If the licensee continues to use the information or informational rights, the licensee is bound by all terms of the contract, including contractual use terms, obligations not to compete, and obligations to pay contract fees.

(2) The licensee may pursue any remedy for breach which has not been waived.

(3) The licensor's rights remain in effect but are subject to the licensee's remedy for breach, including any right of recoupment or setoff.

§22–814.

(a) Subject to subsection (b) of this section, on material breach of an access contract or if the agreement so provides, a party may discontinue all contractual rights of access of the party in breach and direct any person that is assisting the performance of the contract to discontinue its performance.

(b) Except as provided in subsection (c) of this section, before discontinuing all contractual rights of access in an access contract, a party shall give notice in a record to the party in breach stating:

(1) That the party intends to discontinue all contractual rights of access in the access contract on or after 3 days following the date notice is given;

(2) The nature of the claimed breach that entitles the party to discontinue all contractual rights of access in the access contract;

(3) The opportunity to cure as provided under § 22-703 of this title; and

(4) Information to allow for communication concerning the claimed breach, including the party's:

(A) Address and telephone number; and

(B) (i) Facsimile number; or

(ii) E-mail address.

(c) The notice required in subsection (b) of this section is not required for a discontinuation to meet a statutory or legal requirement or due to a material breach of a contractual use term.

§22–815.

(a) On cancellation of a license, the licensor has the right:

(1) To possession of all copies of the licensed information in the possession or control of the licensee and any other materials pertaining to that information which by contract are to be returned or delivered by the licensee to the licensor; and

(2) To prevent the continued exercise of contractual and informational rights in the licensed information under the license.

(b) Except as otherwise provided in § 22-814 of this subtitle, a licensor may exercise its rights under subsection (a) of this section without judicial process only if this can be done:

(1) Without a breach of the peace;

(2) Without a foreseeable risk of personal injury or significant physical damage to information or property other than the licensed information; and

(3) In accordance with § 22-816 of this subtitle.

(c) In a judicial proceeding, the court may enjoin a licensee in breach of contract from continued use of the information and informational rights and may order the licensor or a judicial officer to take the steps described in § 22-618 of this title.

(d) A party has a right to an expedited judicial hearing on a request for prejudgment relief to enforce or protect its rights under this section.

(e) The right to possession under this section is not available to the extent that the information, before breach of the license and in the ordinary course of performance under the license, was so altered or commingled that the information is no longer identifiable or separable.

(f) A licensee that provides information to a licensor subject to contractual use terms has the rights and is subject to the limitations of a licensor under this section with respect to the information it provides.

§22–816.

(a) In this section, "electronic self-help" means the use of electronic means to exercise a licensor's rights under § 22-815(b) of this subtitle.

(b) Notwithstanding the provisions of this section, electronic self-help is prohibited in mass-market transactions.

(c) Prior to cancellation of a license in which the parties have agreed to permit the use of electronic self-help, the licensor shall provide a licensee with the opportunity to cure the claimed breach giving rise to the cancellation as provided in § 22-703 of this title.

(d) On cancellation of a license, electronic self-help is not permitted, except as provided in this section.

(e) If the parties agree to permit electronic self-help, a licensee shall separately manifest assent to a term authorizing use of electronic self-help. The term must:

(1) Provide for notice of exercise as provided in subsection (f) of this section;

(2) State the name of the person designated by the licensee to which notice of exercise must be given and the manner in which notice must be given and place to which notice must be sent to that person; and

(3) Provide a simple procedure for the licensee to change the designated person or place.

(f) Before resorting to electronic self-help authorized by a term of the license, the licensor shall give notice in a record to the person designated by the licensee stating:

(1) That the licensor intends to resort to electronic self-help as a remedy on or after 30 days following receipt by the licensee of the notice;

(2) The nature of the claimed breach that entitles the licensor to resort to self-help; and

(3) The name, title, and address, including direct telephone number, facsimile number, or e-mail address, to which the licensee may communicate concerning the claimed breach.

(g) A licensee may recover direct and incidental damages caused by wrongful use of electronic self-help. The licensee may also recover consequential damages for wrongful use of electronic self-help, whether or not those damages are excluded by the terms of the license, if:

(1) Within the period specified in subsection (f)(1) of this section, the licensee gives notice to the licensor's designated person describing in good faith the general nature and magnitude of damages;

(2) The licensor has reason to know the damages of the type described in subsection (h) of this section may result from the wrongful use of electronic self-help; or

(3) The licensor does not provide the notice required in subsection (f) of this section.

(h) Even if the licensor complies with subsections (e) and (f) of this section, electronic self-help may not be used if the licensor has reason to know that its use will result in substantial injury or harm to the public health or safety or grave harm to the public interest substantially affecting third persons not involved in the dispute.

(i) A court of competent jurisdiction of this State shall give prompt consideration to a petition for injunctive relief and may enjoin, temporarily or permanently, the licensor from exercising electronic self-help even if authorized by a license term or enjoin the licensee from misappropriation or misuse of computer information, as may be appropriate, upon consideration of the following:

(1) Grave harm of the kinds stated in subsection (h) of this section, or the threat thereof, whether or not the licensor has reason to know of those circumstances;

(2) Irreparable harm or threat of irreparable harm to the licensee or licensor;

(3) That the party seeking the relief is more likely than not to succeed under its claim when it is finally adjudicated;

(4) That all of the conditions to entitle a person to the relief under the laws of this State have been fulfilled; and

(5) That the party that may be adversely affected is adequately protected against loss, including a loss because of misappropriation or misuse of computer information, that it may suffer because the relief is granted under this title.

(j) Before breach of contract, rights or obligations under this section may not be waived or varied by an agreement, except that the parties may prohibit use of electronic self-help and the parties, in the term referred to in subsection (e) of this section, may specify additional provisions more favorable to the licensee.

(k) This section does not apply if the licensor obtains possession of a copy without a breach of the peace and the electronic self-help is used solely with respect to that copy.

§23–101.

(a) In this title the following words have the meanings indicated.

(b) "Hotel" means a hotel or motel with more than 30 rooms for rent that is primarily used by transients who are lodged with or without meals.

(c) "Operating agreement" means a written contract, agreement, instrument, or other document between at least two persons that relates to the management, operation, or franchise of a hotel or a retirement community.

(d) "Person" does not include an individual, a not for profit entity, or a public instrumentality.

(e) (1) "Retirement community" means a senior living community, retirement community, assisted living community, continuing care retirement community, independent living community, or similar community that offers a combination of independent living, assisted living, or nursing.

(2) "Retirement community" does not include:

(i) A freestanding nursing home, as defined in § 19–1401 of the Health – General Article, that is licensed by the Department of Health and Mental Hygiene;

(ii) A State facility, as defined in § 10–101 of the Health – General

Article;

(iii) A program licensed by the Department of Health and Mental Hygiene under Title 7 or Title 10 of the Health – General Article;

(iv) A freestanding hospice care program regulated by the Department of Health and Mental Hygiene under Title 19, Subtitle 9 of the Health – General Article;

(v) A freestanding day care center for the elderly regulated by the Department of Health and Mental Hygiene under Title 14, Subtitle 2 of the Health – General Article;

(vi) A retirement community that is owned by or affiliated with a church or religious organization;

(vii) A cooperative housing corporation organized under Title 5, Subtitle 6B of the Corporations and Associations Article and certified as a continuing care provider under Title 10, Subtitle 4 of the Human Services Article and separate entities certified as continuing care providers under Title 10, Subtitle 4 of the Human Services Article that provide services to residents of a cooperative housing corporation; or

(viii) A condominium organized under Title 11 of the Real Property Article and certified as a continuing care provider under Title 10, Subtitle 4 of the Human Services Article and separate entities certified as continuing care providers under Title 10, Subtitle 4 of the Human Services Article that provide services to residents of a condominium.

§23–102.

(a) If a conflict exists between the express terms and conditions of an operating agreement and the terms and conditions implied by the law governing the relationship between a principal and agent, the express terms and conditions of the operating agreement shall govern.

(b) A court may order the remedy of specific performance for anticipatory or actual breach or attempted or actual termination of an operating agreement notwithstanding the existence of an agency relationship between the parties to the operating agreement.

§23–103.

Express covenants or other provisions of an operating agreement that establish a party's duties and obligations under the operating agreement create the only duties and obligations enforceable against the party under the operating agreement.

§23–104.

If an operating agreement states that it shall continue for a period of time or until the happening of an event, the operating agreement shall be enforceable between the parties until the expiration of the period of time or the happening of the event unless the operating agreement contains a right of early termination.

§23–105.

(a) The covenant of good faith and fair dealing shall be implied in an operating agreement unless the operating agreement states that a party may perform a duty or obligation in the party's sole discretion.

(b) Unless an operating agreement contains a covenant or other provision that specifically incorporates a duty into the operating agreement, no duties shall be implied under the operating agreement.

§23–106.

This title may not be construed to:

(1) Limit the defenses of fraud, duress, or illegality; or

(2) Affect any claim between a third party and a party to an operating agreement.