
By: Chairman, Finance Committee (Commission on Uniform State Laws)

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Assigned to: Rules

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 21, 1996

CHAPTER ____

1 AN ACT concerning

2 **Uniform Commercial Code - Letters of Credit**

3 FOR the purpose of enacting the revised Title 5 - Letters of Credit of the Uniform
4 Commercial Code; repealing existing provisions of law relating to letters of credit;
5 expressly authorizing the use of electronic technology; expressly permitting deferred
6 payment letters of credit and two-party letters of credit; providing rules for
7 unstated expiry dates, perpetual letters of credit, and nondocumentary conditions;
8 clarifying and establishing rules for successors by operation of law; conforming the
9 law to existing practice for assignment of proceeds; coordinating certain provisions
10 of law to current international practice for letters of credit; prohibiting certain
11 damages; providing for a statute of limitations; providing for a choice of law to
12 govern a transaction; providing for the procedure for recording and accommodating
13 assignments by consent of the issuer of a letter of credit; clarifying the subrogation
14 rights of an issuer who has honored a letter of credit; making conforming changes to
15 other titles of the Uniform Commercial Code; providing for the application of this
16 Act; and generally relating to the law relating to letters of credit.

17 BY repealing

18 Article - Commercial Law
19 Section 5-101 through 5-117
20 Annotated Code of Maryland
21 (1992 Replacement Volume and 1995 Supplement)

22 BY adding to

23 Article - Commercial Law
24 Section 5-101 through 5-117 and 9-104(m)
25 Annotated Code of Maryland

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1 (1992 Replacement Volume and 1995 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Commercial Law

4 Section 1-105(2), 2-512, 9-103(1)(a), 9-104(1), 9-105(3), 9-106, 9-304(1), and

5 9-305

6 Annotated Code of Maryland

7 (1992 Replacement Volume and 1995 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That Section(s) 5-101 through 5-117 of Article - Commercial Law of the
10 Annotated Code of Maryland be repealed.

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

13 **Article - Commercial Law**

14 5-101. SHORT TITLE.

15 THIS TITLE MAY BE CITED AS MARYLAND UNIFORM COMMERCIAL CODE -
16 LETTERS OF CREDIT.

17 5-102. DEFINITIONS.

18 (A) IN THIS TITLE:

19 (1) "ADVISER" MEANS A PERSON WHO, AT THE REQUEST OF THE
20 ISSUER, A CONFIRMER, OR ANOTHER ADVISER, NOTIFIES OR REQUESTS ANOTHER
21 ADVISER TO NOTIFY THE BENEFICIARY THAT A LETTER OF CREDIT HAS BEEN
22 ISSUED, CONFIRMED, OR AMENDED.

23 (2) "APPLICANT" MEANS A PERSON AT WHOSE REQUEST OR FOR WHOSE
24 ACCOUNT A LETTER OF CREDIT IS ISSUED. THE TERM INCLUDES A PERSON WHO
25 REQUESTS AN ISSUER TO ISSUE A LETTER OF CREDIT ON BEHALF OF ANOTHER IF
26 THE PERSON MAKING THE REQUEST UNDERTAKES AN OBLIGATION TO REIMBURSE
27 THE ISSUER.

28 (3) "BENEFICIARY" MEANS A PERSON WHO UNDER THE TERMS OF A
29 LETTER OF CREDIT IS ENTITLED TO HAVE ITS COMPLYING PRESENTATION
30 HONORED. THE TERM INCLUDES A PERSON TO WHOM DRAWING RIGHTS HAVE
31 BEEN TRANSFERRED UNDER A TRANSFERABLE LETTER OF CREDIT.

32 (4) "CONFIRMER" MEANS A NOMINATED PERSON WHO UNDERTAKES,
33 AT THE REQUEST OR WITH THE CONSENT OF THE ISSUER, TO HONOR A
34 PRESENTATION UNDER A LETTER OF CREDIT ISSUED BY ANOTHER.

35 (5) "DISHONOR" OF A LETTER OF CREDIT MEANS FAILURE TIMELY TO
36 HONOR OR TO TAKE AN INTERIM ACTION, SUCH AS ACCEPTANCE OF A DRAFT, THAT
37 MAY BE REQUIRED BY THE LETTER OF CREDIT.

38 (6) "DOCUMENT" MEANS A DRAFT OR OTHER DEMAND, DOCUMENT OF
39 TITLE, INVESTMENT SECURITY, CERTIFICATE, INVOICE, OR OTHER RECORD,

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1 STATEMENT, OR REPRESENTATION OF FACT, LAW, RIGHT, OR OPINION (I) WHICH IS
2 PRESENTED IN A WRITTEN OR OTHER MEDIUM PERMITTED BY THE LETTER OF
3 CREDIT OR, UNLESS PROHIBITED BY THE LETTER OF CREDIT, BY THE STANDARD
4 PRACTICE REFERRED TO IN § 5-108(E) OF THIS TITLE AND (II) WHICH IS CAPABLE OF
5 BEING EXAMINED FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE
6 LETTER OF CREDIT. A DOCUMENT MAY NOT BE ORAL.

7 (7) "GOOD FAITH" MEANS HONESTY IN FACT IN THE CONDUCT OR
8 TRANSACTION CONCERNED.

9 (8) "HONOR" OF A LETTER OF CREDIT MEANS PERFORMANCE OF THE
10 ISSUER'S UNDERTAKING IN THE LETTER OF CREDIT TO PAY OR DELIVER AN ITEM
11 OF VALUE. UNLESS THE LETTER OF CREDIT OTHERWISE PROVIDES, "HONOR"
12 OCCURS:

13 (I) UPON PAYMENT;

14 (II) IF THE LETTER OF CREDIT PROVIDES FOR ACCEPTANCE, UPON
15 ACCEPTANCE OF A DRAFT AND, AT MATURITY, ITS PAYMENT; OR

16 (III) IF THE LETTER OF CREDIT PROVIDES FOR INCURRING A
17 DEFERRED OBLIGATION, UPON INCURRING THE OBLIGATION AND, AT MATURITY,
18 ITS PERFORMANCE.

19 (9) "ISSUER" MEANS A BANK OR OTHER PERSON THAT ISSUES A LETTER
20 OF CREDIT, BUT DOES NOT INCLUDE AN INDIVIDUAL WHO MAKES AN ENGAGEMENT
21 FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

22 (10) "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT
23 SATISFIES THE REQUIREMENTS OF § 5-104 OF THIS TITLE BY AN ISSUER TO A
24 BENEFICIARY AT THE REQUEST OR FOR THE ACCOUNT OF AN APPLICANT OR, IN
25 THE CASE OF A FINANCIAL INSTITUTION, TO ITSELF OR FOR ITS OWN ACCOUNT, TO
26 HONOR A DOCUMENTARY PRESENTATION BY PAYMENT OR DELIVERY OF AN ITEM
27 OF VALUE.

28 (11) "NOMINATED PERSON" MEANS A PERSON WHOM THE ISSUER (I)
29 DESIGNATES OR AUTHORIZES TO PAY, ACCEPT, NEGOTIATE, OR OTHERWISE GIVE
30 VALUE UNDER A LETTER OF CREDIT AND (II) UNDERTAKES BY AGREEMENT OR
31 CUSTOM AND PRACTICE TO REIMBURSE.

32 (12) "PRESENTATION" MEANS DELIVERY OF A DOCUMENT TO AN ISSUER
33 OR NOMINATED PERSON FOR HONOR OR GIVING OF VALUE UNDER A LETTER OF
34 CREDIT.

35 (13) "PRESENTER" MEANS A PERSON MAKING A PRESENTATION AS OR
36 ON BEHALF OF A BENEFICIARY OR NOMINATED PERSON.

37 (14) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
38 TANGIBLE MEDIUM, OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM
39 AND IS RETRIEVABLE IN PERCEIVABLE FORM.

40 (15) "SUCCESSOR OF A BENEFICIARY" MEANS A PERSON WHO SUCCEEDS
41 TO SUBSTANTIALLY ALL OF THE RIGHTS OF A BENEFICIARY BY OPERATION OF LAW,

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1 INCLUDING A CORPORATION WITH OR INTO WHICH THE BENEFICIARY HAS BEEN
2 MERGED OR CONSOLIDATED, AN ADMINISTRATOR, EXECUTOR, PERSONAL
3 REPRESENTATIVE, TRUSTEE IN BANKRUPTCY, DEBTOR IN POSSESSION,
4 LIQUIDATOR, AND RECEIVER.

5 (B) DEFINITIONS IN OTHER TITLES OF THIS ARTICLE APPLYING TO THIS
6 TITLE AND THE SECTIONS IN WHICH THEY APPEAR ARE:

7 "ACCEPT" OR "ACCEPTANCE." § 3-409.

8 "VALUE." §§ 3-303 AND 4-211.

9 (C) TITLE 1 OF THIS ARTICLE CONTAINS CERTAIN ADDITIONAL GENERAL
10 DEFINITIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION
11 APPLICABLE THROUGHOUT THIS ARTICLE.

12 5-103. SCOPE.

13 (A) THIS TITLE APPLIES TO LETTERS OF CREDIT AND TO CERTAIN RIGHTS
14 AND OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LETTERS OF
15 CREDIT.

16 (B) THE STATEMENT OF A RULE IN THIS TITLE DOES NOT BY ITSELF
17 REQUIRE, IMPLY, OR NEGATE APPLICATION OF THE SAME OR A DIFFERENT RULE
18 TO A SITUATION NOT PROVIDED FOR, OR TO A PERSON NOT SPECIFIED, IN THIS
19 TITLE.

20 (C) WITH THE EXCEPTION OF THIS SUBSECTION, SUBSECTIONS (A) AND (D) OF
21 THIS SECTION, §§ 5-102(A)(9) AND (10), 5-106(D), AND 5-114(D) OF THIS TITLE, AND
22 EXCEPT TO THE EXTENT PROHIBITED IN §§ 1-102(3) AND 5-117(D) OF THIS TITLE, THE
23 EFFECT OF THIS TITLE MAY BE VARIED BY AGREEMENT OR BY A PROVISION
24 STATED OR INCORPORATED BY REFERENCE IN AN UNDERTAKING. A TERM IN AN
25 AGREEMENT OR UNDERTAKING GENERALLY EXCUSING LIABILITY OR GENERALLY
26 LIMITING REMEDIES FOR FAILURE TO PERFORM OBLIGATIONS IS NOT SUFFICIENT
27 TO VARY OBLIGATIONS PRESCRIBED BY THIS TITLE.

28 (D) RIGHTS AND OBLIGATIONS OF AN ISSUER TO A BENEFICIARY OR A
29 NOMINATED PERSON UNDER A LETTER OF CREDIT ARE INDEPENDENT OF THE
30 EXISTENCE, PERFORMANCE, OR NONPERFORMANCE OF A CONTRACT OR
31 ARRANGEMENT OUT OF WHICH THE LETTER OF CREDIT ARISES OR WHICH
32 UNDERLIES IT, INCLUDING CONTRACTS OR ARRANGEMENTS BETWEEN THE ISSUER
33 AND THE APPLICANT AND BETWEEN THE APPLICANT AND THE BENEFICIARY.

34 5-104. FORMAL REQUIREMENTS.

35 A LETTER OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT, OR
36 CANCELLATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS
37 AUTHENTICATED (I) BY A SIGNATURE OR (II) IN ACCORDANCE WITH THE
38 AGREEMENT OF THE PARTIES OR THE STANDARD PRACTICE REFERRED TO IN §
39 5-108(E) OF THIS TITLE.

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1 5-105. CONSIDERATION.

2 CONSIDERATION IS NOT REQUIRED TO ISSUE, AMEND, TRANSFER, OR CANCEL
3 A LETTER OF CREDIT, ADVICE, OR CONFIRMATION.

4 5-106. ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION.

5 (A) A LETTER OF CREDIT IS ISSUED AND BECOMES ENFORCEABLE
6 ACCORDING TO ITS TERMS AGAINST THE ISSUER WHEN THE ISSUER SENDS OR
7 OTHERWISE TRANSMITS IT TO THE PERSON REQUESTED TO ADVISE OR TO THE
8 BENEFICIARY. A LETTER OF CREDIT IS REVOCABLE ONLY IF IT SO PROVIDES.

9 (B) AFTER A LETTER OF CREDIT IS ISSUED, RIGHTS AND OBLIGATIONS OF A
10 BENEFICIARY, APPLICANT, CONFIRMER, AND ISSUER ARE NOT AFFECTED BY AN
11 AMENDMENT OR CANCELLATION TO WHICH THAT PERSON HAS NOT CONSENTED
12 EXCEPT TO THE EXTENT THE LETTER OF CREDIT PROVIDES THAT IT IS REVOCABLE
13 OR THAT THE ISSUER MAY AMEND OR CANCEL THE LETTER OF CREDIT WITHOUT
14 THAT CONSENT.

15 (C) IF THERE IS NO STATED EXPIRATION DATE OR OTHER PROVISION THAT
16 DETERMINES ITS DURATION, A LETTER OF CREDIT EXPIRES 1 YEAR AFTER ITS
17 STATED DATE OF ISSUANCE OR, IF NONE IS STATED, AFTER THE DATE ON WHICH IT
18 IS ISSUED.

19 (D) A LETTER OF CREDIT THAT STATES THAT IT IS PERPETUAL EXPIRES 5
20 YEARS AFTER ITS STATED DATE OF ISSUANCE, OR IF NONE IS STATED, AFTER THE
21 DATE ON WHICH IT IS ISSUED.

22 5-107. CONFIRMER, NOMINATED PERSON, AND ADVISER.

23 (A) A CONFIRMER IS DIRECTLY OBLIGATED ON A LETTER OF CREDIT AND
24 HAS THE RIGHTS AND OBLIGATIONS OF AN ISSUER TO THE EXTENT OF ITS
25 CONFIRMATION. THE CONFIRMER ALSO HAS RIGHTS AGAINST AND OBLIGATIONS
26 TO THE ISSUER AS IF THE ISSUER WERE AN APPLICANT AND THE CONFIRMER HAD
27 ISSUED THE LETTER OF CREDIT AT THE REQUEST AND FOR THE ACCOUNT OF THE
28 ISSUER.

29 (B) A NOMINATED PERSON WHO IS NOT A CONFIRMER IS NOT OBLIGATED TO
30 HONOR OR OTHERWISE GIVE VALUE FOR A PRESENTATION.

31 (C) A PERSON REQUESTED TO ADVISE MAY DECLINE TO ACT AS AN ADVISER.
32 AN ADVISER THAT IS NOT A CONFIRMER IS NOT OBLIGATED TO HONOR OR GIVE
33 VALUE FOR A PRESENTATION. AN ADVISER UNDERTAKES TO THE ISSUER AND TO
34 THE BENEFICIARY ACCURATELY TO ADVISE THE TERMS OF THE LETTER OF CREDIT,
35 CONFIRMATION, AMENDMENT, OR ADVICE RECEIVED BY THAT PERSON AND
36 UNDERTAKES TO THE BENEFICIARY TO CHECK THE APPARENT AUTHENTICITY OF
37 THE REQUEST TO ADVISE. EVEN IF THE ADVICE IS INACCURATE, THE LETTER OF
38 CREDIT, CONFIRMATION, OR AMENDMENT IS ENFORCEABLE AS ISSUED.

39 (D) A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE TERMS
40 OF A LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE HAS THE
41 RIGHTS AND OBLIGATIONS OF AN ADVISER UNDER SUBSECTION (C) OF THIS
42 SECTION. THE TERMS IN THE NOTICE TO THE TRANSFEREE BENEFICIARY MAY

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1 DIFFER FROM THE TERMS IN ANY NOTICE TO THE TRANSFEROR BENEFICIARY TO
2 THE EXTENT PERMITTED BY THE LETTER OF CREDIT, CONFIRMATION,
3 AMENDMENT, OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

4 5-108. ISSUER'S RIGHTS AND OBLIGATIONS.

5 (A) EXCEPT AS OTHERWISE PROVIDED IN § 5-109 OF THIS TITLE, AN ISSUER
6 SHALL HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD
7 PRACTICE REFERRED TO IN SUBSECTION (E), APPEARS ON ITS FACE STRICTLY TO
8 COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT. EXCEPT AS
9 OTHERWISE PROVIDED IN § 5-113 OF THIS TITLE AND UNLESS OTHERWISE AGREED
10 WITH THE APPLICANT, AN ISSUER SHALL DISHONOR A PRESENTATION THAT DOES
11 NOT APPEAR SO TO COMPLY.

12 (B) AN ISSUER HAS A REASONABLE TIME AFTER PRESENTATION, BUT NOT
13 BEYOND THE END OF THE 7TH BUSINESS DAY OF THE ISSUER AFTER THE DAY OF ITS
14 RECEIPT OF DOCUMENTS:

15 (1) TO HONOR;

16 (2) IF THE LETTER OF CREDIT PROVIDES FOR HONOR TO BE
17 COMPLETED MORE THAN 7 BUSINESS DAYS AFTER PRESENTATION, TO ACCEPT A
18 DRAFT OR INCUR A DEFERRED OBLIGATION; OR

19 (3) TO GIVE NOTICE TO THE PRESENTER OF DISCREPANCIES IN THE
20 PRESENTATION.

21 (C) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (D) OF THIS SECTION,
22 AN ISSUER IS PRECLUDED FROM ASSERTING AS A BASIS FOR DISHONOR ANY
23 DISCREPANCY IF TIMELY NOTICE IS NOT GIVEN, OR ANY DISCREPANCY NOT STATED
24 IN THE NOTICE IF TIMELY NOTICE IS GIVEN.

25 (D) FAILURE TO GIVE THE NOTICE SPECIFIED IN SUBSECTION (B) OF THIS
26 SECTION OR TO MENTION FRAUD, FORGERY, OR EXPIRATION IN THE NOTICE DOES
27 NOT PRECLUDE THE ISSUER FROM ASSERTING AS A BASIS FOR DISHONOR FRAUD
28 OR FORGERY AS DESCRIBED IN § 5-109(A) OF THIS TITLE OR EXPIRATION OF THE
29 LETTER OF CREDIT BEFORE PRESENTATION.

30 (E) AN ISSUER SHALL OBSERVE STANDARD PRACTICE OF FINANCIAL
31 INSTITUTIONS THAT REGULARLY ISSUE LETTERS OF CREDIT. DETERMINATION OF
32 THE ISSUER'S OBSERVANCE OF THE STANDARD PRACTICE IS A MATTER OF
33 INTERPRETATION FOR THE COURT. THE COURT SHALL OFFER THE PARTIES A
34 REASONABLE OPPORTUNITY TO PRESENT EVIDENCE OF THE STANDARD PRACTICE.

35 (F) AN ISSUER IS NOT RESPONSIBLE FOR:

36 (1) THE PERFORMANCE OR NONPERFORMANCE OF THE UNDERLYING
37 CONTRACT, ARRANGEMENT, OR TRANSACTION;

38 (2) AN ACT OR OMISSION OF OTHERS; OR

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1 (3) OBSERVANCE OR KNOWLEDGE OF THE USAGE OF A PARTICULAR
2 TRADE OTHER THAN THE STANDARD PRACTICE REFERRED TO IN SUBSECTION (E)
3 OF THIS SECTION.

4 (G) IF AN UNDERTAKING CONSTITUTING A LETTER OF CREDIT UNDER §
5 5-102(A)(10) OF THIS TITLE CONTAINS NONDOCUMENTARY CONDITIONS, AN ISSUER
6 SHALL DISREGARD THE NONDOCUMENTARY CONDITIONS AND TREAT THEM AS IF
7 THEY WERE NOT STATED.

8 (H) AN ISSUER THAT HAS DISHONORED A PRESENTATION SHALL RETURN
9 THE DOCUMENTS OR HOLD THEM AT THE DISPOSAL OF, AND SEND ADVICE TO THAT
10 EFFECT TO, THE PRESENTER.

11 (I) AN ISSUER THAT HAS HONORED A PRESENTATION AS PERMITTED OR
12 REQUIRED BY THIS ARTICLE:

13 (1) IS ENTITLED TO BE REIMBURSED BY THE APPLICANT IN
14 IMMEDIATELY AVAILABLE FUNDS NOT LATER THAN THE DATE OF ITS PAYMENT OF
15 FUNDS;

16 (2) TAKES THE DOCUMENTS FREE OF CLAIMS OF THE BENEFICIARY OR
17 PRESENTER;

18 (3) IS PRECLUDED FROM ASSERTING A RIGHT OF RECOURSE ON A
19 DRAFT UNDER §§ 3-414 AND 3-415 OF THIS ARTICLE;

20 (4) EXCEPT AS OTHERWISE PROVIDED IN §§ 5-110 AND 5-117 OF THIS
21 TITLE, IS PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE
22 GIVEN BY MISTAKE TO THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN
23 THE DOCUMENTS OR TENDER WHICH ARE APPARENT ON THE FACE OF THE
24 PRESENTATION; AND

25 (5) IS DISCHARGED TO THE EXTENT OF ITS PERFORMANCE UNDER THE
26 LETTER OF CREDIT UNLESS THE ISSUER HONORED A PRESENTATION IN WHICH A
27 REQUIRED SIGNATURE OF A BENEFICIARY WAS FORGED.

28 5-109. FRAUD AND FORGERY.

29 (A) IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE STRICTLY TO
30 COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT, BUT A
31 REQUIRED DOCUMENT IS FORGED OR MATERIALLY FRAUDULENT, OR HONOR OF
32 THE PRESENTATION WOULD FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY
33 ON THE ISSUER OR APPLICANT:

34 (1) THE ISSUER SHALL HONOR THE PRESENTATION, IF HONOR IS
35 DEMANDED BY (I) A NOMINATED PERSON WHO HAS GIVEN VALUE IN GOOD FAITH
36 AND WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD, (II) A CONFIRMER WHO
37 HAS HONORED ITS CONFIRMATION IN GOOD FAITH, (III) A HOLDER IN DUE COURSE
38 OF A DRAFT DRAWN UNDER THE LETTER OF CREDIT WHICH WAS TAKEN AFTER
39 ACCEPTANCE BY THE ISSUER OR NOMINATED PERSON, OR (IV) AN ASSIGNEE OF THE
40 ISSUER'S OR NOMINATED PERSON'S DEFERRED OBLIGATION THAT WAS TAKEN FOR

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1 VALUE AND WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD AFTER THE
2 OBLIGATION WAS INCURRED BY THE ISSUER OR NOMINATED PERSON; AND

3 (2) THE ISSUER, ACTING IN GOOD FAITH, MAY HONOR OR DISHONOR
4 THE PRESENTATION IN ANY OTHER CASE.

5 (B) IF AN APPLICANT CLAIMS THAT A REQUIRED DOCUMENT IS FORGED OR
6 MATERIALLY FRAUDULENT OR THAT HONOR OF THE PRESENTATION WOULD
7 FACILITATE A MATERIAL FRAUD BY THE BENEFICIARY ON THE ISSUER OR
8 APPLICANT, A COURT OF COMPETENT JURISDICTION MAY TEMPORARILY OR
9 PERMANENTLY ENJOIN THE ISSUER FROM HONORING A PRESENTATION OR GRANT
10 SIMILAR RELIEF AGAINST THE ISSUER OR OTHER PERSONS ONLY IF THE COURT
11 FINDS THAT:

12 (1) THE RELIEF IS NOT PROHIBITED UNDER THE LAW APPLICABLE TO
13 AN ACCEPTED DRAFT OR DEFERRED OBLIGATION INCURRED BY THE ISSUER;

14 (2) A BENEFICIARY, ISSUER, OR NOMINATED PERSON WHO MAY BE
15 ADVERSELY AFFECTED IS ADEQUATELY PROTECTED AGAINST LOSS THAT IT MAY
16 SUFFER BECAUSE THE RELIEF IS GRANTED;

17 (3) ALL OF THE CONDITIONS TO ENTITLE A PERSON TO THE RELIEF
18 UNDER THE LAW OF THIS STATE HAVE BEEN MET; AND

19 (4) ON THE BASIS OF THE INFORMATION SUBMITTED TO THE COURT,
20 THE APPLICANT IS MORE LIKELY THAN NOT TO SUCCEED UNDER ITS CLAIM OF
21 FORGERY OR MATERIAL FRAUD AND THE PERSON DEMANDING HONOR DOES NOT
22 QUALIFY FOR PROTECTION UNDER SUBSECTION (A)(1) OF THIS SECTION.

23 5-110. WARRANTIES.

24 (A) IF ITS PRESENTATION IS HONORED, THE BENEFICIARY WARRANTS:

25 (1) TO THE ISSUER, ANY OTHER PERSON TO WHOM PRESENTATION IS
26 MADE, AND THE APPLICANT THAT THERE IS NO FRAUD OR FORGERY OF THE KIND
27 DESCRIBED IN § 5-109(A) OF THIS TITLE; AND

28 (2) TO THE APPLICANT THAT THE DRAWING DOES NOT VIOLATE ANY
29 AGREEMENT BETWEEN THE APPLICANT AND BENEFICIARY OR ANY OTHER
30 AGREEMENT INTENDED BY THEM TO BE AUGMENTED BY THE LETTER OF CREDIT.

31 (B) THE WARRANTIES IN SUBSECTION (A) OF THIS SECTION ARE IN ADDITION
32 TO WARRANTIES ARISING UNDER TITLES 3, 4, 7, AND 8 OF THIS ARTICLE BECAUSE OF
33 THE PRESENTATION OR TRANSFER OF DOCUMENTS COVERED BY ANY OF THOSE
34 TITLES.

35 5-111. REMEDIES.

36 (A) IF AN ISSUER WRONGFULLY DISHONORS OR REPUDIATES ITS
37 OBLIGATION TO PAY MONEY UNDER A LETTER OF CREDIT BEFORE PRESENTATION,
38 THE BENEFICIARY, SUCCESSOR, OR NOMINATED PERSON PRESENTING ON ITS OWN
39 BEHALF MAY RECOVER FROM THE ISSUER THE AMOUNT THAT IS THE SUBJECT OF
40 THE DISHONOR OR REPUDIATION. IF THE ISSUER'S OBLIGATION UNDER THE

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1 LETTER OF CREDIT IS NOT FOR THE PAYMENT OF MONEY, THE CLAIMANT MAY
2 OBTAIN SPECIFIC PERFORMANCE OR, AT THE CLAIMANT'S ELECTION, RECOVER AN
3 AMOUNT EQUAL TO THE VALUE OF PERFORMANCE FROM THE ISSUER. IN EITHER
4 CASE, THE CLAIMANT MAY ALSO RECOVER INCIDENTAL BUT NOT CONSEQUENTIAL
5 DAMAGES. THE CLAIMANT IS NOT OBLIGATED TO TAKE ACTION TO AVOID
6 DAMAGES THAT MIGHT BE DUE FROM THE ISSUER UNDER THIS SUBSECTION. IF,
7 ALTHOUGH NOT OBLIGATED TO DO SO, THE CLAIMANT AVOIDS DAMAGES, THE
8 CLAIMANT'S RECOVERY FROM THE ISSUER MUST BE REDUCED BY THE AMOUNT OF
9 DAMAGES AVOIDED. THE ISSUER HAS THE BURDEN OF PROVING THE AMOUNT OF
10 DAMAGES AVOIDED. IN THE CASE OF REPUDIATION THE CLAIMANT NEED NOT
11 PRESENT ANY DOCUMENT.

12 (B) IF AN ISSUER WRONGFULLY DISHONORS A DRAFT OR DEMAND
13 PRESENTED UNDER A LETTER OF CREDIT OR HONORS A DRAFT OR DEMAND IN
14 BREACH OF ITS OBLIGATION TO THE APPLICANT, THE APPLICANT MAY RECOVER
15 DAMAGES RESULTING FROM THE BREACH, INCLUDING INCIDENTAL BUT NOT
16 CONSEQUENTIAL DAMAGES, LESS ANY AMOUNT SAVED AS A RESULT OF THE
17 BREACH.

18 (C) IF AN ADVISER OR NOMINATED PERSON OTHER THAN A CONFIRMER
19 BREACHES AN OBLIGATION UNDER THIS ARTICLE OR AN ISSUER BREACHES AN
20 OBLIGATION NOT COVERED IN SUBSECTION (A) OR (B) OF THIS SECTION, A PERSON
21 TO WHOM THE OBLIGATION IS OWED MAY RECOVER DAMAGES RESULTING FROM
22 THE BREACH, INCLUDING INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES, LESS
23 ANY AMOUNT SAVED AS A RESULT OF THE BREACH. TO THE EXTENT OF THE
24 CONFIRMATION, A CONFIRMER HAS THE LIABILITY OF AN ISSUER SPECIFIED IN THIS
25 SUBSECTION AND SUBSECTIONS (A) AND (B) OF THIS SECTION.

26 (D) AN ISSUER, NOMINATED PERSON, OR ADVISER WHO IS FOUND LIABLE
27 UNDER SUBSECTION (A), (B), OR (C) OF THIS SECTION SHALL PAY INTEREST ON THE
28 AMOUNT OWED THEREUNDER FROM THE DATE OF WRONGFUL DISHONOR OR
29 OTHER APPROPRIATE DATE.

30 (E) REASONABLE ATTORNEY'S FEES AND OTHER EXPENSES OF LITIGATION
31 MUST BE AWARDED TO THE PREVAILING PARTY IN AN ACTION IN WHICH A REMEDY
32 IS SOUGHT UNDER THIS TITLE.

33 (F) DAMAGES THAT WOULD OTHERWISE BE PAYABLE BY A PARTY FOR
34 BREACH OF AN OBLIGATION UNDER THIS TITLE MAY BE LIQUIDATED BY
35 AGREEMENT OR UNDERTAKING, BUT ONLY IN AN AMOUNT OR BY A FORMULA
36 THAT IS REASONABLE IN LIGHT OF THE HARM ANTICIPATED.

37 5-112. TRANSFER OF LETTER OF CREDIT.

38 (A) EXCEPT AS OTHERWISE PROVIDED IN § 5-113 OF THIS TITLE, UNLESS A
39 LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE RIGHT OF A
40 BENEFICIARY TO DRAW OR OTHERWISE DEMAND PERFORMANCE UNDER A LETTER
41 OF CREDIT MAY NOT BE TRANSFERRED.

42 (B) EVEN IF A LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE
43 ISSUER MAY REFUSE TO RECOGNIZE OR CARRY OUT A TRANSFER IF:

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1 (1) THE TRANSFER WOULD VIOLATE APPLICABLE LAW; OR

2 (2) THE TRANSFEROR OR TRANSFEREE HAS FAILED TO COMPLY WITH
3 ANY REQUIREMENT STATED IN THE LETTER OF CREDIT OR ANY OTHER
4 REQUIREMENT RELATING TO TRANSFER IMPOSED BY THE ISSUER WHICH IS WITHIN
5 THE STANDARD PRACTICE REFERRED TO IN § 5-108(E) OF THIS TITLE OR IS
6 OTHERWISE REASONABLE UNDER THE CIRCUMSTANCES.

7 5-113. TRANSFER BY OPERATION OF LAW.

8 (A) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN
9 AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN
10 THE NAME OF THE BENEFICIARY WITHOUT DISCLOSING ITS STATUS AS A
11 SUCCESSOR.

12 (B) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN
13 AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN
14 ITS OWN NAME AS THE DISCLOSED SUCCESSOR OF THE BENEFICIARY. EXCEPT AS
15 OTHERWISE PROVIDED IN SUBSECTION (E) OF THIS SECTION, AN ISSUER SHALL
16 RECOGNIZE A DISCLOSED SUCCESSOR OF A BENEFICIARY AS BENEFICIARY IN FULL
17 SUBSTITUTION FOR ITS PREDECESSOR UPON COMPLIANCE WITH THE
18 REQUIREMENTS FOR RECOGNITION BY THE ISSUER OF A TRANSFER OF DRAWING
19 RIGHTS BY OPERATION OF LAW UNDER THE STANDARD PRACTICE REFERRED TO IN
20 § 5-108(E) OF THIS TITLE OR, IN THE ABSENCE OF SUCH A PRACTICE, COMPLIANCE
21 WITH OTHER REASONABLE PROCEDURES SUFFICIENT TO PROTECT THE ISSUER.

22 (C) AN ISSUER IS NOT OBLIGED TO DETERMINE WHETHER A PURPORTED
23 SUCCESSOR IS A SUCCESSOR OF A BENEFICIARY OR WHETHER THE SIGNATURE OF A
24 PURPORTED SUCCESSOR IS GENUINE OR AUTHORIZED.

25 (D) HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING
26 PRESENTATION UNDER SUBSECTION (A) OR (B) OF THIS SECTION HAS THE
27 CONSEQUENCES SPECIFIED IN § 5-108(I) OF THIS TITLE EVEN IF THE PURPORTED
28 SUCCESSOR IS NOT THE SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN
29 THE NAME OF THE BENEFICIARY OR OF A DISCLOSED SUCCESSOR BY A PERSON
30 WHO IS NEITHER THE BENEFICIARY NOR THE SUCCESSOR OF THE BENEFICIARY
31 ARE FORGED DOCUMENTS FOR THE PURPOSES OF § 5-109 OF THIS TITLE.

32 (E) AN ISSUER WHOSE RIGHTS OF REIMBURSEMENT ARE NOT COVERED BY
33 SUBSECTION (D) OF THIS SECTION OR SUBSTANTIALLY SIMILAR LAW AND ANY
34 CONFIRMER OR NOMINATED PERSON MAY DECLINE TO RECOGNIZE A
35 PRESENTATION UNDER SUBSECTION (B) OF THIS SECTION.

36 (F) A BENEFICIARY WHOSE NAME IS CHANGED AFTER THE ISSUANCE OF A
37 LETTER OF CREDIT HAS THE SAME RIGHTS AND OBLIGATIONS AS A SUCCESSOR OF A
38 BENEFICIARY UNDER THIS SECTION.

39 5-114. ASSIGNMENT OF PROCEEDS.

40 (A) IN THIS SECTION, "PROCEEDS OF A LETTER OF CREDIT" MEANS THE CASH,
41 CHECK, ACCEPTED DRAFT, OR OTHER ITEM OF VALUE PAID OR DELIVERED UPON
42 HONOR OR GIVING OF VALUE BY THE ISSUER OR ANY NOMINATED PERSON UNDER

11

1 THE LETTER OF CREDIT. THE TERM DOES NOT INCLUDE A BENEFICIARY'S DRAWING
2 RIGHTS OR DOCUMENTS PRESENTED BY THE BENEFICIARY.

3 (B) A BENEFICIARY MAY ASSIGN ITS RIGHT TO PART OR ALL OF THE
4 PROCEEDS OF A LETTER OF CREDIT. THE BENEFICIARY MAY DO SO BEFORE
5 PRESENTATION AS A PRESENT ASSIGNMENT OF ITS RIGHT TO RECEIVE PROCEEDS
6 CONTINGENT UPON ITS COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE
7 LETTER OF CREDIT.

8 (C) AN ISSUER OR NOMINATED PERSON NEED NOT RECOGNIZE AN
9 ASSIGNMENT OF PROCEEDS OF A LETTER OF CREDIT UNTIL IT CONSENTS TO THE
10 ASSIGNMENT.

11 (D) AN ISSUER OR NOMINATED PERSON HAS NO OBLIGATION TO GIVE OR
12 WITHHOLD ITS CONSENT TO AN ASSIGNMENT OF PROCEEDS OF A LETTER OF
13 CREDIT, BUT CONSENT MAY NOT BE UNREASONABLY WITHHELD IF THE ASSIGNEE
14 POSSESSES AND EXHIBITS THE LETTER OF CREDIT AND PRESENTATION OF THE
15 LETTER OF CREDIT IS A CONDITION TO HONOR.

16 (E) RIGHTS OF A TRANSFEREE BENEFICIARY OR NOMINATED PERSON ARE
17 INDEPENDENT OF THE BENEFICIARY'S ASSIGNMENT OF THE PROCEEDS OF A
18 LETTER OF CREDIT AND ARE SUPERIOR TO THE ASSIGNEE'S RIGHT TO THE
19 PROCEEDS.

20 (F) NEITHER THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN
21 ASSIGNEE AND AN ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED PERSON
22 NOR THE ISSUER'S OR NOMINATED PERSON'S PAYMENT OF PROCEEDS TO AN
23 ASSIGNEE OR A THIRD PERSON AFFECT THE RIGHTS BETWEEN THE ASSIGNEE AND
24 ANY PERSON OTHER THAN THE ISSUER, TRANSFEREE BENEFICIARY, OR
25 NOMINATED PERSON. THE MODE OF CREATING AND PERFECTING A SECURITY
26 INTEREST IN OR GRANTING AN ASSIGNMENT OF A BENEFICIARY'S RIGHTS TO
27 PROCEEDS IS GOVERNED BY TITLE 9 OF THIS ARTICLE OR OTHER LAW. AGAINST
28 PERSONS OTHER THAN THE ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED
29 PERSON, THE RIGHTS AND OBLIGATIONS ARISING UPON THE CREATION OF A
30 SECURITY INTEREST OR OTHER ASSIGNMENT OF A BENEFICIARY'S RIGHT TO
31 PROCEEDS AND ITS PERFECTION ARE GOVERNED BY TITLE 9 OF THIS ARTICLE OR
32 OTHER LAW.

33 5-115. STATUTE OF LIMITATIONS.

34 AN ACTION TO ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS
35 ARTICLE MUST BE COMMENCED WITHIN 1 YEAR AFTER THE EXPIRATION DATE OF
36 THE RELEVANT LETTER OF CREDIT OR 1 YEAR AFTER THE CAUSE OF ACTION
37 ACCRUES, WHICHEVER OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE
38 BREACH OCCURS, REGARDLESS OF THE AGGRIEVED PARTY'S LACK OF KNOWLEDGE
39 OF THE BREACH.

40 5-116. CHOICE OF LAW AND FORUM.

41 (A) THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER FOR
42 ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION CHOSEN BY
43 AN AGREEMENT IN THE FORM OF A RECORD SIGNED OR OTHERWISE

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1 AUTHENTICATED BY THE AFFECTED PARTIES IN THE MANNER PROVIDED IN § 5-104
2 OF THIS TITLE OR BY A PROVISION IN THE PERSON'S LETTER OF CREDIT,
3 CONFIRMATION, OR OTHER UNDERTAKING. THE JURISDICTION WHOSE LAW IS
4 CHOSEN NEED NOT BEAR ANY RELATION TO THE TRANSACTION.

5 (B) UNLESS SUBSECTION (A) OF THIS SECTION APPLIES, THE LIABILITY OF AN
6 ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS GOVERNED
7 BY THE LAW OF THE JURISDICTION IN WHICH THE PERSON IS LOCATED. THE
8 PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS INDICATED IN THE
9 PERSON'S UNDERTAKING. IF MORE THAN ONE ADDRESS IS INDICATED, THE PERSON
10 IS CONSIDERED TO BE LOCATED AT THE ADDRESS FROM WHICH THE PERSON'S
11 UNDERTAKING WAS ISSUED. FOR THE PURPOSE OF JURISDICTION, CHOICE OF LAW,
12 AND RECOGNITION OF INTERBRANCH LETTERS OF CREDIT, BUT NOT
13 ENFORCEMENT OF A JUDGMENT, ALL BRANCHES OF A BANK ARE CONSIDERED
14 SEPARATE JURIDICAL ENTITIES AND A BANK IS CONSIDERED TO BE LOCATED AT
15 THE PLACE WHERE ITS RELEVANT BRANCH IS CONSIDERED TO BE LOCATED UNDER
16 THIS SUBSECTION.

17 (C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE LIABILITY
18 OF AN ISSUER, NOMINATED PERSON, OR ADVISER IS GOVERNED BY ANY RULES OF
19 CUSTOM OR PRACTICE, SUCH AS THE UNIFORM CUSTOMS AND PRACTICE FOR
20 DOCUMENTARY CREDITS, TO WHICH THE LETTER OF CREDIT, CONFIRMATION, OR
21 OTHER UNDERTAKING IS EXPRESSLY MADE SUBJECT. IF (I) THIS TITLE WOULD
22 GOVERN THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER UNDER
23 SUBSECTION (A) OR (B) OF THIS SECTION, (II) THE RELEVANT UNDERTAKING
24 INCORPORATES RULES OF CUSTOM OR PRACTICE, AND (III) THERE IS CONFLICT
25 BETWEEN THIS TITLE AND THOSE RULES AS APPLIED TO THAT UNDERTAKING,
26 THOSE RULES GOVERN EXCEPT TO THE EXTENT OF ANY CONFLICT WITH THE
27 NONVARIABLE PROVISIONS SPECIFIED IN § 5-103(C) OF THIS TITLE.

28 (D) IF THERE IS CONFLICT BETWEEN THIS TITLE AND TITLE 3, 4, 4A, OR 9, THIS
29 TITLE GOVERNS.

30 (E) THE FORUM FOR SETTLING DISPUTES ARISING OUT OF AN UNDERTAKING
31 WITHIN THIS TITLE MAY BE CHOSEN IN THE MANNER AND WITH THE BINDING
32 EFFECT THAT GOVERNING LAW MAY BE CHOSEN IN ACCORDANCE WITH
33 SUBSECTION (A) OF THIS SECTION.

34 5-117. SUBROGATION OF ISSUER, APPLICANT, AND NOMINATED PERSON.

35 (A) AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS
36 SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS IF
37 THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION
38 OWED TO THE BENEFICIARY AND OF THE APPLICANT TO THE SAME EXTENT AS IF
39 THE ISSUER WERE THE SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION
40 OWED TO THE APPLICANT.

41 (B) AN APPLICANT THAT REIMBURSES AN ISSUER IS SUBROGATED TO THE
42 RIGHTS OF THE ISSUER AGAINST ANY BENEFICIARY, PRESENTER, OR NOMINATED
43 PERSON TO THE SAME EXTENT AS IF THE APPLICANT WERE THE SECONDARY
44 OBLIGOR OF THE OBLIGATIONS OWED TO THE ISSUER AND HAS THE RIGHTS OF

13

1 SUBROGATION OF THE ISSUER TO THE RIGHTS OF THE BENEFICIARY STATED IN
2 SUBSECTION (A) OF THIS SECTION.

3 (C) A NOMINATED PERSON WHO PAYS OR GIVES VALUE AGAINST A DRAFT
4 OR DEMAND PRESENTED UNDER A LETTER OF CREDIT IS SUBROGATED TO THE
5 RIGHTS OF:

6 (1) THE ISSUER AGAINST THE APPLICANT TO THE SAME EXTENT AS IF
7 THE NOMINATED PERSON WERE A SECONDARY OBLIGOR OF THE OBLIGATION
8 OWED TO THE ISSUER BY THE APPLICANT;

9 (2) THE BENEFICIARY TO THE SAME EXTENT AS IF THE NOMINATED
10 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
11 TO THE BENEFICIARY; AND

12 (3) THE APPLICANT TO THE SAME EXTENT AS IF THE NOMINATED
13 PERSON WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED
14 TO THE APPLICANT.

15 (D) NOTWITHSTANDING ANY AGREEMENT OR TERM TO THE CONTRARY, THE
16 RIGHTS OF SUBROGATION STATED IN SUBSECTIONS (A) AND (B) OF THIS SECTION DO
17 NOT ARISE UNTIL THE ISSUER HONORS THE LETTER OF CREDIT OR OTHERWISE
18 PAYS AND THE RIGHTS IN SUBSECTION (C) OF THIS SECTION DO NOT ARISE UNTIL
19 THE NOMINATED PERSON PAYS OR OTHERWISE GIVES VALUE. UNTIL THEN, THE
20 ISSUER, NOMINATED PERSON, AND THE APPLICANT DO NOT DERIVE UNDER THIS
21 SECTION PRESENT OR PROSPECTIVE RIGHTS FORMING THE BASIS OF A CLAIM,
22 DEFENSE, OR EXCUSE.

23 1-105.

24 (2) Where one of the following provisions of Titles 1 through 10 of this article
25 specifies the applicable law, that provision governs and a contrary agreement is effective
26 only to the extent permitted by the law (including the conflict of laws rules) so specified:

27 Rights of creditors against sold goods. § 2-402.

28 Applicability of the title on leases. §§ 2A-105 and 2A-106.

29 Applicability of the title on bank deposits and collections. § 4-102.

30 Governing law in the title on funds transfers. § 4A-507.

31 LETTERS OF CREDIT. § 5-116.

32 Bulk transfers subject to the title on bulk transfers. § 6-102.

33 Applicability of the title on investment securities. § 8-106.

34 Perfection provisions of the title on secured transactions. § 9-103.

35 2-512.

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

14

1 (a) The nonconformity appears without inspection; or

2 (b) Despite tender of the required documents the circumstances would
3 justify injunction against honor under the provisions of Titles 1 through 10 of this article
4 [(§ 5-114)] (§ 5-109(B)).

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

7 9-103.

8 (1) (a) This subsection applies to documents [and], instruments, RIGHTS TO
9 PROCEEDS OF WRITTEN LETTERS OF CREDIT, and [to] goods other than those covered
10 by a certificate of title described in subsection (2), mobile goods described in subsection
11 (3), and minerals described in subsection (5).

12 9-104.

13 This title does not apply

14 (l) To a transfer of an interest in any deposit account (subsection (1) of § 9-105),
15 except as provided with respect to proceeds (§ 9-306) and priorities in proceeds (§
16 9-312)[.]; OR

17 (M) TO A TRANSFER OF AN INTEREST IN A LETTER OF CREDIT OTHER THAN
18 THE RIGHTS TO PROCEEDS OF A WRITTEN LETTER OF CREDIT.

19 9-105.

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

21 "Check." § 3-104.

22 "Contract for sale." § 2-106.

23 "Holder in due course." § 3-302.

24 "LETTERS OF CREDIT." § 5-102.

25 "Note." § 3-104.

26 "PROCEEDS OF A LETTER OF CREDIT." § 5-114(A).

27 "Sale." § 2-106.

28 9-106.

29 "Account" means any right to payment for goods sold or leased or for services
30 rendered which is not evidenced by an instrument or chattel paper, whether or not it has
31 been earned by performance. "General intangibles" means any personal property
32 (including things in action and uncertificated general and limited partnership interests),
33 other than goods, accounts, chattel paper, documents, instruments, RIGHTS TO
34 PROCEEDS OF WRITTEN LETTERS OF CREDIT, and money. All rights to payment earned
35 or unearned under a charter or other contract involving the use or hire of a vessel and all
36 rights incident to the charter or contract are accounts.

15

1 9-304.

2 (1) A security interest in chattel paper or negotiable documents maybe perfected
3 by filing. A SECURITY INTEREST IN THE RIGHTS TO PROCEEDS OF A WRITTEN
4 LETTER OF CREDIT CAN BE PERFECTED ONLY BY THE SECURED PARTY'S TAKING
5 POSSESSION OF THE LETTER OF CREDIT. A security interest in money or instruments
6 (other than certificated securities or instruments which constitute part of chattel paper)
7 can be perfected only by the secured party's taking possession, except as provided in
8 subsections (4) and (5) of this section and subsections (2) and (3) of § 9-306 on proceeds.

9 9-305.

10 A security interest in [letters of credit and advices of credit (subsection (2)(a) of §
11 5-116),] goods, instruments (other than certificated securities), money, negotiable
12 documents or chattel paper may be perfected by the secured party's taking possession of
13 the collateral. A SECURITY INTEREST IN THE RIGHT TO PROCEEDS OF A WRITTEN
14 LETTER OF CREDIT MAY BE PERFECTED BY THE SECURED PARTY'S TAKING
15 POSSESSION OF THE LETTER OF CREDIT. If such collateral other than goodscovered by
16 a negotiable document is held by a bailee, the secured party is deemed to have possession
17 from the time the bailee receives notification of the secured party's interest. A security
18 interest is perfected by possession from the time possession is taken without relation back
19 and continues only so long as possession is retained, unless otherwise specified in this
20 title. The security interest may be otherwise perfected as provided in this title before or
21 after the period of possession by the secured party.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act applies to a
23 letter of credit that is issued on or after the effective date of this Act. This Act does not
24 apply to a transaction, event, obligation, or duty arising out of or associated with a letter
25 of credit that was issued before the effective date of this Act.

26 SECTION 4. AND BE IT FURTHER ENACTED, That a transaction arising out
27 of or associated with a letter of credit that was issued before the effective date of this Act
28 and the rights, obligations, and interests flowing from that transaction are governed by
29 any statute or other law amended or repealed by this Act as if repeal or amendment had
30 not occurred and may be terminated, completed, consummated, or enforcedunder that
31 statute or other law.

32 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 1996.