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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY -- THE
UNIFORM COMMERCIAL CODE

Introduced By: Senator William A. Walaska

Date Introduced: January 24, 2007

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 91-4 of the General Laws in Chapter 91 entitled "Causes of
2 Action" is hereby amended to read as follows:

3 **9-1-4. Statute of frauds.** – No action shall be brought:

4 (1) Whereby to charge any person upon any contract for the sale of lands, tenements, or
5 hereditaments, or the making of any lease thereof for a longer time than one year;

6 (2) Whereby to charge any person upon any agreement made upon consideration of
7 marriage;

8 (3) Whereby to charge any trustee under any express trust, or any executor or
9 administrator, upon his or her special promise to answer any debt or damage out of his or her own
10 estate;

11 (4) Whereby to charge any person upon his or her special promise to answer for the debt,
12 default, or miscarriage of another person;

13 (5) Whereby to charge any person upon any agreement which is not to be performed
14 within the space of one year from the making thereof;

15 (6) Whereby to charge any person upon any agreement or promise to pay any
16 commission for or upon the sale of any interest in real estate;

17 (7) Except in cases to which the uniform commercial code (title 6A) applies, whereby to
18 charge any person upon any contract for the sale of personal property beyond five thousand

1 [dollars \(\\$5,000\) in an amount or value of remedy,](#)

2 unless the promise or agreement upon which the action shall be brought, or some note or
3 memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or by
4 some other person by him or her thereunto lawfully authorized.

5 SECTION 2. Sections 6A-1-101, 6A-1-102, 6A-1-103, 6A-1-104, 6A-1-105, 6A-1-106,
6 6A-1-107, 6A-1-108, 6A-1-201, 6A-1-202, 6A-1-203, 6A-1-204, 6A-1-205 and 6A-1-206 of the
7 General Laws in Chapter 6A-1 entitled "General Provisions" are hereby amended to read as
8 follows.

9 ~~6A-1-101. **Short title** Short titles. -- Title 6A shall be known and may be cited as the~~
10 ~~Uniform Commercial Code.~~

11 [\(a\) Title 6A may be cited as the Uniform Commercial Code.](#)

12 [\(b\) This chapter may be cited as Uniform Commercial Code – General Provisions.](#)

13 ~~6A-1-102. **Purposes -- Rules of construction -- Variation by agreement** Scope of~~
14 ~~**Chapter.** -- (1) Title 6A shall be liberally construed and applied to promote its underlying~~
15 ~~purposes and policies.~~

16 ~~(2) Underlying purposes and policies of title 6A are:~~

17 ~~(a) To simplify, clarify, and modernize the law governing commercial transactions;~~

18 ~~(b) To permit the continued expansion of commercial practices through custom, usage,~~
19 ~~and agreement of the parties;~~

20 ~~(c) To make uniform the law among the various jurisdictions.~~

21 ~~(3) The effect of provisions of title 6A may be varied by agreement, except as otherwise~~
22 ~~provided in title 6A and except that the obligations of good faith, diligence, reasonableness, and~~
23 ~~care prescribed by title 6A may not be disclaimed by agreement but the parties may by agreement~~
24 ~~determine the standards by which the performance of such obligations is to be measured if such~~
25 ~~standards are not manifestly unreasonable.~~

26 ~~(4) The presence in certain provisions of title 6A of the words "unless otherwise agreed"~~
27 ~~or words of similar import does not imply that the effect of other provisions may not be varied by~~
28 ~~agreement under subsection (3).~~

29 ~~(5) In title 6A, unless the context otherwise requires,~~

30 ~~(a) Words in the singular number include the plural, and in the plural include the~~
31 ~~singular;~~

32 ~~(b) Words of the masculine gender include the feminine and the neuter, and when the~~
33 ~~sense so indicates words of the neuter gender may refer to any gender.~~

34 [This chapter applies to a transaction to the extent that it is governed by another chapter of](#)

1 Title 6A.

2 ~~**6A-1-103. Supplementary general principles of law applicable** Construction of~~
3 ~~**uniform commercial code to promote its purposes and policies -- Applicability of**~~
4 ~~**supplemental principles of law. -- Unless displaced by the particular provisions of title 6A, the**~~
5 ~~principles of law and equity, including the law merchant and the law relative to capacity to~~
6 ~~contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake,~~
7 ~~bankruptcy, or other validating or invalidating cause shall supplement its provisions.~~

8 (a) Title 6A must be liberally construed and applied to promote its underlying purposes
9 and policies, which are:

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

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

13 (3) to make uniform the law among the various jurisdictions.

14 (b) Unless displaced by the particular provisions of title 6A, the principles of law and
15 equity, including the law merchant and the law relative to capacity to contract, principal and
16 agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other
17 validating or invalidating cause supplement its provisions.

18 ~~**6A-1-104. Construction against implicit repeal** Construction against implied repeal.~~

19 ~~-- Title 6A being a general act intended as a unified coverage of its subject matter, no part of it~~
20 ~~shall be deemed to be impliedly repealed by subsequent legislation if such construction can~~
21 ~~reasonably be avoided.~~

22 ~~**6A-1-105. Territorial application of title 6A -- Parties' power to choose applicable**~~

23 ~~**law Severability. -- (1) Except as provided hereafter in this section, when a transaction bears a**~~
24 ~~reasonable relation to this state and also to another state or nation, the parties may agree that the~~
25 ~~law either of this state or of such other state or nation shall govern their rights and duties. Failing~~
26 ~~such agreement, title 6A applies to transactions bearing an appropriate relation to this state.~~

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

30 ~~-(a) Rights of creditors against sold goods. section 6A-2-402.~~

31 ~~-(b) Applicability of the chapter on leases. sections 6A-2-1-105 and 6A-2-1-106.~~

32 ~~-(c) Applicability of the chapter on bank deposits and collections. section 6A-4-102.~~

33 ~~-(d) Applicability of the chapter on investment securities. section 6A-8-110.~~

34 ~~-(e) Governing law in the article on funds transfers. section 6A-4.1-507.~~

1 ~~-(f) Letters of credit, section 6A-5-116.~~

2 ~~-(g) Law governing perfection, the effect of perfection or nonperfection, and the priority~~
3 ~~of security interests and agricultural liens, sections 6A-9-301 through 6A-9-307.~~

4 If any provision or clause of title 6A or its application to any person or circumstance is
5 held invalid, the invalidity does not affect other provisions or applications of title 6A which can
6 be given effect without the invalid provision or application, and to this end the provisions of title
7 6A are severable.

8 **6A-1-106. Remedies to be liberally administered Use of singular and plural --**

9 **Gender. --** ~~(1) The remedies provided by title 6A shall be liberally administered to the end that~~
10 ~~the aggrieved party may be put in as good a position as if the other party had fully performed, but~~
11 ~~neither consequential or special nor penal damages may be had except as specifically provided in~~
12 ~~title 6A or by other rule of law.~~

13 ~~-(2) Any right or obligation declared by title 6A is enforceable by action unless the~~
14 ~~provision declaring it specifies a different and limited effect.~~

15 In title 6A, unless the statutory context otherwise requires:

16 (1) words in the singular number include the plural, and those in the plural include
17 the singular; and

18 (2) words of any gender also refer to any other gender.

19 **6A-1-107. Waiver or renunciation of claim or right after breach Section captions. --**

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

22 Section captions are part of title 6A.

23 **6A-1-108. Severability Relation to electronic signatures in global and national**

24 **commerce act. --** ~~If any provision or clause of title 6A or application thereof to any person or~~
25 ~~circumstances is held invalid, such invalidity shall not affect other provisions or applications of~~
26 ~~title 6A which can be given effect without the invalid provision or application, and to this end the~~
27 ~~provisions of title 6A are declared to be severable.~~

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

32 **6A-1-201. General definitions. --** ~~Subject to additional definitions contained in the~~

33 ~~subsequent chapters of this title which are applicable to specific chapters thereof, and unless the~~
34 ~~context otherwise requires, in this title:~~

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

3 ~~-(2) "Aggrieved party" means a party entitled to resort to a remedy.~~

4 ~~-(3) "Agreement" means the bargain of the parties in fact as found in their language or by~~
5 ~~implication from other circumstances including course of dealing or usage of trade or course of~~
6 ~~performance as provided in this title (sections 6A-1-205, 6A-1-208 and 6A-2:1-207). Whether an~~
7 ~~agreement has legal consequences is determined by the provisions of this title, if applicable;~~
8 ~~otherwise by the law of contracts (section 6A-1-103). (Compare "Contract".)~~

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

10 ~~-(5) "Bearer" means a person in control of a negotiable electronic document of title or a~~
11 ~~person in possession of an instrument, a negotiable, tangible document of title, or certificated~~
12 ~~security payable to bearer or indorsed in blank.~~

13 ~~-(6) "Bill of lading" means a document of title evidencing the receipt of goods for~~
14 ~~shipment issued by a person engaged in the business of directly or indirectly transporting or~~
15 ~~forwarding goods. The term does not include a warehouse receipt.~~

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

17 ~~-(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that~~
18 ~~the existence of the fact is more probable than its nonexistence.~~

19 ~~-(9) "Buyer in ordinary course of business" means a person that buys goods in good faith,~~
20 ~~without knowledge that the sale violates the rights of another person in the goods, and in the~~
21 ~~ordinary course from a person, other than a pawnbroker, in the business of selling goods of that~~
22 ~~kind. A person buys goods in the ordinary course if the sale to the person comports with the usual~~
23 ~~or customary practices in the kind of business in which the seller is engaged or with the seller's~~
24 ~~own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or~~
25 ~~minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of~~
26 ~~business may buy for cash, by exchange of other property, or on secured or unsecured credit, and~~
27 ~~may acquire goods or documents of title under a pre-existing contract for sale. Only a buyer that~~
28 ~~takes possession of the goods or has a right to recover the goods from the seller under chapter 2~~
29 ~~may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk~~
30 ~~or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary~~
31 ~~course of business.~~

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

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

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

7 ~~-(11) "Contract" means the total legal obligation which results from the parties' agreement~~
8 ~~as affected by this title and any other applicable rules of law. (Compare "Agreement".)~~

9 ~~-(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any~~
10 ~~representative of creditors, including an assignee for the benefit of creditors, a trustee in~~
11 ~~bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or~~
12 ~~assignor's estate.~~

13 ~~-(13) "Defendant" includes a person in the position of defendant in a cross action or~~
14 ~~counterclaim.~~

15 ~~-(14) "Delivery" with respect to an electronic document of title means voluntary transfer~~
16 ~~of control and with respect to instruments, tangible documents of title, chattel paper, or~~
17 ~~certificated securities means voluntary transfer of possession.~~

18 ~~-(15) "Document of title" means a record: (i) that in the regular course of business or~~
19 ~~financing is treated as adequately evidencing that the person in possession or control of the record~~
20 ~~is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and~~
21 ~~(ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's~~
22 ~~possession which are either identified or are fungible portions of an identified mass. The term~~
23 ~~includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and~~
24 ~~order for delivery of goods. An electronic document of title means a document of title evidenced~~
25 ~~by a record consisting of information stored in an electronic medium. A tangible document of title~~
26 ~~means a document of title evidenced by a record consisting of information that is inscribed on a~~
27 ~~tangible medium.~~

28 ~~-(16) "Fault" means wrongful act, omission, or breach.~~

29 ~~-(17) "Fungible" with respect to goods or securities means goods or securities of which~~
30 ~~any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not~~
31 ~~fungible shall be deemed fungible for the purposes of this title to the extent that under a particular~~
32 ~~agreement or document unlike units are treated as equivalents.~~

33 ~~-(18) "Genuine" means free of forgery or counterfeiting.~~

34 ~~-(19) "Good faith" means honesty in fact in the conduct or transaction concerned.~~

1 ~~-(20) "Holder" means:~~

2 ~~-(a) The person in possession of a negotiable instrument that is payable either to bearer or~~

3 ~~to an identified person that is the person in possession;~~

4 ~~-(b) The person in possession of a negotiable tangible document of title if the goods are~~

5 ~~deliverable either to bearer or to the order of the person in possession; or~~

6 ~~-(c) The person in control of a negotiable electronic document of title.~~

7 ~~-(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase~~

8 ~~or discount a draft complying with the terms of the credit.~~

9 ~~-(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or~~

10 ~~other proceedings intended to liquidate or rehabilitate the estate of the person involved.~~

11 ~~-(23) A person is "insolvent" who either has ceased to pay his or her debts in the ordinary~~

12 ~~course of business or cannot pay his or her debts as they become due or is insolvent within the~~

13 ~~meaning of the federal bankruptcy law.~~

14 ~~-(24) "Money" means a medium of exchange authorized or adopted by a domestic or~~

15 ~~foreign government and includes a monetary unit of account established by an intergovernmental~~

16 ~~organization or by agreement between two (2) or more nations.~~

17 ~~-(25) Subject to subsection (27), a person has "notice" of a fact if the person:~~

18 ~~-(i) Has actual knowledge of it; or~~

19 ~~-(ii) Has received a notice or notification of it; or~~

20 ~~-(iii) From all the facts and circumstances known to him or her at the time in question he~~

21 ~~or she has reason to know that it exists.~~

22 ~~A person "knows" or has "knowledge" of a fact when the person has actual knowledge of~~

23 ~~it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to~~

24 ~~reason to know. The time and circumstances under which a notice or notification may cease to be~~

25 ~~effective are not determined by this title.~~

26 ~~-(26) A person "notifies" or "gives" a notice or notification to another person by taking~~

27 ~~such steps as may be reasonably required to inform the other person in ordinary course, whether~~

28 ~~or not the other person actually comes to know of it. Subject to subsection (27), a person~~

29 ~~"receives" a notice or notification when:~~

30 ~~-(i) It comes to that person's attention; or~~

31 ~~-(ii) It is duly delivered in a form reasonable under the circumstances at the place of~~

32 ~~business through which the contract was made or at another location held out by that person as~~

33 ~~the place for receipt of such communications.~~

34 ~~-(27) Notice, knowledge, or a notice or notification received by an organization is~~

1 ~~effective for a particular transaction from the time when it is brought to the attention of the~~
2 ~~individual conducting that transaction, and in any event from the time when it would have been~~
3 ~~brought to the individual's attention if the organization had exercised due diligence. An~~
4 ~~organization exercises due diligence if it maintains reasonable routines for communicating~~
5 ~~significant information to the person conducting the transaction and there is reasonable~~
6 ~~compliance with the routines. Due diligence does not require an individual acting for the~~
7 ~~organization to communicate information unless such communication is part of the individual's~~
8 ~~regular duties or the individual has reason to know of the transaction and that the transaction~~
9 ~~would be materially affected by the information.~~

10 ~~-(28) "Organization" includes a corporation, government or governmental subdivision or~~
11 ~~agency, business trust, estate, trust, partnership, or association, two (2) or more persons having a~~
12 ~~joint or common interest, or any other legal or commercial entity.~~

13 ~~-(29) "Party", as distinct from "third party", means a person who has engaged in a~~
14 ~~transaction or made an agreement within this title.~~

15 ~~-(30) "Person" includes an individual or an organization (see section 6A-1-102).~~

16 ~~-(31) "Presumption" or "presumed" means that the trier of fact must find the existence of~~
17 ~~the fact presumed unless and until evidence is introduced which would support a finding of its~~
18 ~~nonexistence.~~

19 ~~-(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,~~
20 ~~security interest, issue or re-issue, gift, or any other voluntary transaction creating an interest in~~
21 ~~property.~~

22 ~~-(33) "Purchaser" means a person who takes by purchase.~~

23 ~~-(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or~~
24 ~~without resort to a tribunal.~~

25 ~~-(35) "Representative" includes an agent, an officer of a corporation or association, and a~~
26 ~~trustee, executor or administrator of an estate, or any other person empowered to act for another.~~

27 ~~-(36) "Rights" includes remedies.~~

28 ~~-(37) "Security interest" means an interest in personal property or fixtures which secures~~
29 ~~payment or performance of an obligation. The term also includes any interest of a consignor and a~~
30 ~~buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that~~
31 ~~is subject to chapter 9 of this title. The special property interest of a buyer of goods on~~
32 ~~identification of those goods to a contract for sale under section 6A-2-401 is not a "security~~
33 ~~interest," but a buyer may also acquire a "security interest" by complying with chapter 9 of this~~
34 ~~title. Except as otherwise provided in section 6A-2-505, the right of a seller or lessor of goods~~

1 ~~under chapter 2 or 2.1 of this title to retain or acquire possession of the goods is not a "security~~
2 ~~interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 9~~
3 ~~of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or~~
4 ~~delivery to the buyer (section 6A-2-401) is limited in effect to a reservation of a "security~~
5 ~~interest."~~

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

10 ~~(A) The original term of the lease is equal to or greater than the remaining economic life~~
11 ~~of the goods;~~

12 ~~(B) The lessee is bound to renew the lease for the remaining economic life of the goods~~
13 ~~or is bound to become the owner of the goods;~~

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

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

19 ~~(ii) A transaction does not create a security interest merely because it provides that:~~

20 ~~(A) The present value of the consideration the lessee is obligated to pay the lessor for the~~
21 ~~right to possession and use of the goods is substantially equal to or is greater than the fair market~~
22 ~~value of the goods at the time the lease is entered into;~~

23 ~~(B) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing,~~
24 ~~recording, or registration fees, or service or maintenance costs with respect to the goods;~~

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

26 ~~(D) The lessee has an option to renew the lease for a fixed rent that is equal to or greater~~
27 ~~than the reasonably predictable fair market rent for the use of the goods for the term of the~~
28 ~~renewal at the time the option is to be performed; or~~

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

32 ~~(iii) For purposes of this subsection (37):~~

33 ~~(A) Additional consideration is not nominal if (i) when the option to renew the lease is~~
34 ~~granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the~~

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

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

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

14 ~~(38) "Send" in connection with a writing, record, or notice means:~~

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

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

21 ~~(39) "Signed" includes any symbol executed or adopted by a party with present intention~~
22 ~~to authenticate a writing.~~

23 ~~(40) "Surety" includes guarantor.~~

24 ~~(41) "Telegram" includes a message transmitted by radio, teletype, cable, any~~
25 ~~mechanical method of transmission, or the like.~~

26 ~~(42) "Term" means that portion of an agreement which relates to a particular matter.~~

27 ~~(43) "Unauthorized" signature means one made without actual, implied, or apparent~~
28 ~~authority and includes a forgery.~~

29 ~~(44) "Value". Except as otherwise provided with respect to negotiable instruments and~~
30 ~~bank collections (sections 6A-3-303, 6A-4-210, and 6A-4-211), a person gives "value" for rights~~
31 ~~if he or she acquires them:~~

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

- 1 ~~(ii) As security for or in total or partial satisfaction of a pre-existing claim; or~~
2 ~~(iii) By accepting delivery pursuant to a pre-existing contract for purchase; or~~
3 ~~(iv) Generally, in return for any consideration sufficient to support a simple contract.~~

4 ~~(45) "Warehouse receipt" means a document of title issued by a person engaged in the~~
5 ~~business of storing goods for hire.~~

6 ~~(46) "Written" or "writing" includes printing, typewriting, or any other intentional~~
7 ~~reduction to tangible form.~~

8 (a) Unless the context otherwise requires, words or phrases defined in this section, or in
9 the additional definitions contained in other chapters of title 6A that apply to particular chapters
10 or parts thereof, have the meanings stated.

11 (b) Subject to definitions contained in other chapters of title 6A that apply to particular
12 chapters or parts thereof:

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

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

16 (3) "Agreement", as distinguished from "contract", means the bargain of the parties in
17 fact, as found in their language or inferred from other circumstances, including course of
18 performance, course of dealing, or usage of trade as provided in section 6A-1-303.

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

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

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

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

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

28 (9) "Buyer in ordinary course of business" means a person that buys goods in good faith,
29 without knowledge that the sale violates the rights of another person in the goods, and in the
30 ordinary course from a person, other than a pawnbroker, in the business of selling goods of that
31 kind. A person buys goods in the ordinary course if the sale to the person comports with the usual
32 or customary practices in the kind of business in which the seller is engaged or with the seller's
33 own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or
34 minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of

1 business may buy for cash, by exchange of other property, or on secured or unsecured credit, and
2 may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that
3 takes possession of the goods or has a right to recover the goods from the seller under Chapter 2
4 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not
5 include a person that acquires goods in a transfer in bulk or as security for or in total or partial
6 satisfaction of a money debt.

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

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

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

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

17 (12) “Contract”, as distinguished from “agreement”, means the total legal obligation that
18 results from the parties’ agreement as determined by title 6A as supplemented by any other
19 applicable laws.

20 (13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any
21 representative of creditors, including an assignee for the benefit of creditors, a trustee in
22 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or
23 assignor’s estate.

24 (14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-
25 claim, or third-party claim.

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

28 (16) “Document of title” includes bill of lading, dock warrant, dock receipt, warehouse
29 receipt or order for the delivery of goods, and also any other document which in the regular
30 course of business or financing is treated as adequately evidencing that the person in possession
31 of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a
32 document of title, a document must purport to be issued by or addressed to a bailee and purport to
33 cover goods in the bailee’s possession which are either identified or are fungible portions of an
34 identified mass.

1 (17) “Fault” means a default, breach, or wrongful act or omission.

2 (18) “Fungible goods” means:

3 (A) goods of which any unit, by nature or usage of trade, is the equivalent of any other
4 like unit; or

5 (B) goods that by agreement are treated as equivalent.

6 (19) “Genuine” means free of forgery or counterfeiting.

7 (20) “Good faith” means honesty in fact in the conduct or transaction concerned.

8 (21) “Holder” means:

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

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

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

15 (23) “Insolvent” means:

16 (A) having generally ceased to pay debts in the ordinary course of business other than as
17 a result of bona fide dispute;

18 (B) being unable to pay debts as they become due; or

19 (C) being insolvent within the meaning of federal bankruptcy law.

20 (24) “Money” means a medium of exchange currently authorized or adopted by a
21 domestic or foreign government. The term includes a monetary unit of account established by an
22 intergovernmental organization or by agreement between two (2) or more countries.

23 (25) “Organization” means a person other than an individual.

24 (26) “Party”, as distinguished from “third-party”, means a person that has engaged in a
25 transaction or made an agreement subject to title 6A.

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

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

34 (29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge,

1 lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest
2 in property.

3 (30) “Purchaser” means a person that takes by purchase.

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

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

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

10 (34) “Right” includes remedy.

11 (35) “Security interest” means an interest in personal property or fixtures which secures
12 payment or performance of an obligation. “Security interest” includes any interest of a consignor
13 and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction
14 that is subject to Chapter 9. “Security interest” does not include the special property interest of a
15 buyer of goods on identification of those goods to a contract for sale under section 6A-2- 401, but
16 a buyer may also acquire a “security interest” by complying with Chapter 9. Except as otherwise
17 provided in section 6A-2-505, the right of a seller or lessor of goods under Chapter 2 or 2.1 to
18 retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may
19 also acquire a “security interest” by complying with Chapter 9. The retention or reservation of
20 title by a seller of goods notwithstanding shipment or delivery to the buyer under section 6A-2-
21 401 is limited in effect to a reservation of a “security interest.” Whether a transaction in the form
22 of a lease creates a “security interest” is determined pursuant to section 6A-1-203.

23 (36) “Send” in connection with a writing, record, or notice means:

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

28 (B) in any other way to cause to be received any record or notice within the time it would
29 have arrived if properly sent.

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

32 (38) “State” means a State of the United States, the District of Columbia, Puerto Rico, the
33 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
34 the United States.

1 (39) “Surety” includes a guarantor or other secondary obligor.

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

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

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

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

9 ~~**6A-1-202. Prima facie evidence by third party documents** Notice -- Knowledge. -- A~~
10 ~~document in due form purporting to be a bill of lading, policy or certificate of insurance, official~~
11 ~~weigher's or inspector's certificate, consular invoice, or any other document authorized or~~
12 ~~required by the contract to be issued by a third party shall be prima facie evidence of its own~~
13 ~~authenticity and genuineness and of the facts stated in the document by the third party.~~

14 (a) Subject to subsection (f), a person has “notice” of a fact if the person:

15 (1) has actual knowledge of it;

16 (2) has received a notice or notification of it; or

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

19 (b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

20 (c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to
21 reason to know.

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

25 (e) Subject to subsection (f), a person “receives” a notice or notification when:

26 (1) it comes to that person’s attention; or

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

30 (f) Notice, knowledge, or a notice or notification received by an organization is effective
31 for a particular transaction from the time it is brought to the attention of the individual conducting
32 that transaction and, in any event, from the time it would have been brought to the individual’s
33 attention if the organization had exercised due diligence. An organization exercises due diligence
34 if it maintains reasonable routines for communicating significant information to the person

1 conducting the transaction and there is reasonable compliance with the routines. Due diligence
2 does not require an individual acting for the organization to communicate information unless the
3 communication is part of the individual's regular duties or the individual has reason to know of
4 the transaction and that the transaction would be materially affected by the information.

5 **6A-1-203. ~~Obligation of good faith~~ Lease distinguished from security interest. --**

6 ~~Every contract or duty within title 6A imposes an obligation of good faith in its performance or~~
7 ~~enforcement.~~

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

10 (b) A transaction in the form of a lease creates a security interest if the consideration that
11 the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for
12 the term of the lease and is not subject to termination by the lessee, and:

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

15 (2) the lessee is bound to renew the lease for the remaining economic life of the goods or
16 is bound to become the owner of the goods;

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

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

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

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

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

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

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

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

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

1 option is to be performed.

2 (d) Additional consideration is nominal if it is less than the lessee's reasonably
3 predictable cost of performing under the lease agreement if the option is not exercised.

4 Additional consideration is not nominal if:

5 (1) when the option to renew the lease is granted to the lessee, the rent is stated to be the
6 fair market rent for the use of the goods for the term of the renewal determined at the time the
7 option is to be performed; or

8 (2) when the option to become the owner of the goods is granted to the lessee, the price is
9 stated to be the fair market value of the goods determined at the time the option is to be
10 performed.

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

14 ~~**6A-1-204. Time -- Reasonable time -- "Seasonably" Value. -- (1) Whenever title 6A**~~
15 ~~requires any action to be taken within a reasonable time, any time which is not manifestly~~
16 ~~unreasonable may be fixed by agreement.~~

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

19 ~~-(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no~~
20 ~~time is agreed at or within a reasonable time.~~

21 Except as otherwise provided in Chapters 3, 4, and 5, a person gives value for rights if the
22 person acquires them:

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

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

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

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

29 ~~**6A-1-205. Course of dealing and usage of trade Reasonable time -- Seasonableness. -**~~
30 ~~-(1) A course of dealing is a sequence of previous conduct between the parties to a particular~~
31 ~~transaction which is fairly to be regarded as establishing a common basis of understanding for~~
32 ~~interpreting their expressions and other conduct.~~

33 ~~-(2) A usage of trade is any practice or method of dealing having such regularity of~~
34 ~~observance in a place, vocation, or trade as to justify an expectation that it will be observed with~~

1 ~~respect to the transaction in question. The existence and scope of such a usage are to be proved as~~
2 ~~facts. If it is established that such a usage is embodied in a written trade code or similar writing~~
3 ~~the interpretation of the writing is for the court.~~

4 ~~(3) A course of dealing between parties and any usage of trade in the vocation or trade in~~
5 ~~which they are engaged or of which they are or should be aware give particular meaning to and~~
6 ~~supplement or qualify terms of an agreement.~~

7 ~~(4) The express terms of an agreement and an applicable course of dealing or usage of~~
8 ~~trade shall be construed wherever reasonable as consistent with each other; but when such~~
9 ~~construction is unreasonable express terms control both course of dealing and usage of trade and~~
10 ~~course of dealing controls usage of trade.~~

11 ~~(5) An applicable usage of trade in the place where any part of performance is to occur~~
12 ~~shall be used in interpreting the agreement as to that part of the performance.~~

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

16 (a) Whether a time for taking an action required by title 6A is reasonable depends on the
17 nature, purpose, and circumstances of the action.

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

20 ~~**6A-1-206. Statute of frauds for kinds of personal property not otherwise covered**~~

21 ~~**Presumptions.** -- (1) Except in the cases described in subsection (2) of this section, a contract for~~
22 ~~the sale of personal property is not enforceable by way of action or defense beyond five thousand~~
23 ~~dollars (\$5,000) in amount or value of remedy unless there is some writing which indicates that a~~
24 ~~contract for sale has been made between the parties at a defined or stated price, reasonably~~
25 ~~identifies the subject matter, and is signed by the party against whom enforcement is sought or by~~
26 ~~his or her authorized agent.~~

27 ~~(2) Subsection (1) of this section does not apply to contract for the sale of goods (section~~
28 ~~6A-2-201) nor of securities (section 6A-8-113) nor to security agreements (section 6A-9-203).~~

29 Whenever title 6A creates a “presumption” with respect to a fact, or provides that a fact is
30 “presumed,” the trier of fact must find the existence of the fact unless and until evidence is
31 introduced that supports a finding of its nonexistence.

32 SECTION 3. Sections 6A-1-109, 6A-1-207 and 6A-1-208 of the General Laws in
33 Chapter 6A-1 entitled "General Provisions" are hereby repealed.

34 ~~**6A-1-109. Section captions.** -- Section captions are parts of title 6A.~~

1 ~~**6A-1-207. Performance or acceptance under reservation of rights.** --- (1) A party who,~~
2 ~~with explicit reservation of rights, performs or promises performance or assents to performance in~~
3 ~~a manner demanded or offered by the other party does not thereby prejudice the rights reserved.~~
4 ~~Such words as "without prejudice", "under protest", or the like are sufficient.~~

5 ~~(2) Subsection (1) does not apply to an accord and satisfaction.~~

6 ~~**6A-1-208. Option to accelerate at will.** --- A term providing that one party or his or her~~
7 ~~successor in interest may accelerate payment or performance or require collateral or additional~~
8 ~~collateral "at will" or "when he or she deems him or herself insecure" or in words of similar~~
9 ~~import shall be construed to mean that he or she shall have power to do so only if he or she in~~
10 ~~good faith believes that the prospect of payment or performance is impaired. The burden of~~
11 ~~establishing lack of good faith is on the party against whom the power has been exercised.~~

12 SECTION 4. Chapter 6A-1 of the General Laws entitled "General Provisions" is hereby
13 amended by adding thereto the following sections:

14 Part 3

15 Territorial Applicability and General Rules

16 **6A-1-301. Territorial applicability – Parties' power to choose applicable law. -- (a)**
17 Except as otherwise provided in this section, when a transaction bears a reasonable relation to this
18 state and also to another state or nation the parties may agree that the law either of this state or of
19 such other state or nation shall govern their rights and duties.

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

23 (c) If one of the following provisions of title 6A specifies the applicable law, that
24 provision governs and a contrary agreement is effective only to the extent permitted by the law so
25 specified:

26 (1) Section 6A-2-402;

27 (2) Sections 6A-2.1-105 and 2.1-106;

28 (3) Section 6A-4-102;

29 (4) Section 6A-4.1-507;

30 (5) Section 6A-5-116;

31 (6) [RESERVED]

32 (7) Section 6A-8-110;

33 (8) Sections 6A-9-301 through 9-307.

34 **6A-1-302. Variation by agreement. -- (a) Except as otherwise provided in subsection**

1 (b) or elsewhere in title 6A, the effect of provisions of title 6A may be varied by agreement.

2 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by title
3 6A may not be disclaimed by agreement. The parties, by agreement, may determine the standards
4 by which the performance of those obligations is to be measured if those standards are not
5 manifestly unreasonable. Whenever title 6A requires an action to be taken within a reasonable
6 time, a time that is not manifestly unreasonable may be fixed by agreement.

7 (c) The presence in certain provisions of title 6A of the phrase “unless otherwise agreed”,
8 or words of similar import, does not imply that the effect of other provisions may not be varied by
9 agreement under this section.

10 **6A-1-303. Course of performance, course of dealing and usage of trade. -- (a) A**
11 “course of performance” is a sequence of conduct between the parties to a particular transaction
12 that exists if:

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

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

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

20 (c) A “usage of trade” is any practice or method of dealing having such regularity of
21 observance in a place, vocation, or trade as to justify an expectation that it will be observed with
22 respect to the transaction in question. The existence and scope of such a usage must be proved as
23 facts. If it is established that such a usage is embodied in a trade code or similar record, the
24 interpretation of the record is a question of law.

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

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

34 (1) express terms prevail over course of performance, course of dealing, and usage of

1 trade;

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

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

4 (f) Subject to section 6A-2-209, a course of performance is relevant to show a waiver or
5 modification of any term inconsistent with the course of performance.

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

9 **6A-1-304. Obligation of good faith.** -- Every contract or duty within title 6A imposes an
10 obligation of good faith in its performance and enforcement.

11 **6A-1-305. Remedies to be liberally administered.** -- (a) The remedies provided by title
12 6A must be liberally administered to the end that the aggrieved party may be put in as good a
13 position as if the other party had fully performed but neither consequential or special damages nor
14 penal damages may be had except as specifically provided in title 6A or by other rule of law.

15 (b) Any right or obligation declared by title 6A is enforceable by action unless the
16 provision declaring it specifies a different and limited effect.

17 **6A-1-306. Waiver or renunciation of claim or right after breach.** -- A claim or right
18 arising out of an alleged breach may be discharged in whole or in part without consideration by
19 agreement of the aggrieved party in an authenticated record.

20 **6A-1-307. Prima facie evidence by third-party documents.** -- A document in due form
21 purporting to be a bill of lading, policy or certificate of insurance, official weigher's or
22 inspector's certificate, consular invoice, or any other document authorized or required by the
23 contract to be issued by a third-party is prima facie evidence of its own authenticity and
24 genuineness and of the facts stated in the document by the third-party.

25 **6A-1-308. Performance or acceptance under reservation of rights.** -- (a) A party that
26 with explicit reservation of rights performs or promises performance or assents to performance in
27 a manner demanded or offered by the other party does not thereby prejudice the rights reserved.
28 Such words as "without prejudice," "under protest," or the like are sufficient.

29 (b) Subsection (a) does not apply to an accord and satisfaction.

30 **6A-1-309. Option to accelerate at will.** -- A term providing that one party or that party's
31 successor in interest may accelerate payment or performance or require collateral or additional
32 collateral "at will" or when the party "deems itself insecure," or words of similar import, means
33 that the party has power to do so only if that party in good faith believes that the prospect of
34 payment or performance is impaired. The burden of establishing lack of good faith is on the party

1 [against which the power has been exercised.](#)

2 **6A-1-310. Subordinated obligations.** -- [An obligation may be issued as subordinated to](#)
3 [performance of another obligation of the person obligated, or a creditor may subordinate its right](#)
4 [to performance of an obligation by agreement with either the person obligated or another creditor](#)
5 [of the person obligated. Subordination does not create a security interest as against either the](#)
6 [common debtor or a subordinated creditor.](#)

7 SECTION 5. Section 6A-2-202 of the General Laws in Chapter 6A-2 entitled "Sales" is
8 hereby amended to read as follows:

9 **6A-2-202. Final written expression -- Parol or extrinsic evidence.** -- Terms with
10 respect to which the confirmatory memoranda of the parties agree or which are otherwise set
11 forth in a writing intended by the parties as a final expression of their agreement with respect to
12 such terms as are included therein may not be contradicted by evidence of any prior agreement or
13 of a contemporaneous oral agreement but may be explained or supplemented,

14 (a) By [course of performance](#), course of dealing, or usage of trade (section ~~6A-1-205~~ [6A-](#)
15 [1-303](#)) ~~or by course of performance (section 6A-2-208)~~; and

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

18 SECTION 6. Section 6A-2-208 of the General Laws in Chapter 6A-2 entitled "Sales" is
19 hereby repealed.

20 ~~**6A-2-208. Course of performance or practical construction.** -- (1) Where the contract~~
21 ~~for sale involves repeated occasions for performance by either party with knowledge of the nature~~
22 ~~of the performance and opportunity for objection to it by the other, any course of performance~~
23 ~~accepted or acquiesced in without objection shall be relevant to determine the meaning of the~~
24 ~~agreement.~~

25 ~~-(2) The express terms of the agreement and any such course of performance, as well as~~
26 ~~any course of dealing and usage of trade, shall be construed whenever reasonable as consistent~~
27 ~~with each other; but when such construction is unreasonable, express terms shall control course of~~
28 ~~performance and course of performance shall control both course of dealing and usage of trade~~
29 ~~(section 6A-1-205.)~~

30 ~~-(3) Subject to the provisions of the next section on modification and waiver, such course~~
31 ~~of performance shall be relevant to show a waiver or modification of any term inconsistent with~~
32 ~~such course of performance.~~

33 SECTION 7. Sections 6A-2.1-207, 6A-2.1-501, 6A-2.1-518, 6A-2.1-519, 6A-2.1-527 and
34 6A-2.1-528 of the General Laws in Chapter 6A-2.1 entitled "Leases" are hereby amended to read

1 as follows:

2 ~~**6A-2.1-207. Course of performance or practical construction [Reserved]. -- (1) If a**~~
3 ~~lease contract involves repeated occasions for performance by either party with knowledge of the~~
4 ~~nature of the performance and opportunity for objection to it by the other, any course of~~
5 ~~performance accepted or acquiesced in without objection is relevant to determine the meaning of~~
6 ~~the lease agreement.~~

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

12 ~~(3) Subject to the provisions of section 6A-2.1-208 on modification and waiver, course~~
13 ~~of performance is relevant to show a waiver or modification of any term inconsistent with the~~
14 ~~course of performance.~~

15 **6A-2.1-501. Default: Procedure. --** (1) Whether the lessor or the lessee is in default
16 under a lease contract is determined by the lease agreement and this chapter.

17 (2) If the lessor or the lessee is in default under the lease contract, the party seeking
18 enforcement has rights and remedies as provided in this chapter and, except as limited by this
19 chapter, as provided in the lease agreement.

20 (3) If the lessor or the lessee is in default under the lease contract, the party seeking
21 enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by
22 self help or any available judicial procedure or nonjudicial procedure, including administrative
23 proceeding, arbitration, or the like, in accordance with this chapter.

24 (4) Except as otherwise provided in section ~~6A-1-106(1)~~ [6A-1-305\(a\)](#) or this chapter or
25 the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

26 (5) If the lease agreement covers both real property and goods, the party seeking
27 enforcement may proceed under this part as to the goods, or under other applicable law as to both
28 the real property and the goods in accordance with that party's rights and remedies in respect of
29 the real property, in which case this part does not apply.

30 **6A-2.1-518. Cover -- Substitute goods. --** (1) After a default by a lessor under the lease
31 contract of the type described in section 6A-2.1-508(1), or, if agreed, after other default by the
32 lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease
33 goods in substitution for those due from the lessor.

34 (2) Except as otherwise provided with respect to damages liquidated in the lease

1 agreement (section 6A-2.1-504) or otherwise determined pursuant to agreement of the parties
2 (sections ~~6A-1-102(3)~~ [6A-1-302](#) and 6A-2.1-503), if a lessee's cover is by a lease agreement
3 substantially similar to the original lease agreement and the new lease agreement is made in good
4 faith and in a commercially reasonable manner, the lessee may recover from the lessor as
5 damages (i) the present value, as of the date of the commencement of the term of the new lease
6 agreement, of the rent under the new lease agreement applicable to that period of the new lease
7 term which is comparable to the then remaining term of the original lease agreement minus the
8 present value as of the same date of the total rent for the then remaining lease term of the original
9 lease agreement, and (ii) any incidental or consequential damages, less expenses saved in
10 consequence of the lessor's default.

11 (3) If a lessee's cover is by lease agreement that for any reason does not qualify for
12 treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the
13 lessor as if the lessee had elected not to cover and section 6A-2.1-519 governs.

14 **6A-2.1-519. Lessee's damages for nondelivery, repudiation, default, and breach of**
15 **warranty in regard to accepted goods.** -- (1) Except as otherwise provided with respect to
16 damages liquidated in the lease agreement (section 6A-2.1-504) or otherwise determined pursuant
17 to agreement of the parties (sections ~~6A-1-102(3)~~ [6A-1-302](#) and 6A-2.1-503), if a lessee elects
18 not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason
19 does not qualify for treatment under section 6A-2.1-518(2), or is by purchase or otherwise, the
20 measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of
21 acceptance by the lessee is the present value, as of the date of the default, of the then market rent
22 minus the present value as of the same date of the original rent, computed for the remaining lease
23 term of the original lease agreement, together with incidental and consequential damages, less
24 expenses saved in consequence of the lessor's default.

25 (2) Market rent is to be determined as of the place for tender or, in cases of rejection
26 after arrival or revocation of acceptance, as of the place of arrival.

27 (3) Except as otherwise agreed, if the lessee has accepted goods and given notification
28 (section 6A-2.1-516(3)), the measure of damages for nonconforming tender or delivery or other
29 default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as
30 determined in any manner that is reasonable together with incidental and consequential damages,
31 less expenses saved in consequence of the lessor's default.

32 (4) Except as otherwise agreed, the measure of damages for breach of warranty is the
33 present value at the time and place of acceptance of the difference between the value of the use of
34 the goods accepted and the value if they had been as warranted for the lease term, unless special

1 circumstances show proximate damages of a different amount, together with incidental and
2 consequential damages, less expenses saved in consequence of the lessor's default or breach of
3 warranty.

4 **6A-2.1-527. Lessor's rights to dispose of goods.** -- (1) After a default by a lessee under
5 the lease contract of the type described in section 6A-2.1-523(1) or 6A-2.1-523(3)(a) or after the
6 lessor refuses to deliver or takes possession of goods (section 6A-2.1-525 or 6A-2.1-526), or, if
7 agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the
8 undelivered balance thereof by lease, sale, or otherwise.

9 (2) Except as otherwise provided with respect to damages liquidated in the lease
10 agreement (section 6A-2.1-504) or otherwise determined pursuant to agreement of the parties
11 (sections ~~6A-1-102(3)~~ [6A-1-302](#) and 6A-2.1-503), if the disposition is by lease agreement
12 substantially similar to the original lease agreement and the new lease agreement is made in good
13 faith and in a commercially reasonable manner, the lessor may recover from the lessee as
14 damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new
15 lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining
16 lease term of the original lease agreement minus the present value, as of the same date, of the rent
17 under the new lease agreement applicable to that period of the new lease term which is
18 comparable to the then remaining term of the original lease agreement, and (iii) any incidental
19 damages allowed under section 6A-2.1-530, less expenses saved in consequence of the lessee's
20 default.

21 (3) If the lessor's disposition is by lease agreement that for any reason does not qualify
22 for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the
23 lessee as if the lessor had elected not to dispose of the goods and section 6A-2.1-528 governs.

24 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
25 value as a result of a disposition under this section takes the goods free of the original lease
26 contract and any rights of the original lessee even though the lessor fails to comply with one or
27 more of the requirements of this chapter.

28 (5) The lessor is not accountable to the lessee for any profit made on any disposition. A
29 lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for
30 any excess over the amount of the lessee's security interest (section 6A-2.1-508(5)).

31 **6A-2.1-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or**
32 **other default.** -- (1) Except as otherwise provided with respect to damages liquidated in the lease
33 agreement (section 6A-2.1-504) or otherwise determined pursuant to agreement of the parties
34 (sections ~~6A-1-102(3)~~ [6A-1-302](#) and 6A-2.1-503), if a lessor elects to retain the goods or a lessor

1 elects to dispose of the goods and the disposition is by lease agreement that for any reason does
2 not qualify for treatment under section 6A-2.1-527(2), or is by sale or otherwise, the lessor may
3 recover from the lessee as damages for a default of the type described in section 6A-2.1-523(1) or
4 6A-2.1-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of
5 the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken
6 possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which
7 the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date
8 determined under clause (i) of the total rent for the then remaining lease term of the original lease
9 agreement minus the present value as of the same date of the market rent at the place where the
10 goods are located computed for the same lease term, and (iii) any incidental damages allowed
11 under section 6A-2.1-530, less expenses saved in consequence of the lessee's default.

12 (2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in
13 as good a position as performance would have, the measure of damages is the present value of the
14 profit, including reasonable overhead, the lessor would have made from full performance by the
15 lessee, together with any incidental damages allowed under section 6A-2.1-530, due allowance
16 for costs reasonably incurred and due credit for payments or proceeds of disposition.

17 SECTION 8. Sections 6A-4.1-106 and 6A-4.1-204 of the General Laws in Chapter 6A-
18 4.1 entitled "Funds Transfers" are hereby amended to read as follows:

19 **6A-4.1-106. Time payment order is received.** -- (a) The time of receipt of a payment
20 order or communication cancelling or amending a payment order is determined by the rules
21 applicable to receipt of a notice stated in section ~~6A-1-201(27)~~ [6A-1-202](#). A receiving bank may
22 fix a cut-off time or times on a funds transfer business day for the receipt and processing of
23 payment orders and communications cancelling or amending payment orders. Different cut off
24 times may apply to payment orders, cancellations, or amendments, or to different categories of
25 payment orders, cancellations, or amendments. A cut off time may apply to senders generally or
26 different cut off times may apply to different senders or categories of payment orders. If a
27 payment order or communication cancelling or amending a payment order is received after the
28 close of a funds transfer business day or after the appropriate cut off time on a funds transfer
29 business day, the receiving bank may treat the payment order or communication as received at the
30 opening of the next funds transfer business day.

31 (b) If this chapter refers to an execution date or payment date or states a day on which a
32 receiving bank is required to take action, and the date or day does not fall on a funds transfer
33 business day, the next day that is a funds transfer business day is treated as the date or day stated,
34 unless the contrary is stated in this chapter.

1 **6A-4.1-204. Refund of payment and duty of customer to report with respect to**
2 **unauthorized payment order.** -- (a) If a receiving bank accepts a payment order issued in the
3 name of its customer as sender which is (i) not authorized and not effective as the order of the
4 customer under section 6A-4.1-202, or (ii) not enforceable, in whole or in part, against the
5 customer under section 6A-4.1-203, the bank shall refund any payment of the payment order
6 received from the customer to the extent the bank is not entitled to enforce payment and shall pay
7 interest on the refundable amount calculated from the date the bank received payment to the date
8 of the refund. However, the customer is not entitled to interest from the bank on the amount to be
9 refunded if the customer fails to exercise ordinary care to determine that the order was not
10 authorized by the customer and to notify the bank of the relevant facts within a reasonable time
11 not exceeding ninety (90) days after the date the customer received notification from the bank
12 that the order was accepted or that the customer's account was debited with respect to the order.
13 The bank is not entitled to any recovery from the customer on account of a failure by the
14 customer to give notification as stated in this section.

15 (b) Reasonable time under subsection (a) may be fixed by agreement as stated in section
16 ~~6A-1-204(1)~~ [6A-1-302\(b\)](#), but the obligation of a receiving bank to refund payment as stated in
17 subsection (a) may not otherwise be varied by agreement.

18 SECTION 9. Section 6A-5-103 of the General Laws in Chapter 6A-5 entitled "Letters of
19 Credit" is hereby amended to read as follows:

20 **6A-5-103. Scope.** -- (a) This chapter applies to letters of credit and to certain rights and
21 obligations arising out of transactions involving letters of credit.

22 (b) The statement of a rule in this chapter does not by itself require, imply, or negate
23 application of the same or a different rule to a situation not provided for, or to a person not
24 specified, in this chapter.

25 (c) With the exception of this subsection, subsections (a) and (d), sections 6A-5-
26 102(a)(9) and (10), 6A-5-106(d), and 6A-5-114(d), and except to the extent prohibited in sections
27 ~~6A-1-102(3)~~ [6A-1-302](#) and 6A-5-117(d), the effect of this chapter may be varied by agreement or
28 by a provision stated or incorporated by reference in an undertaking. A term in an agreement or
29 undertaking generally excusing liability or generally limiting remedies for failure to perform
30 obligations is not sufficient to vary obligations prescribed by this chapter.

31 (d) Rights and obligations of an issuer to a beneficiary or a nominated person under a
32 letter of credit are independent of the existence, performance, or nonperformance of a contract or
33 arrangement out of which the letter of credit arises or which underlies it, including contracts or
34 arrangements between the issuer and the applicant and between the applicant and the beneficiary.

1 SECTION 10. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY -- THE
UNIFORM COMMERCIAL CODE

- 1 This act would revise Article 1 of the Uniform Commercial Code to make clear that
- 2 Article 1 applies only to matters which are subject to the Uniform Commercial Code.
- 3 This act would take effect upon passage.

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