**South Carolina General Assembly**

120th Session, 2013-2014

**A213, R207, S343**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Hayes

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Introduced in the Senate on February 6, 2013

Introduced in the House on March 25, 2014

Last Amended on March 19, 2014

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Governor's Action: June 2, 2014, Signed

Summary: Uniform Commercial Code

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 2/6/2013 Senate Introduced and read first time ([Senate Journal‑page 14](file:///H%3A%5CSJ%20Archive%5C2013%5C02-06-13.docx))

 2/6/2013 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 14](file:///H%3A%5CSJ%20Archive%5C2013%5C02-06-13.docx))

 4/1/2013 Senate Referred to Subcommittee: Gregory (ch), Allen, Bennett, Johnson, Turner

 3/12/2014 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 8](file:///H%3A%5CSJ%20Archive%5C2014%5C03-12-14.docx))

 3/19/2014 Senate Committee Amendment Adopted ([Senate Journal‑page 35](file:///H%3A%5CSJ%20Archive%5C2014%5C03-19-14.docx))

 3/19/2014 Senate Read second time ([Senate Journal‑page 35](file:///H%3A%5CSJ%20Archive%5C2014%5C03-19-14.docx))

 3/19/2014 Senate Roll call Ayes‑39 Nays‑4 ([Senate Journal‑page 35](file:///H%3A%5CSJ%20Archive%5C2014%5C03-19-14.docx))

 3/20/2014 Senate Read third time and sent to House ([Senate Journal‑page 21](file:///H%3A%5CSJ%20Archive%5C2014%5C03-20-14.docx))

 3/25/2014 House Introduced and read first time ([House Journal‑page 17](file:///H%3A%5CHJ%20Archive%5C2014%5C03-25-14.docx))

 3/25/2014 House Referred to Committee on **Judiciary** ([House Journal‑page 17](file:///H%3A%5CHJ%20Archive%5C2014%5C03-25-14.docx))

 5/14/2014 House Committee report: Favorable **Judiciary** ([House Journal‑page 4](file:///H%3A%5CHJ%20Archive%5C2014%5C05-14-14.docx))

 5/20/2014 House Read second time ([House Journal‑page 47](file:///H%3A%5CHJ%20Archive%5C2014%5C05-20-14.docx))

 5/20/2014 House Roll call Yeas‑104 Nays‑0 ([House Journal‑page 48](file:///H%3A%5CHJ%20Archive%5C2014%5C05-20-14.docx))

 5/21/2014 House Read third time and enrolled ([House Journal‑page 6](file:///H%3A%5CHJ%20Archive%5C2014%5C05-21-14.docx))

 5/29/2014 Ratified R 207

 6/2/2014 Signed By Governor

 6/11/2014 Effective date See Act for Effective Date

 6/12/2014 Act No. 213

**VERSIONS OF THIS BILL**

[2/6/2013](file:///p%3A%5Cpprever%5C2013-14%5C343_20130206.docx)

[3/12/2014](file:///p%3A%5Cpprever%5C2013-14%5C343_20140312.docx)

[3/19/2014](file:///p%3A%5Cpprever%5C2013-14%5C343_20140319.docx)

[5/14/2014](file:///p%3A%5Cpprever%5C2013-14%5C343_20140514.docx)

(A213, R207, S343)

**AN ACT TO AMEND CHAPTER 7, TITLE 36, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ARTICLE 7 OF THE UNIFORM COMMERCIAL CODE, SO AS TO REVISE THE CHAPTER IN ITS ENTIRETY IN ORDER TO PROVIDE FOR THE USE OF ELECTRONIC DOCUMENTS OF TITLE; AND TO AMEND CHAPTER 1, TITLE 36, SECTIONS 36‑2‑103, 36‑2‑104, 36‑2‑202, 36‑2‑310, 36‑2‑323, 36‑2‑401, 36‑2‑503, 36‑2‑505, 36‑2‑506, 36‑2‑509, 36‑2‑605, 36‑2‑705, 36‑2A‑103, 36‑2A‑501, 36‑2A‑514, 36‑2A‑518, 36‑2A‑519, 36‑2A‑527, 36‑2A‑528, 36‑3‑103, 36‑4‑104, 36‑4‑210, 36‑4A‑105, 36‑4A‑106, 36‑4A‑204, 36‑5‑103, 36‑8‑102, 36‑9‑102, 36-8-103, 36‑9‑203, 36‑9‑207, 36‑9‑208, 36‑9‑301, 36-9-310, 36‑9‑312, 36‑9‑313, 36‑9‑314, 36‑9‑317, 36‑9‑338, 36‑9‑601, ALL RELATING TO THE UNIFORM COMMERCIAL CODE, SO AS TO MAKE CONFORMING CHANGES; TO REPEAL SECTION 36-2-208 RELATING TO THE COMMERCIAL CODE GOVERNING CERTAIN SALES AND SECTION 36-2A-207 RELATING TO THE COMMERCIAL CODE GOVERNING LEASES; TO PROVIDE FINDINGS THAT THE PROVISIONS OF THIS ACT RELATE TO ONE SUBJECT; TO STATE THAT PROVISIONS OF THIS ACT ARE SEVERABLE; TO PROVIDE FOR THE PROSPECTIVE APPLICATION OF THIS ACT; AND TO PROVIDE FOR THE EFFECTIVE DATE OF THIS ACT.**

Be it enacted by the General Assembly of the State of South Carolina:

**General provisions, conforming changes**

SECTION 1. Chapter 1, Title 36 of the 1976 Code is amended to read:

“CHAPTER 1

Commercial Code‑General Provisions

Part 1

Short Title, Construction, Application

and Subject Matter of the Act

 Section 36‑1‑101. (1) This title shall be known and may be cited as the Uniform Commercial Code.

 (2) This chapter may be cited as Uniform Commercial Code‑General Provisions.

 Section 36‑1‑102. This chapter applies to a transaction to the extent that it is governed by another chapter of this title, known as the Uniform Commercial Code.

 Section 36‑1‑103. (a) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:

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

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

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

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

SOUTH CAROLINA REPORTER’S COMMENTS

With minor stylistic changes, revised Section 36‑1‑103 combines former Section 36‑1‑102(1) and (2). Subsection (1) of former Section 36‑1‑102 provided that ‘[t]his act shall be liberally construed and applied to promote its underlying purposes and policies’ and subsection (2) identified those purposes and policies. Except for changing the references to ‘this act’ in the former statute to ‘the Uniform Commercial Code’ and making ‘minor stylistic changes,’ the language of subsection (a) is the same as former Section 1‑102(1) and (2).

 Section 36‑1‑104. The Uniform Commercial Code, being a general enactment of chapters under Title 36, intended as a unified coverage of its subject matter, no part of it shall be considered to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of changing the reference from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑104 is identical to former Section 36‑1‑104. In Atlas Food Systems and Services, Inc. v. Crane National Vendors Division of Unidynamics Corp., 319 S.C. 556, 462 S.E.2d 858 (1995), the court held that under former Section 36‑1‑104, a 1988 amendment to S.C. Code Ann. Section 15‑3‑530(1) reducing the general contract statute of limitations to three years, did not repeal, by implication, the preexisting six year statute of limitations for breach of contract obligations under Article 2 of the Uniform Commercial Code, now codified at S.C. Code Ann. Section 36‑2‑725(1) (2003).

 Section 36‑1‑105. If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title that can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

SOUTH CAROLINA REPORTER’S COMMENTS

Except for changing references from ‘this act’ to ‘the Uniform Commercial Code,’ revised Section 36‑1‑105 is identical to former Section 36‑1‑108. Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑108.

 Section 36‑1‑106. In the Uniform Commercial Code, unless the statutory context otherwise requires:

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

 (b) words of any gender also refer to any other gender.

SOUTH CAROLINA REPORTER’S COMMENTS

With the exception of minor stylistic changes, revised Section 36‑1‑106 is identical to former Section 36‑1‑102(5). Neither the appellate courts of South Carolina nor the federal courts have interpreted former Section 36‑1‑102(5).

 Section 36‑1‑107. Section captions are part of the Uniform Commercial Code, with the exception of the subsection headings of Chapter 9, Title 36, which are not part of the provisions. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions of each chapter, are to be included by the Code Commissioner in the annotated versions of this title, but are not considered part of the provisions of this title and do not indicate legislative intent.

SOUTH CAROLINA REPORTER’S COMMENTS

Section captions are part of the Uniform Commercial Code, but neither the Official Comments nor the South Carolina Reporter’s Comments are part of the Uniform Commercial Code. Moreover, the Official Comments should not be relied upon as legislative history in interpreting provisions of the statute.

 Section 36‑1‑108. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., except that nothing in this title modifies, limits, or supersedes Section 7001(c) of that act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that act.

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑108 is an ‘E‑Sign Shield’ provision drafted to exempt revised Article 1 from the effect of Section 7001 of the Federal Electronic Signatures in Global and National Commerce Act [‘E‑Sign’], 15 U.S.C. Section 7001. As a general rule, in transactions affecting interstate or foreign commerce, Section 7001 preempts any statute that denies legal effect, validity, or enforceability to a signature, contract, or other record solely because it is in electronic form. However, 15 U.S.C. Section 7002(a) empowers the states to exempt state law from the provisions of Section 7001. Under Section 7002(a)(1), a state can supersede the provisions of Section 7001 by enacting the 1999 Official Text of the Uniform Electronic Transactions Act [UETA]. In the alternative, a state can supersede the provisions of Section 7001 by enacting a statute that meets the requirements of Section 7002(a)(2). The Drafters assert that revised Article 1, including revised Section 1‑108 meets the requirements of Section 7002(a)(2), and exempts revised Article 1 from preemption. *See* Revised Section 1‑108, Official Comment 1.

Part 2

General Definitions and Principles of Interpretation

 Section 36‑1‑201. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of the Uniform Commercial Code that apply to particular chapters or parts thereof, have the meanings stated.

 (b) Subject to definitions contained in other chapters of this title that apply to particular chapters or parts thereof:

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

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

 (3) ‘Agreement’, as distinguished from ‘contract’, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 36‑1‑303.

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

 (5) ‘Bearer’ means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

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

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

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

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

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

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

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

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

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

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

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

 (15) ‘Delivery’, with respect to an electronic document of title means voluntary transfer of control, and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

 (16) ‘Document of title’ means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee’s possession that are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

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

 (18) ‘Fungible goods’ means:

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

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

 (19) ‘Genuine’ means free of forgery or counterfeiting.

 (20) ‘Good faith’, except as otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

 (21) ‘Holder’ means:

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

 (B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

 (C) the person in control of a negotiable electronic document of title.

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

 (23) ‘Insolvent’ means:

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

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

 (C) being insolvent within the meaning of Federal Bankruptcy Law.

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

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

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

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

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

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

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

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

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

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

 (34) ‘Right’ includes remedy.

 (35) ‘Security interest’ means an interest in personal property or fixtures, which secures payment or performance of an obligation. ‘Security interest’ includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. ‘Security interest’ does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 36‑2‑401, but a buyer also may acquire a ‘security interest’ by complying with Chapter 9. Except as otherwise provided in Section 36‑2‑505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a ‘security interest’, but a seller or lessor also may acquire a ‘security interest’ by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 36‑2‑401 is limited in effect to a reservation of a ‘security interest’. Whether a transaction in the form of a lease creates a ‘security interest’ is determined pursuant to Section 36‑1‑203.

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

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA REPORTER’S COMMENTS

 1. Definitions Deleted: The 2014 amendments to Article 1 delete the definitions of ‘honor’ and ‘telegram,’ terms that were defined in former Section 36‑1‑201(21) and (41).

 2. Definitions Reformulated as substantive provisions and codified in separate sections of Article 1:

 a. Notice, Knowledge, Notifications, Receiving Notice: Former Section 36‑1‑201(25)–(27) defined notice, knowledge, notification, and related terms. The 2014 amendment deleted those definitions from revised Section 36‑1‑201, and codified them in revised Section 36‑1‑202.

 b. Presumption: Former Section 36‑1‑201(31) defined the term presumption. The 2014 amendments to Article 1 delete that definition from revised Section 36‑1‑201. However, the 2014 amendments codify, as revised Section 36‑1‑206, the definition of presumption in former Section 36‑1‑201(31), making only changes of style.

 c. Value: Former Section 36‑1‑201(44) defined the term ‘value’. The 2014 amendments to Article 1 do not include value among the terms defined in revised Section 36‑1‑201(b). However, the amendments codified, without substantive change, the definition in former Section 36‑1‑201(44) in revised Section 36‑1‑204.

 d. Distinguishing a lease from a security interest: In 2001, the definition of security interest in former Section 36‑1‑201(37) was amended to include rules for determining whether a transaction in the form of a lease creates an Article 9 security interest. The 2014 amendments delete those rules from the definition of security interest in revised Section 36‑1‑201(35), but codify them in substantively identical form in revised Section 36‑1‑203.

 2. New definitions and terms added by the 2014 amendments to the list of definitions in revised Section 36‑1‑201(b):

 a. Consumer—Section 36‑1‑201(b)(11): The 2014 amendments add consumer to terms defined in revised Section 36‑1‑201(b). Revised Section 36‑1‑201(b)(11) defines consumer as an individual entering into a transaction primarily for personal family or household purposes. The definition is consistent with the use of the term under Article 9. *See* S.C. Code Section 36‑9‑102(a)(22)–(26).

 b. Present Value—Section 36‑1‑201(b)(28): Although present value was not separately defined in former Section 36‑1‑201, the rules for distinguishing leases from security interests were codified in former Section 36‑1‑201(37), under the definition of ‘security interest.’ The 2014 amendments define ‘Present value’ in revised Section 36‑1‑201(28). The 2014 amendments delete the rules for distinguishing leases from security interests from the revised definition of security interest, but codify them in revised Section 36‑1‑203.

 c. Record—Section 36‑1‑201(b)(31): The 2014 amendments to former Section 36‑1‑201 add ‘record’ to the list of defined terms. Revised Section 36‑1‑201(b)(31) provides that record means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form. The term encompasses both written and electronic communications. Although new to Article 1, in 2001, the provisions of Article 9 were revised to include a substantively identical definition of record. *See* Section 36‑9‑102(a)(70).

 d. State—Section 36‑1‑201(b)(38): The 2014 amendments add the definition of ‘State’ that is used in all acts prepared by the National Conference on Uniform State Laws or its successor, the Uniform Laws Commission.

 3. Substantive changes to the definitions or terms defined in both former Section 36‑1‑201 and revised Section 36‑1‑201(b) in the 2014 amendments:

 a. Bearer—Section 36‑1‑201(b)(5): The definition of bearer is amended to include a person in control of negotiable electronic documents of title as well as a person in possession of a negotiable tangible document of title. The amendment, equating control of a negotiable electronic document of title with possession of negotiable tangible document of title, is one of a set of provisions drafted to facilitate the recognition of electronic documents.

 b. Bill of Lading—Section 36‑1‑201(b)(6): The 2014 amendments delete the reference to ‘airbills’ from the definition of a bill of lading because it is no longer necessary. In addition, the revised Section 36‑1‑201(b)(6) expressly states that the definition of a bill of lading does not include a warehouse receipt.

 c. Buyer in Ordinary Course of Business—Section 36‑1‑201(b)(9): The 2014 amendments make two significant revisions to the definition of buyer in ordinary course of business. First, revised Section 36‑1‑201(b)(9) provides some guidelines for determining when a person buys goods ‘in the ordinary course.’ Under the revised definition, a buyer buys in the ordinary course if the sale ‘comports with the usual or customary practices in the kind of business in which the seller is engaged’ or with the ‘seller’s own usual or customary practices.’ Second, to qualify as a buyer in ordinary course of business, under the revised definition, a buyer must have possession of the goods or the right to recover the goods from the seller under Article 2. *See* S.C. Code Sections 36‑2‑501, 36‑2‑502, and 36‑2‑716.

 d. Delivery—Section 36‑1‑201(b)(15): The definition of delivery is amended to include the voluntary transfer of control of an electronic document of title as well as the voluntary transfer of possession of a tangible document of title. This amendment is one of a set of related provisions designed to facilitate the recognition of electronic documents of title.

 e. Document of Title—Section 36‑1‑201(b)(16): The revised definition of document of title explicitly makes the obligation or designation of a bailee essential to a document of title. Revised Section 36‑1‑201(b)(16) also defines ‘electronic document of title’ and ‘tangible document of title.’ An electronic document of title is a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is a document of title evidenced by a record consisting of information inscribed on a tangible medium. Note that the term ‘record,’ used in defining both electronic and tangible documents of title, is defined in revised Section 36‑1‑201(b)(31) as ‘information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.’

 f. Good Faith—36‑1‑201(b)(20): The definition of good faith in Article 1 is amended to require observance of reasonable commercial standards of fair dealing as well as honesty in fact.

 g. Holder—Section 36‑1‑201(b)(21): The 2014 amendments restructures and substantively revises the definition of holder.

Subsection (A) applies to negotiable instruments and revises the definition of holder to conform to the use of the term in the revision of Article 3 that became effective in 2008. Subsection (B) governs negotiable tangible documents of title and provides that a person is a holder, if the person has possession of the document and the goods covered are deliverable either to the bearer or to the order of the person in possession of the document. Subsection (C) applies to negotiable electronic documents of title and provides that the person in control of the document is a holder.

 h. Security Interest—Section 36‑1‑201(b)(35): In addition to deleting the rules for distinguishing a lease from security interest from the definition of a security interest, the 2014 amendments further revise the definition to reflect changes in the scope of Article 9. Under revised Section 36‑1‑201(b)(35), the definition includes the interest of an Article 9 consignor, as well as rights acquired by a buyer of accounts, chattel paper, payment intangibles, or promissory notes. *See* Section 36‑9‑109(a)(3) & (4).

 i. Signed—Section 36‑1‑201(b)(37) : The definition of signed adopts the standard used in Article 9 to define the term ‘authenticate.’ However, under the definition in revised Section 36‑1‑201(b)(37), only records in writing can be signed.

 j. Warehouse Receipt—Section 36‑1‑201(b)(42): The definition of warehouse receipt is revised to state expressly that a warehouse receipt is a document of title.

 4. Definitions of the following terms that are defined in both former Section 36‑1‑201 and revised Section 36‑1‑201(b) as clarified by the 2014 amendments:

 a. Agreement—Section 36‑1‑201(b)(3): The revised definition of agreement emphasizes the distinction between an agreement and a contract. The amendment also cites revised Section 36‑1‑303 as the basis for inferring terms of an agreement from course of performance, course of dealing, and usage of trade.

 b. Bank—Section 36‑1‑201(b)(4): Revised Section 36‑1‑201(b)(4) adopts the definition of bank currently codified in Section 36‑4‑105(1).

 c. Conspicuous—Section 36‑1‑201(b)(10): The definition of conspicuous is amended to provide more specific examples of terms that are conspicuous.

 d. Contract—Section 36‑1‑201(b)(12): The revised definition emphasizes the distinction between an agreement and a contract.

 e. Fungible Goods—Section 36‑1‑201(b)(18): The revised definition eliminates a reference to securities because Article 8 no longer uses the term fungible to describe securities.

 f. Insolvent—Section 36‑1‑201(b)(23): The revised definition clarifies that there are three alternative tests to determine whether a person is insolvent.

 g. Money—Section 36‑1‑201(b)(24): The revised definition provides that a medium of exchange constitutes money only if it is currently authorized by a government. The revised definition also includes a monetary unit of account established by an intergovernmental organization or an agreement between two or more governments.

 h. Purchase—Section 36‑1‑201(b)(29): The revised definition of purchase includes taking an interest in property by lease.

 i. Surety—Section 36‑1‑201(b)(39): The revised definition includes not only guarantors, but also other secondary obligors.

 4. Definitions from the former Section 36‑1‑201adopted and included in revised Section 36‑1‑201(b) without substantive changes:

 a. Action

 b. Aggrieved party

 c. Branch

 d. Burden of establishing

 e. Creditor

 f. Fault

 g. Genuine

 h. Insolvency Proceeding

 i. Organization

 j. Party

 k. Person

 l. Purchaser

 m. Remedy

 n. Representative

 o. Right

 p. Send

 q. Term

 r. Unauthorized Signature

 Section 36‑1‑202. (a) Subject to subsection (f), a person has ‘notice’ of a fact if the person:

 (1) has actual knowledge of it;

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

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

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

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

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

 (e) Subject to subsection (f), a person ‘receives’ a notice or notification when:

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

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

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

SOUTH CAROLINA REPORTER’S COMMENTS

This section is derived from former Sections 36‑1‑201(25)–(27). Subsection (a), specifying when a person has notice of a fact, is identical to former Section 36‑1‑201(25)(a)–(c). Subsection (b), defining ‘knowledge’ and ‘knows’ is adopted without substantive changes from the second paragraph of former Section 36‑1‑201(25). Subsection (c), defining ‘discover’ and ‘learn,’ is also substantively identical to the second paragraph of former Section 36‑1‑201(25). Subsection (d), specifying when a person ‘notifies’ or gives ‘notice or notification,’ is substantively identical to the first sentence of former Section 36‑1‑201(26). Subsection (e), specifying when a person receives notice, is substantively identical to the second sentence of former Section 36‑1‑201(26), but unlike the former statute, subsection (e) expressly states that the receipt of notice or notification by a person is subject to the rules of determining when notification received by an organization is effective. Subsection (f), specifying when notification received by an organization is effective, is substantially identical Section 36‑1‑201 (27).

NOTE: Former Section 36‑1‑202 provided that a document in due form purporting to be a bill of lading or any other document authorized or required to be issued by a third party was prima facie evidence of its own authority, genuineness, and of the facts stated in the document by a third party. With minor stylistic changes, former Section 36‑1‑202 is codified in revised Section 36‑1‑307.

 Section 36‑1‑203. (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SOUTH CAROLINA REPORTER’S COMMENTS

With one exception, this section is substantively identical to the portion of former Section 36‑1‑201(37) that provided the rules and process for distinguishing between a lease and a transaction creating a security interest. The exception is that revised Section 36‑1‑203 does not include the definition of present value , which is codified in revised Section 36‑1‑201(b)(28).

NOTE: Former Section 36‑1‑203 imposed the obligation of good faith in the performance and enforcement of contract within the scope of the code. The obligation of good faith is now imposed under revised Section 36‑1‑304.

 Section 36‑1‑204. Except as otherwise provided in Chapters 3, 4, 4A, 5, and 6 of this title, a person gives value for rights if the person acquires them:

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

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

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

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

SOUTH CAROLINA REPORTER’S COMMENTS

The definition of value in revised Section 36‑1‑204 is unchanged from former Section 36‑1‑201(44).

NOTE: Former Section 36‑1‑204 defined the terms ‘reasonable time’ and ‘seasonably.’ Those terms are now defined in revised Section 36‑1‑205.

 Section 36‑1‑205. (a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

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

SOUTH CAROLINA REPORTER’S COMMENTS

Revised Section 36‑1‑205 is based upon former Section 36‑1‑205(2)‑(3) and provides the same standards for determining a ‘reasonable time’ within which to take an action required by the Uniform Commercial Code and whether an action is taken ‘seasonably’. The revised statute, however, does not include a provision comparable to former Section 36‑1‑204(1), addressing agreements to define a reasonable time.

NOTE: Former Section 36‑1‑205 defined ‘course of dealing’ and ‘usage of trade’ and provided standards under which evidence of a course of dealing or usage of trade were used to interpret, supplement, and qualify the express terms of an agreement. The substance of former Section 36‑1‑205 is now codified in revised Section 36‑1‑303.

 Section 36‑1‑206. Whenever the provisions of this title create a ‘presumption’ with respect to a fact, or provide that a fact is ‘presumed’, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

SOUTH CAROLINA REPORTER’S COMMENTS

This section defines the terms presumption and presumed when the Uniform Commercial Code creates a presumption with respect to a fact or provides that a fact is presumed. The section is based upon the definition of presumption in former Section 36‑1‑201(31). A presumption under both the former and revised definitions imposes an obligation upon the party against whom the presumption is made to come forward with evidence to rebut the existence of the presumed fact. The definitions do not shift the burden of persuasion.

NOTE: Former Section 36‑1‑206 constituted a general statute of frauds for contracts for the sale of personal property, but that provision is now deleted, as it was determined by the drafters that such a provision was better imposed by a state law and was not necessary under a uniform commercial provision.

Part 3

Territorial Applicability and General Rules

 Section 36‑1‑301. (a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this State and also to another state or nation, the parties may agree that the law either of this State or of such other state or nation shall govern their rights and duties.

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

 (c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by law so specified:

 (1) Section 36‑2‑402;

 (2) Sections 36‑2A‑105 and 36‑2A‑106;

 (3) Section 36‑4‑102;

 (4) Section 36‑4A‑507;

 (5) Section 36‑5‑116;

 (6) Section 36‑8‑110;

 (7) Sections 36‑9‑301 through 36‑9‑307.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑105.

 Section 36‑1‑302. (a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

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

 (c) The presence in certain provisions of the Uniform Commercial Code of the phrase ‘unless otherwise agreed’, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

SOUTH CAROLINA REPORTER’S COMMENTS

This section combines the rules from former Sections 36‑1‑102(3) (variation by agreement), 36‑1‑102(4) (provisions not including phrase ‘unless otherwise provided’ may be varied by agreement), and Section 36‑1‑204(1) (fixing reasonable time by agreement). This section makes no substantive changes from those provisions.

 Section 36‑1‑303. (a) A ‘course of performance’ is a sequence of conduct between the parties to a particular transaction that exists if:

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

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

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

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

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

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

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

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

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

 (f) Subject to Section 36‑2‑209, a course of performance is relevant to show a waive or modification of any term inconsistent with the course of performance.

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

SOUTH CAROLINA REPORTER’S COMMENTS

Subsections (a)–(c) define ‘course of performance,’ ‘course of dealing,’ and ‘usage of trade,’ based upon Section 36‑2‑208(1) (course of performance), former Section 36‑1‑205(1) (course of dealing) and former Section 36‑1‑205(2) (usage of trade). Subsection (d) is based upon Section 36‑2‑208 and former Section 36‑1‑205(3) and provides that a course of performance, course of dealing, and usage of trade are relevant in ascertaining the meaning of the parties’ agreement and may supplement or qualify the terms of the agreement. Subsection (e) is based upon Section 36‑2‑208(2) and former Section 36‑1‑205(4) and provides the hierarchy of express terms and terms implied from course of performance, course of dealing, and usage of trade in determining the terms of an agreement. Subsection (f) is based upon Section 36‑2‑208(3) and provides that a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

 Section 36‑1‑304. Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑203.

 Section 36‑1‑305. (a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

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

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑106.

 Section 36‑1‑306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

SOUTH CAROLINA REPORTER’S COMMENTS

This section replaces former Section 36‑1‑107, which at the time of its enactment in 1966 was inconsistent with the Official Text of former Section 1‑107. The Official Text of former Section 1‑107 provided that a claim for breach of contract could be discharged without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. Former Section 36‑1‑207 did not condition the discharge of a claim for breach upon the aggrieved party signing and delivering a written waiver or renunciation of the claim. Under revised Section 36‑1‑306, a claim for breach may be discharged without consideration by agreement of the aggrieved party in an authenticated record. The revision effects two changes to former Section 36‑1‑107. First, revised Section 36‑1‑306 makes it clear that the discharge of a claim for breach requires the aggrieved party’s agreement. Second, that agreement must be evidenced by a record authenticated by the aggrieved party. The authenticated record requirement may be satisfied either by a signed writing or an authentic electronic record.

 Section 36‑1‑307. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑202.

 Section 36‑1‑308. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as ‘without prejudice’, ‘under protest’, or the like are sufficient.

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

SOUTH CAROLINA REPORTER’S COMMENTS

Subsection (a) is substantively identical to former Section 36‑1‑207. Subsection (b) provides that subsection (a) does not apply to an accord and satisfaction. The rules governing accord and satisfaction are codified in Section 36‑3‑311.

 Section 36‑1‑309. A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral ‘at will’ or when the party ‘deems itself insecure’, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is substantively identical to former Section 36‑1‑208.

 Section 36‑1‑310. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

SOUTH CAROLINA REPORTER’S COMMENTS

This section is based upon former Section 1‑209, an optional provision proposed in 1966, but never enacted in South Carolina. The purpose of the provision is to make it clear that a subordination agreement does not create a security interest unless so intended.”

**Documents of title, use of electronic documents permitted**

SECTION 2. Chapter 7, Title 36 of the 1976 Code is amended to read:

“CHAPTER 7

Commercial Code‑Warehouse Receipts, Bills of Lading and Other Documents of Title

PART 1

General

 Section 36‑7‑101. This chapter must be known and may be cited as Uniform Commercial Code‑Documents of Title.

 Section 36‑7‑102. (a) In this chapter, unless the context otherwise requires:

 (1) ‘Bailee’ means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

 (2) ‘Carrier’ means a person who issues a bill of lading.

 (3) ‘Consignee’ means the person named in a bill of lading to whom or to whose order the bill promises delivery.

 (4) ‘Consignor’ means the person named in a bill of lading as the person from whom the goods have been received for shipment.

 (5) ‘Delivery order’ means a record that contains an order to deliver goods directed to a warehouse, carrier or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

 (6) ‘Document’ means document of title as defined in the general definitions in Chapter 1 of this title.

 (7) ‘Reserved.’

 (8) ‘Goods’ means all things that are treated as movable for the purposes of a contract for storage or transportation.

 (9) ‘Issuer’ means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver. The term includes a person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

 (10) ‘Person entitled under the document’ means the holder, in the case of a negotiable document of title, or the person to whom delivery of the goods is to be made by the terms of, or pursuant to, instructions in a record under, a negotiable document of title.

 (11) ‘Reserved.’

 (12) ‘Sign’ means, with present intent to authenticate or adopt a record, to:

 (A) execute or adopt a tangible symbol; or

 (B) attach to or logically associate with the record an electronic sound, symbol, or process.

 (13) ‘Shipper’ means a person that enters into a contract of transportation with a carrier.

 (14) ‘Warehouseman’ or ‘Warehouse’ means a person engaged in the business of storing goods for hire.

 (b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

 (1) ‘Contract for sale’ Section 36‑2‑106;

 (2) ‘Lessee in the ordinary course of business’ Section 36‑2A‑103; and

 (3) ‘Receipt of goods’ Section 36‑2‑103.

 (c) In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this chapter.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments include a set of new definitions that were drafted to provide a framework for the development of electronic documents of title and to facilitate the electronic mediums for the storage and communications. Some of these new definitions are codified in revised Article 1 and others appear as amendments to the provisions of Article 7. Four of the new definitions in the 2014 amendments that provide the basic foundation and essential framework for the further development of electronic documents of title are codified in revised Article 1. The definition of document of title in revised Section 36‑1‑201(b)(16) includes a definition of an electronic document of title as ‘a document of title evidenced by a record consisting of information stored in an electronic medium.’ Moreover, new definitions of the terms ‘bearer’, ‘delivered’, and ‘holder,’ codified in revised Section 36‑1‑201(b)(5), (15) and (21)(c), provide a framework for the process of negotiating electronic documents provided for in the 2014 amendments and codified in revised Section 36‑7‑501(b). The 2014 amendments also include new definitions of terms in Article 7 that were drafted to facilitate electronic mediums. The definition of ‘Record’ in revised Section 36‑1‑201(b)(37) and the new definition of ‘Signed’ in Section 36‑7‑102(a)(12) serve this function. Moreover, the amendment substituting the term ‘record’ for the term ‘written order’ in the definition of ‘Delivery order’ in Section 36‑7‑102(a)(5) facilitates the use of electronic mediums for the storage and communication of information. The 2014 amendments include new definitions of the terms ‘carrier’ and ‘shipper.’ Section 36‑7‑102(a)(2) defines carrier as a person who issues a bill of lading and Section 36‑7‑102(a) defines shipper as a person who enters into a contract of transportation with a carrier. The 2014 amendments remove the definition the definition of the ‘person entitled under the document’ from Section 36‑7‑403 and includes it in Section 36‑7‑102 as subsection (a)(10).

 Section 36‑7‑103. (a) This chapter is subject to any treaty or statute of the United States or regulatory statute of this State, or lawfully published tariff, to the extent the treaty, statute, regulatory statute or tariff is applicable.

 (b) This chapter does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in any respect not specifically treated in this chapter. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

 (c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

 (d) To the extent there is a conflict between the Uniform Electronics Act and this chapter, this chapter governs.

 Section 36‑7‑104. (a) Except as provided in subsection (c), a warehouse receipt, bill of lading, or other document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

 (b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading stating that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

 (c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendments added subsection (c), which provides that, notwithstanding subsection (a), a document of title is nonnegotiable if at the time it was issued it had a conspicuous legend stating that it is nonnegotiable.

 Section 36‑7‑105. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

 (1) the person entitled under the electronic document surrenders control of the document to the issuer; and

 (2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

 (b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

 (1) the electronic document ceases to have any effect or validity; and

 (2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

 (c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

 (1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

 (2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

 (d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

 (1) the tangible document ceases to have any effect or validity; and

 (2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

SOUTH CAROLINA REPORTER’S COMMENTS

This section provides a process under which a person entitled under a document of title issued in one medium may request the issuer to issue a document of title in a different medium. For example, if the person in control of an electronic negotiable document of title and therefore the person entitled under that document, requests that the issuer of the electronic document issue a tangible document as a substitute for the electronic, revised Section 36‑7‑105(a) allows the issuer to issue a tangible document as a substitute for the electronic document, provided the holder surrenders control of the electronic document to the issuer and the tangible record, when issued, states that it was issued in substitution for an electronic document. A person entitled under a tangible negotiable record can invoke the same process to obtain an electronic document in substitution for the tangible record. Note that the issuer is not obligated to issue a substitute document in the other medium in response to the request of the person entitled. Nevertheless, providing a process to convert a document of title issued in one medium for a document in the other medium provides flexibility that may result in greater use and acceptance of electronic documents.

 Section 36‑7‑106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

 (b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

 (1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in items (4), (5), and (6), unalterable;

 (2) the authoritative copy identifies the person asserting control as:

 (A) the person to which the document was issued; or

 (B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

 (3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

 (4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

 (6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

SOUTH CAROLINA REPORTER’S COMMENTS

Control of an electronic document of title is the legal equivalent of indorsement and possession of a tangible document of title. For transactions utilizing electronic documents of title to function efficiently, all parties to the transaction must be able to readily and reliably identify the person who has control of an electronic document. Revised Section 36‑7‑106 provides the standard that a system evidencing transfers of electronic documents must meet to establish control.

PART 2

Warehouse Receipts: Special Provisions

 Section 36‑7‑201. (a) A warehouse receipt may be issued by any warehouse.

 (b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even though issued by a person that is the owner of the goods and is not a warehouse.

 Section 36‑7‑202. (a) A warehouse receipt need not be in any particular form.

 (b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

 (1) a statement of the location of the warehouse facility where the goods are stored;

 (2) the date of issue of the receipt;

 (3) the unique identification code of the receipt;

 (4) a statement whether the goods received will be delivered to the bearer, to a named person, or the person’s order;

 (5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

 (6) a description of the goods or of the packages containing them;

 (7) the signature of the warehouse, or its agent;

 (8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

 (9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest pursuant to Section 36‑7‑209. If the precise amount of advances made or liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

 (c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of this title and do not impair its obligation of delivery pursuant to Section 36‑7‑403 or its duty of care pursuant to Section 36‑7‑204. Any contrary provision is ineffective.

 Section 36‑7‑203. A party to or purchaser for value in good faith of a document of title other than a bill of lading that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

 (1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as the case in which the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by ‘contents, condition and quality unknown,’ ‘said to contain’ or words of similar import, if the indication is true; or

 (2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

 Section 36‑7‑204. (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

 (b) Damages may be limited by a term in the warehouse receipt, storage agreement, or tariff limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. This limitation is not effective with respect to the liability of the warehouse for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the liability of the warehouse may be increased on part or on all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be changed based on an increased valuation of the goods.

 (c) Reasonable provisions as to the time and manner or presenting claims and commencing actions based on the bailment may be included in the warehouse receipt, storage agreement, or tariff.

SOUTH CAROLINA REPORTER’S COMMENTS

Section 36‑7‑204(a) revises the requirements for an effective agreement to limit a warehouse’s liability in order to conform to modern business practices.

 Section 36‑7‑205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouse that also is in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

 Section 36‑7‑206. (a) A warehouse,by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title, or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 36‑7‑210.

 (b) If a warehouse in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and Section 36‑7‑210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and*,* if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

 (c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property or to the warehouse or to persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

 (d) The warehouse must deliver the goods to any person entitled to the goods under this chapter upon due demand made at any time before sale or other disposition under this section.

 (e) The warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

 Section 36‑7‑207. (a) Unless the warehouse receipt otherwise provides, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

 (b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled to them and the warehouse is severally liable to each owner for the share of that owner. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts which the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

 Section 36‑7‑208. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good‑faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

 Section 36‑7‑209. (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds of them in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to whom a negotiable warehouse receipt is duly negotiated, a warehouse’s lien is limited to charges in an amount or at a rate specified on the receipt or, if no charges are so specified, then to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

 (b) A warehouse also may reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by the chapter on secured transactions (Chapter 9).

 (c) A warehouse’s lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good‑faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

 (1) deliver or entrust the goods or any document of title covering the goods to the bailor or the nominee of the bailor with:

 (A) actual or apparent authority to ship, store, or sell;

 (B) power to obtain delivery under Section 36-7‑403; or

 (C) power of disposition under Sections 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c), or other statute of rule of law; or

 (2) acquiesce in the procurement of the bailor or its nominee of any document.

 (d) The lien of a warehouse on household goods for charges and expenses in relation to the goods under subsection (a) also is effective against all other persons if the depositor was the legal possessor of the goods at the time of the deposit. In this subsection, the term ‘household goods’ means furniture, furnishings, or personal effects used by the depositor in a dwelling.

 (e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

 Section 36‑7‑210. (a) Except as provided in subsection (b), a warehouse’s lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. This notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market for the goods it sells at the price current in that market at the time of the sale, or otherwise sells the goods in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

 (b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

 (1) All persons known to claim an interest in the goods must be notified.

 (2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

 (3) The sale must conform to the terms of the notification.

 (4) The sale must be held at the nearest suitable place to where the goods are held or stored.

 (5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

 (c) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying pursuant to this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

 (d) A warehouse may buy at any public sale held pursuant to this section.

 (e) A purchaser in good faith of goods sold to enforce a warehouseman’s lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

 (f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

 (g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

 (h) If a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (a) or (b).

 (i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART 3

Bills of Lading: Special Provisions

 Section 36‑7‑301. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying in either case upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill of lading indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by ‘contents or condition of contents of packages unknown,’ ‘said to contain,’ ‘shipper’s weight, load and count’ or words of similar import, if that indication is true.

 (b) If goods are loaded by the issuer of a bill of lading:

 (1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

 (2) words such as ‘shipper’s weight, load and count’ or other words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

 (c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case ‘shipper’s weight’ or words of similar import are ineffective.

 (d) The issuer of a bill of lading, by including in the bill the words ‘shipper’s weight, load and count’ or of similar import, may indicate that the goods were loaded by the shipper, and if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of those words does not imply liability for damages caused by improper loading.

 (e) A shipper guarantees to e an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

 Section 36‑7‑302. (a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to anyone entitled to recover on the bill or other document for any breach by the other person or by the performing carrier of its obligation under the bill or other document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other party or the performing carrier may be varied by agreement of the parties.

 (b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person’s obligation is discharged by delivery of the goods to another person pursuant to the bill or other document, and does not include liability for breach by any other persons or by the issuer.

 (c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

 (1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

 (2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

 Section 36‑7‑303. (a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

 (1) the holder of a negotiable bill;

 (2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

 (3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

 (4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

 (b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

 Section 36‑7‑304. (a) Except as customary in international transportation, a tangible bill of lading shall not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

 (b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

 (c) If a tangible bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrender of its part.

 (d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

 (e) The bailee shall deliver in accordance with Part 4 of this chapter against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee’s obligation on the whole bill.

 Section 36‑7‑305. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

 (b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 36‑7‑105, may procure a substitute bill to be issued at any place designated in the request.

 Section 36‑7‑306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

 Section 36‑7‑307. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier’s lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, then to a reasonable charge.

 (b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

 (c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

 Section 36‑7‑308. (a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

 (b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods shall not be sold, but must be retained by the carrier, subject to the terms of the bill and this chapter.

 (c) A carrier may buy at any public sale pursuant to this section.

 (d) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier’s noncompliance with this section.

 (e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

 (f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

 (g) A carrier’s lien may be enforced pursuant to either subsection (a) or the procedure set forth in subsection (b) of Section 36‑7‑210.

 (h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section, and in case of wilful violation, is liable for conversion.

 Section 36‑7‑309. (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

 (b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier’s liability shall not exceed a value stated in the bill or transportation agreement if the carrier’s rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier’s liability for conversion to its own use.

 (c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

PART 4

Warehouse Receipts and Bill of Lading: General Obligations

 Section 36‑7‑401. The obligations imposed by this chapter on an issuer apply to a document of title even if:

 (1) the document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issue, form or content;

 (2) the issuer violated laws regulating the conduct of its business;

 (3) the goods covered by the document were owned by the bailee when the document was issued; or

 (4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

 Section 36‑7‑402. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen or destroyed documents, or substitute documents issued pursuant to Section 36‑7‑105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document as such by conspicuous notation.

 Section 36‑7‑403. (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

 (1) delivery of the goods to a person whose receipt was rightful as against the claimant;

 (2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

 (3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse’s lawful termination of storage;

 (4) the exercise by a seller of its right to stop delivery pursuant to Section 36‑2‑705 or by a lessor of its right to stop delivery pursuant to Section 36‑2A‑526;

 (5) a diversion, reconsignment, or other disposition pursuant to Section 36‑7‑303;

 (6) release, satisfaction or any other personal defense against the claimant; or

 (7) any other lawful excuse.

 (b) A person claiming goods covered by a document of title shall satisfy the bailee’s lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

 (c) Unless a person claiming the goods is a person against which the document of title does not confer a right under Section 36‑7‑503 (a):

 (1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries and;

 (2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

 Section 36‑7‑404. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

 (1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

 (2) the person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5

Warehouse Receipts and Bills of Lading: Negotiation and Transfer

 Section 36‑7‑501. (a) The following rules apply to a negotiable tangible document of title:

 (1) If the document’s original terms run to the order of a named person, the document is negotiated by the named person’s indorsement and delivery. After the named person’s indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

 (2) If the document’s original terms run to bearer, it is negotiated by delivery alone.

 (3) If the document’s original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

 (4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

 (5) A document is ‘duly negotiated’ if it is negotiated in the manner stated in this section to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

 (b) The following rules apply to a negotiable electronic document of title:

 (1) If the document’s original terms run to the order of a named person or bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

 (2) If the document’s original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

 (3) A document is ‘duly negotiated’ if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

 (c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee’s rights.

 (d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

SOUTH CAROLINA REPORTER’S COMMENTS

The 2014 amendment added the requirements for negotiation and due negotiation of a negotiable electronic document of title that are codified at Section 36‑7‑501(b).

 Section 36‑7‑502. (a) Subject to Section 36‑7‑503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

 (1) title to the document;

 (2) title to the goods;

 (3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

 (4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter, but in the case of a delivery order, the bailee’s obligation accrues only upon the bailee’s acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

 (b) Subject to Section 36‑7‑503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee, and are not impaired even if:

 (1) the due negotiation or any prior due negotiation constituted a breach of duty;

 (2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion; or

 (3) a previous sale or other transfer of the goods or document has been made to a third person.

 Section 36‑7‑503. (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

 (1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor’s nominee with:

 (A) actual or apparent authority to ship, store or sell;

 (B) power to obtain delivery under Section 36‑7‑403; or

 (C) power of disposition under Section 36‑2‑403, 36‑2A‑304(2), 36‑2A‑305(2), 36‑9‑320, or 36‑9‑321(c), or other statute or rule of law; or

 (2) acquiesce in the procurement by the bailor or the bailor’s nominee of any document.

 (b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 36‑7‑504 to the same extent as the rights of the issuer or a transferee from the issuer.

 (c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges the carrier’s obligation to deliver.

 Section 36‑7‑504. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

 (b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

 (1) by those creditors of the transferor which could treat the transfer as void under Section 36‑2‑402 or Section 36‑2A‑308;

 (2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer’s rights;

 (3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee’s rights; or

 (4) as against the bailee, by good faith dealings of the bailee with the transferor.

 (c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading that causes the bailee not to deliver to the consignee defeats the consignee’s title to the goods if the goods have been delivered to a buyer in ordinary course of business or lessee in ordinary course of business and, in any event, defeats the consignee’s rights against the bailee.

 (d) Delivery of the goods pursuant to a nonnegotiable document may be stopped by a seller under Section 36‑2‑705 or a lessor under Section 36‑2A‑526, subject to the requirements of due notification in those sections. A bailee honoring the seller’s or lessor’s instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

 Section 36‑7‑505. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

 Section 36‑7‑506. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

 Section 36‑7‑507. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 36‑7‑508, then unless otherwise agreed the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

 (1) the document is genuine;

 (2) the transferor does not have knowledge of any fact that would impair the document’s validity or worth; and

 (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

 Section 36‑7‑508. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

 Section 36‑7‑509. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by the chapters on sales (Chapter 2), leases (Chapter 2A), and on letters of credit (Chapter 5).

PART 6

Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

 Section 36‑7‑601. (a) If a document of title is lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court also may order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

 (b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery.

 Section 36‑7‑602. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document’s negotiation is enjoined. The bailee shall not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

 Section 36‑7‑603. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods, or by original action.”

**Sales, conforming changes**

SECTION 3. Section 36‑2‑103(1) of the 1976 Code is amended to read:

 “(1) In this chapter unless the context otherwise requires:

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

 (b) [Reserved].

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

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

**Sales, conforming changes**

SECTION 4. Section 36‑2‑103(3) of the 1976 Code is amended to read:

 “(3) ‘Control’ as provided in Section 36‑7‑106 and the following definitions in other chapters of Title 36 apply to this chapter:

 ‘Check’ Section 36‑3‑104.

 ‘Consignee’ Section 36‑7‑102.

 ‘Consignor’ Section 36‑7‑102.

 ‘Consumer goods’ Section 36‑9‑102.

 ‘Dishonor’ Section 36‑3‑507.

 ‘Draft’ Section 36‑3‑104.”

**Sales, conforming changes**

SECTION 5. Section 36‑2‑104(2) of the 1976 Code is amended to read:

 “(2) ‘Financing agency’ means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. ‘Financing agency’ includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 36‑2‑707).”

**Sales, conforming changes**

SECTION 6. Section 36‑2‑202 of the 1976 Code is amended to read:

 “Section 36‑2‑202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

 (a) by course of performance, course of dealing, or usage of trade (Section 36‑1‑303) ; and

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

**Sales, conforming changes**

SECTION 7. Section 36‑2‑310(c) of the 1976 Code is amended to read:

 “(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or if none, the seller’s residence; and”

**Sales, conforming changes**

SECTION 8. Section 36‑2‑323(2) of the 1976 Code is amended to read:

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

 (a) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (subsection (1) of Section 36‑2‑508); and

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

**Sales, conforming changes**

SECTION 9. Section 36‑2‑401(3) of the 1976 Code is amended to read:

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

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

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

**Sales, conforming changes**

SECTION 10. Section 36‑2‑503(4) and (5) of the 1976 Code is amended to read:

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

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

 (b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Chapter 9 receipt by the bailee of notification of the buyer’s rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

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

 (a) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (subsection (2) of Section 36‑2‑323); and

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

**Sales, conforming changes**

SECTION 11. Section 36‑2‑505(1)(b) and (2) of the 1976 Code is amended to read:

 “(b) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Section 36‑2‑507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

 (2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section (Section 36‑2‑504) but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title.”

**Sales, conforming changes**

SECTION 12. Section 36‑2‑506(2) of the 1976 Code is amended to read:

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

**Sales, conforming changes**

SECTION 13. Section 36‑2‑509(2) of the 1976 Code is amended to read:

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

 (a) on his receipt of possession or control of a negotiable document of title covering the goods; or

 (b) on acknowledgment by the bailee of the buyer’s right to possession of the goods; or

 (c) after his receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Section 36‑2‑503.”

**Sales, conforming changes**

SECTION 14. Section 36‑2‑605(2) of the 1976 Code is amended to read:

 “(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.”

**Sales, conforming changes**

SECTION 15. Section 36‑2‑705(3)(c) of the 1976 Code is amended to read:

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

**Leases, conforming changes**

SECTION 16. Section 36‑2A‑103(1)(a) and (o) of the 1976 Code is amended to read:

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

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

**Leases, conforming changes**

SECTION 17. Section 36‑2A‑103(3) of the 1976 Code is amended to read:

 “(3) The following definitions in other chapters apply to this chapter:

 ‘Account’ Section 36‑9‑102.

 ‘Between merchants’ Section 36‑2‑104(3).

 ‘Buyer’ Section 36‑2‑103(1)(a).

 ‘Chattel paper’ Section 36‑9‑102.

 ‘Consumer goods’ Section 36‑9‑102.

 ‘Document’ Section 36‑9‑102.

 ‘Entrusting’ Section 36‑2‑403(3).

 ‘General intangibles’ Section 36‑9‑102(a)(42).

 ‘Instrument’ Section 36‑9‑102.

 ‘Merchant’ Section 36‑2‑104(1).

 ‘Mortgage’ Section 36‑9‑102.

 ‘Pursuant to commitment’ Section 36‑9‑102.

 ‘Receipt’ Section 36‑2‑103(1)(c).

 ‘Sale’ Section 36‑2‑106(1).

 ‘Sale on approval’ Section 36‑2‑326.

 ‘Sale or return’ Section 36‑2‑326.

 ‘Seller’ Section 36‑2‑103(1)(d).”

**Leases, conforming changes**

SECTION 18. Section 36‑2A‑501(4) of the 1976 Code is amended to read:

 “(4) Except as otherwise provided in Section 36‑1‑305(a) or this chapter or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.”

**Leases, conforming changes**

SECTION 19. Section 36‑2A‑514(2) of the 1976 Code is amended to read:

 “(2) A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.”

**Leases, conforming changes**

SECTION 20. Section 36‑2A‑518(2) of the 1976 Code is amended to read:

 “(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections 36‑1‑302 and 36‑2A‑503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor’s default.”

**Leases, conforming changes**

SECTION 21. Section 36‑2A‑519(1) of the 1976 Code is amended to read:

 “(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections 36‑1‑302 and 36‑2A‑503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor’s default.”

**Leases, conforming changes**

SECTION 22. Section 36‑2A‑527(2) of the 1976 Code is amended to read:

 “(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections 36‑1‑302 and 36‑2A‑503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

**Leases, conforming changes**

SECTION 23. Section 36‑2A‑528(1) of the 1976 Code is amended to read:

 “(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 36‑2A‑504) or otherwise determined pursuant to agreement of the parties (Sections 36‑1‑302 and 36‑2A‑503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 36‑2A‑527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 36‑2A‑523(1) or 36‑2A‑523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 36‑2A‑530, less expenses saved in consequence of the lessee’s default.”

**Negotiable instruments, conforming changes**

SECTION 24. Section 36‑3‑103(a)(6) and (13) of the 1976 Code, as last amended by Act 204 of 2008, is further amended to read:

 “(6) ‘[Reserved]’.

 (13) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

**Bank deposits and collections, conforming changes**

SECTION 25. Section 36‑4‑104(c) of the 1976 Code, as last amended by Act 204 of 2008, is further amended to read:

 “(c) ‘Control’ as provided in Section 36‑7‑106 and the following definitions in other chapters apply to this chapter:

 ‘Acceptance’ Section 36‑3‑409.

 ‘Alteration’ Section 36‑3‑407.

 ‘Cashier’s check’ Section 36‑3‑104.

 ‘Certificate of deposit’ Section 36‑3‑104.

 ‘Certified check’ Section 36‑3‑409.

 ‘Check’ Section 36‑3‑104.

 ‘Holder in due course’ Section 36‑3‑302.

 ‘Instrument’ Section 36‑3‑104.

 ‘Notice of dishonor’ Section 36‑3‑503.

 ‘Order’ Section 36‑3‑103.

 ‘Ordinary care’ Section 36‑3‑103.

 ‘Person entitled to enforce’ Section 36‑3‑301.

 ‘Presentment’ Section 36‑3‑501.

 ‘Promise’ Section 36‑3‑103.

 ‘Prove’ Section 36‑3‑103.

 ‘Record’ Section 36‑3‑103.

 ‘Remotely‑created consumer item’ Section 36‑3‑103.

 ‘Teller’s check’ Section 36‑3‑104.

 ‘Unauthorized signature’ Section 36‑3‑403.”

**Bank deposits and collections, conforming changes**

SECTION 26. Section 36‑4‑210(c) of the 1976 Code, as last amended by Act 204 of 2008, is further amended to read:

 “(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9, but:

 (1) no security agreement is necessary to make the security interest enforceable (Section 36‑9‑203(b)(3)(A));

 (2) no filing is required to perfect the security interest; and

 (3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.”

**Fund transfers, conforming changes**

SECTION 27. Section 36‑4A‑105(a)(6) and (7) of the 1976 Code is amended to read:

 “(6) [Reserved].

 (7) ‘Prove’ with respect to a fact means to meet the burden of establishing the fact (Section 36‑1‑201(b)(8)).”

**Fund transfers, conforming changes**

SECTION 28. Section 36‑4A‑106(a) of the 1976 Code is amended to read:

 “(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 36‑1‑202. A receiving bank may fix a cut‑off time or times on a funds‑transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cut‑off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut‑off time may apply to senders generally or different cut‑off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds‑transfer business day or after the appropriate cut‑off time on a funds‑transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds‑transfer business day.”

**Fund transfers, conforming changes**

SECTION 29. Section 36‑4A‑204(b) of the 1976 Code is amended to read:

 “(b) Reasonable time under subsection (a) may be fixed by agreement as stated in Section 36‑1‑302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.”

**Letters of credit, conforming changes**

SECTION 30. Section 36‑5‑103(c) of the 1976 Code is amended to read:

 “(c) With the exception of this subsection, subsections (a) and (d), Sections 36‑5‑102(a)(9) and (10), 36‑5‑106(d), and 36‑5‑114(d), and except to the extent prohibited in Sections 36‑1‑302 and 36‑5‑117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.”

**Investment securities, conforming changes**

SECTION 31. Section 36‑8‑102(a)(10) of the 1976 Code is amended to read:

 “(10) [Reserved].”

**Investment securities, conforming changes**

SECTION 32. Section 36‑8‑103 of the 1976 Code is amended by adding subsection (g) at the end to read:

 “(g) A document of title is not a financial asset unless Section 36‑8‑102(a)(9)(iii) applies.”

**Secured transactions, conforming changes**

SECTION 33. Section 36‑9‑102(a)(30) and (43) of the 1976 Code, as last amended by Act 96 of 2013, is further amended to read:

 “(30) ‘Document’ means a document of title or a receipt of the type described in Section 36‑7‑201(b).

 (43) [Reserved].”

**Secured transactions, conforming changes**

SECTION 34. Section 36‑9‑102(b) of the 1976 Code, as last amended by Act 96 of 2013, is further amended to read:

 “(b) ‘Control’ as provided in Section 36‑7‑106 and the following definitions in other chapters apply to this chapter:

 ‘Applicant’ Section 36‑5‑102.

 ‘Beneficiary’ Section 36‑5‑102.

 ‘Broker’ Section 36‑8‑102.

 ‘Certificated security’ Section 36‑8‑102.

 ‘Check’ Section 36‑3‑104.

 ‘Clearing corporation’ Section 36‑8‑102.

 ‘Contract for sale’ Section 36‑2‑106.

 ‘Customer’ Section 36‑4‑104.

 ‘Entitlement holder’ Section 36‑8‑102.

 ‘Financial asset’ Section 36‑8‑102.

 ‘Holder in due course’ Section 36‑3‑302.

 ‘Issuer’ (with respect to a letter of credit or letter‑of‑credit right) Section 36‑5‑102.

 ‘Issuer’ (with respect to a security) Section 36‑8‑201.

 ‘Issuer’ (with respect to documents of title) Section 36‑7‑102.

 ‘Lease’ Section 36‑2A‑103.

 ‘Lease agreement’ Section 36‑2A‑103.

 ‘Lease contract’ Section 36‑2A‑103.

 ‘Leasehold interest’ Section 36‑2A‑103.

 ‘Lessee’ Section 36‑2A‑103.

 ‘Lessee in ordinary course of business’ Section 36‑2A‑103.

 ‘Lessor’ Section 36‑2A‑103.

 ‘Lessor’s residual interest’ Section 36‑2A‑103.

 ‘Letter of credit’ Section 36‑5‑102.

 ‘Merchant’ Section 36‑2‑104.

 ‘Negotiable instrument’ Section 36‑3‑104.

 ‘Nominated person’ Section 36‑5‑102.

 ‘Note’ Section 36‑3‑104.

 ‘Proceeds of a letter of credit’ Section 36‑5‑114.

 ‘Sale’ Section 36‑2‑106.

 ‘Securities account’ Section 36‑8‑501.

 ‘Securities intermediary’ Section 36‑8‑102.

 ‘Security’ Section 36‑8‑102.

 ‘Security certificate’ Section 36‑8‑102.

 ‘Security entitlement’ Section 36‑8‑102.

 ‘Uncertificated security’ Section 36‑8‑102.”

**Secured transactions, conforming changes**

SECTION 35. Section 36‑9‑203(b)(3)(D) of the 1976 Code is amended to read:

 “(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter‑of‑credit rights, or electronic documents and the secured party has control under Section 36‑7‑106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 pursuant to the debtor’s security agreement.”

**Secured transactions, conforming changes**

SECTION 36. Section 36‑9‑207(c) of the 1976 Code is amended to read:

 “(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under Section 36‑7‑106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107:

 (1) may hold as additional security any proceeds, except money or funds, received from the collateral;

 (2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

 (3) may create a security interest in the collateral.”

**Secured transactions, conforming changes**

SECTION 37. Section 36‑9‑208(b)(4) and (5) of the 1976 Code is amended to read:

 “(4) a secured party having control of investment property under Section 36‑8‑106(d)(2) or 36‑9‑106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

 (5) a secured party having control of a letter‑of‑credit right under Section 36‑9‑107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

 (6) a secured party having control of an electronic document shall:

 (A) give control of the electronic document to the debtor or its designated custodian;

 (B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

 (C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.”

**Secured transactions, conforming changes**

SECTION 38. Section 36‑9‑301(3) of the 1976 Code is amended to read:

 “(3) Except as otherwise provided in item (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

 (A) perfection of a security interest in the goods by filing a fixture filing;

 (B) perfection of a security interest in timber to be cut; and

 (C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.”

**Secured transactions, conforming changes**

SECTION 39. Section 36‑9‑310(b) of the 1976 Code is amended to read:

 “(b) The filing of a financing statement is not necessary to perfect a security interest:

 (1) that is perfected under Section 36‑9‑308(d), (e), (f), or (g);

 (2) that is perfected under Section 36‑9‑309 when it attaches;

 (3) in property subject to a statute, regulation, or treaty described in Section 36‑9‑311(a);

 (4) in goods in possession of a bailee which is perfected under Section 36‑9‑312(d)(1) or (2);

 (5) in certificated securities, documents, goods, or instruments which are perfected without filing, control, or possession under Section 36‑9‑312(e), (f), or (g);

 (6) in collateral in the secured party’s possession under Section 36‑9‑313;

 (7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 36‑9‑313;

 (8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter‑of‑credit rights which is perfected by control under Section 36‑9‑314;

 (9) in proceeds which is perfected under Section 36‑9‑315; or

 (10) that is perfected under Section 36‑9‑316.”

**Secured transactions, conforming changes**

SECTION 40. Section 36‑9‑312(e) of the 1976 Code is amended to read:

 “(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.”

**Secured transactions, conforming changes**

SECTION 41. Section 36‑9‑313(a) of the 1976 Code is amended to read:

 “(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 36‑8‑301.”

**Secured transactions, conforming changes**

SECTION 42. Section 36‑9‑314(a) and (b) of the 1976 Code is amended to read:

 “(a) A security interest in investment property, deposit accounts, letter‑of‑credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 36‑7‑106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107.

 (b) A security interest in deposit accounts, electronic chattel paper, letter‑of‑credit rights, or electronic documents is perfected by control under Section 36‑7‑106, 36‑9‑104, 36‑9‑105, or 36‑9‑107 when the secured party obtains control and remains perfected by control only while the secured party retains control.”

**Secured transactions, conforming changes**

SECTION 43. Section 36‑9‑317(b), (c), and (d) of the 1976 Code, as last amended by Act 96 of 2013, is further amended to read:

 “(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper,tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

 (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

 (d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.”

**Secured transactions, conforming changes**

SECTION 44. Section 36‑9‑338(2) of the 1976 Code is amended to read:

 “(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.”

**Secured transactions, conforming changes**

SECTION 45. Section 36‑9‑601(b) of the 1976 Code is amended to read:

 “(b) A secured party in possession of collateral or control of collateral under Section 36‑7‑106, 36‑9‑104, 36‑9‑105, 36‑9‑106, or 36‑9‑107 has the rights and duties provided in Section 36‑9‑207.”

**Repeal**

SECTION 46. Sections 36‑2‑208 and 36‑2A‑207 of the 1976 Code are repealed.

**One subject findings**

SECTION 47. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in that each provision relates directly to or in conjunction with other sections within the subject of the Uniform Commercial Code, as stated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

**Code commissioner directives**

SECTION 48. After enactment of the provisions of this act, the Code Commissioner is instructed to insert the Official Comments, as amended, available from the Uniform Law Commission at http://uniformlaws.org, into the annotated versions of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provision and before the S.C. Reporter’s Comments, to the extent that S.C. Reporter’s Comments follow a provision. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions to the Uniform Commercial Code, are not considered part of this act and do not indicate legislative intent.

**Severability**

SECTION 49. The provisions of this act are severable. If any section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the act, the General Assembly hereby declaring that it would have passed each and every section, subsection, paragraph, subparagraph, item, subitem, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, items, subitems, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Prospective application**

SECTION 50. The provisions of this act apply prospectively. To the extent that issues arise based upon rights or obligations that arise prior to the effective date of this act, prior law applies to resolve those issues. Transactions, documents of title, or bailment validly entered into before the effective date of this act and the rights, duties, and interests arising from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this act, as though the repeal or amendment had not occurred.

**Time effective**

SECTION 51. This act becomes effective on October 1, 2014. It applies to transactions entered into and events occurring after that date.

Ratified the 29th day of May, 2014.

Approved the 2nd day of June, 2014.

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