

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2590
98TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary and Civil and Criminal Jurisprudence, April 21, 2016, with recommendation that the Senate Committee Substitute do pass.

6306S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal sections 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 400.1-207, 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 400.7-202, 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309, 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, 400.7-604, 515.240, 515.250, and 515.260, RSMo, and to enact in lieu thereof ninety-seven new sections relating to the regulation of commercial entities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 400.1-102, 400.1-103, 400.1-105, 400.1-106, 400.1-107, 2 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 400.1-205, 400.1-206, 3 400.1-207, 400.1-208, 400.7-102, 400.7-103, 400.7-104, 400.7-105, 400.7-201, 4 400.7-202, 400.7-203, 400.7-204, 400.7-205, 400.7-206, 400.7-207, 400.7-208, 5 400.7-209, 400.7-210, 400.7-301, 400.7-302, 400.7-303, 400.7-304, 400.7-305, 6 400.7-307, 400.7-308, 400.7-309, 400.7-401, 400.7-402, 400.7-403, 400.7-404, 7 400.7-501, 400.7-502, 400.7-503, 400.7-504, 400.7-505, 400.7-506, 400.7-507, 8 400.7-508, 400.7-509, 400.7-601, 400.7-602, 400.7-603, 400.7-604, 515.240, 9 515.250, and 515.260, RSMo, are repealed and ninety-seven new sections enacted 10 in lieu thereof, to be known as sections 400.1-102, 400.1-103, 400.1-105, 11 400.1-106, 400.1-107, 400.1-108, 400.1-201, 400.1-202, 400.1-203, 400.1-204, 12 400.1-205, 400.1-206, 400.1-301, 400.1-302, 400.1-303, 400.1-304, 400.1-305,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 400.1-306, 400.1-307, 400.1-308, 400.1-309, 400.1-310, 400.7-102, 400.7-103,
14 400.7-104, 400.7-105, 400.7-106, 400.7-201, 400.7-202, 400.7-203, 400.7-204,
15 400.7-205, 400.7-206, 400.7-207, 400.7-208, 400.7-209, 400.7-210, 400.7-301,
16 400.7-302, 400.7-303, 400.7-304, 400.7-305, 400.7-307, 400.7-308, 400.7-309,
17 400.7-401, 400.7-402, 400.7-403, 400.7-404, 400.7-501, 400.7-502, 400.7-503,
18 400.7-504, 400.7-505, 400.7-506, 400.7-507, 400.7-508, 400.7-509, 400.7-601,
19 400.7-602, 400.7-603, 400.7-703, 400.7-704, 515.500, 515.505, 515.510, 515.515,
20 515.520, 515.525, 515.530, 515.535, 515.540, 515.545, 515.550, 515.555, 515.560,
21 515.565, 515.570, 515.575, 515.580, 515.585, 515.590, 515.595, 515.600, 515.605,
22 515.610, 515.615, 515.620, 515.625, 515.630, 515.635, 515.640, 515.645, 515.650,
23 515.655, 515.660, and 515.665, to read as follows:

400.1-102. [(1) This chapter shall be liberally construed and applied to
2 promote its underlying purposes and policies.
3 (2) Underlying purposes and policies of this chapter are
4 (a) to simplify, clarify and modernize the law governing commercial
5 transactions;
6 (b) to permit the continued expansion of commercial practices through
7 custom, usage and agreement of the parties;
8 (c) to make uniform the law among the various jurisdictions.
9 (3) The effect of provisions of this chapter may be varied by agreement,
10 except as otherwise provided in this chapter and except that the obligations of
11 good faith, diligence, reasonableness and care prescribed by this chapter may not
12 be disclaimed by agreement but the parties may by agreement determine the
13 standards by which the performance of such obligations is to be measured if such
14 standards are not manifestly unreasonable.
15 (4) The presence in certain provisions of this chapter of the words "unless
16 otherwise agreed" or words of similar import does not imply that the effect of
17 other provisions may not be varied by agreement under subsection (3).
18 (5) In this chapter unless the context otherwise requires
19 (a) words in the singular number include the plural, and in the plural
20 include the singular;
21 (b) words of the masculine gender include the feminine and the neuter,
22 and when the sense so indicates words of the neuter gender may refer to any
23 gender.] **This article applies to a transaction to the extent that it is**
24 **governed by another article of this chapter.**

400.1-103. (a) **This chapter must be liberally construed and**

2 **applied to promote its underlying purposes and policies, which are:**

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

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

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

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

400.1-105. [(1) Except as provided hereafter in this section, when a
2 transaction bears a reasonable relation to this state and also to another state or
3 nation the parties may agree that the law either of this state or of such other
4 state or nation shall govern their rights and duties. Failing such agreement this
5 chapter applies to transactions bearing an appropriate relation to this state.

6 (2) Where one of the following provisions of this chapter specifies the
7 applicable law, that provision governs and a contrary agreement is effective only
8 to the extent permitted by the law (including the conflict of laws rules) so
9 specified:

10 Rights of creditors against sold goods. Section 400.2-402.

11 Applicability of the Article on Leases. Sections 400.2A-105 and
12 400.2A-106.

13 Applicability of the Article on Bank Deposits and Collections. Section
14 400.4-102.

15 Letter of credit. Section 400.5-116.

16 Applicability of the Article on Investment Securities. Section 400.8-110.

17 Law governing perfection, the effect of perfection or nonperfection, and the
18 priority of security interests. Sections 400.9-301 through 400.9-307.] **If any**
19 **provision or clause of this chapter or its application to any person or**
20 **circumstance is held invalid, the invalidity does not affect other**
21 **provisions or applications of this chapter which can be given effect**
22 **without the invalid provision or application, and to this end the**
23 **provisions of this chapter are severable.**

400.1-106. [(1) The remedies provided by this chapter shall be liberally
2 administered to the end that the aggrieved party may be put in as good a position

3 as if the other party had fully performed but neither consequential or special nor
4 penal damages may be had except as specifically provided in this chapter or by
5 other rule of law.

6 (2) Any right or obligation declared by this chapter is enforceable by
7 action unless the provision declaring it specifies a different and limited effect.]

8 **In this chapter, unless the statutory context otherwise requires:**

9 (1) **words in the singular number include the plural, and those**
10 **in the plural include the singular; and**

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

400.1-107. [Any claim or right arising out of an alleged breach can be
2 discharged in whole or in part without consideration by a written waiver or
3 renunciation signed and delivered by the aggrieved party.] **Section captions**
4 **are part of this chapter.**

400.1-108. [If any provision or clause of this chapter or application thereof
2 to any person or circumstances is held invalid, such invalidity shall not affect
3 other provisions or applications of this chapter which can be given effect without
4 the invalid provision or application, and to this end the provisions of this chapter
5 are declared to be severable.] **This chapter modifies, limits, and supersedes**
6 **the federal Electronic Signatures in Global and National Commerce Act,**
7 **15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede**
8 **Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize**
9 **electronic delivery of any of the notices described in Section 103(b) of**
10 **that Act, 15 U.S.C. Section 103(b).**

400.1-201. [Subject to additional definitions contained in the subsequent
2 articles of this chapter which are applicable to specific articles or parts thereof,
3 and] (a) Unless the context otherwise requires, [in this chapter:] **words or**
4 **phrases defined in this section, or in the additional definitions**
5 **contained in other articles of this chapter that apply to particular**
6 **articles or parts thereof, have the meanings stated.**

7 (b) **Subject to definitions contained in other articles of this**
8 **chapter that apply to particular articles or parts thereof:**

9 (1) "Action", in the sense of a judicial proceeding, includes recoupment,
10 counterclaim, set-off, suit in equity, and any other [proceedings] **proceeding** in
11 which rights are determined.

12 (2) "Aggrieved party" means a party entitled to [resort to] **pursue** a
13 remedy.

14 (3) "Agreement", as **distinguished from "contract"**, means the bargain
15 of the parties in fact, as found in their language or [by implication] **inferred**
16 from other circumstances, including **course of performance**, course of dealing,
17 or usage of trade [or course of performance] as provided in [this chapter (sections
18 400.1-205 and 400.2-208)]. Whether an agreement has legal consequences is
19 determined by the provisions of this chapter, if applicable; otherwise by the law
20 of contracts ([section 400.1-103]). [(Compare "Contract".)]

21 (4) "Bank" means [any] **a person engaged in the business of banking and**
22 **includes a savings bank, savings and loan association, credit union, and**
23 **trust company.**

24 (5) "Bearer" means [the] **a person in control of a negotiable**
25 **electronic document of title or a person in possession of an instrument, a**
26 **negotiable tangible** document of title, or **a certificated security payable to**
27 **bearer or [endorsed] indorsed** in blank.

28 (6) "Bill of lading" means a document **of title** evidencing the receipt of
29 goods for shipment issued by a person engaged in the business of **directly or**
30 **indirectly** transporting or forwarding goods[, and includes an airbill. "Airbill"
31 means a document serving for air transportation as a bill of lading does for
32 marine or rail transportation, and includes an air consignment note or air
33 waybill]. **The term does not include a warehouse receipt.**

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

35 (8) "Burden of establishing" a fact means the burden of persuading the
36 [triers] **trier** of fact that the existence of the fact is more probable than its
37 nonexistence.

38 (9) "Buyer in ordinary course of business" means a person that buys goods
39 in good faith [and], without knowledge that the sale violates the rights of another
40 person in the goods, and in the ordinary course from a person, other than a
41 pawnbroker, in the business of selling goods of that kind. A person buys goods
42 in the ordinary course if the sale to the person comports with the usual or
43 customary practices in the kind of business in which the seller is engaged or with
44 the seller's own usual or customary practices. A person that sells oil, gas, or
45 other minerals at the wellhead or minehead is a person in the business of selling
46 goods of that kind. A buyer in ordinary course of business may buy for cash, by
47 exchange of other property, or on secured or unsecured credit, and may acquire
48 goods or documents of title under a preexisting contract for sale. Only a buyer
49 that takes possession of the goods or has a right to recover the goods from the

50 seller under article 2 may be a buyer in ordinary course of business. **"Buyer in**
51 **ordinary course of business" does not include** a person that acquires goods
52 in a transfer in bulk or as security for[,] or in total or partial satisfaction of[,] a
53 money debt [is not a buyer in ordinary course of business].

54 (10) "Conspicuous"[:], **with reference to** a term [or clause is conspicuous
55 when it is], **means** so written, **displayed, or presented** that a reasonable
56 person against [whom] **which** it is to operate ought to have noticed it. [A
57 printed heading in capitals (as: NONNEGOTIABLE BILL OF LADING) is
58 conspicuous. Language in the body of a form is "conspicuous" if it is in larger or
59 other contrasting type or color. But in a telegram any stated term is
60 "conspicuous".] Whether a term [or clause] is "conspicuous" or not is [for] a
61 decision [by] **for** the court. **Conspicuous terms include the following:**

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

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

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

72 (12) **"Contract", as distinguished from "agreement", means the total**
73 **legal obligation [which] that results from the parties' agreement as [affected]**
74 **determined by this chapter [and] as supplemented by any other applicable**
75 **[rules of law] laws. [(Compare "Agreement".)]**

76 [(12)] (13) **"Creditor" includes a general creditor, a secured creditor, a**
77 **lien creditor, and any representative of creditors, including an assignee for the**
78 **benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor**
79 **or administrator of an insolvent debtor's or assignor's estate.**

80 [(13) **"Defendant" includes a person in the position of defendant in a**
81 **cross-action or counterclaim.]**

82 (14) **"Delivery", with respect to an electronic document of title means**
83 **voluntary transfer of control and with respect to instruments, tangible**
84 **documents of title, chattel paper, or certificated securities means voluntary**
85 **transfer of possession.**

86 (15) "Document of title" means a record (i) that in the regular
87 course of business or financing is treated as adequately evidencing that
88 the person in possession or control of the record is entitled to receive,
89 control, hold, and dispose of the record and the goods the record covers
90 and (ii) that purports to be issued by or addressed to a bailee and to
91 cover goods in the bailee's possession which are either identified or are
92 fungible portions of an identified mass. The term includes a bill of
93 lading, transport document, dock warrant, dock receipt, warehouse
94 receipt, and order for delivery of goods. An electronic document of
95 title means a document of title evidenced by a record consisting of
96 information stored in an electronic medium. A tangible document of
97 title means a document of title evidenced by a record consisting of
98 information that is inscribed on a tangible medium.

99 (16) "Document of title" includes bill of lading, dock warrant, dock receipt,
100 warehouse receipt or order for the delivery of goods, and also any other document
101 which in the regular course of business or financing is treated as adequately
102 evidencing that the person in possession of it is entitled to receive, hold, and
103 dispose of the document and the goods it covers. To be a document of title, a
104 document must purport to be issued by or addressed to a bailee and purport to
105 cover goods in the bailee's possession which are either identified or are fungible
106 portions of an identified mass.

107 [(16)] (17) "Fault" means a **default, breach, or wrongful act[,] or**
108 omission [or breach].

109 [(17)] (18) "Fungible **goods**" [with respect to goods or securities] means:
110 (A) goods [or securities] of which any unit [is], by nature or usage of
111 trade, **is** the equivalent of any other like unit[.]; **or**

112 (B) goods [which are not fungible shall be deemed fungible for the
113 purposes of this chapter to the extent] that **by** [under a particular] agreement [or
114 document unlike units] are treated as [equivalents] **equivalent**.

115 [(18)] (19) "Genuine" means free of forgery or counterfeiting.

116 [(19)] (20) "Good faith", **except as otherwise provided in article 5,**
117 means honesty in fact [in the conduct or transaction concerned] **and the**
118 **observance of reasonable commercial standards of fair dealing**.

119 [(20)] (21) "Holder" [with respect to a negotiable instrument,] means:

120 (A) the person in possession [if the] **of a negotiable instrument that is**
121 payable **either** to bearer or[, in the case of an instrument payable] to an

122 identified person [if the identified] **that is the** person [is] in possession
123 [. Holder" with respect to a document of title means];

124 **(B) the person in possession of a document of a negotiable tangible**
125 **document of title** if the goods are deliverable **either** to bearer or to the order
126 of the person in possession[.]; **or**

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

129 [(21) To "honor" is to pay or to accept and pay, or where a credit so
130 engages to purchase or discount a draft complying with the terms of the credit.]

131 (22) "Insolvency [proceedings] **proceeding**" includes [any] **an** assignment
132 for the benefit of creditors or other [proceedings] **proceeding** intended to
133 liquidate or rehabilitate the estate of the person involved.

134 (23) [A person is] "Insolvent" [who either has] **means:**

135 **(A) having generally** ceased to pay [his or her] debts in the ordinary
136 course of business [or cannot pay his or her] **other than as a result of bona**
137 **fide dispute;**

138 **(B) being unable to pay** debts as they become due; or [is]

139 **(C) being** insolvent within the meaning of [the] federal bankruptcy law.

140 (24) "Money" means a medium of exchange **currently** authorized or
141 adopted by a domestic or foreign government [and]. **The term** includes a
142 monetary unit of account established by an intergovernmental organization or by
143 agreement between two or more [nations] **countries.**

144 (25) [A person has "notice" of a fact when

145 (a) a person has actual knowledge of it; or

146 (b) a person has received a notice or notification of it; or

147 (c) from all the facts and circumstances known to him or her at the time
148 in question he or she has reason to know that it exists.

149 A person "knows" or has "knowledge" of a fact when a person has actual
150 knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers
151 to knowledge rather than to reason to know. The time and circumstances under
152 which a notice or notification may cease to be effective are not determined by this
153 chapter.

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

158 (a) it comes to a person's attention, or

159 (b) it is duly delivered at the place of business through which the contract
160 was made or at any other place held out by a person as the place for receipt of
161 such communications.

162 (27) Notice, knowledge or a notice or notification received by an
163 organization is effective for a particular transaction from the time when it is
164 brought to the attention of the individual conducting that transaction, and in any
165 event from the time when it would have been brought to an individual's attention
166 if the organization had exercised due diligence. An organization exercises due
167 diligence if it maintains reasonable routines for communicating significant
168 information to the person conducting the transaction and there is reasonable
169 compliance with the routines. Due diligence does not require an individual acting
170 for the organization to communicate information unless such communication is
171 part of an individual's regular duties or unless he or she has reason to know of
172 the transaction and that the transaction would be materially affected by the
173 information.

174 (28) "Organization" [includes a corporation, government or governmental
175 subdivision or agency, business trust, estate, trust, partnership or association,
176 two or more persons having a joint or common interest, or any other legal or
177 commercial entity] **means a person other than an individual.**

178 [(29)] **(26)** "Party", as [distinct] **distinguished** from "third party",
179 means a person [who] **that** has engaged in a transaction or made an agreement
180 [within] **subject to** this chapter.

181 [(30)] **(27)** "Person" [includes] **means** an individual [or an organization
182 (see section 400.1-102)], **corporation, business trust, estate, trust,**
183 **partnership, limited liability company, association, joint venture,**
184 **government, governmental subdivision, agency, or instrumentality,**
185 **public corporation, or any other legal or commercial entity.**

186 [(31)] "Presumption" or "presumed" means that the trier of fact must find
187 the existence of the fact presumed unless and until evidence is introduced which
188 would support a finding of its nonexistence.

189 (32) **(28)** "Present value" means the amount as of a date certain
190 of one or more sums payable in the future, discounted to the date
191 certain by use of either an interest rate specified by the parties if that
192 rate is not manifestly unreasonable at the time the transaction is
193 entered into or, if an interest rate is not so specified, a commercially

194 **reasonable rate that takes into account the facts and circumstances at**
195 **the time the transaction is entered into.**

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

199 [(33)] **(30)** "Purchaser" means a person [who] **that** takes by purchase.

200 [(34)] **(31)** "**Record**" **means information that is inscribed on a**
201 **tangible medium or that is stored in an electronic or other medium and**
202 **is retrievable in perceivable form.**

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

205 [(35)] **(33)** "Representative" [includes an agent, an officer of a corporation
206 or association, and a trustee, executor or administrator of an estate, or any other]
207 **means a person empowered to act for another, including an agent, an officer**
208 **of a corporation or association, and a trustee, executor, or**
209 **administrator of an estate.**

210 [(36) "Rights] **(34)** "**Right**" includes [remedies] **remedy.**

211 [(37)] **(35)** "Security interest" means an interest in personal property or
212 fixtures which secures payment or performance of an obligation. [The term also]
213 "**Security interest**" includes any interest of a consignor and a buyer of accounts,
214 chattel paper, a payment intangible, or a promissory note in a transaction that
215 is subject to article 9. "**Security interest**" **does not include** the special
216 property interest of a buyer of goods on identification of those goods to a contract
217 for sale under section 400.2-401 [is not a "security interest"], but a buyer may
218 also acquire a "security interest" by complying with article 9. Except as otherwise
219 provided in section 400.2-505, the right of a seller or lessor of goods under article
220 2 or 2A to retain or acquire possession of the goods is not a "security interest",
221 but a seller or lessor may also acquire a "security interest" by complying with
222 article 9. The retention or reservation of title by a seller of goods
223 notwithstanding shipment or delivery to the buyer [**(under section 400.2-401)]**
224 is limited in effect to a reservation of a "security interest". Whether a transaction
225 [creates] **in the form of** a lease [or] **creates a** "security interest" is determined
226 [by the facts of each case; however, a transaction creates a security interest if the
227 consideration the lessee is to pay the lessor for the right to possession and use of
228 the goods is an obligation for the term of the lease not subject to termination by
229 the lessee, and

230 (a) the original term of the lease is equal to or greater than the remaining
231 economic life of the goods,

232 (b) the lessee is bound to renew the lease for the remaining economic life
233 of the goods or is bound to become the owner of the goods,

234 (c) the lessee has an option to renew the lease for the remaining economic
235 life of the goods for no additional consideration or nominal additional
236 consideration upon compliance with the lease agreement, or

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

240 A transaction does not create a security interest merely because it provides that

241 (a) the present value of the consideration the lessee is obligated to pay the
242 lessor for the right to possession and use of the goods is substantially equal to or
243 is greater than the fair market value of the goods at the time the lease is entered
244 into,

245 (b) the lessee assumes risk of loss of the goods, or agrees to pay taxes,
246 insurance, filing, recording, or registration fees, or service or maintenance costs
247 with respect to the goods,

248 (c) the lessee has an option to renew the lease or to become the owner of
249 the goods,

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

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

257 For purposes of subsection (37):

258 (a) Additional consideration is not nominal if (i) when the option to renew
259 the lease is granted to the lessee the rent is stated to be the fair market rent for
260 the use of the goods for the term of the renewal determined at the time the option
261 is to be performed, or (ii) when the option to become the owner of the goods is
262 granted to the lessee the price is stated to be the fair market value of the goods
263 determined at the time the option is to be performed. Additional consideration
264 is nominal if it is less than the lessee's reasonably predictable cost of performing
265 under the lease agreement if the option is not exercised;

266 (b) "Reasonably predictable" and "remaining economic life of the goods"
267 are to be determined with reference to the facts and circumstances at the time the
268 transaction is entered into; and

269 (c) "Present value" means the amount as of a date certain of one or more
270 sums payable in the future, discounted to the date certain. The discount is
271 determined by the interest rate specified by the parties if the rate is not
272 manifestly unreasonable at the time the transaction is entered into; otherwise,
273 the discount is determined by a commercially reasonable rate that takes into
274 account the facts and circumstances of each case at the time the transaction was
275 entered into.

276 [(38)] **pursuant to section 400.1-203.**

277 **(36)** "Send" in connection with [any] a writing, **record**, or notice means:

278 **(A)** to deposit in the mail or deliver for transmission by any other usual
279 means of communication with postage or cost of transmission provided for and
280 properly addressed and, in the case of an instrument, to an address specified
281 thereon or otherwise agreed, or if there be none to any address reasonable under
282 the circumstances[. The receipt of any writing]; **or**

283 **(B) in any other way to cause to be received any record** or notice
284 within the time [at which] it would have arrived if properly sent [has the effect
285 of a proper sending].

286 [(39)] **(37)** "Signed" includes **using** any symbol executed or adopted [by
287 a party] with present intention to [authenticate] **adopt or accept** a writing.

288 [(40)] "Special property" means identifiable property in which the holder
289 has only a qualified, temporary, or limited interest.

290 [(41)] **(38)** "State" means **a State of the United States, the District**
291 **of Columbia, Puerto Rico, the United States Virgin Islands, or any**
292 **territory or insular possession subject to the jurisdiction of the United**
293 **States.**

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

295 [(42)] "Telegram" includes a message transmitted by radio, teletype, cable,
296 any mechanical method of transmission, or the like.

297 [(43)] **(40)** "Term" means [that] a portion of an agreement [which] **that**
298 relates to a particular matter.

299 [(44)] **(41)** "Unauthorized["] signature" means [one] a **signature** made
300 without actual, implied, or apparent authority [and]. **The term** includes a
301 forgery.

302 [(45) "Value". Except as otherwise provided with respect to negotiable
303 instruments and bank collections (sections 400.3-303, 400.4-208 and 400.4-209)
304 a person gives "value" for rights if he or she acquires them

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

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

310 (c) by accepting delivery pursuant to a preexisting contract for purchase;
311 or

312 (d) generally, in return for any consideration sufficient to support a simple
313 contract.

314 (46)] (42) "Warehouse receipt" means a receipt issued by a person
315 engaged in the business of storing goods for hire.

316 [(47) "Written" or] (43) "Writing" includes printing, typewriting, or any
317 other intentional reduction to tangible form. **"Written" has a corresponding**
318 **meaning.**

319 400.1-202. [A document in due form purporting to be a bill of lading,
320 policy or certificate of insurance, official weigher's or inspector's certificate,
321 consular invoice, or any other document authorized or required by the contract
322 to be issued by a third party shall be prima facie evidence of its own authenticity
323 and genuineness and of the facts stated in the document by the third party.]

324 **(a) Subject to subsection (f), a person has "notice" of a fact if the**
325 **person:**

326 **(1) has actual knowledge of it;**

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

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

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

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

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

338 **(e) Subject to subsection (f), a person "receives" a notice or**
339 **notification when:**

340 **(1) it comes to that person's attention; or**

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

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

 400.1-203. [Every contract or duty within this chapter imposes an
2 obligation of good faith in its performance or enforcement.] **(a) Whether a**
3 **transaction in the form of a lease creates a lease or security interest is**
4 **determined by the facts of each case.**

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

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

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

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

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

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

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

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

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

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

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

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

40 **(d) Additional consideration is nominal if it is less than the**
41 **lessee's reasonably predictable cost of performing under the lease**
42 **agreement if the option is not exercised. Additional consideration is**
43 **not nominal if:**

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

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

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

400.1-204. [(1) Whenever this chapter requires any action to be taken
2 within a reasonable time, any time which is not manifestly unreasonable may be
3 fixed by agreement.

4 (2) What is a reasonable time for taking any action depends on the nature,
5 purpose and circumstances of such action.

6 (3) An action is taken "seasonably" when it is taken at or within the time
7 agreed or if no time is agreed at or within a reasonable time.] **Except as
8 otherwise provided in articles 3, 4, and 5, a person gives value for
9 rights if the person acquires them:**

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

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

16 **(3) by accepting delivery under a preexisting contract for
17 purchase; or**

18 **(4) in return for any consideration sufficient to support a simple
19 contract.**

400.1-205. [(1) A course of dealing is a sequence of previous conduct
2 between the parties to a particular transaction which is fairly to be regarded as
3 establishing a common basis of understanding for interpreting their expressions
4 and other conduct.

5 (2) A usage of trade is any practice or method of dealing having such
6 regularity of observance in a place, vocation or trade as to justify an expectation
7 that it will be observed with respect to the transaction in question. The existence
8 and scope of such a usage are to be proved as facts. If it is established that such
9 a usage is embodied in a written trade code or similar writing the interpretation
10 of the writing is for the court.

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

15 (4) The express terms of an agreement and an applicable course of dealing
16 or usage of trade shall be construed wherever reasonable as consistent with each
17 other; but when such construction is unreasonable express terms control both

18 course of dealing and usage of trade and course of dealing controls usage of trade.

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

22 (6) Evidence of a relevant usage of trade offered by one party is not
23 admissible unless and until he has given the other party such notice as the court
24 finds sufficient to prevent unfair surprise to the latter.] **(a) Whether a time for**
25 **taking an action required by this chapter is reasonable depends on the**
26 **nature, purpose, and circumstances of the action.**

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

400.1-206. [(1) Except in the cases described in subsection (2) of this
2 section a contract for the sale of personal property is not enforceable by way of
3 action or defense beyond five thousand dollars in amount or value of remedy
4 unless there is some writing which indicates that a contract for sale has been
5 made between the parties at a defined or stated price, reasonably identifies the
6 subject matter, and is signed by the party against whom enforcement is sought
7 or by his authorized agent.

8 (2) Subsection (1) of this section does not apply to contracts for the sale
9 of goods (section 400.2-201) nor of securities (section 400.8-113) nor to security
10 agreements (section 400.9-203).] **Whenever this chapter creates a**
11 **"presumption" with respect to a fact, or provides that a fact is**
12 **"presumed", the trier of fact must find the existence of the fact unless**
13 **and until evidence is introduced that supports a finding of its**
14 **nonexistence.**

400.1-301. **(a) Except as otherwise provided in this section, when**
2 **a transaction bears a reasonable relation to this state and also to**
3 **another state or nation the parties may agree that the law either of this**
4 **state or of such other state or nation shall govern their rights and**
5 **duties.**

6 **(b) In the absence of an agreement effective under subsection (a),**
7 **and except as provided in subsection (c), this chapter applies to**
8 **transactions bearing an appropriate relation to this state.**

9 **(c) If one of the following provisions of this chapter specifies the**
10 **applicable law, that provision governs and a contrary agreement is**
11 **effective only to the extent permitted by the law so specified:**

- 12 **(1) section 400.2-402;**
13 **(2) sections 400.2A-105 and 400.2A-106;**
14 **(3) section 400.4-102;**
15 **(4) section 400.4A-507;**
16 **(5) section 400.5-116;**
17 **(6) section 400.8-110;**
18 **(7) sections 400.9-301 through 400.9-307.**

400.1-302. (a) Except as otherwise provided in subsection (b) or
2 **elsewhere in this chapter, the effect of provisions of this chapter may**
3 **be varied by agreement.**

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

11 **(c) The presence in certain provisions of this chapter of the**
12 **phrase "unless otherwise agreed", or words of similar import, does not**
13 **imply that the effect of other provisions may not be varied by**
14 **agreement under this section.**

400.1-303. (a) A "course of performance" is a sequence of conduct
2 **between the parties to a particular transaction that exists if:**

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

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

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

12 **(c) A "usage of trade" is any practice or method of dealing having**
13 **such regularity of observance in a place, vocation, or trade as to justify**
14 **an expectation that it will be observed with respect to the transaction**
15 **in question. The existence and scope of such a usage must be proved**
16 **as facts. If it is established that such a usage is embodied in a trade**

17 code or similar record, the interpretation of the record is a question of
18 law.

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

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

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

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

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

37 (f) Subject to section 400.2-209, a course of performance is
38 relevant to show a waiver or modification of any term inconsistent with
39 the course of performance.

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

400.1-304. Every contract or duty within this chapter imposes an
2 obligation of good faith in its performance and enforcement.

400.1-305. (a) The remedies provided by this chapter must be
2 liberally administered to the end that the aggrieved party may be put
3 in as good a position as if the other party had fully performed but
4 neither consequential or special damages nor penal damages may be
5 had except as specifically provided in this chapter or by other rule of
6 law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by action unless the provision declaring it specifies a
9 different and limited effect.

400.1-306. A claim or right arising out of an alleged breach may
2 be discharged in whole or in part without consideration by agreement
3 of the aggrieved party in an authenticated record.

400.1-307. A document in due form purporting to be a bill of
2 lading, policy or certificate of insurance, official weigher's or
3 inspector's certificate, consular invoice, or any other document
4 authorized or required by the contract to be issued by a third party is
5 prima facie evidence of its own authenticity and genuineness and of the
6 facts stated in the document by the third party.

400.1-308. (a) A party that with explicit reservation of rights
2 performs or promises performance or assents to performance in a
3 manner demanded or offered by the other party does not thereby
4 prejudice the rights reserved. Such words as "without prejudice",
5 "under protest", or the like are sufficient.

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

400.1-309. A term providing that one party or that party's
2 successor in interest may accelerate payment or performance or
3 require collateral or additional collateral "at will" or when the party
4 "deems itself insecure", or words of similar import, means that the party
5 has power to do so only if that party in good faith believes that the
6 prospect of payment or performance is impaired. The burden of
7 establishing lack of good faith is on the party against which the power
8 has been exercised.

400.1-310. An obligation may be issued as subordinated to
2 performance of another obligation of the person obligated, or a creditor
3 may subordinate its right to performance of an obligation by agreement
4 with either the person obligated or another creditor of the person
5 obligated. Subordination does not create a security interest as against
6 either the common debtor or a subordinated creditor.

400.7-102. [(1)] (a) In this article, unless the context otherwise requires:

2 [(a)] (1) "Bailee" means [the] a person [who] that by a warehouse
3 receipt, bill of lading, or other document of title acknowledges possession of goods
4 and contracts to deliver them.

5 [(b)] (2) "Carrier" means a person that issues a bill of lading.

6 [(3)] "Consignee" means [the] a person named in a bill of lading to
7 [whom] which or to whose order the bill promises delivery.

8 [(c)] (4) "Consignor" means [the] a person named in a bill of lading as

9 the person from [whom] **which** the goods have been received for shipment.

10 [(d)] **(5)** "Delivery order" means a [written] **record that contains an**
11 order to deliver goods directed to a [warehouseman] **warehouse**, carrier, or other
12 person [who] **that** in the ordinary course of business issues warehouse receipts
13 or bills of lading.

14 [(e)] "Document" means document of title as defined in the general
15 definitions in article 1 (section 400.1-201).

16 [(f)] **(6)** "Good faith" **has the same meaning as in section 400.1-**
17 **201(a)(6).**

18 **(7)** "Goods" means all things [which] **that** are treated as movable for the
19 purposes of a contract [of] **for** storage or transportation.

20 [(g)] **(8)** "Issuer" means a bailee [who] **that** issues a document [except
21 that] **of title or**, in [relation to] **the case of** an unaccepted delivery order [it
22 means], the person [who] **that** orders the possessor of goods to deliver. [Issuer]
23 **The term** includes [any] **a** person for [whom] **which** an agent or employee
24 purports to act in issuing a document if the agent or employee has real or
25 apparent authority to issue documents, [notwithstanding that] **even if** the issuer
26 [received no] **did not receive any** goods [or that], the goods were misdescribed,
27 or [that] in any other respect the agent or employee violated [his] **the issuer's**
28 instructions.

29 **(9)** "Person entitled under the document" means the holder, in
30 **the case of a negotiable document of title, or the person to which**
31 **delivery of the goods is to be made by the terms of, or pursuant to**
32 **instructions in a record under, a nonnegotiable document of title.**

33 **(10)** "Record" has the same meaning as in section 400.1-201(a)(10).

34 **(11)** "Sign" means, with present intent to authenticate or adopt
35 **a record:**

36 **(A)** to execute or adopt a tangible symbol; or

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

39 **(12)** "Shipper" means a person that enters into a contract of
40 **transportation with a carrier.**

41 [(h)] "Warehouseman" is] **(13)** "Warehouse" means a person engaged in
42 the business of storing goods for hire.

43 **(2)** Other definitions applying to this article or to specified parts thereof,
44 and the sections in which they appear are:

45 "Duly negotiate". Section 400.7-501.

46 "Person entitled under the document". Section 400.7-403(4).

47 (3)] (b) Definitions in other articles applying to this article and the
48 sections in which they appear are:

49 (1) "Contract for sale"[.], section 400.2-106.

50 ["Overseas". Section 400.2-323.]

51 (2) "Lessee in ordinary course", section 400.2A-103.

52 (3) "Receipt" of goods[.], section 400.2-103.

53 [(4)] (c) In addition, article 1 contains general definitions and principles
54 of construction and interpretation applicable throughout this article.

400.7-103. [To the extent that] (a) **This article is subject to** any treaty
2 or statute of the United States[,] **or** regulatory statute of this state [or tariff,
3 classification or regulation filed or issued pursuant thereto] **to the extent the**
4 **treaty, statute, or regulatory statute** is applicable[, the provisions of this
5 article are subject thereto].

6 (b) **This article does not modify or repeal any law prescribing the**
7 **form or content of a document of title or the services or facilities to be**
8 **afforded by a bailee, or otherwise regulating a bailee's business in**
9 **respects not specifically treated in this article. However, violation of**
10 **such a law does not affect the status of a document of title that**
11 **otherwise is within the definition of a document of title.**

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

18 (d) **To the extent there is a conflict between the uniform**
19 **electronic transactions act under sections 432.200 to 432.295 and this**
20 **article, this article governs.**

400.7-104. [(1) A warehouse receipt, bill of lading or other] (a) **Except**
2 **as otherwise provided in subsection (c), a** document of title is negotiable
3 [(a)] if by its terms the goods are to be delivered to bearer or to the order of a
4 named person[; or].

5 (b) [where recognized in overseas trade, if it runs to a named person or
6 assigns.

7 (2) Any other] A document of title other than one described in
8 subsection (a) is nonnegotiable. A bill of lading [in which it is stated] that
9 states that the goods are consigned to a named person is not made negotiable by
10 a provision that the goods are to be delivered only against [a written] an order
11 in a record signed by the same or another named person.

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

400.7-105. [The omission from either part 2 or part 3 of this article of a
2 provision corresponding to a provision made in the other part does not imply that
3 a corresponding rule of law is not applicable.] (a) Upon request of a person
4 entitled under an electronic document of title, the issuer of the
5 electronic document may issue a tangible document of title as a
6 substitute for the electronic document if:

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

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

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

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

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

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

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

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

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

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

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

400.7-106. (a) A person has control of an electronic document of
2 title if a system employed for evidencing the transfer of interests in the
3 electronic document reliably establishes that person as the person to
4 which the electronic document was issued or transferred.

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

8 (1) a single authoritative copy of the document exists which is
9 unique, identifiable, and, except as otherwise provided in paragraphs
10 (4), (5), and (6), unalterable;

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

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

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

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

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

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

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

400.7-201. [(1)] (a) A warehouse receipt may be issued by any
2 [warehouseman] warehouse.

3 [(2) Where] (b) If goods, including distilled spirits and agricultural
4 commodities, are stored under a statute requiring a bond against withdrawal or
5 a license for the issuance of receipts in the nature of warehouse receipts, a receipt

6 issued for the goods [has like effect as] **is deemed to be** a warehouse receipt
7 even [though] **if** issued by a person [who] **that** is the owner of the goods and is
8 not a [warehouseman] **warehouse**.

400.7-202. [(1)] **(a)** A warehouse receipt need not be in any particular
2 form.

3 [(2)] **(b)** Unless a warehouse receipt [embodies within its written or
4 printed terms] **provides for** each of the following, the [warehouseman]
5 **warehouse** is liable for damages caused [by the omission] to a person injured
6 [thereby] **by its omission**:

7 [(a)] **(1)** a **statement of the location of the warehouse facility** where
8 the goods are stored;

9 [(b)] **(2)** the date of issue of the receipt;

10 [(c)] **(3)** the [consecutive number] **unique identification code** of the
11 receipt;

12 [(d)] **(4)** a statement whether the goods received will be delivered to the
13 bearer, to a [specified] **named** person, or to a [specified] **named** person or [his]
14 **its** order;

15 [(e)] **(5)** the rate of storage and handling charges, [except that where]
16 **unless** goods are stored under a field warehousing arrangement, **in which case**
17 a statement of that fact is sufficient on a nonnegotiable receipt;

18 [(f)] **(6)** a description of the goods or [of] the packages containing them;

19 [(g)] **(7)** the signature of the [warehouseman, which may be made by his
20 authorized] **warehouse or its** agent;

21 [(h)] **(8)** if the receipt is issued for goods [of which the warehouseman is
22 owner] **that the warehouse owns**, either solely [or], jointly, or in common with
23 others, **a statement of the fact of [such] that** ownership; and

24 [(i)] **(9)** a statement of the amount of advances made and of liabilities
25 incurred for which the [warehouseman] **warehouse** claims a lien or security
26 interest [(section 400.7-209). If], **unless** the precise amount of [such] advances
27 made or [of such] liabilities incurred [is], at the time of the issue of the receipt,
28 **is unknown to the [warehouseman] warehouse** or to [his] **its** agent [who issues
29 it] **that issued the receipt, in which case** a statement of the fact that
30 advances have been made or liabilities incurred and the purpose [thereof] **of the**
31 **advances or liabilities** is sufficient.

32 [(3)] **(c)** A [warehouseman] **warehouse** may insert in [his] **its** receipt
33 any [other] terms [which] **that** are not contrary to [the provisions of] this chapter

34 and do not impair [his] **its** obligation of delivery [(**under** section 400.7-403)]
35 or [his] **its** duty of care [(**under** section 400.7-204)]. Any contrary [provisions
36 shall be] **provision is** ineffective.

400.7-203. A party to or purchaser for value in good faith of a document
2 of title, other than a bill of lading [relying in either case], **that relies** upon the
3 description [therein] of the goods **in the document** may recover from the issuer
4 damages caused by the nonreceipt or misdescription of the goods, except to the
5 extent that:

6 (1) the document conspicuously indicates that the issuer does not know
7 whether [any part or] all **or part** of the goods in fact were received or conform
8 to the description, **such** as [where] **a case in which** the description is in terms
9 of marks or labels or kind, quantity, or condition, or the receipt or description is
10 qualified by "contents, condition, and quality unknown", "said to contain", or [the
11 like] **words of similar import**, if [such] **the** indication [be] **is** true[.]; or

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

400.7-204. [(1)] (a) A [warehouseman] **warehouse** is liable for damages
2 for loss of or injury to the goods caused by [his] **its** failure to exercise [such] care
3 [in] **with** regard to [them as] **the goods that** a reasonably careful [man]
4 **person** would exercise under [like] **similar** circumstances [but]. Unless
5 otherwise agreed [he], **the warehouse** is not liable for damages [which] **that**
6 could not have been avoided by the exercise of [such] **that** care.

7 [(2)] (b) Damages may be limited by a term in the warehouse receipt or
8 storage agreement limiting the amount of liability in case of loss or damage[, and
9 setting forth a specific liability per article or item, or value per unit of weight,]
10 beyond which the [warehouseman shall] **warehouse** is not [be] liable[; provided,
11 however, that such liability may]. **Such a limitation is not effective with**
12 **respect to the warehouse's liability for conversion to its own use.** On
13 [written] request of the bailor **in a record** at the time of signing [such] **the**
14 storage agreement or within a reasonable time after receipt of the warehouse
15 receipt, **the warehouse's liability may** be increased on part or all of the goods
16 [thereunder,] **covered by the storage agreement or the warehouse**
17 **receipt.** In [which] **this** event, increased rates may be charged based on [such]
18 **an** increased valuation [but that no such increase shall be permitted contrary to
19 a lawful limitation of liability contained in the warehouseman's tariff, if any. No
20 such limitation is effective with respect to the warehouseman's liability for

21 conversion to his own use] **of the goods**.

22 [(3)] **(c)** Reasonable provisions as to the time and manner of presenting
23 claims and [instituting] **commencing** actions based on the bailment may be
24 included in the warehouse receipt or [tariff] **storage agreement**.

25 [(4)] **(d)** This section does not [impair] **modify** or repeal any existing
26 statute of this state [which] **that** imposes a higher responsibility upon the
27 [warehouseman] **warehouse** or invalidates a contractual [limitations which]
28 **limitation that** would be permissible under this article.

400.7-205. A buyer in [the] ordinary course of business of fungible goods
2 sold and delivered by a [warehouseman who] **warehouse that** is also in the
3 business of buying and selling such goods takes **the goods** free of any claim
4 under a warehouse receipt even [though it] **if the receipt is negotiable and**
5 has been duly negotiated.

400.7-206. [(1)] **(a)** A [warehouseman may on notifying] **warehouse, by**
2 **giving notice to** the person on whose account the goods are held and any other
3 person known to claim an interest in the goods, **may** require payment of any
4 charges and removal of the goods from the warehouse at the termination of the
5 period of storage fixed by the document[,] **of title** or, if [no] a period is **not** fixed,
6 within a stated period not less than thirty days after the [notification]
7 **warehouse gives notice**. If the goods are not removed before the date specified
8 in the [notification] **notice**, the [warehouseman] **warehouse** may sell them [in
9 accordance with the provisions of the section on enforcement of a warehouseman's
10 lien (] **pursuant to** section 400.7-210[)].

11 [(2)] **(b)** If a [warehouseman] **warehouse** in good faith believes that
12 [the] goods are about to deteriorate or decline in value to less than the amount
13 of [his] **its** lien within the time [prescribed] **provided** in subsection [(1) for
14 notification, advertisement and sale] **(a) and section 400.7-210**, the
15 [warehouseman] **warehouse** may specify in the [notification] **notice given**
16 **under subsection (a)** any reasonable shorter time for removal of the goods and
17 [in case], **if** the goods are not removed, may sell them at public sale held not less
18 than one week after a single advertisement or posting.

19 [(3)] **(c)** If, as a result of a quality or condition of the goods of which the
20 [warehouseman had no] **warehouse did not have** notice at the time of deposit,
21 the goods are a hazard to other property, [or to] the warehouse **facilities**, or [to]
22 **other** persons, the [warehouseman] **warehouse** may sell the goods at public or
23 private sale without advertisement **or posting** on reasonable notification to all

24 persons known to claim an interest in the goods. If the [warehouseman]
25 **warehouse**, after a reasonable effort, is unable to sell the goods [he], **it** may
26 dispose of them in any lawful manner and [shall] **does not** incur [no] liability
27 by reason of [such] **that** disposition.

28 [(4) The warehouseman must] **(d) A warehouse shall** deliver the goods
29 to any person entitled to them under this article upon due demand made at any
30 time [prior to] **before** sale or other disposition under this section.

31 [(5) The warehouseman] **(e) A warehouse** may satisfy [his] **its** lien
32 from the proceeds of any sale or disposition under this section but [must] **shall**
33 hold the balance for delivery on the demand of any person to [whom he] **which**
34 **the warehouse** would have been bound to deliver the goods.

400.7-207. [(1)] **(a)** Unless the warehouse receipt [otherwise] provides
2 **otherwise**, a [warehouseman must] **warehouse shall** keep separate the goods
3 covered by each receipt so as to permit at all times identification and delivery of
4 those goods [except that]. **However**, different lots of fungible goods may be
5 commingled.

6 [(2)] **(b) If different lots of fungible goods [so] are** commingled, **the**
7 **goods** are owned in common by the persons entitled thereto and the
8 [warehouseman] **warehouse** is severally liable to each owner for that owner's
9 share. [Where] **If**, because of overissue, a mass of fungible goods is insufficient
10 to meet all the receipts [which] the [warehouseman] **warehouse** has issued
11 against it, the persons entitled include all holders to [whom] **which** overissued
12 receipts have been duly negotiated.

400.7-208. [Where] **If** a blank in a negotiable **tangible** warehouse receipt
2 has been filled in without authority, a **good-faith** purchaser for value and
3 without notice of the [want] **lack** of authority may treat the insertion as
4 authorized. Any other unauthorized alteration leaves any **tangible or**
5 **electronic warehouse** receipt enforceable against the issuer according to its
6 original tenor.

400.7-209. [(1)] **(a)** A [warehouseman] **warehouse** has a lien against the
2 bailor on the goods covered by a warehouse receipt or **storage agreement or** on
3 the proceeds thereof in [his] **its** possession for charges for storage or
4 transportation [(, including demurrage and terminal charges)], insurance, labor,
5 or **other** charges, present or future, in relation to the goods, and for expenses
6 necessary for preservation of the goods or reasonably incurred in their sale
7 pursuant to law. If the person on whose account the goods are held is liable for

8 [like] **similar** charges or expenses in relation to other goods whenever deposited
9 and it is stated in the **warehouse receipt or storage agreement** that a lien is
10 claimed for charges and expenses in relation to other goods, the [warehouseman]
11 **warehouse** also has a lien against [him] **the goods covered by the**
12 **warehouse receipt or storage agreement or on the proceeds thereof in**
13 **its possession** for [such] **those** charges and expenses, whether or not the other
14 goods have been delivered by the [warehouseman] **warehouse**. [But] **However,**
15 **as** against a person to [whom] **which** a negotiable warehouse receipt is duly
16 negotiated, a [warehouseman's] **warehouse's** lien is limited to charges in an
17 amount or at a rate specified [on] **in the warehouse** receipt or, if no charges are
18 so specified [then], to a reasonable charge for storage of the **specific** goods
19 covered by the receipt subsequent to the date of the receipt.

20 [(2) The warehouseman] **(b) A warehouse** may also reserve a security
21 interest against the bailor for [a] **the** maximum amount specified on the receipt
22 for charges other than those specified in subsection [(1)] **(a)**, such as for money
23 advanced and interest. [Such a] **The** security interest is governed by [the article
24 on secured transactions [article 9]].

25 [(3)] **(c)** A [warehouseman's] **warehouse's** lien for charges and expenses
26 under subsection [(1)] **(a)** or a security interest under subsection [(2)] **(b)** is also
27 effective against any person [who] **that** so entrusted the bailor with possession
28 of the goods that a pledge of them by [him] **the bailor** to a good-faith purchaser
29 for value would have been valid [but]. **However, the lien or security interest**
30 is not effective against a person [as to whom the document confers no right in the
31 goods covered by it under section 400.7-503] **that before issuance of a**
32 **document of title had a legal interest or a perfected security interest**
33 **in the goods and that did not:**

34 **(1) deliver or entrust the goods or any document of title covering**
35 **the goods to the bailor or the bailor's nominee with:**

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

37 **(B) power to obtain delivery under section 400.7-403; or**

38 **(C) power of disposition under sections 400.2-403, 400.2A-304(2),**

39 **400.2A-305(2), 400.9-320, or 400.9-321(c) or other statute or rule of law;**

40 **or**

41 **(2) acquiesce in the procurement by the bailor or its nominee of**
42 **any document.**

43 [(4)] **(d)** A warehouse's lien on household goods for charges and

44 **expenses in relation to the goods under subsection (a) is also effective**
45 **against all persons if the depositor was the legal possessor of the goods**
46 **at the time of deposit. In this subsection, "household goods" means**
47 **furniture, furnishings, or personal effects used by the depositor in a**
48 **dwelling.**

49 (e) A [warehouseman] **warehouse** loses [his] **its** lien on any goods
50 [which he] **that it** voluntarily delivers or [which he] unjustifiably refuses to
51 deliver.

400.7-210. [(1)] (a) Except as **otherwise** provided in subsection [(2)] (b),
2 a [warehouseman's] **warehouse's** lien may be enforced by public or private sale
3 of the goods, in [bloc] **bulk** or in [parcels] **packages**, at any time or place and
4 on any terms [which] **that** are commercially reasonable, after notifying all
5 persons known to claim an interest in the goods. [Such] **The** notification must
6 include a statement of the amount due, the nature of the proposed sale, and the
7 time and place of any public sale. The fact that a better price could have been
8 obtained by a sale at a different time or in a [different] method **different** from
9 that selected by the [warehouseman] **warehouse** is not of itself sufficient to
10 establish that the sale was not made in a commercially reasonable manner. **The**
11 **warehouse sells in a commercially reasonable manner** if the
12 [warehouseman either] **warehouse** sells the goods in the usual manner in any
13 recognized market [therefor] **therefore**, [or if he] sells at the price current in
14 [such] **that** market at the time of [his] **the** sale, or [if he has] otherwise [sold]
15 **sells** in conformity with commercially reasonable practices among dealers in the
16 type of goods sold[, he has sold in a commercially reasonable manner]. A sale of
17 more goods than apparently necessary to be offered to [insure] **ensure**
18 satisfaction of the obligation is not commercially reasonable, except in cases
19 covered by the preceding sentence.

20 [(2)] (b) A [warehouseman's] **warehouse may enforce its** lien on
21 goods, other than goods stored by a merchant in the course of [his] **its** business
22 [may be enforced only as follows], **only if the following requirements are**
23 **satisfied:**

24 [(a)] (1) All persons known to claim an interest in the goods must be
25 notified.

26 [(b)] The notification must be delivered in person or sent by registered or
27 certified letter to the last known address of any person to be notified.

28 [(c)] (2) The notification must include an itemized statement of the claim,

29 a description of the goods subject to the lien, a demand for payment within a
30 specified time not less than ten days after receipt of the notification, and a
31 conspicuous statement that unless the claim is paid within that time the goods
32 will be advertised for sale and sold by auction at a specified time and place.

33 [(d)] (3) The sale must conform to the terms of the notification.

34 [(e)] (4) The sale must be held at the nearest suitable place to [that]
35 where the goods are held or stored.

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

46 [(3)] (c) Before any sale pursuant to this section, any person claiming a
47 right in the goods may pay the amount necessary to satisfy the lien and the
48 reasonable expenses incurred [under] **in complying with** this section. In that
49 event, the goods [must] **may** not be sold[,] but must be retained by the
50 [warehouseman] **warehouse** subject to the terms of the receipt and this article.

51 [(4) The warehouseman] (d) **A warehouse** may buy at any public sale
52 **held** pursuant to this section.

53 [(5)] (e) A purchaser in good faith of goods sold to enforce a
54 [warehouseman's] **warehouse's** lien takes the goods free of any rights of persons
55 against [whom] **which** the lien was valid, despite **the warehouse's**
56 noncompliance [by the warehouseman] with [the requirements of] this section.

57 [(6) The warehouseman] (f) **A warehouse** may satisfy [his] **its** lien from
58 the proceeds of any sale pursuant to this section but [must] **shall** hold the
59 balance, if any, for delivery on demand to any person to [whom he] **which the**
60 **warehouse** would have been bound to deliver the goods.

61 [(7)] (g) The rights provided by this section [shall be] **are** in addition to
62 all other rights allowed by law to a creditor against [his] **a** debtor.

63 [(8) Where] (h) **If** a lien is on goods stored by a merchant in the course
64 of [his] **its** business, the lien may be enforced in accordance with [either]

65 subsection [(1)] **(a)** or [(2)] **(b)**.

66 [(9) The warehouseman] **(i) A warehouse** is liable for damages caused
67 by failure to comply with the requirements for sale under this section and, in case
68 of willful violation, is liable for conversion.

400.7-301. [(1)] **(a)** A consignee of a nonnegotiable bill [who] **of lading**
2 **which** has given value in good faith, or a holder to [whom] **which** a negotiable
3 bill has been duly negotiated, relying [in either case] upon the description
4 [therein] of the goods[,] **in the bill** or upon the date [therein] shown **in the bill**,
5 may recover from the issuer damages caused by the misdating of the bill or the
6 nonreceipt or misdescription of the goods, except to the extent that the
7 [document] **bill** indicates that the issuer does not know whether any part or all
8 of the goods in fact were received or conform to the description, **such** as [where]
9 **in a case in which** the description is in terms of marks or labels or kind,
10 quantity, or condition or the receipt or description is qualified by "contents or
11 condition of contents of packages unknown", "said to contain", "shipper's weight,
12 load, and count", or [the like] **words of similar import**, if [such] **that**
13 indication [be] **is true**.

14 [(2) When] **(b) If** goods are loaded by [an] **the issuer** [who is a common
15 carrier,] **of a bill of lading**;

16 **(1)** the issuer [must] **shall** count the packages of goods if [package
17 freight] **shipped in packages** and ascertain the kind and quantity if **shipped**
18 **in bulk** [freight. In such cases]; **and**

19 **(2) words such as** "shipper's weight, load, and count" or [other] words
20 **of similar import** indicating that the description was made by the shipper are
21 ineffective except as to [freight] **goods** concealed [by] **in** packages.

22 [(3) When] **(c) If** bulk [freight is] **goods are** loaded by a shipper [who]
23 **that** makes available to the issuer **of a bill of lading** adequate facilities for
24 weighing [such freight, an] **those goods, the issuer** [who is a common carrier
25 must] **shall** ascertain the kind and quantity within a reasonable time after
26 receiving the [written] **shipper's** request [of the shipper] **in a record** to do so.
27 In [such cases] **that case**, "shipper's weight" or [other] words of [like purport]
28 **similar import** are ineffective.

29 [(4)] **(d)** The issuer [may] **of a bill of lading**, by [inserting] **including**
30 in the bill the words "shipper's weight, load, and count" or [other] words of [like
31 purport] **similar import**, **may** indicate that the goods were loaded by the
32 shipper[:], and, if [such] **that** statement [be] **is true**, the issuer [shall] **is not** [be]

33 liable for damages caused by the improper loading. [But their] **However,**
34 omission of such words does not imply liability for [such] damages caused by
35 improper loading.

36 [(5) The] (e) A shipper [shall be deemed to have guaranteed] **guarantees**
37 to [the] **an** issuer the accuracy at the time of shipment of the description, marks,
38 labels, number, kind, quantity, condition, and weight, as furnished by [him;] **the**
39 **shipper**, and the shipper shall indemnify the issuer against damage caused by
40 inaccuracies in [such] **those** particulars. [The] **This** right of [the issuer to such]
41 indemnity [shall in no way] **does not** limit [his] **the issuer's** responsibility
42 [and] **or** liability under the contract of carriage to any person other than the
43 shipper.

400.7-302. [(1)] (a) The issuer of a through bill of lading, or other
2 document of title embodying an undertaking to be performed in part by
3 [persons] **a person** acting as its [agents] **agent** or by [connecting carriers] **a**
4 **performing carrier**, is liable to [anyone] **any person** entitled to recover on the
5 **bill or other** document for any breach by [such] **the** other [persons] **person** or
6 [by a connecting] **the performing** carrier of its obligation under the [document
7 but] **bill or other document. However,** to the extent that the **bill or other**
8 **document** covers an undertaking to be performed overseas or in territory not
9 contiguous to the continental United States or an undertaking including matters
10 other than transportation, this liability **for breach by the other person or**
11 **the performing carrier** may be varied by agreement of the parties.

12 [(2) Where] (b) **If** goods covered by a through bill of lading or other
13 document of title embodying an undertaking to be performed in part by
14 [persons] **a person** other than the issuer are received by [any such] **that** person,
15 [he] **the person** is subject, with respect to [his] **its** own performance while the
16 goods are in [his] **its** possession, to the obligation of the issuer. [His] **The**
17 **person's** obligation is discharged by delivery of the goods to another [such]
18 person pursuant to the **bill or other** document[,] and does not include liability
19 for breach by any other [such persons] **person** or by the issuer.

20 [(3)] (c) The issuer of [such] **a** through bill of lading or other document
21 [shall be] **of title described in subsection (a) is** entitled to recover from the
22 [connecting] **performing** carrier, or [such] other person in possession of the
23 goods when the breach of the obligation under the **bill or other** document
24 occurred[.]:

25 (1) the amount it may be required to pay to [anyone] **any person**

26 entitled to recover on the **bill or other** document [therefor] **for the breach**, as
 27 may be evidenced by any receipt, judgment, or transcript [thereof,] **of judgment**;
 28 and

29 **(2)** the amount of any expense reasonably incurred by [it] **the issuer** in
 30 defending any action [brought] **commenced** by [anyone] **any person** entitled
 31 to recover on the **bill or other** document [therefor] **for the breach**.

400.7-303. [(1)] **(a)** Unless the bill of lading otherwise provides, [the] **a**
 2 carrier may deliver the goods to a person or destination other than that stated in
 3 the bill or may otherwise dispose of the goods, **without liability for**
 4 **misdelivery**, on instructions from:

5 [(a)] **(1)** the holder of a negotiable bill; [or]

6 [(b)] **(2)** the consignor on a nonnegotiable bill [notwithstanding], **even**
 7 **if the consignee has given** contrary instructions [from the consignee]; [or]

8 [(c)] **(3)** the consignee on a nonnegotiable bill in the absence of contrary
 9 instructions from the consignor, if the goods have arrived at the billed destination
 10 or if the consignee is in possession of the **tangible bill or in control of the**
 11 **electronic bill**; or

12 [(d)] **(4)** the consignee on a nonnegotiable bill, if [he] **the consignee** is
 13 entitled as against the consignor to dispose of [them] **the goods**.

14 [(2)] **(b)** Unless [such] instructions **described in subsection (a)** are
 15 [noted on] **included in** a negotiable bill of lading, a person to [whom] **which** the
 16 bill is duly negotiated [can] **may** hold the bailee according to the original terms.

400.7-304. [(1)] **(a)** Except [where] **as** customary in [overseas]
 2 **international** transportation, a **tangible** bill of lading [must] **may** not be
 3 issued in a set of parts. The issuer is liable for damages caused by violation of
 4 this subsection.

5 [(2) Where] **(b)** **If** a **tangible** bill of lading is lawfully [drawn] **issued**
 6 in a set of parts, each of which [is numbered] **contains an identification code**
 7 and **is** expressed to be valid only if the goods have not been delivered against any
 8 other part, the whole of the parts [constitute] **constitutes** one bill.

9 [(3) Where] **(c)** **If** a **tangible negotiable** bill of lading is lawfully issued
 10 in a set of parts and different parts are negotiated to different persons, the title
 11 of the holder to [whom] **which** the first due negotiation is made prevails as to
 12 both the document **of title** and the goods even [though] **if** any later holder may
 13 have received the goods from the carrier in good faith and discharged the carrier's
 14 obligation by [surrender of his] **surrendering its** part.

15 [(4) Any] **(d)** A person [who] **that** negotiates or transfers a single part
16 of a **tangible** bill of lading [drawn] **issued** in a set is liable to holders of that
17 part as if it were the whole set.

18 [(5)] **(e)** The bailee [is obliged to] **shall** deliver in accordance with part
19 4 of this article against the first presented part of a **tangible** bill of lading
20 lawfully [drawn] **issued** in a set. [Such] Delivery **in this manner** discharges
21 the bailee's obligation on the whole bill.

400.7-305. [(1)] **(a)** Instead of issuing a bill of lading to the consignor at
2 the place of shipment, a carrier [may], at the request of the consignor, **may**
3 procure the bill to be issued at destination or at any other place designated in the
4 request.

5 [(2)] **(b)** Upon request of [anyone] **any person** entitled as against [the]
6 **a carrier** to control the goods while in transit and on surrender of **possession or**
7 **control of** any outstanding bill of lading or other receipt covering [such] **the**
8 goods, the issuer, **subject to section 400.7-105**, may procure a substitute bill
9 to be issued at any place designated in the request.

400.7-307. [(1)] **(a)** A carrier has a lien on the goods covered by a bill of
2 lading **or on the proceeds thereof in its possession** for charges [subsequent
3 to] **after** the date of [its] **the carrier's** receipt of the goods for storage or
4 transportation [(, including demurrage and terminal charges)], and for expenses
5 necessary for preservation of the goods incident to their transportation or
6 reasonably incurred in their sale pursuant to law. [But] **However**, against a
7 purchaser for value of a negotiable bill of lading, a carrier's lien is limited to
8 charges stated in the bill or the applicable tariffs[,] or, if no charges are stated
9 [then to], a reasonable charge.

10 [(2)] **(b)** A lien for charges and expenses under subsection [(1)] **(a)** on
11 goods [which] **that** the carrier was required by law to receive for transportation
12 is effective against the consignor or any person entitled to the goods unless the
13 carrier had notice that the consignor lacked authority to subject the goods to
14 [such] **those** charges and expenses. Any other lien under subsection [(1)] **(a)** is
15 effective against the consignor and any person [who] **that** permitted the bailor
16 to have control or possession of the goods unless the carrier had notice that the
17 bailor lacked [such] authority.

18 [(3)] **(c)** A carrier loses [his] **its** lien on any goods [which he] **that it**
19 voluntarily delivers or [which he] unjustifiably refuses to deliver.

400.7-308. [(1)] **(a)** A carrier's lien **on goods** may be enforced by public

2 or private sale of the goods, in [bloc] **bulk** or in [parcels] **packages**, at any time
3 or place and on any terms [which] **that** are commercially reasonable, after
4 notifying all persons known to claim an interest in the goods. [Such] **The**
5 notification must include a statement of the amount due, the nature of the
6 proposed sale, and the time and place of any public sale. The fact that a better
7 price could have been obtained by a sale at a different time or in a [different]
8 method **different** from that selected by the carrier is not of itself sufficient to
9 establish that the sale was not made in a commercially reasonable manner. [If]
10 The carrier [either] **sells goods in a commercially reasonable manner if**
11 **the carrier** sells the goods in the usual manner in any recognized market
12 therefor [or if he], sells at the price current in [such] **that** market at the time of
13 [his] **the** sale, or [if he has] otherwise [sold] **sells** in conformity with
14 commercially reasonable practices among dealers in the type of goods sold [he has
15 sold in a commercially reasonable manner]. A sale of more goods than apparently
16 necessary to be offered to [insure] **ensure** satisfaction of the obligation is not
17 commercially reasonable, except in cases covered by the preceding sentence.

18 [(2)] **(b)** Before any sale pursuant to this section, any person claiming a
19 right in the goods may pay the amount necessary to satisfy the lien and the
20 reasonable expenses incurred [under] **in complying with** this section. In that
21 event, the goods [must] **may** not be sold[,] but must be retained by the carrier,
22 subject to the terms of the bill **of lading** and this article.

23 [(3)] **(c)** A carrier may buy at any public sale pursuant to this
24 section.

25 [(4)] **(d)** A purchaser in good faith of goods sold to enforce a carrier's lien
26 takes the goods free of any rights of persons against [whom] **which** the lien was
27 valid, despite **the carrier's** noncompliance [by the carrier] with [the
28 requirements of] this section.

29 [(5)] **(e)** A carrier may satisfy [his] **its** lien from the proceeds of any
30 sale pursuant to this section but [must] **shall** hold the balance, if any, for
31 delivery on demand to any person to [whom he] **which the carrier** would have
32 been bound to deliver the goods.

33 [(6)] **(f)** The rights provided by this section [shall be] **are** in addition to
34 all other rights allowed by law to a creditor against [his] **a** debtor.

35 [(7)] **(g)** A carrier's lien may be enforced [in accordance with] **pursuant**
36 **to** either subsection [(1)] **(a)** or the procedure set forth in [subsection (2) of]
37 section [400.7-210] **400.7-210(b)**.

38 [(8) The] **(h)** A carrier is liable for damages caused by failure to comply
39 with the requirements for sale under this section and, in case of willful violation,
40 is liable for conversion.

 400.7-309. [(1)] **(a)** A carrier [who] **that** issues a bill of lading, whether
2 negotiable or nonnegotiable [must], **shall** exercise the degree of care in relation
3 to the goods which a reasonably careful [man] **person** would exercise under
4 [like] **similar** circumstances. This subsection does not [repeal or change] **affect**
5 any [law] **statute, regulation**, or rule of law [which] **that** imposes liability upon
6 a common carrier for damages not caused by its negligence.

7 [(2)] **(b)** Damages may be limited by a [provision] **term in the bill of**
8 **lading or in a transportation agreement** that the carrier's liability [shall]
9 **may** not exceed a value stated in the [document] **bill or transportation**
10 **agreement** if the carrier's rates are dependent upon value and the consignor [by
11 the carrier's tariff] is afforded an opportunity to declare a higher value [or a
12 value as lawfully provided in the tariff, or where no tariff is filed he] **and the**
13 **consignor** is [otherwise] advised of [such] **the** opportunity[; but no]. **However,**
14 such a limitation is **not** effective with respect to the carrier's liability for
15 conversion to its own use.

16 [(3)] **(c)** Reasonable provisions as to the time and manner of presenting
17 claims and [instituting] **commencing** actions based on the shipment may be
18 included in a bill of lading or [tariff] **a transportation agreement**.

 400.7-401. The obligations imposed by this article on an issuer apply to
2 a document of title [regardless of the fact that

3 (a)] **even if:**

4 (1) the document [may] **does** not comply with the requirements of this
5 article or of any other [law] **statute, rule**, or regulation regarding its [issue]
6 **issuance**, form, or content; [or

7 (b)] (2) the issuer [may have] violated laws regulating the conduct of [his]
8 **its** business; [or

9 (c)] (3) the goods covered by the document (3) were owned by the bailee [at
10 the time] **when** the document was issued; or

11 [(d)] (4) the person issuing the document [does] **is** not [come within the
12 definition of warehouseman] **a warehouse** [if it] **but the document** purports
13 to be a warehouse receipt.

 400.7-402. [Neither] A duplicate [nor] **or** any other document of title
2 purporting to cover goods already represented by an outstanding document of the

3 same issuer [confers] **does not confer** any right in the goods, except as provided
 4 in the case of **tangible bills of lading** in a set of **parts**, overissue of documents
 5 for fungible goods [and], substitutes for lost, stolen, or destroyed documents, **or**
 6 **substitute documents issued pursuant to section 400.7-105**. [But] The
 7 issuer is liable for damages caused by [his] **its** overissue or failure to identify a
 8 duplicate document [as such] by a conspicuous notation [on its face].

400.7-403. [(1) The] **(a) A** bailee [must] **shall** deliver the goods to a
 2 person entitled under [the] **a** document [who] **of title if the person** complies
 3 with subsections [(2)] **(b)** and [(3)] **(c)**, unless and to the extent that the bailee
 4 establishes any of the following:

5 [(a)] **(1)** delivery of the goods to a person whose receipt was rightful as
 6 against the claimant;

7 [(b)] **(2)** damage to or delay, loss, or destruction of the goods for which
 8 the bailee is not liable;

9 [(c)] **(3)** previous sale or other disposition of the goods in lawful
 10 enforcement of a lien or on [warehouseman's] **a warehouse's** lawful termination
 11 of storage;

12 [(d)] **(4)** the exercise by a seller of [his] **its** right to stop delivery
 13 pursuant to [the provisions of the article on sales (] section 400.2-705 D)] **or by**
 14 **a lessor of its right to stop delivery pursuant to section 400.2A-526;**

15 [(e)] **(5)** a diversion, reconsignment, or other disposition pursuant to [the
 16 provisions of this article (] section 400.7-303 D)] or tariff regulating such right];

17 [(f)] **(6)** release, satisfaction, or any other [fact affording a] personal
 18 defense against the claimant; **or**

19 [(g)] **(7)** any other lawful excuse.

20 [(2)] **(b)** A person claiming goods covered by a document of title [must]
 21 **shall** satisfy the bailee's lien [where] **if** the bailee so requests or [where] **if** the
 22 bailee is prohibited by law from delivering the goods until the charges are paid.

23 [(3)] **(c)** Unless [the] **a** person claiming **the goods** is [one] **a person**
 24 against [whom] **which** the document [confers no] **of title does not confer a**
 25 right under section [400.7-503(1), he must] **400.7-503(a):**

26 **(1) the person claiming under a document shall** surrender [for
 27 cancellation or notation] **possession or control** of [partial deliveries] any
 28 outstanding negotiable document covering the goods[,] **for cancellation or**
 29 **indication of partial deliveries;** and

30 **(2)** the bailee [must] **shall** cancel the document or conspicuously [note]

31 **indicate in the document** the partial delivery [thereon] or [be] **the bailee is**
32 liable to any person to [whom] **which** the document is duly negotiated.

33 [(4) "Person entitled under the document" means holder in the case of a
34 negotiable document, or the person to whom delivery is to be made by the terms
35 of or pursuant to written instructions under a nonnegotiable document.]

400.7-404. A bailee [who] **that** in good faith [including observance of
2 reasonable commercial standards] has received goods and delivered or otherwise
3 disposed of [them] **the goods** according to the terms of [the] **a** document of title
4 or pursuant to this article is not liable [therefor. This rule applies] **for the**
5 **goods** even [though] **if:**

6 (1) the person from [whom he] **which the bailee** received the goods [had
7 no] **did not have** authority to procure the document or to dispose of the goods
8 [and even though]; **or**

9 (2) the person to [whom he] **which the bailee** delivered the goods [had
10 no] **did not have** authority to receive [them] **the goods**.

400.7-501. [(1)] **(a) The following rules apply to** a negotiable
2 **tangible** document of title [running]:

3 (1) **If the document's original terms run** to the order of a named
4 person, **the document** is negotiated by [his endorsement] **the named person's**
5 **indorsement** and delivery. After [his endorsement] **the named person's**
6 **indorsement** in blank or to bearer, any person [can] **may** negotiate [it] **the**
7 **document** by delivery alone.

8 (2) [(a) A negotiable document of title] **If the document's original**
9 **terms run to bearer**, it is [also] negotiated by delivery alone [when by its
10 original terms it runs to bearer].

11 [(b) When a document running] **(3) If the document's original terms**
12 **run** to the order of a named person **and it** is delivered to [him] **the named**
13 **person**, the effect is the same as if the document had been negotiated.

14 [(3)] **(4)** Negotiation of [a negotiable] **the** document [of title] after it has
15 been [endorsed] **indorsed** to a [specified] **named** person requires [endorsement]
16 **indorsement** by the [special endorsee as well as] **named person and** delivery.

17 [(4)] **(5)** A [negotiable] document [of title] is ["duly negotiated"] when
18 **if** it is negotiated in the manner stated in this [section] **subsection** to a holder
19 [who] **that** purchases it in good faith, without notice of any defense against or
20 claim to it on the part of any person, and for value, unless it is established that
21 the negotiation is not in the regular course of business or financing or involves

22 receiving the document in settlement or payment of a [money] **monetary**
23 obligation.

24 [(5) Endorsement] **(b) The following rules apply to a negotiable**
25 **electronic document of title:**

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

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

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

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

42 [(6)] **(d) The naming in a negotiable bill of lading** of a person to be
43 notified of the arrival of the goods does not limit the negotiability of the bill [nor]
44 **or constitute notice to a purchaser [thereof] of the bill** of any interest of [such]
45 **that person in the goods.**

400.7-502. [(1)] **(a) Subject to [the following section and to the provisions**
2 **of section] sections 400.7-205 [on fungible goods] and 400.7-503, a holder to**
3 **[whom] which** a negotiable document of title has been duly negotiated acquires
4 **thereby:**

5 [(a)] **(1) title to the document;**

6 [(b)] **(2) title to the goods;**

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

9 [(d)] **(4) the direct obligation of the issuer to hold or deliver the goods**
10 **according to the terms of the document free of any defense or claim by [him] the**
11 **issuer** except those arising under the terms of the document or under this
12 **article[,], but in the case of a delivery order, the bailee's obligation accrues only**

13 upon **the bailee's acceptance of the delivery order** and the obligation acquired
14 by the holder is that the issuer and any [endorser] **indorser** will procure the
15 acceptance of the bailee.

16 [(2)] **(b)** Subject to [the following] section **400.7-503**, title and rights [so]
17 acquired **by due negotiation** are not defeated by any stoppage of the goods
18 represented by the document **of title** or by surrender of [such] **the** goods by the
19 bailee[,] and are not impaired even [though] **if**:

20 **(1)** the **due** negotiation or any prior **due** negotiation constituted a breach
21 of duty [or even though];

22 **(2)** any person has been deprived of possession of [the] **a negotiable**
23 **tangible document or control of a negotiable electronic** document by
24 misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion[.];
25 or [even though]

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

400.7-503. [(1)] **(a)** A document of title confers no right in goods against
2 a person [who] **that** before issuance of the document had a legal interest or a
3 perfected security interest in [them] **the goods** and [who neither

4 (a) delivered] **that did not**:

5 **(1)** **deliver** or [entrusted them] **entrust the goods** or any document of
6 title covering [them] **the goods** to the bailor or [his or her] **the bailor's**
7 nominee with:

8 **(A)** actual or apparent authority to ship, store, or sell [or with];

9 **(B)** power to obtain delivery under [this article (]section 400.7-403[)]; or
10 [with]

11 **(C)** power of disposition under [this chapter (sections] **section 400.2-403**
12 [and], **400.2A-304(2), 400.2A-305(2), 400.9-320[)], or 400.9-321(c)** or other
13 statute or rule of law; [nor

14 (b) acquiesced] **or**

15 **(2)** **acquiesce** in the procurement by the bailor or [his or her] **its**
16 nominee of any document [of title].

17 [(2)] **(b)** Title to goods based upon an unaccepted delivery order is subject
18 to the rights of [anyone] **any person** to [whom] **which** a negotiable warehouse
19 receipt or bill of lading covering the goods has been duly negotiated. [Such a]
20 **That** title may be defeated under section 400.7-504 to the same extent as the
21 rights of the issuer or a transferee from the issuer.

22 [(3)] (c) Title to goods based upon a bill of lading issued to a freight
23 forwarder is subject to the rights of [anyone] **any person** to [whom] **which** a bill
24 issued by the freight forwarder is duly negotiated[; but]. **However**, delivery by
25 the carrier in accordance with part 4 of this article pursuant to its own bill of
26 lading discharges the carrier's obligation to deliver.

 400.7-504. [(1)] (a) A transferee of a document **of title**, whether
2 negotiable or nonnegotiable, to [whom] **which** the document has been delivered
3 but not duly negotiated, acquires the title and rights [which his] **that its**
4 transferor had or had actual authority to convey.

5 [(2)] (b) In the case of a **transfer of a nonnegotiable document of title**,
6 until but not after the bailee receives [notification] **notice** of the transfer, the
7 rights of the transferee may be defeated:

8 [(a)] (1) by those creditors of the transferor [who] **which** could treat the
9 [sale] **transfer** as void under section 400.2-402 **or 400.2A-308**; [or

10 (b)] (2) by a buyer from the transferor in ordinary course of business if
11 the bailee has delivered the goods to the buyer or received notification of [his]
12 **the buyer's** rights;

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

16 [(c)] (4) as against the bailee, by good-faith dealings of the bailee with
17 the transferor.

18 [(3)] (c) A diversion or other change of shipping instructions by the
19 consignor in a nonnegotiable bill of lading which causes the bailee not to deliver
20 **the goods** to the consignee defeats the consignee's title to the goods if [they] **the**
21 **goods** have been delivered to a buyer in ordinary course of business **or a lessee**
22 **in ordinary course of business** and, in any event, defeats the consignee's
23 rights against the bailee.

24 [(4)] (d) Delivery **of the goods** pursuant to a nonnegotiable document
25 **of title** may be stopped by a seller under section 400.2-705 **or a lessor under**
26 **section 400.2A-526**, [and] subject to the [requirement] **requirements** of due
27 notification [there provided] **in those sections**. A bailee [honoring] **that**
28 **honors** the seller's **or lessor's** instructions is entitled to be indemnified by the
29 seller **or lessor** against any resulting loss or expense.

 400.7-505. The [endorsement] **indorsement** of a **tangible** document of
2 title issued by a bailee does not make the [endorser] **indorser** liable for any

3 default by the bailee or [by] previous [endorsers] **indorsers**.

400.7-506. The transferee of a negotiable **tangible** document of title has
2 a specifically enforceable right to have [his] **its** transferor supply any necessary
3 [endorsement] **indorsement**, but the transfer becomes a negotiation only as of
4 the time the [endorsement] **indorsement** is supplied.

400.7-507. [Where] **If** a person negotiates or [transfers] **delivers** a
2 document of title for value, otherwise than as a mere intermediary under section
3 400.7-508, [then] unless otherwise agreed [he], **the transferor, in addition to**
4 **any warranty made in selling or leasing the goods**, warrants to [his] **its**
5 immediate purchaser only [in addition to any warranty made in selling the goods

6 (a)] that:

7 (1) the document is genuine; [and

8 (b) that he has no] (2) **the transferor does not have** knowledge of any
9 fact [which] **that** would impair [its] **the document's** validity or worth; and

10 [(c) that his] (3) **the** negotiation or [transfer] **delivery** is rightful and
11 fully effective with respect to the title to the document and the goods it
12 represents.

400.7-508. A collecting bank or other intermediary known to be entrusted
2 with documents **of title** on behalf of another or with collection of a draft or other
3 claim against delivery of documents warrants by [such] **the** delivery of the
4 documents only its own good faith and authority[. This rule applies] even
5 [though] **if the collecting bank or other** intermediary has purchased or made
6 advances against the claim or draft to be collected.

400.7-509. [The question] Whether a document **of title** is adequate to
2 fulfill the obligations of a contract for sale, **a contract for lease**, or the
3 conditions of a **letter of credit** is [governed] **determined** by [the articles on
4 sales ([] article 2 [] and on letters of credit (article), **2A, or 5**)].

400.7-601. [(1)] (a) If a document [has been] **of title is** lost, stolen, or
2 destroyed, a court may order delivery of the goods or issuance of a substitute
3 document and the bailee may without liability to any person comply with [such]
4 **the** order. If the document was negotiable [the claimant must post], **a court**
5 **may not order delivery of the goods or issuance of a substitute**
6 **document without the claimant's posting** security [approved by the court to
7 indemnify] **unless it finds that** any person [who] **that** may suffer loss as a
8 result of nonsurrender of **possession or control of** the document **is**
9 **adequately protected against the loss**. If the document was [not negotiable]

10 **nonnegotiable**, [such security may be required at the discretion of] the court
11 **may require security**. The court may also [in its discretion] order payment of
12 the bailee's reasonable costs and [counsel] **attorney's fees in any action under**
13 **this subsection**.

14 [(2)] **(b)** A bailee [who] **that**, without a court order, delivers goods to a
15 person claiming under a missing negotiable document **of title** is liable to any
16 person injured thereby[, and]. If the delivery is not in good faith [becomes], **the**
17 **bailee is** liable for conversion. Delivery in good faith is not conversion [if made
18 in accordance with a filed classification or tariff or, where no classification or
19 tariff is filed,] if the claimant posts security with the bailee in an amount at least
20 double the value of the goods at the time of posting to indemnify any person
21 injured by the delivery [who] **which** files a notice of claim within one year after
22 the delivery.

400.7-602. [Except where the] **Unless a document of title** was originally
2 issued upon delivery of the goods by a person [who had no] **that did not have**
3 power to dispose of them, [no] **a lien [attaches] does not attach** by virtue of any
4 judicial process to goods in the possession of a bailee for which a negotiable
5 document of title is outstanding unless **possession or control of** the document
6 [be] **is** first surrendered to the bailee or [its] **the document's negotiation is**
7 enjoined[, and]. The bailee [shall] **may not be compelled to deliver the goods**
8 pursuant to process until **possession or control of** the document is surrendered
9 to [him] **the bailee** or [impounded by] **to** the court. [One who purchases] **A**
10 **purchaser of** the document for value without notice of the process or injunction
11 takes free of the lien imposed by judicial process.

400.7-603. If more than one person claims title **to** or possession of the
2 goods, the bailee is excused from delivery until [he] **the bailee** has [had] a
3 reasonable time to ascertain the validity of the adverse claims or to [bring]
4 **commence** an action [to compel all claimants to interplead and may compel
5 such] **for interpleader**. **The bailee may assert an interpleader**[,] either in
6 defending an action for nondelivery of the goods[,] or by original action[,
7 whichever is appropriate].

400.7-703. **This chapter applies to a document of title that is**
2 **issued or a bailment that arises on or after the effective date of this**
3 **chapter. This chapter does not apply to a document of title that is**
4 **issued or a bailment that arises before the effective date of this chapter**
5 **even if the document of title or bailment would be subject to this**

6 chapter if the document of title had been issued or bailment had arisen
7 on or after the effective date of this chapter. This chapter does not
8 apply to a right of action that has accrued before the effective date of
9 this chapter.

400.7-704. A document of title issued or a bailment that arises
2 before the effective date of this chapter and the rights, obligations, and
3 interests flowing from that document or bailment are governed by any
4 statute or other rule amended or repealed by this chapter as if
5 amendment or repeal had not occurred and may be terminated,
6 completed, consummated, or enforced under that statute or other rule.

515.500. Sections 515.500 to 515.665 may be cited as the "Missouri
2 Commercial Receivership Act".

515.505. As used in sections 515.500 to 515.665, the following
2 terms shall mean:

3 (1) "Affiliate":

4 (a) A person that directly or indirectly owns, controls, or holds
5 with power to vote twenty percent or more of the outstanding voting
6 interests of a debtor, other than:

7 a. An entity that holds such securities in a fiduciary or agency
8 capacity without sole discretionary power to vote such interests; or

9 b. Solely to secure a debt, if such entity has not in fact exercised
10 such power to vote;

11 (b) A person whose business is operated under a lease or
12 operating agreement by a debtor, or a person substantially all of whose
13 property is operated under an operating agreement with a debtor; or

14 (c) A person that directly or indirectly operates the business or
15 substantially all of the property of the debtor under a lease or
16 operating agreement or similar arrangement;

17 (2) "Claim", a right to payment whether or not such right is
18 reduced to judgment, liquidated, unliquidated, fixed, contingent,
19 matured, unmatured, disputed, undisputed, legal, equitable, secured or
20 unsecured, or a right to an equitable remedy for breach of performance
21 if such breach gives rise to a right to payment, whether or not such
22 right to an equitable remedy is reduced to judgment, fixed, contingent,
23 matured, unmatured, disputed, undisputed, secured, or unsecured;

24 (3) "Court", a circuit court of the state of Missouri with before
25 which an application to appoint a receiver under sections 515.500 to

26 515.665 has been made or granted, or before which a receivership
27 action under sections 515.500 to 515.665 is pending;

28 (4) "Creditor", a person that has a claim against the debtor that
29 arose at the time of or before the appointment of a receiver pursuant
30 to sections 515.500 to 515.665;

31 (5) "Debt", liability on a claim;

32 (6) "Debtor", a person as to which a receiver is sought to be
33 appointed or a court appoints pursuant to sections 515.500 to 515.665,
34 a person who owns property as to which a receiver is sought to be
35 appointed or a court appoints a receiver pursuant to sections 515.500
36 to 515.665, a person as to which a receiver has been appointed by a
37 court in a foreign jurisdiction, or a person who owns property as to
38 which a receiver has been appointed by a court in a foreign
39 jurisdiction;

40 (7) "Entity", a person other than a natural person;

41 (8) "Estate property", property as to which a court appoints a
42 receiver pursuant to sections 515.500 to 515.665;

43 (9) "Executory contract", a contract, including a lease, where the
44 obligations of the debtor and the counter party or counter parties to
45 the contract are unperformed to the extent that the failure of either
46 party to complete performance of its obligations would constitute a
47 material breach of the contract, thereby excusing the other party's
48 performance of its obligations under the contract;

49 (10) "Foreign jurisdiction", any state or federal jurisdiction other
50 than that of this state;

51 (11) "Insolvent", a financial status or condition such that the sum
52 of the person's debts is greater than the value of such person's
53 property, at fair valuation;

54 (12) "Lien", a charge against property or an interest in property
55 to secure payment of a debt or performance of an obligation whether
56 created voluntarily or by operation of law;

57 (13) "Notice and a hearing", such notice as is appropriate and an
58 opportunity for hearing if one is requested. Absent request for hearing
59 by an appropriate person or party in interest, the term notice and a
60 hearing does not indicate a requirement for an actual hearing unless
61 the court so orders;

62 (14) "Party", a person who is a party to the action, becomes a

63 party to the action, or shall be joined or shall be allowed to intervene
64 in the action pursuant to the rules of the Missouri supreme court,
65 including, without limitation, any person needed for just adjudication
66 of the action;

67 (15) "Party in interest", the debtor, any party, the receiver, any
68 person with an ownership interest in or lien against estate property or
69 property sought to become estate property, any person that, with
70 respect to particular matters presented in the receivership, has an
71 interest that will be affected, and, in a general receivership, any
72 creditor of the debtor;

73 (16) "Person", includes natural persons, partnerships, limited
74 liability companies, corporations, and other entities recognized under
75 the laws of this state;

76 (17) "Property", any right, title, and interest, of the debtor,
77 whether legal or equitable, tangible or intangible, in real and personal
78 property, regardless of the manner by which such rights were or are
79 acquired, but does not include property of an individual person exempt
80 from execution under the laws of this state; provided however, that
81 estate property includes any nonexempt interest in property that is
82 partially exempt. Property includes, but is not limited to, any proceeds,
83 products, offspring, rents, or profits of or from property. Property does
84 not include any power that a debtor may exercise solely for the benefit
85 of another person or property impressed with a trust except to the
86 extent that the debtor has a residual interest;

87 (18) "Receiver", a receiver appointed by a court pursuant to
88 sections 515.500 to 515.665;

89 (19) "Receivership", the estate created pursuant to the court's
90 order or orders appointing a receiver pursuant to sections 515.500 to
91 515.665, including all estate property and the interests, rights, powers,
92 and duties of the receiver and all parties in interest relating to estate
93 property;

94 (20) "Receivership action", the action as to which a receiver is
95 sought to be appointed or a court appoints a receiver pursuant to
96 sections 515.500 to 515.665;

97 (21) "Secured creditor", a creditor that has a security interest or
98 other lien on estate property.

515.510. 1. To the extent the appointment of a receiver is not

2 otherwise provided for pursuant to sections 49.555, 82.1026, 91.730,
3 198.099, 257.450, 276.501, 287.360, 287.875, 351.498, 351.1189, 354.357,
4 354.480, 355.736, 369.354, 370.154, 375.650, 375.954, 375.1166, 375.1176,
5 379.1336, 379.1418, 382.409, 393.145, 407.100, 425.030, 441.510, 443.893,
6 513.105, 513.110, 521.310, 537.500, 630.763, or any other statute providing
7 for the appointment of a receiver or administration of a receivership
8 estate in specific circumstances, the court or any judge thereof in
9 vacation, shall have the power to appoint a receiver, whenever such
10 appointment shall be deemed necessary, whose duty it shall be to keep
11 and preserve any money or other thing deposited in court, or that may
12 be subject of a tender, and to keep and preserve all property and
13 protect any business or business interest entrusted to the receiver
14 pending any legal or equitable action concerning the same, subject to
15 the order of the court, including in the following instances:

16 (1) In an action brought to dissolve an entity the court may
17 appoint a receiver with the powers of a custodian to manage the
18 business affairs of the entity and to wind up and liquidate the entity;

19 (2) In an action in which the person seeking appointment of a
20 receiver has a lien on or interest in property or its revenue-producing
21 potential, and either:

22 (a) The appointment of a receiver with respect to the property
23 or its revenue-producing potential is necessary to keep and preserve
24 the property or its revenue-producing potential or to protect any
25 business or business interest concerning the property or its revenue-
26 producing potential; or

27 (b) The appointment of a receiver with respect to the property
28 or its revenue-producing potential is provided for by a valid and
29 enforceable contract or contract provision; or

30 (c) The appointment of a receiver is necessary to effectuate or
31 enforce an assignment of rents or other revenues from the property;

32 (3) After judgment, in order to give effect to the judgment,
33 provided that the party seeking the appointment demonstrates it has
34 no other adequate remedy to enforce the judgment;

35 (4) To dispose of property according to provisions of a judgment
36 dealing with its disposition;

37 (5) To the extent that property is not exempt from execution, at
38 the instance of a judgment creditor either before or after the issuance

39 of any execution, to preserve or protect it, or prevent its transfer;

40 (6) If and to the extent that property is subject to execution to
41 satisfy a judgment, to preserve the property during the pendency of an
42 appeal, or when an execution has been returned unsatisfied, or when
43 an order requiring a judgment debtor to appear for proceedings
44 supplemental to judgment has been issued and the judgment debtor
45 fails to submit to examination as ordered;

46 (7) Upon attachment of real or personal property when the
47 property attached is of a perishable nature or is otherwise in danger
48 of waste, impairment, or destruction or where a debtor has absconded
49 with, secreted, or abandoned the property, and it is necessary to
50 collect, conserve, manage, control, or protect it, or to dispose of it
51 promptly, or when the court determines that the nature of the property
52 or the exigency of the case otherwise provides cause for the
53 appointment of a receiver;

54 (8) In an action by a transferor of real or personal property to
55 avoid or rescind the transfer on the basis of fraud, or in an action to
56 subject property or a fund to the payment of a debt;

57 (9) In an action against any entity if that person is insolvent or
58 is not generally paying the entity's debts as those debts become due
59 unless they are the subject of bona fide dispute;

60 (10) In an action where a mortgagee has posted and the court has
61 approved a redemption bond as provided pursuant to section 443.440;

62 (11) If a general assignment for the benefit of creditors has been
63 made;

64 (12) Pursuant to the terms of a valid and enforceable contract or
65 contract provision providing for the appointment of a receiver, other
66 than pursuant to a contract or contract provision providing for the
67 appointment of a receiver with respect to the primary residence of a
68 debtor who is a natural person;

69 (13) To enforce a valid and enforceable contractual assignment
70 of rents or other revenue from the property; and

71 (14) To prevent irreparable injury to the person or persons
72 requesting the appointment of a receiver with respect to the debtor's
73 property.

74 2. A court of this state shall appoint as receiver of property
75 located in this state a person appointed in a foreign jurisdiction as

76 receiver with respect to the property specifically or with respect to the
77 debtor's property generally, upon the application of the receiver
78 appointed in the foreign jurisdiction or of any party to that foreign
79 action, and following the appointment shall give effect to orders,
80 judgments, and decrees of the court in the foreign jurisdiction affecting
81 the property in this state held by a receiver appointed in the foreign
82 jurisdiction, unless the court determines that to do so would be
83 manifestly unjust or manifestly inequitable. The venue of such an
84 action may be any county in which the debtor resides or maintains any
85 office, or any county in which any property over which a receiver is to
86 be appointed is located at the time the action is commenced.

87 3. At least seven days' notice of any application for the
88 appointment of a receiver shall be given to the debtor and to all other
89 parties to the action in which the request for appointment of a receiver
90 is sought, and to all other parties in interest as the court may require.
91 If any execution by a judgment creditor or any application by a
92 judgment creditor for the appointment of a receiver with respect to
93 property over which the appointment of a receiver is sought is pending
94 in any other action at the time the application is made, then notice of
95 the application for the receiver's appointment also shall be given to the
96 judgment creditor in the other action. The court may shorten or
97 expand the period for notice of an application for the appointment of
98 a receiver upon good cause shown.

99 4. The order appointing a receiver shall reasonably describe the
100 property over which the receiver is to take charge, by category,
101 individual items, or both if the receiver is to take charge of less than
102 substantially all of the debtor's property. If the order appointing a
103 receiver does not expressly limit the receiver's authority to designated
104 property or categories of property of the owner, the receiver shall be
105 deemed a general receiver with authority to take charge over all of the
106 debtor's property, wherever located.

107 5. The court may condition the appointment of a receiver upon
108 the giving of security by the person seeking the appointment of a
109 receiver, in such amount as the court may specify, for the payment of
110 costs and damages incurred or suffered by any person should it later
111 be determined that the appointment of the receiver was wrongfully
112 obtained.

113 **6. The appointment of a receiver is not required to be relief**
114 **ancillary or in addition to any other claim, and may be sought as an**
115 **independent claim and remedy.**

116 **7. Sections 515.500 to 515.665 shall not apply to persons or**
117 **entities who are, or who should be, regulated as public utilities by the**
118 **public service commission.**

515.515. A receiver shall be either a general receiver or a limited
2 **receiver. A receiver shall be a general receiver if the receiver is**
3 **appointed to take possession and control of all or substantially all of a**
4 **debtor's property and provided the power to liquidate such property.**
5 **A receiver shall be a limited receiver if the receiver is appointed to**
6 **take possession and control of only limited or specific property of a**
7 **debtor, whether to preserve or to liquidate such property. A receiver**
8 **appointed at the request of a person having a lien on or interest in**
9 **specific property that constitutes all or substantially all of a debtor's**
10 **property may be either a general receiver or a limited receiver. The**
11 **court shall specify in the order appointing a receiver whether the**
12 **receiver is appointed as a general receiver or as a limited**
13 **receiver. The court by order, upon notice and a hearing, may convert**
14 **either a general receiver into a limited receiver or a limited receiver**
15 **into a general receiver for good cause shown. In the absence of a clear**
16 **designation by the court of the type of receiver appointed, whether**
17 **limited or general, the receiver shall be presumed to be a general**
18 **receiver and shall have the rights, powers, and duties attendant**
19 **thereto.**

515.520. 1. Upon entry of an order appointing a receiver or upon
2 **conversion of a limited receiver to a general receiver pursuant to**
3 **section 515.515 and within ten business days thereof, or within such**
4 **additional time as the court may allow, the receiver shall give notice**
5 **of the appointment or conversion to all parties in interest, including**
6 **the secretary of state for the state of Missouri, and state and federal**
7 **taxing authorities. Such notice shall be made by first class mail and**
8 **proof of service thereof shall be filed with the court. The content of**
9 **such notice shall include:**

10 **(1) The caption reflecting the action in which the receiver is**
11 **appointed;**

12 **(2) The date the action was filed;**

- 13 **(3) The date the receiver was appointed;**
14 **(4) The name, address, and contact information of the appointed**
15 **receiver;**
16 **(5) Whether the receiver is a limited or general receiver;**
17 **(6) A description of the estate property;**
18 **(7) The debtor's name and address and the name and address of**
19 **the attorney for the debtor, if any;**
20 **(8) The court address at which pleadings, motions, or other**
21 **papers may be filed;**
22 **(9) Such additional information as the court directs; and**
23 **(10) A copy of the court's order appointing the receiver.**

24 **2. A general receiver shall also give notice of the receivership by**
25 **publication in a newspaper of general circulation published in the**
26 **county or counties in which estate property is known to be located once**
27 **a week for three consecutive weeks. The first notice shall be published**
28 **within thirty days after the date of appointment of the receiver. The**
29 **notice of the receivership shall include the date of appointment of the**
30 **receiver, the name of the court and the action number, the last day on**
31 **which claims may be filed, if established by the court, and the name**
32 **and address of the debtor, the receiver, and the receiver's attorney, if**
33 **any. For purposes of this section, all intangible property included as**
34 **estate property is deemed to be located in the county in which the**
35 **debtor, if a natural person, resides, or in which the debtor, if an entity,**
36 **maintains its principal administrative offices.**

37 **3. The debtor shall cooperate with all reasonable requests for**
38 **information from the receiver for purposes of assisting the receiver in**
39 **providing notice pursuant to subsection 1 of this section. In the court's**
40 **discretion, the failure of such debtor to cooperate with any reasonable**
41 **request for information may be punished as a contempt of court.**

515.525. Except as provided in sections 515.500 to 515.665 or
2 **otherwise by statute, any person, whether or not a resident of this**
3 **state, may serve as a receiver. A person may not be appointed as a**
4 **receiver, and shall be replaced as receiver if already appointed, if it**
5 **should appear to the court that the person:**

- 6 **(1) Has been found guilty of a felony or other crime involving**
7 **moral turpitude or is controlled by a person who has been convicted of**
8 **a felony or other crime involving moral turpitude;**

9 **(2) Is a party to the action, or is a parent, grandparent,**
10 **grandchild, sibling, partner, director, officer, agent, attorney, employee,**
11 **secured or unsecured creditor or lienor of, or holder of any equity**
12 **interest in, or controls or is controlled by, the debtor, or who is the**
13 **agent, affiliate, or attorney of any disqualified person;**

14 **(3) Has an interest materially adverse to the interest of persons**
15 **to be affected by the receivership generally; or**

16 **(4) Is a sheriff of any county.**

515.530. Except as otherwise provided for by statute or court
2 **rule, before entering upon duties of receiver, a receiver shall execute**
3 **a bond with one or more sureties approved by the court, in the amount**
4 **the court specifies, conditioned that the receiver will faithfully**
5 **discharge the duties of receiver in accordance with orders of the court**
6 **and state law. Unless otherwise ordered by the court, the receiver's**
7 **bond runs in favor of all persons having an interest in the receivership**
8 **proceeding or property held by the receiver and in favor of state**
9 **agencies.**

515.535. As of the time of appointment, and subject to the
2 **provisions of subdivision (3) of subsection 3 of section 515.575, the**
3 **receiver shall have the powers and priority as if it were a creditor that**
4 **obtained a judicial lien at the time of appointment on all of the debtor's**
5 **property that is subject to the receivership, subject to satisfaction of**
6 **recording requirements as to real property pursuant to paragraph (c)**
7 **of subsection 2 of section 515.545.**

515.540. 1. Except as otherwise provided for by sections 515.500
2 **to 515.665, the court in all cases has exclusive authority over the**
3 **receiver, and the exclusive possession and right of control with respect**
4 **to all real property and all tangible and intangible personal property**
5 **with respect to which the receiver is appointed, wherever located, and**
6 **the exclusive authority to determine all controversies relating to the**
7 **collection, preservation, application, and distribution of all property,**
8 **and all claims against the receiver arising out of the exercise of the**
9 **receiver's powers or the performance of the receiver's duties. However,**
10 **the court does not have exclusive authority over actions in which a**
11 **state agency is a party and in which jurisdiction or venue is vested**
12 **elsewhere.**

13 **2. For good cause shown, the court has power to shorten or**

14 **expand the time frames specified in sections 515.500 to 515.665.**

15 **515.545. 1. A receiver has the following powers and authority:**

16 **(1) To incur or pay expenses incidental to the receiver's**
17 **preservation and use of estate property, and otherwise in the**
18 **performance of the receiver's duties, including the power to pay**
19 **obligations incurred prior to the receiver's appointment if and to the**
20 **extent that payment is determined by the receiver to be prudent in**
21 **order to preserve the value of estate property and the funds used for**
22 **this purpose are not subject to any lien or right of setoff in favor of a**
23 **creditor who has not consented to the payment and whose interest is**
24 **not otherwise adequately protected;**

25 **(2) If the appointment applies to all or substantially all of the**
26 **property of an operating business or any revenue-producing property**
27 **of the debtor, to do all the things which the owner of the business or**
28 **property may do in the exercise of ordinary business judgment, or in**
29 **the ordinary course of the operation of the business as a going concern**
30 **or use of the property including, but not limited to, the purchase and**
31 **sale of goods or services in the ordinary course of such business, and**
32 **the incurring and payment of expenses of the business or property in**
33 **the ordinary course;**

34 **(3) To assert any rights, claims, or choses in action of the debtor,**
35 **if and to the extent that the rights, claims, or choses in action are**
36 **themselves property within the scope of the appointment or relate to**
37 **any estate property, to maintain in the receiver's name or in the name**
38 **of the debtor any action to enforce any right, claim, or chose in action,**
39 **and to intervene in actions in which the debtor is a party for the**
40 **purpose of exercising the powers under this subsection;**

41 **(4) To intervene in any action in which a claim is asserted**
42 **against the debtor, for the purpose of prosecuting or defending the**
43 **claim and requesting the transfer of venue of the action to the court**
44 **appointing the receiver. However, the court shall not transfer actions**
45 **in which a state agency is a party and as to which a statute expressly**
46 **vests jurisdiction or venue elsewhere. This power is exercisable with**
47 **court approval by a limited receiver, and with or without court**
48 **approval by a general receiver;**

49 **(5) To assert rights, claims, or choses in action of the receiver**
50 **arising out of transactions in which the receiver is a participant;**

37 **(6) To pursue in the name of the receiver any claim under**
38 **sections 428.005 to 428.059 assertable by any creditor of the debtor, if**
39 **pursuit of the claim is determined by the receiver to be appropriate in**
40 **the exercise of the receiver's business judgment;**

41 **(7) To seek and obtain advice or instruction from the court with**
42 **respect to any course of action with respect to which the receiver is**
43 **uncertain in the exercise of the receiver's powers or the discharge of**
44 **the receiver's duties;**

45 **(8) To obtain appraisals with respect to estate property;**

46 **(9) To compel by subpoena any person to submit to an**
47 **examination under oath, in the manner of a deposition in accordance**
48 **with rule 57.03 of the Missouri rules of civil procedure, with respect to**
49 **estate property or any other matter that may affect the administration**
50 **of the receivership;**

51 **(10) To use, sell, or lease property other than in the ordinary**
52 **course of business pursuant to section 515.645, and to execute in the**
53 **debtor's stead such documents, conveyances, and borrower consents as**
54 **may be required in connection therewith; and**

55 **(11) All other powers as may be conferred upon the receiver**
56 **specifically by sections 515.500 to 515.665, by statute, court rule, or by**
57 **the court.**

58 **2. A receiver has the following duties:**

59 **(1) The duty to notify all federal and state taxing and applicable**
60 **regulatory agencies of the receiver's appointment in accordance with**
61 **any applicable laws imposing this duty, including but not limited to 26**
62 **U.S.C. Section 6036;**

63 **(2) The duty to comply with state law;**

64 **(3) If a receiver is appointed with respect to any real property,**
65 **the duty to record as soon as practicable within the land records in any**
66 **county in which such real property may be situated a notice of lis**
67 **pendens as provided in section 527.260, together with a certified copy**
68 **of the order of appointment, together with a legal description of the**
69 **real property if one is not included in that order; and**

70 **(4) Other duties as may be required specifically by sections**
71 **515.500 to 515.665, by statute, court rule, or by the court.**

72 **3. The various powers, authorities, and duties of a receiver**
73 **provided by sections 515.500 to 515.665 may be expanded, modified, or**

74 limited by order of the court.

515.550. 1. Upon demand by a receiver, any person, including the
2 debtor, shall turn over any estate property that is within the possession
3 or control of that person unless otherwise ordered by the court for
4 good cause shown. A receiver by motion may seek to compel turnover
5 of estate property as against any person over which the court first
6 establishes jurisdiction, unless there exists a bona fide dispute with
7 respect to the existence or nature of the receiver's possessory interest
8 in the estate property, in which case turnover shall be sought by means
9 of a legal action. In the absence of a bona fide dispute with respect to
10 the receiver's right to possession of estate property, the failure to
11 relinquish possession and control to the receiver shall be punishable
12 as a contempt of the court.

13 2. Should the court after notice and a hearing pursuant to
14 subsection 1 of this section order the turnover of property to the
15 receiver, the party against which such order is made shall have the
16 right to deliver a bond executed by such party as principal together
17 with one or more sufficient sureties providing that the principal and
18 each such surety shall each be bound to the receiver in double the
19 amount of the value of the property to be turned over, should the
20 property not be turned over to the receiver when such order becomes
21 final. Absent such bond, the property ordered to be turned over to the
22 receiver shall be immediately turned over to the receiver within ten
23 days of the entry of such order.

515.555. 1. In addition to other duties and requirements set forth
2 in sections 515.500 to 515.665 and as ordered by the court, the debtor
3 shall:

4 (1) Within fourteen days of the appointment of a general
5 receiver, make available for inspection by the receiver during normal
6 business hours all information and data required to be filed with the
7 court pursuant to section 515.560, in the form and manner the same are
8 maintained in the ordinary course of the debtor's business;

9 (2) Assist and cooperate fully with the receiver in the
10 administration of the estate and the discharge of the receiver's duties,
11 and comply with all orders of the court;

12 (3) Supply to the receiver information necessary to enable the
13 receiver to complete any schedules or reports that the receiver may be

14 required to file with the court, and otherwise assist the receiver in the
15 completion of the schedules;

16 (4) Upon the receiver's appointment, deliver into the receiver's
17 possession all the property of the receivership estate in the person's
18 possession, custody, or control, including, but not limited to, all
19 accounts, books, papers, records, and other documents; and

20 (5) Following the receiver's appointment, submit to examination
21 by the receiver, or by any other person upon order of the court, under
22 oath, concerning the acts, conduct, property, liabilities, and financial
23 condition of that person or any matter relating to the receiver's
24 administration of the estate.

25 2. When the debtor is an entity, each of the officers, directors,
26 managers, members, partners, or other individuals exercising or having
27 the power to exercise control over the affairs of the entity are subject
28 to the requirements of this section.

515.560. 1. Within thirty days after the date of appointment of a
2 general receiver, the debtor shall file with the court and submit to the
3 receiver the following schedules:

4 (1) A true list of all of the known creditors and applicable
5 regulatory and taxing agencies of the debtor, including the mailing
6 addresses for each, the amount and nature of their claims, and whether
7 their claims are disputed; and

8 (2) A true list of all estate property, including the estimated
9 liquidation value and location of the property and, if real property, a
10 legal description thereof, as of the date of appointment of the receiver.

11 2. The Missouri supreme court may from time to time prescribe
12 by court rule the schedules to be filed in receiverships as the supreme
13 court shall deem appropriate to the effective administrations of
14 sections 515.500 to 515.665.

515.565. 1. A receiver shall not be obligated to obtain any
2 appraisal or other independent valuation of property in the receiver's
3 possession unless ordered by the court to do so.

4 2. A court may order the receiver to file such additional
5 schedules, reports of assets, liabilities, claims, or inventories as
6 necessary and proper.

7 3. Whenever a list or schedule required pursuant to this section
8 is not prepared and filed as required by the debtor, the court may

9 order the receiver, a petitioning creditor, or such other person as the
10 court in its discretion deems appropriate to prepare and file such list
11 or schedule within a time fixed by the court. The court may approve
12 reimbursement of the cost incurred in complying with such order as an
13 administrative expense.

515.570. 1. A general receiver shall file with the court a monthly
2 report of the receiver's operations and financial affairs unless
3 otherwise ordered by the court. Except as otherwise ordered by the
4 court, each report of a general receiver shall be due by the last day of
5 the subsequent month and shall include the following:

- 6 (1) A balance sheet;
- 7 (2) A statement of income and expenses;
- 8 (3) A statement of cash receipts and disbursements;
- 9 (4) A statement of accrued accounts receivable of the receiver;
- 10 (5) A statement disclosing amounts considered to be
11 uncollectable;
- 12 (6) A statement of accounts payable of the receiver, including
13 professional fees. Such statement shall list the name of each creditor
14 and the amounts owing and remaining unpaid over thirty days; and
- 15 (7) A tax disclosure statement, which shall list post filing taxes
16 due or tax deposits required, the name of the taxing agency, the
17 amount due, the date due, and an explanation for any failure to make
18 payments or deposits.

19 2. A limited receiver shall file with the court all such reports as
20 the court may require.

515.575. 1. Except as otherwise ordered by the court, the entry
2 of an order appointing a general receiver shall operate as a stay,
3 applicable to all persons, of:

- 4 (1) The commencement or continuation, including the issuance,
5 employment, or service of process, of a judicial, administrative, or
6 other action or proceeding against the debtor that was or could have
7 been commenced before the entry of the order of appointment, or to
8 recover a claim against the debtor that arose before the entry of the
9 order of appointment;
- 10 (2) The enforcement against the debtor or any estate property of
11 a judgment obtained before the order of appointment;
- 12 (3) Any act to obtain possession of estate property from the

13 receiver, or to interfere with, or exercise control over, estate property;

14 (4) Any act to create, perfect, or enforce any lien or claim against
15 estate property except by exercise of a right of setoff, to the extent that
16 the lien secures a claim against the debtor that arose before the entry
17 of the order of appointment; or

18 (5) Any act to collect, assess, or recover a claim against the
19 debtor that arose before the entry of the order of appointment.

20 2. The stay shall automatically expire as to the acts specified in
21 subdivisions (1), (2), and (3) of subsection 1 of this section sixty days
22 after the entry of the order of appointment unless before the expiration
23 of the sixty-day period the debtor or receiver, for good cause shown,
24 obtains an order of the court extending the stay, after notice and a
25 hearing. A person whose action or proceeding is stayed by motion to
26 the court may seek relief from the stay for good cause shown. Any
27 judgment obtained against the debtor or estate property following the
28 entry of the order of appointment is not a lien against estate property
29 unless the receivership is terminated prior to a conveyance of the
30 property against which the judgment would otherwise constitute a lien.

31 3. The entry of an order appointing a receiver does not operate
32 as a stay of:

33 (1) The commencement or continuation of a criminal proceeding
34 against the debtor;

35 (2) The commencement or continuation of an action or
36 proceeding to establish paternity, or to establish or modify an order for
37 alimony, maintenance, or support, or to collect alimony, maintenance,
38 or support under any order of a court;

39 (3) Any act to perfect or to maintain or continue the perfection
40 of an interest in estate property pursuant to any generally applicable
41 Missouri law that permits perfection of an interest in property to be
42 effective against an entity that acquires rights in such property before
43 the date of perfection. Such right to perfect an interest in estate
44 property includes any act to perfect an interest in purchase money
45 collateral pursuant to sections 400.9-301 to 400.9-339, perfection of a
46 lien that may be placed against real property under the provisions of
47 chapter 429, or the assertion of a right to continue in possession of any
48 estate property that is in the possession of a person entitled to retain
49 possession of such property pending payment for work performed with

50 respect to such property. If perfection of an interest would otherwise
51 require seizure of the property involved or the commencement of an
52 action, the perfection shall instead be accomplished by filing, and by
53 serving upon the receiver, or receiver's counsel, if any, notice of the
54 interest within the time fixed by law for seizure or commencement;

55 (4) The commencement or continuation of an action or
56 proceeding by a governmental unit to enforce its police or regulatory
57 power;

58 (5) The enforcement of a judgment, other than a money
59 judgment, obtained in an action or proceeding by a governmental unit
60 to enforce its police or regulatory power, or with respect to any
61 licensure of the debtor;

62 (6) The exercise of a right of setoff, including but not limited to
63 any right of a commodity broker, forward contract merchant,
64 stockbroker, financial institution, or securities clearing agency to set
65 off a claim for a margin payment or settlement payment arising out of
66 a commodity contract, forward contract, or securities contract against
67 cash, securities, or other property held or due from the commodity
68 broker, forward contract merchant, stockbroker, financial institution,
69 or securities clearing agency to margin, guarantee, secure, or settle the
70 commodity contract, forward contract, or securities contract, and any
71 right of a swap participant to set off a claim for a payment due to the
72 swap participant under or in connection with a swap agreement against
73 any payment due from the swap participant under or in connection
74 with the swap agreement or against cash, securities, or other property
75 of the debtor held by or due from the swap participant to guarantee,
76 secure, or settle the swap agreement;

77 (7) The establishment by a governmental unit of any tax liability
78 and any appeal thereof; or

79 (8) Any action pending in a court other than that in which the
80 receiver is appointed until transcription of the order appointing the
81 receiver or extending the stay is made to the other court in which an
82 action against the debtor is pending.

83 4. For the purposes of subdivision (8) of subsection 3 of this
84 section, the receiver or any party in interest is authorized to cause to
85 be transcribed any order appointing a receiver or extending the stay
86 to any and all courts in which any action against a debtor is pending

87 in this state. A court that receives a transcript of an order of
88 receivership or extension of stay may on its own order sua sponte
89 transfer the matter before the court to the court issuing an order of
90 receivership.

515.580. 1. A utility providing service to estate property may not
2 alter, refuse, or discontinue service to the property without first giving
3 the receiver fifteen days' notice, or such other notice as may be
4 required by the rules of the public service commission for a customer
5 of that class, of any default or intention to alter, refuse, or discontinue
6 service to estate property. This section does not prohibit the court,
7 upon motion by the receiver, to prohibit the alteration or cessation of
8 utility service if the receiver can furnish adequate assurance of
9 payment in the form of deposit or other security for service to be
10 provided after entry of the order appointing the receiver.

11 2. Any utility regulated by the public service commission which
12 violates this section shall be subject to appropriate remedial measures
13 by the commission upon receiving notice that the utility has violated
14 the provisions of this section.

15 3. When a utility not regulated by the public service commission
16 violates this section, upon direction of the court, an action may be
17 brought by the receiver against the utility to enforce compliance with
18 the provisions of this section.

515.585. 1. A receiver may assume or reject any executory
2 contract or unexpired lease of the debtor upon order of the court
3 following notice and a hearing, which shall include notice to persons
4 party to the executory contract or unexpired lease to be assumed or
5 rejected. The court may condition assumption or rejection of any
6 executory contract or unexpired lease on the terms and conditions the
7 court believes are just and proper under the particular circumstances
8 of the action. Such terms and conditions may include a requirement
9 that the receiver cures or provides adequate assurance that the
10 receiver will promptly cure any default. A general receiver's
11 performance of an executory contract or unexpired lease prior to the
12 court's authorization of its assumption or rejection shall not constitute
13 an assumption of the executory contract or unexpired lease, or an
14 agreement by the receiver to assume it, nor otherwise preclude the
15 receiver thereafter from seeking the court's authority to reject it.

16 **2. Any person party to an executory contract or unexpired lease**
17 **may by motion seek to compel the rejection thereof at any time, such**
18 **rejection the court shall order in its discretion, and as the interests of**
19 **justice may require. In determining a motion to compel the rejection**
20 **of an executory contract or unexpired lease, the court may consider,**
21 **among other factors:**

22 **(1) Whether rejection is in the best interests of the receivership**
23 **estate and the interests of creditors;**

24 **(2) The extent to which the executory contract or unexpired**
25 **lease burdens the receivership estate financially;**

26 **(3) Whether the debtor is performing or is in breach of the**
27 **executory contract or unexpired lease;**

28 **(4) If the debtor is in breach of a financial provision of the**
29 **executory contract or unexpired lease, the debtor's ability to cure such**
30 **breach within a reasonable time; and**

31 **(5) Harm suffered by the non-debtor person party to the**
32 **executory contract or unexpired lease that results or may result from**
33 **refusing the rejection thereof.**

34 **3. Any obligation or liability incurred by a general receiver on**
35 **account of the receiver's assumption of an executory contract or**
36 **unexpired lease shall be treated as an expense of the receivership. A**
37 **receiver's rejection of an executory contract or unexpired lease shall**
38 **be treated as a breach of the contract or lease occurring immediately**
39 **prior to the receiver's appointment; and the receiver's right to possess**
40 **or use property pursuant to any executory contract or unexpired lease**
41 **shall terminate upon rejection of such contract or lease. A non-debtor**
42 **party to an executory contract or unexpired lease that is rejected by a**
43 **receiver may take such steps as may be necessary under applicable law**
44 **to terminate or cancel such contract or lease. The claim of a non-**
45 **debtor party to an executory contract or unexpired lease resulting from**
46 **a receiver's rejection of it shall be served upon the receiver within**
47 **thirty days following the date the receiver gives notice of such**
48 **rejection to such person, which notice shall indicate the right to file a**
49 **claim within the thirty day period.**

50 **4. A receiver's power under this section to assume an executory**
51 **contract or unexpired lease shall not be affected by any provision in**
52 **such contract or lease that would effect or permit a forfeiture,**

53 **modification, or termination of it on account of either the receiver's**
54 **appointment, the financial condition of the debtor, or an assignment for**
55 **the benefit of creditors by the debtor.**

56 **5. A receiver may not assume an executory contract or unexpired**
57 **lease of debtor without the consent of the other person party to such**
58 **contract or lease if:**

59 **(1) Applicable law would excuse a person, other than the debtor,**
60 **from accepting performance from or rendering performance to anyone**
61 **other than the debtor even in the absence of any provisions in the**
62 **contract or lease expressly restricting or prohibiting an assignment of**
63 **the person's rights or the performance of the debtor's duties;**

64 **(2) The contract or lease is a contract to make a loan or extend**
65 **credit or financial accommodations to or for the benefit of the debtor,**
66 **or to issue a security of the debtor; or**

67 **(3) The executory contract or lease expires by its own terms, or**
68 **under applicable law prior to the receiver's assumption thereof.**

69 **6. A receiver may not assign an executory contract or unexpired**
70 **lease without assuming it, absent the consent of the other parties to the**
71 **contract or lease.**

72 **7. If the receiver rejects an executory contract or unexpired**
73 **lease for:**

74 **(1) The sale of real property under which the debtor is the seller**
75 **and the purchaser is in possession of the real property;**

76 **(2) The sale of a real property timeshare interest under which**
77 **the debtor is the seller;**

78 **(3) The license of intellectual property rights under which the**
79 **debtor is the licensor; or**

80 **(4) The lease of real property in which the debtor is the lessor;**
81 **then the purchaser, licensee, or lessee may treat the rejection as a**
82 **termination of the contract, license agreement, or lease, or**
83 **alternatively, the purchaser, licensee, or lessee may remain in**
84 **possession in which circumstance the purchaser, licensee, or lessee**
85 **shall continue to perform all obligations arising thereunder as and**
86 **when they may fall due, but may offset against any payments any**
87 **damages occurring on account of the rejection after it occurs. The**
88 **purchaser of real property in such a circumstance is entitled to receive**
89 **from the receiver any deed or any other instrument of conveyance**

90 which the debtor is obligated to deliver under the executory contract
91 when the purchaser becomes entitled to receive it, and the deed or
92 instrument has the same force and effect as if given by the person. A
93 purchaser, licensee, or lessee who elects to remain in possession under
94 the terms of this subsection has no rights against the receiver on
95 account of any damages arising from the receiver's rejection except as
96 expressly provided for by this subsection. A purchaser of real property
97 who elects to treat rejection of an executory contract as a termination
98 has a lien against the interest in that real property of the debtor for the
99 recovery of any portion of the purchase price that the purchaser has
100 paid.

101 8. Any contract with the state shall be deemed rejected if not
102 assumed within sixty days of appointment of a general receiver unless
103 the receiver and state agency agree to its assumption.

104 9. Nothing in sections 515.500 to 515.665 affects the enforceability
105 of anti-assignment prohibitions provided under contract or applicable
106 law.

515.590. 1. If a receiver is authorized to operate the business of
2 a debtor or manage a debtor's property, the receiver may obtain
3 unsecured credit and incur unsecured debt in the ordinary course of
4 business as an administrative expense of the receiver without order of
5 the court.

6 2. The court after notice and a hearing may authorize a receiver
7 to obtain credit or incur debt other than in the ordinary course of
8 business. The court may allow the receiver to mortgage, pledge,
9 hypothecate, or otherwise encumber estate property as security for
10 repayment of any debt that the receiver may incur, including that the
11 court may provide that additional credit extended to a receiver by a
12 secured creditor of the debtor be afforded the same priority as the
13 secured creditor's existing lien.

14 3. When determining the propriety of allowing a receiver to
15 obtain credit or incur debt pursuant to subsection 2 of this section, the
16 court shall consider the likely impact on the interests of unsecured
17 creditors of the debtor.

515.595. 1. A receiver has the right to sue and be sued in the
2 receiver's capacity as such, without leave of court, in all circumstances
3 necessary or proper for the conduct of the receivership. However, an

4 action seeking to dispossess a receiver of any estate property or
5 otherwise to interfere with the receiver's management or control of any
6 estate property may not be maintained or continued unless permitted
7 by order of the court obtained upon notice and a hearing.

8 2. An action by or against a receiver is adjunct to the
9 receivership action. The clerk of the court may assign or refer a case
10 number that reflects the relationship of any action to the receivership
11 action. All pleadings in an adjunct action shall include the case
12 number of the receivership action as well as the adjunct action case
13 number assigned by the clerk of the court. All adjunct actions shall be
14 referred to the judge, if any, assigned to the receivership action.

15 3. A receiver may be joined or substituted as a party in any
16 action or proceeding that was pending at the time of the receiver's
17 appointment and in which the debtor is a party, upon application by
18 the receiver to the court, agency, or other forum before which the
19 action or proceeding is pending.

20 4. Venue for adjunct actions by or against a receiver shall lie in
21 the court in which the receivership is pending, if the court has
22 jurisdiction over the action. Actions in other courts in this state shall
23 be transferred to the court upon the receiver's filing of a motion for
24 change of venue, provided that the receiver files the motion within
25 thirty days following service of original process upon the
26 receiver. However, actions in other courts or forums in which a state
27 agency is a party shall not be transferred on request of the receiver
28 absent consent of the affected state agency or grounds provided under
29 other applicable law.

30 5. An action by or against a receiver does not abate by reason of
31 death or resignation or removal of the receiver, but continues against
32 the successor receiver or against the debtor, if a successor receiver is
33 not appointed.

34 6. Whenever the assets of any domestic or foreign corporation,
35 that has been doing business in this state, has been placed in the hands
36 of any general receiver and the receiver is in possession of its assets,
37 service of all process upon the corporation may be made upon the
38 receiver.

39 7. A judgment against a general receiver or the debtor is not a
40 lien on estate property, nor shall any execution issue thereon. Upon

41 entry of a judgment against a general receiver or the debtor in the
42 court in which a general receivership is pending, or upon filing in a
43 general receivership of a certified copy of a judgment against a general
44 receiver or the debtor entered by another court in this state or a
45 foreign jurisdiction, the judgment shall be treated as an allowed claim
46 in the receivership. A judgment against a limited receiver shall be
47 treated and has the same effect as a judgment against the debtor,
48 except that the judgment is not enforceable against estate property
49 unless otherwise ordered by the court upon notice and a hearing.

515.600. 1. A receiver appointed pursuant to sections 515.500 to
2 515.665, and the agents, attorneys, and employees of the receivership
3 employed by the receiver pursuant to section 515.605 shall enjoy
4 judicial immunity for acts and omissions arising out of and performed
5 in connection with his or her official duties on behalf of the court and
6 within the scope of his or her appointment. A person other than a
7 successor receiver duly appointed by the court does not have a right of
8 action against a receiver under this section to recover property or the
9 value thereof for or on behalf of the estate except as provided in
10 subsection 2 of this section. A successor receiver may recover only
11 actual damages incurred by the receivership estate from a prior
12 receiver.

13 2. A person, other than a successor receiver duly appointed by
14 the court, shall not have the right to bring an action against a receiver
15 or the agents, attorneys, and employees of the receivership employed
16 by the receiver pursuant to section 515.605 for any act or omission
17 while acting in the performance of their functions and duties in
18 connection with the receivership unless such person first files a
19 verified application with the appointing court requesting leave to bring
20 such action and the court grants such application after notice and
21 hearing. The appointing court shall only approve the application to
22 bring claims against the receiver under this section upon a prima facie
23 showing by the person making such request that the receiver's actions
24 are not protected by the grant of immunity set forth in subsection 1 of
25 this section. No other court apart from the appointing court shall have
26 the authority to review or approve the application to bring claims
27 against the receiver under this section.

28 3. If a person requests leave to bring claims under subsection 2

29 of this section and such leave is denied, the court shall grant judgment
30 in favor of the receiver for the costs of the proceeding and reasonable
31 attorney's fee if the court finds that the position of the person was not
32 substantially justified.

515.605. 1. The receiver, with the court's approval, may employ
2 one or more attorneys, accountants, appraisers, auctioneers, or other
3 professional persons that do not hold or represent an interest adverse
4 to the receivership to represent or assist the receiver in carrying out
5 the receiver's duties.

6 2. A person is not disqualified for employment under this section
7 solely because of the person's employment by, representation of, or
8 other relationship with a creditor or other party in interest, if the
9 relationship is disclosed in the application for the person's employment
10 and if the court determines that there is no actual conflict of interest
11 or inappropriate appearance of a conflict.

12 3. This section does not preclude the court from authorizing the
13 receiver to act as attorney or accountant if the authorization is in the
14 best interests of the receivership.

15 4. The receiver and any professionals employed by the receiver
16 shall maintain itemized billing records containing a description of
17 services, the time spent, billing rates of all who perform work to be
18 compensated, and a detailed list of expenses. The receiver, and any
19 professionals employed by the receiver may file a motion requesting
20 the allowance of fees and expenses. Notice of the motion shall be
21 served on all persons required to be identified on the master mailing
22 list maintained pursuant to section 515.610, advising that objections to
23 the application shall be filed within ten days from the date of the
24 notice, and if objections are not timely filed, the court may approve the
25 motion without further notice or hearing. If an objection is filed, the
26 receiver or professional whose compensation is affected may notice the
27 objection for a hearing. Upon request of any person required to receive
28 notice pursuant to this subsection, the receiver and any professionals
29 employed by the receiver shall provide a copy of their itemized billing
30 records upon which their motion for fees and expenses is based within
31 five days of the date of the request.

515.610. 1. Creditors and parties in interest to whom are given
2 notice as provided by sections 515.500 to 515.665 and creditors or other

3 persons submitting written claims in the receivership or otherwise
4 appearing and participating in the receivership are bound by the acts
5 of the receiver and the orders of the court relating to the receivership
6 whether or not the person is a party to the receivership action.

7 2. Creditors and parties in interest have a right to notice and a
8 hearing as provided in sections 515.500 to 515.665 whether or not the
9 person is a party to the receivership action.

10 3. Any party in interest may appear in the receivership in the
11 manner prescribed by court rule and shall file with the court a written
12 notice including the name and mailing address of the party in interest,
13 and the name and address of the party in interest's attorney, if any,
14 with the clerk, and by serving a copy of the notice upon the receiver
15 and the receiver's attorney of record, if any. The receiver shall
16 maintain a master mailing list of all parties and of all parties in
17 interest that file and serve a notice of appearance in accordance with
18 this subsection and such parties in interest's attorneys, if any. The
19 receiver shall make a copy of the current master mailing list available
20 to any party or upon request.

21 4. Any request for relief against a state agency shall be mailed
22 to or otherwise served on the agency and on the office of the attorney
23 general.

24 5. The receiver shall give not less than ten days' written notice
25 of any examination by the receiver of the debtor to all persons required
26 to be identified on the master mailing list.

27 6. All persons required to be identified on the master mailing list
28 are entitled to not less than thirty days' written notice of the hearing
29 of any motion or other proceeding involving any proposed:

30 (1) Allowance or disallowance of any claim or claims;

31 (2) Abandonment, disposition, or distribution of estate property,
32 other than an emergency disposition of property subject to eroding
33 value or a disposition of estate property in the ordinary course of
34 business;

35 (3) Compromise or settlement of a controversy that might affect
36 the distribution to creditors from the receivership;

37 (4) Motion for termination of the receivership or removal or
38 discharge of the receiver. Notice of the motion shall also be sent to the
39 department of revenue and other applicable regulatory agencies;

40 **(5) Any opposition to any motion to authorize any of the actions**
41 **under subdivisions (1) to (4) of this subsection shall be filed and served**
42 **upon all persons required to be identified on the master mailing list at**
43 **least ten days before the date of the proposed action.**

44 **7. Whenever notice is not specifically required to be given under**
45 **sections 515.500 to 515.665 or otherwise by court rule, the court may**
46 **consider motions and grant or deny relief without notice or hearing,**
47 **unless a party or party in interest would be prejudiced or harmed by**
48 **the relief requested.**

515.615. 1. The claims administration process identified in this
2 **section shall be administered by a general receiver and may be ordered**
3 **by the court to be administered by a limited receiver.**

4 **2. All claims, other than claims of duly perfected secured**
5 **creditors, arising prior to the receiver's appointment shall be in the**
6 **form required by this section and served and noticed as required by**
7 **this section. Any claim not in the form required by this section and so**
8 **served and noticed is barred from participating in any distribution to**
9 **creditors.**

10 **3. Claims shall be served on the receiver within thirty days from**
11 **the date notice is given under this section, unless the court reduces or**
12 **extends the period for cause shown, except that a claim arising from**
13 **the rejection of an executory contract or an unexpired lease of the**
14 **debtor may be served within thirty days after the rejection. Claims by**
15 **state agencies shall be served by such state agencies on the receiver**
16 **within sixty days from the date notice is given by mail under this**
17 **section.**

18 **4. Claims shall be in written form entitled "Proof of Claim",**
19 **setting forth the name and address of the creditor and the nature and**
20 **amount of the claim, and executed by the creditor or the creditor's**
21 **authorized agent. When a claim or an interest in estate property**
22 **securing the claim is based on a writing, the original or a copy of the**
23 **writing shall be included as a part of the proof of claim together with**
24 **evidence of perfection of any security interest or other lien asserted by**
25 **the claimant. Unless otherwise ordered by the court, creditors may**
26 **amend such claims and such amendments shall relate back to the**
27 **original filing of such claim.**

28 **5. Notices of claim shall be filed with the court. A notice shall be**

29 filed with the court relating to each served claim. A notice of claim
30 shall not include the claim or supporting documentation served upon
31 the receiver. A notice of claim shall include the name and address of
32 the creditor asserting the claim, together with the name and address
33 of the attorney, if any representing the creditor, the amount of the
34 claim, whether or not the claim is secured or unsecured, and if secured,
35 a brief description of any estate property and other collateral securing
36 the claim.

37 6. A claim properly noticed, executed, and served in accordance
38 with this section constitutes prima facie evidence of the validity and
39 amount of the claim.

515.620. 1. At any time prior to the entry of an order approving
2 the general receiver's final report, the receiver or any party in interest
3 may file with the court an objection to a claim, such objection shall be
4 in writing and shall set forth the grounds for the objection to the claim.
5 A copy of the objection shall be mailed to the creditor who shall have
6 thirty days to file with the court any suggestions in support of the
7 claim. Upon the filing of any suggestions in support of the claim, the
8 court may adjudicate the claim objection or set a hearing relating to
9 the claim objection. Claims that comply with the requirements of
10 section 515.615 that are not disallowed by the court are entitled to
11 share in distributions from the receivership in accordance with the
12 priorities provided for by sections 515.500 to 515.665 or otherwise by
13 law.

14 2. Upon order of the court, the general receiver, or any party in
15 interest objecting to the creditor's claim, an objection may be subject
16 to mediation prior to adjudication of the objection. However, state
17 claims are not subject to mediation absent agreement of the state.

18 3. Upon motion of the general receiver or other party in interest,
19 the following claims may be estimated for purpose of allowance under
20 this section under the rules or orders applicable to the estimation of
21 claims under this section:

22 (1) Any contingent or unliquidated claim, the fixing or
23 liquidation of which, as the circumstance may be, would unduly delay
24 the administration of the receivership; or

25 (2) Any right to payment arising from a right to an equitable
26 remedy for breach of performance.

27 Claims subject to this subsection shall be allowed in the estimated
28 amount thereof.

515.625. 1. Claims not disallowed by the court shall receive
2 distribution under sections 515.500 to 515.665 in the order of priority
3 under subdivisions (1) to (8) of this section and, with the exception of
4 subdivisions (1) to (3) of this subsection, on a pro rata basis:

5 (1) Any secured creditor that is duly perfected under applicable
6 law, whether or not such secured creditor has filed a proof of claim,
7 shall receive the proceeds from the disposition of the estate property
8 that secures its claim. However, the receiver may recover from estate
9 property secured by a lien or the proceeds thereof the reasonable,
10 necessary expenses of preserving, protecting, or disposing of the estate
11 property to the extent of any benefit to a duly perfected secured
12 creditor. If and to the extent that the proceeds are less than the
13 amount of a duly perfected secured creditor's claim or a duly perfected
14 secured creditor's lien is avoided on any basis, the duly perfected
15 secured creditor's claim is an unsecured claim under subdivision (8) of
16 this subsection. Duly perfected secured claims shall be paid from the
17 proceeds in accordance with their respective priorities under otherwise
18 applicable law;

19 (2) Actual, necessary costs and expenses incurred during the
20 administration of the receivership, other than those expenses allowable
21 under subdivision (1) of this subsection, including allowed fees and
22 reimbursement of reasonable charges and expenses of the receiver and
23 professional persons employed by the receiver. Notwithstanding
24 subdivision (1) of this subsection, expenses incurred during the
25 administration of the estate have priority over the secured claim of any
26 secured creditor obtaining or consenting to the appointment of the
27 receiver;

28 (3) A secured creditor that is not duly perfected under applicable
29 law shall receive the proceeds from the disposition of the estate
30 property that secures its claim if and to the extent that unsecured
31 claims are made subject to those liens under applicable law;

32 (4) Claims for wages, salaries, or commissions, including
33 vacation, severance, and sick leave pay, or contributions to an
34 employee benefit plan earned by the claimant within one hundred
35 eighty days of the date of appointment of the receiver or the cessation

36 of any business relating to the receivership, whichever occurs first, but
37 only to the extent of ten thousand nine hundred fifty dollars;

38 (5) Unsecured claims, to the extent of two thousand four hundred
39 twenty-five dollars for each natural person, arising from the deposit
40 with the person debtor before the date of appointment of the receiver
41 of money in connection with the purchase, lease, or rental of estate
42 property or the purchase of services for personal, family, or household
43 use that were not delivered or provided;

44 (6) Claims for a marital, family, or other support debt, but not to
45 the extent that the debt is assigned to another person, voluntarily, by
46 operation of law, or otherwise; or includes a liability designated as a
47 support obligation unless that liability is actually in the nature of a
48 support obligation;

49 (7) Unsecured claims of governmental units for taxes which
50 accrued prior to the date of appointment of the receiver;

51 (8) Other unsecured claims.

52 2. If all of the classes under subsection 1 of this section have
53 been paid in full, any residue shall be paid to the debtor.

515.630. Except as otherwise provided for by statute, estate
2 property acquired by the estate, the receiver, or the debtor of the
3 receiver is subject to an allowed secured claim to the same extent as
4 would exist in the absence of a receivership.

515.635. To the extent that funds are available in the estate for
2 distribution to creditors in a general receivership, the holder of an
3 allowed noncontingent, liquidated claim is entitled to receive interest
4 at the legal rate or other applicable rate from the date of appointment
5 of the receiver or the date on which the claim became a noncontingent,
6 liquidated claim. If there are sufficient funds in the estate to fully pay
7 all interest owing to all members of the class, then interest shall be
8 paid proportionately to each member of the class.

515.640. The receiver or any party upon order of the court
2 following notice and a hearing and upon the terms and conditions the
3 court considers just and proper may abandon any estate property that
4 is burdensome to the receiver or is of inconsequential value or
5 benefit. However, a receiver may not abandon property that is a
6 hazard or potential hazard to the public in contravention of a state
7 statute or rule that is reasonably designed to protect the public health

8 or safety from identified hazards. Property that is abandoned no
9 longer constitutes estate property.

515.645. 1. The receiver with the court's approval after notice
2 and a hearing may use, sell, or lease estate property other than in the
3 ordinary course of business.

4 2. The court may order that a general receiver's sale of estate
5 property either under subsection 1 of this section, or consisting of real
6 property that the debtor intended to sell in its ordinary course of
7 business, be effected free and clear of liens, claims, and of all rights of
8 redemption, whether or not the sale will generate proceeds sufficient
9 to fully satisfy all claims secured by the property, unless either:

10 (1) The property to be sold is real property used principally in
11 the production of crops, livestock, or aquaculture, or the property is a
12 homestead, and the owner of the property has not consented to the sale
13 following the appointment of the receiver; or

14 (2) A party in interest, including but not limited to an owner of
15 the property to be sold or a secured creditor as regards to the property
16 to be sold serves and files a timely opposition to the receiver's sale, and
17 the court determines that the amount likely to be realized by the
18 receiver's sale is less than the amount that may be realized within a
19 reasonable time in the absence of the receiver's sale.

20 Upon any sale free and clear of liens authorized by this section, all
21 liens encumbering the property sold shall transfer and attach to the
22 proceeds of the sale, net of reasonable expenses incurred in the
23 disposition of the property sold, in the same order, priority, and
24 validity as the liens had with respect to the property sold immediately
25 before the conveyance. The court may authorize the receiver at the
26 time of sale to satisfy, in whole or in part, any lien on the property sold
27 out of the proceeds of its sale if the interest of any other creditor
28 having a lien against the proceeds of the sale would not thereby be
29 impaired.

30 3. At a public sale of estate property under subsection 1 of this
31 section, a creditor with a lien against the property to be sold may
32 credit bid at the sale of the property. A creditor with a lien against the
33 property to be sold who purchases the property from a receiver may
34 offset against the purchase price its secured claim against the property,
35 provided that such secured creditor tenders cash sufficient to satisfy

36 in full all secured claims payable out of the proceeds of sale having
37 priority over such secured creditor's secured claim. If the lien or the
38 claim it secures is the subject of a bona fide dispute, the court may
39 order the holder of the lien or claim to provide the receiver with
40 adequate security to assure full payment of the purchase price in the
41 event the lien, the claim, or any part thereof is determined to be invalid
42 or unenforceable.

43 4. If estate property includes an interest as a co-owner of
44 property, the receiver shall have the rights and powers of a co-owner
45 afforded by applicable state or federal law, including but not limited
46 to any rights of partition.

47 5. The reversal or modification on appeal of an authorization to
48 sell or lease estate property under this section does not affect the
49 validity of a sale or lease under that authorization to any person that
50 purchased or leased the property in good faith, whether or not the
51 person knew of the pendency of the appeal, unless the authorization
52 and sale or lease were stayed pending the appeal.

53 6. The notice of a proposed use, sale, or lease of estate property
54 required by subsection 1 of this section shall include the time and place
55 of any public sale, the terms and conditions of any private sale and the
56 time fixed for filing objections, and shall be mailed to all parties in
57 interest, and to such other persons as the court in the interests of
58 justice may require.

59 7. In determining whether a sale free and clear of liens, claims,
60 encumbrances, and of all rights of redemption is in the best interest of
61 the estate, the court may consider, among such other factors as the
62 court deems appropriate, the following:

63 (1) Whether the sale shall be conducted in a commercially
64 reasonable manner considering assets of a similar type or nature;

65 (2) Whether an independent appraisal supports the purchase
66 price to be paid;

67 (3) Whether creditors and parties in interest received adequate
68 notice of the sale, sale procedures, and details of the proposed sale;

69 (4) Any relationship between the buyer and the debtor;

70 (5) Whether the sale is an arm's length transaction; and

71 (6) Whether parties asserting a lien as to the property to be sold
72 consent to the proposed sale.

515.650. 1. A receiver appointed in any action pending in the
2 courts of this state, without first seeking approval of the court, may
3 apply to any court outside of this state for appointment as receiver
4 with respect to any property or business of the person over whose
5 property the receiver is appointed constituting estate property which
6 is located in any other jurisdiction, if the appointment is necessary to
7 the receiver's possession, control, management, or disposition of
8 property in accordance with orders of the court.

9 2. A receiver appointed by a court of another state, or by a
10 federal court in any district outside of this state, or any other person
11 having an interest in that proceeding, may obtain appointment by a
12 court of this state of that same receiver with respect to any property
13 or business of the person over whose property the receiver is appointed
14 constituting property of the foreign receivership that is located in this
15 jurisdiction if the person is eligible to serve as receiver and the
16 appointment is necessary to the receiver's possession, control, or
17 disposition of the property in accordance with orders of the court in
18 the foreign proceeding. Upon the receiver's request, the court shall
19 enter the orders not offensive to the laws and public policy of this
20 state, necessary to effectuate orders entered by the court in the foreign
21 receivership proceeding. A receiver appointed in an ancillary
22 receivership in this state is required to comply with sections 515.500 to
23 515.665 requiring notice to creditors or other parties in interest only
24 as may be required by the superior court in the ancillary receivership.

515.655. 1. The court shall remove or replace the receiver on
2 application of the debtor, the receiver, or any creditor, or any party or
3 on the court's own motion if the receiver fails to perform the receiver's
4 duties or obligations under sections 515.500 to 515.665, as ordered by
5 the court.

6 2. Upon removal, resignation, or death of the receiver the court
7 shall appoint a successor receiver if the court determines that further
8 administration of the estate is required. The successor receiver shall
9 immediately take possession of the estate and assume the duties of
10 receiver.

11 3. Whenever the court is satisfied that the receiver so removed
12 or replaced has fully accounted for and turned over to the successor
13 receiver appointed by the court all of the property of the estate and has

14 filed a report of all receipts and disbursements during the person's
15 tenure as receiver, the court shall enter an order discharging that
16 person from all further duties and responsibilities as receiver after
17 notice and a hearing.

515.660. 1. Upon distribution or disposition of all property of the
2 estate, or the completion of the receiver's duties with respect to estate
3 property, the receiver shall move the court to be discharged upon
4 notice and a hearing.

5 2. The receiver's final report and accounting setting forth all
6 receipts and disbursements of the estate shall be included in the
7 petition for discharge and filed with the court.

8 3. Upon approval of the final report, the court shall discharge
9 the receiver.

10 4. The receiver's discharge releases the receiver from any
11 further duties and responsibilities as receiver under sections 515.500
12 to 515.665.

13 5. Upon motion of any party in interest, or upon the court's own
14 motion, the court has the power to discharge the receiver and
15 terminate the court's administration of the property over which the
16 receiver was appointed. If the court determines that the appointment
17 of the receiver was wrongfully procured or procured in bad faith, the
18 court may assess against the person who procured the receiver's
19 appointment all of the receiver's fees and other costs of the
20 receivership and any other sanctions the court determines to be
21 appropriate.

22 6. A certified copy of an order terminating the court's
23 administration of the property over which the receiver was appointed
24 shall operate as a release of any lis pendens notice recorded pursuant
25 to section 515.545 and the same shall be recorded within the land
26 records in any county in which such real property may be situated,
27 together with a legal description of the real property if one is not
28 included in that order.

515.665. Orders of the court pursuant to sections 515.500 to
2 515.665 are appealable to the extent allowed under existing law,
3 including subdivision (2) of section 512.020.

2 [400.1-207. (1) A party who, with explicit reservation of
rights, performs or promises performance or assents to performance

3 in a manner demanded or offered by the other party does not
4 thereby prejudice the rights reserved. Such words as "without
5 prejudice", "under protest" or the like are sufficient.

6 (2) Subsection (1) does not apply to an accord and satisfaction.]

7 [400.1-208. A term providing that one party or his successor
8 in interest may accelerate payment or performance or require
9 collateral or additional collateral "at will" or "when he deems
10 himself insecure" or in words of similar import shall be construed
11 to mean that he shall have power to do so only if he in good faith
12 believes that the prospect of payment or performance is
13 impaired. The burden of establishing lack of good faith is on the
14 party against whom the power has been exercised.]

15 [400.7-604. To the extent that the provisions of this article
16 conflict with the provisions of sections 415.400 to 415.430 the
17 provisions of sections 415.400 to 415.430 shall control.]

18 [515.240. The court, or any judge thereof in vacation, shall
19 have power to appoint a receiver, whenever such appointment shall
20 be deemed necessary, whose duty it shall be to keep and preserve
21 any money or other thing deposited in court, or that may be subject
22 of a tender, and to keep and preserve all property and protect any
23 business or business interest entrusted to him pending any legal
24 or equitable proceeding concerning the same, subject to the order
25 of the court.]

26 [515.250. Such receiver shall give bond, and have the same
27 powers and be subject to all the provisions, as far as they may be
28 applicable, enjoined upon a receiver appointed by virtue of the law
29 providing for suits by attachment.]

30 [515.260. The court shall allow such receiver such
31 compensation for his services and expenses as may be reasonable
32 and just, and cause the same to be taxed as costs, and paid as
33 other costs in the cause.]
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