(122nd General Assembly)
(House Bill Number 338)

AN ACT

To amend sections 1301.05, 1302.56, 1309.01, 1309.03, 1309.04, 1309.23, and 1309.24, to enact new sections 1305.01 to 1305.16, and to repeal sections 1305.01, 1305.02, 1305.03, 1305.04, 1305.05, 1305.06, 1305.07, 1305.08, 1305.09, 1305.10, 1305.11, 1305.12, 1305.13, 1305.14, 1305.15, and 1305.16 of the Revised Code to adopt Revised Article V--Letters of Credit of the Uniform Commercial Code.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1301.05, 1302.56, 1309.01, 1309.03, 1309.04, 1309.23, and 1309.24 be amended and new sections 1305.01, 1305.02, 1305.03, 1305.04, 1305.05, 1305.06, 1305.07, 1305.08, 1305.09, 1305.10, 1305.11, 1305.12, 1305.13, 1305.14, 1305.15, and 1305.16 of the Revised Code be enacted to read as follows:

Sec. 1301.05. (A) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing such an agreement Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code apply to transactions bearing an appropriate relation to this state.

(B) Where one of the following provisions of Chapters 1301., 1302., 1303., 1304., 1305., 1307., 1308., 1309., and 1310. of the Revised Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law, including the conflict of laws rules, so specified:

(1) Rights of creditors against sold goods, as provided in section 1302.43 of the Revised Code;

(2) Applicability of sections 1304.01 to 1304.40 of the Revised Code, as provided in section 1304.02 of the Revised Code;

(3) Fund transfers under sections 1304.51 to 1304.85 of the Revised

ode, as provided in section 1304.85 of the Revised Code;

(4) Choice of law as to letters of credit under section 1305.15 Of the Revised Code;

(5) Applicability of sections 1308.01 to 1308.36 of the Revised Code, as provided in section 1308.05 of the Revised Code;

~~(5)~~(6) Perfection provisions of section 1309.03 of the Revised Code;

~~(6)~~(7) Applicability of sections 1310.01 to 1310.78 of the Revised Code, as provided in sections 1310.03 and 1310.04 of the Revised Code.

Sec. 1302.56. (A) Where the contract requires payment before inspection, ~~non-conformity~~ nonconformity of the goods does not excuse the buyer from so making payment unless:

(1) ~~the non-conformity~~ The nonconformity appears without inspection; or

(2) ~~despite~~ Despite tender of the required documents the circumstances would justify injunction against honor under ~~the provisions~~ division (B) of section ~~1305.13~~ 1305.08 of the Revised Code.

(B) Payment pursuant to division (A) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of ~~his~~ the buyer's remedies.

Sec. 1305.01. (A) AS USED IN THIS CHAPTER:

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

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

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

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

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

(6) "DOCUMENT" MEANS A DRAFT OR OTHER DEMAND, DOCUMENT OF TITLE, INVESTMENT SECURITY, CERTIFICATE, INVOICE, OR OTHER RECORD, STATEMENT, OR REPRESENTATION OF FACT, LAW, RIGHT, OR OPINION THAT IS (a) PRESENTED IN A WRITTEN OR OTHER MEDIUM PERMITTED BY THE LETTER OF CREDIT OR, UNLESS PROHIBITED BY THE LETTER OF CREDIT, BY THE STANDARD PRACTICE REFERRED TO IN DIVISION (E) OF SECTION 1305.07 Of the Revised Code and (b) CAPABLE OF BEING EXAMINED FOR COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT. A DOCUMENT MAY NOT BE ORAL.

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

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

(a) UPON PAYMENT;

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

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

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

(10) "LETTER OF CREDIT" MEANS A DEFINITE UNDERTAKING THAT SATISFIES THE REQUIREMENTS OF SECTION 1305.03 Of the Revised Code BY AN ISSUER TO A BENEFICIARY AT THE REQUEST OR FOR THE ACCOUNT OF AN APPLICANT OR, IN THE CASE OF A FINANCIAL INSTITUTION, TO ITSELF OR FOR ITS OWN ACCOUNT, TO HONOR A DOCUMENTARY PRESENTATION BY PAYMENT OR DELIVERY OF AN ITEM OF VALUE.

(11) "NOMINATED PERSON" MEANS A PERSON WHOM THE

ISSUER (a) DESIGNATES OR AUTHORIZES TO PAY, ACCEPT, NEGOTIATE, OR OTHERWISE GIVE VALUE UNDER A LETTER OF CREDIT AND (b) UNDERTAKES BY AGREEMENT OR CUSTOM AND PRACTICE TO REIMBURSE.

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

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

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

(15) "SUCCESSOR OF A BENEFICIARY" MEANS A PERSON WHO SUCCEEDS TO SUBSTANTIALLY ALL OF THE RIGHTS OF A BENEFICIARY BY OPERATION OF LAW, INCLUDING A CORPORATION WITH OR INTO WHICH THE BENEFICIARY HAS BEEN MERGED OR CONSOLIDATED, AN ADMINISTRATOR, EXECUTOR, PERSONAL REPRESENTATIVE, TRUSTEE IN BANKRUPTCY, DEBTOR IN POSSESSION, LIQUIDATOR, AND RECEIVER.

(B) DEFINITIONS IN OTHER CHAPTERS APPLYING TO THIS CHAPTER AND THE SECTIONS IN WHICH THEY APPEAR ARE: "ACCEPT" OR "ACCEPTANCE" IN SECTION 1303.46 AND "VALUE" IN SECTIONS 1303.33 AND 1304.21 Of the Revised Code.

(C) CHAPTER 1301. Of the Revised Code CONTAINS CERTAIN ADDITIONAL GENERAL DEFINITIONS AND PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGHOUT THIS CHAPTER.

Sec. 1305.02. (A) THIS CHAPTER APPLIES TO LETTERS OF CREDIT AND TO CERTAIN RIGHTS AND OBLIGATIONS ARISING OUT OF TRANSACTIONS INVOLVING LETTERS OF CREDIT.

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

(C) WITH THE EXCEPTION OF THIS DIVISION, DIVISIONS (A) AND (D) OF THIS SECTION, DIVISIONS (A)(9) AND (10) OF SECTION 1305.01, DIVISION (D) OF SECTION 1305.05, AND

DIVISION (D) OF SECTION 1305.13, AND EXCEPT TO THE EXTENT PROHIBITED IN DIVISION (C) OF SECTION 1301.02 AND DIVISION (D) OF SECTION 1305.16 Of the Revised Code, THE EFFECT OF THIS CHAPTER MAY BE VARIED BY AGREEMENT OR BY A PROVISION STATED OR INCORPORATED BY REFERENCE IN AN UNDERTAKING. A TERM IN AN AGREEMENT OR UNDERTAKING GENERALLY EXCUSING LIABILITY OR GENERALLY LIMITING REMEDIES FOR FAILURE TO PERFORM OBLIGATIONS IS NOT SUFFICIENT TO VARY OBLIGATIONS PRESCRIBED BY THIS CHAPTER.

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

Sec. 1305.03. A LETTER OF CREDIT, CONFIRMATION, ADVICE, TRANSFER, AMENDMENT, OR CANCELLATION MAY BE ISSUED IN ANY FORM THAT IS A RECORD AND IS AUTHENTICATED BY A SIGNATURE OR IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES OR THE STANDARD PRACTICE REFERRED TO IN DIVISION (E) OF SECTION 1305.07 Of the Revised Code.

Sec. 1305.04. CONSIDERATION IS NOT REQUIRED TO ISSUE, AMEND, TRANSFER, OR CANCEL A LETTER OF CREDIT, ADVICE, OR CONFIRMATION.

Sec. 1305.05. (A) A LETTER OF CREDIT IS ISSUED AND BECOMES ENFORCEABLE ACCORDING TO ITS TERMS AGAINST THE ISSUER WHEN THE ISSUER SENDS OR OTHERWISE TRANSMITS IT TO THE PERSON REQUESTED TO ADVISE OR TO THE BENEFICIARY. A LETTER OF CREDIT IS REVOCABLE ONLY IF IT SO PROVIDES.

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

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

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

Sec. 1305.06. (A) A CONFIRMER IS DIRECTLY OBLIGATED ON A LETTER OF CREDIT AND HAS THE RIGHTS AND OBLIGATIONS OF AN ISSUER TO THE EXTENT OF ITS CONFIRMATION. THE CONFIRMER ALSO HAS RIGHTS AGAINST AND OBLIGATIONS TO THE ISSUER AS IF THE ISSUER WERE AN APPLICANT AND THE CONFIRMER HAD ISSUED THE LETTER OF CREDIT AT THE REQUEST AND FOR THE ACCOUNT OF THE ISSUER.

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

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

(D) A PERSON WHO NOTIFIES A TRANSFEREE BENEFICIARY OF THE TERMS OF A LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE HAS THE RIGHTS AND OBLIGATIONS OF AN ADVISER UNDER DIVISION (C) OF THIS SECTION. THE TERMS IN THE NOTICE TO THE TRANSFEREE BENEFICIARY MAY DIFFER FROM THE TERMS IN ANY NOTICE TO THE TRANSFEROR BENEFICIARY TO THE EXTENT PERMITTED BY THE LETTER OF CREDIT, CONFIRMATION, AMENDMENT, OR ADVICE RECEIVED BY THE PERSON WHO SO NOTIFIES.

Sec. 1305.07. (A) EXCEPT AS OTHERWISE PROVIDED IN

SECTION 1305.08 Of the Revised Code, AN ISSUER SHALL HONOR A PRESENTATION THAT, AS DETERMINED BY THE STANDARD PRACTICE REFERRED TO IN DIVISION (E) OF THIS SECTION, APPEARS ON ITS FACE STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT. EXCEPT AS OTHERWISE PROVIDED IN SECTION 1305.12 Of the Revised Code AND, UNLESS OTHERWISE AGREED WITH THE APPLICANT, AN ISSUER SHALL DISHONOR A PRESENTATION THAT DOES NOT APPEAR SO TO COMPLY.

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

(1) TO HONOR;

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

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

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

(D) FAILURE TO GIVE THE NOTICE SPECIFIED IN DIVISION (B) OF THIS SECTION OR TO MENTION FRAUD, FORGERY, OR EXPIRATION IN THE NOTICE DOES NOT PRECLUDE THE ISSUER FROM ASSERTING AS A BASIS FOR DISHONOR FRAUD OR FORGERY AS DESCRIBED IN DIVISION (A) OF SECTION 1305.08 Of the Revised Code OR EXPIRATION OF THE LETTER OF CREDIT BEFORE PRESENTATION.

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

(F) AN ISSUER IS NOT RESPONSIBLE FOR:

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

(2) AN ACT OR OMISSION OF OTHERS; OR

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

(G) IF AN UNDERTAKING CONSTITUTING A LETTER OF CREDIT UNDER DIVISION (A)(10) OF SECTION 1305.01 Of the Revised Code CONTAINS NONDOCUMENTARY CONDITIONS, AN ISSUER SHALL DISREGARD THE NONDOCUMENTARY CONDITIONS AND TREAT THEM AS IF THEY WERE NOT STATED.

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

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

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

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

(3) IS PRECLUDED FROM ASSERTING A RIGHT OF RECOURSE ON A DRAFT UNDER SECTIONS 1303.54 AND 1303.55 Of the Revised Code;

(4) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 1305.09 AND 1305.16 Of the Revised Code, IS PRECLUDED FROM RESTITUTION OF MONEY PAID OR OTHER VALUE GIVEN BY MISTAKE TO THE EXTENT THE MISTAKE CONCERNS DISCREPANCIES IN THE DOCUMENTS OR TENDER THAT ARE APPARENT ON THE FACE OF THE PRESENTATION; AND

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

Sec. 1305.08. (A) IF A PRESENTATION IS MADE THAT APPEARS ON ITS FACE STRICTLY TO COMPLY WITH THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT, BUT A REQUIRED DOCUMENT IS FORGED OR MATERIALLY FRAUDULENT, OR HONOR OF THE PRESENTATION WOULD FACILITATE A

MATERIAL FRAUD BY THE BENEFICIARY ON THE ISSUER OR APPLICANT:

(1) THE ISSUER SHALL HONOR THE PRESENTATION, IF HONOR IS DEMANDED BY (a) A NOMINATED PERSON WHO HAS GIVEN VALUE IN GOOD FAITH AND WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD, (b) A CONFIRMER WHO HAS HONORED ITS CONFIRMATION IN GOOD FAITH, (c) A HOLDER IN DUE COURSE OF A DRAFT DRAWN UNDER THE LETTER OF CREDIT WHICH WAS TAKEN AFTER ACCEPTANCE BY THE ISSUER OR NOMINATED PERSON, OR (d) AN ASSIGNEE OF THE ISSUER'S OR NOMINATED PERSON'S DEFERRED OBLIGATION THAT WAS TAKEN FOR VALUE AND WITHOUT NOTICE OF FORGERY OR MATERIAL FRAUD AFTER THE OBLIGATION WAS INCURRED BY THE ISSUER OR NOMINATED PERSON; AND

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

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

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

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

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

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

Sec. 1305.09. (A) IF ITS PRESENTATION IS HONORED, THE BENEFICIARY WARRANTS:

(1) TO THE ISSUER, ANY OTHER PERSON TO WHOM PRESENTATION IS MADE, AND THE APPLICANT THAT THERE IS NO FRAUD OR FORGERY OF THE KIND DESCRIBED IN DIVISION (A) OF SECTION 1305.08 OF THE REVISED CODE; AND

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

(B) THE WARRANTIES IN DIVISION (A) OF THIS SECTION ARE IN ADDITION TO WARRANTIES ARISING UNDER CHAPTERS 1303., 1304., 1307., AND 1308. OF THE REVISED CODE BECAUSE OF THE PRESENTATION OR TRANSFER OF DOCUMENTS COVERED BY ANY OF THOSE CHAPTERS.

Sec. 1305.10. (A) IF AN ISSUER WRONGFULLY DISHONORS OR REPUDIATES ITS OBLIGATION TO PAY MONEY UNDER A LETTER OF CREDIT BEFORE PRESENTATION, THE BENEFICIARY, SUCCESSOR, OR NOMINATED PERSON PRESENTING ON ITS OWN BEHALF MAY RECOVER FROM THE ISSUER THE AMOUNT THAT IS THE SUBJECT OF THE DISHONOR OR REPUDIATION. IF THE ISSUER'S OBLIGATION UNDER THE LETTER OF CREDIT IS NOT FOR THE PAYMENT OF MONEY, THE CLAIMANT MAY OBTAIN SPECIFIC PERFORMANCE OR, AT THE CLAIMANT'S ELECTION, RECOVER AN AMOUNT EQUAL TO THE VALUE OF PERFORMANCE FROM THE ISSUER. IN EITHER CASE, THE CLAIMANT MAY ALSO RECOVER INCIDENTAL BUT NOT CONSEQUENTIAL DAMAGES. THE CLAIMANT IS NOT OBLIGATED TO TAKE ACTION TO AVOID DAMAGES THAT MIGHT BE DUE FROM THE ISSUER UNDER THIS DIVISION. IF, ALTHOUGH NOT OBLIGATED TO DO SO, THE CLAIMANT AVOIDS DAMAGES, THE CLAIMANT'S RECOVERY FROM THE ISSUER MUST BE REDUCED BY THE AMOUNT OF DAMAGES AVOIDED. THE ISSUER HAS THE BURDEN OF PROVING THE AMOUNT OF DAMAGES AVOIDED. IN THE CASE OF REPUDIATION THE CLAIMANT NEED NOT PRESENT ANY DOCUMENT.

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

AS A RESULT OF THE BREACH.

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

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

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

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

Sec. 1305.11. (A) EXCEPT AS OTHERWISE PROVIDED IN SECTION 1305.12 OF THE REVISED CODE, UNLESS A LETTER OF CREDIT PROVIDES THAT IT IS TRANSFERABLE, THE RIGHT OF A BENEFICIARY TO DRAW OR OTHERWISE DEMAND PERFORMANCE UNDER A LETTER OF CREDIT MAY NOT BE TRANSFERRED.

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

(1) THE TRANSFER WOULD VIOLATE APPLICABLE LAW; OR

(2) THE TRANSFEROR OR TRANSFEREE HAS FAILED TO COMPLY WITH ANY REQUIREMENT STATED IN THE LETTER OF CREDIT OR ANY OTHER REQUIREMENT RELATING TO TRANSFER IMPOSED BY THE ISSUER THAT IS WITHIN THE

STANDARD PRACTICE REFERRED TO IN DIVISION (E) OF SECTION 1305.07 OF THE REVISED CODE OR IS OTHERWISE REASONABLE UNDER THE CIRCUMSTANCES.

Sec. 1305.12. (A) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN THE NAME OF THE BENEFICIARY WITHOUT DISCLOSING ITS STATUS AS A SUCCESSOR.

(B) A SUCCESSOR OF A BENEFICIARY MAY CONSENT TO AMENDMENTS, SIGN AND PRESENT DOCUMENTS, AND RECEIVE PAYMENT OR OTHER ITEMS OF VALUE IN ITS OWN NAME AS THE DISCLOSED SUCCESSOR OF THE BENEFICIARY. EXCEPT AS OTHERWISE PROVIDED IN DIVISION (E) OF THIS SECTION, AN ISSUER SHALL RECOGNIZE A DISCLOSED SUCCESSOR OF A BENEFICIARY AS BENEFICIARY IN FULL SUBSTITUTION FOR ITS PREDECESSOR UPON COMPLIANCE WITH THE REQUIREMENTS FOR RECOGNITION BY THE ISSUER OF A TRANSFER OF DRAWING RIGHTS BY OPERATION OF LAW UNDER THE STANDARD PRACTICE REFERRED TO IN DIVISION (E) OF SECTION 1305.07 OF THE REVISED CODE OR, IN THE ABSENCE OF SUCH A PRACTICE, COMPLIANCE WITH OTHER REASONABLE PROCEDURES SUFFICIENT TO PROTECT THE ISSUER.

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

(D) HONOR OF A PURPORTED SUCCESSOR'S APPARENTLY COMPLYING PRESENTATION UNDER DIVISION (A) OR (B) OF THIS SECTION HAS THE CONSEQUENCES SPECIFIED IN DIVISION (I) OF SECTION 1305.07 OF THE REVISED CODE EVEN IF THE PURPORTED SUCCESSOR IS NOT THE SUCCESSOR OF A BENEFICIARY. DOCUMENTS SIGNED IN THE NAME OF THE BENEFICIARY OR OF A DISCLOSED SUCCESSOR BY A PERSON WHO IS NEITHER THE BENEFICIARY NOR THE SUCCESSOR OF THE BENEFICIARY ARE FORGED DOCUMENTS FOR THE PURPOSES OF SECTION 1305.08 OF THE REVISED CODE.

(E) AN ISSUER WHOSE RIGHTS OF REIMBURSEMENT ARE NOT COVERED BY DIVISION (D) OF THIS SECTION OR SUBSTANTIALLY SIMILAR LAW AND ANY CONFIRMER OR NOMINATED PERSON MAY DECLINE TO RECOGNIZE A

PRESENTATION UNDER DIVISION (B) OF THIS SECTION.

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

Sec. 1305.13. (A) AS USED IN THIS SECTION, "PROCEEDS OF A LETTER OF CREDIT" MEANS THE CASH, CHECK, ACCEPTED DRAFT, OR OTHER ITEM OF VALUE PAID OR DELIVERED UPON HONOR OR GIVING OF VALUE BY THE ISSUER OR ANY NOMINATED PERSON UNDER THE LETTER OF CREDIT. THE TERM DOES NOT INCLUDE A BENEFICIARY'S DRAWING RIGHTS OR DOCUMENTS PRESENTED BY THE BENEFICIARY.

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

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

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

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

(F) NEITHER THE RIGHTS RECOGNIZED BY THIS SECTION BETWEEN AN ASSIGNEE AND AN ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED PERSON NOR THE ISSUER'S OR NOMINATED PERSON'S PAYMENT OF PROCEEDS TO AN ASSIGNEE OR A THIRD PERSON AFFECT THE RIGHTS BETWEEN THE ASSIGNEE AND ANY PERSON OTHER THAN THE ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED PERSON. THE MODE OF CREATING AND PERFECTING A SECURITY INTEREST

N OR GRANTING AN ASSIGNMENT OF A BENEFICIARY'S RIGHTS TO PROCEEDS IS GOVERNED BY CHAPTER 1309. OF THE REVISED CODE OR OTHER LAW. AGAINST PERSONS OTHER THAN THE ISSUER, TRANSFEREE BENEFICIARY, OR NOMINATED PERSON, THE RIGHTS AND OBLIGATIONS ARISING UPON THE CREATION OF A SECURITY INTEREST OR OTHER ASSIGNMENT OF A BENEFICIARY'S RIGHT TO PROCEEDS AND ITS PERFECTION ARE GOVERNED BY CHAPTER 1309. OF THE REVISED CODE OR OTHER LAW.

Sec. 1305.14. AN ACTION TO ENFORCE A RIGHT OR OBLIGATION ARISING UNDER THIS CHAPTER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE EXPIRATION DATE OF THE RELEVANT LETTER OF CREDIT OR ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES, WHICHEVER OCCURS LATER. A CAUSE OF ACTION ACCRUES WHEN THE BREACH OCCURS, REGARDLESS OF THE AGGRIEVED PARTY'S LACK OF KNOWLEDGE OF THE BREACH.

Sec. 1305.15. (A) THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION CHOSEN BY AN AGREEMENT IN THE FORM OF A RECORD SIGNED OR OTHERWISE AUTHENTICATED BY THE AFFECTED PARTIES IN THE MANNER PROVIDED IN SECTION 1305.03 OF THE REVISED CODE OR BY A PROVISION IN THE PERSON'S LETTER OF CREDIT, CONFIRMATION, OR OTHER UNDERTAKING. THE JURISDICTION WHOSE LAW IS CHOSEN NEED NOT BEAR ANY RELATION TO THE TRANSACTION.

(B) UNLESS DIVISION (A) OF THIS SECTION APPLIES, THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER FOR ACTION OR OMISSION IS GOVERNED BY THE LAW OF THE JURISDICTION IN WHICH THE PERSON IS LOCATED. THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS INDICATED IN THE PERSON'S UNDERTAKING. IF MORE THAN ONE ADDRESS IS INDICATED, THE PERSON IS CONSIDERED TO BE LOCATED AT THE ADDRESS FROM WHICH THE PERSON'S UNDERTAKING WAS ISSUED. FOR THE PURPOSE OF JURISDICTION, CHOICE OF LAW, AND RECOGNITION OF INTERBRANCH LETTERS OF CREDIT, BUT NOT ENFORCEMENT OF A JUDGMENT, ALL BRANCHES OF A BANK ARE CONSIDERED SEPARATE JURIDICAL ENTITIES AND A BANK IS CONSIDERED TO BE LOCATED AT THE PLACE WHERE

ITS RELEVANT BRANCH IS CONSIDERED TO BE LOCATED UNDER THIS DIVISION.

(C) EXCEPT AS OTHERWISE PROVIDED IN THIS DIVISION, THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER IS GOVERNED BY ANY RULES OF CUSTOM OR PRACTICE, SUCH AS THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, TO WHICH THE LETTER OF CREDIT, CONFIRMATION, OR OTHER UNDERTAKING IS EXPRESSLY MADE SUBJECT. IF (1) THIS CHAPTER WOULD GOVERN THE LIABILITY OF AN ISSUER, NOMINATED PERSON, OR ADVISER UNDER DIVISION (A) OR (B) OF THIS SECTION, (2) THE RELEVANT UNDERTAKING INCORPORATES RULES OF CUSTOM OR PRACTICE, AND (3) THERE IS CONFLICT BETWEEN THIS CHAPTER AND THOSE RULES AS APPLIED TO THAT UNDERTAKING, THOSE RULES GOVERN EXCEPT TO THE EXTENT OF ANY CONFLICT WITH THE NONVARIABLE PROVISIONS SPECIFIED IN DIVISION (C) OF SECTION 1305.02 OF THE REVISED CODE.

(D) IF THERE IS CONFLICT BETWEEN THIS CHAPTER AND CHAPTER 1303., 1304., OR 1309. OF THE REVISED CODE, THIS CHAPTER GOVERNS.

(E) THE FORUM FOR SETTLING DISPUTES ARISING OUT OF AN UNDERTAKING WITHIN THIS CHAPTER MAY BE CHOSEN IN THE MANNER AND WITH THE BINDING EFFECT THAT GOVERNING LAW MAY BE CHOSEN IN ACCORDANCE WITH DIVISION (A) OF THIS SECTION.

Sec. 1305.16. (A) AN ISSUER THAT HONORS A BENEFICIARY'S PRESENTATION IS SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO THE SAME EXTENT AS IF THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE BENEFICIARY AND OF THE APPLICANT TO THE SAME EXTENT AS IF THE ISSUER WERE THE SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE APPLICANT.

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

OF THE BENEFICIARY STATED IN DIVISION (A) OF THIS SECTION.

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

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

(2) THE BENEFICIARY TO THE SAME EXTENT AS IF THE ISSUER WERE A SECONDARY OBLIGOR OF THE UNDERLYING OBLIGATION OWED TO THE BENEFICIARY; AND

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

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

Sec. 1309.01. (A) As used in sections 1309.01 to 1309.50 of the Revised Code, unless the context otherwise requires:

(1) "Account debtor" means the person who is obligated on an account, chattel paper, or general intangible.

(2) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper.

(3) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold.

(4) "Debtor" means the person who owes payment or other performance of the obligations secured, whether or not ~~he~~ the person owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where

the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of sections 1309.01 to 1309.50 of the Revised Code dealing with the collateral, the obligor in any provision dealing with the obligation and may include both where the context so requires.

(5) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union, or like organization, other than an account evidenced by a certificate of deposit.

(6) "Document" means document of title as defined in division (O) of section 1301.01 of the Revised Code, and a receipt of the kind described in division (B) of section 1307.06 of the Revised Code.

(7) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(8) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures under section 1309.32 of the Revised Code, but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. "Goods" also include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops.

(9) "Instrument" means a negotiable instrument as defined in section 1303.03 of the Revised Code, or a certificated security as defined in section 1308.01 of the Revised Code, or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment.

(10) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like.

(11) An advance is made "pursuant to commitment" if the secured party has bound ~~himself~~ itself to make it, whether or not a subsequent event of default or other event not within ~~his~~ the secured party's control has relieved or may relieve ~~him~~ the secured party from ~~his~~ the secured party's obligation.

(12) "Security agreement" means an agreement which creates or provides for a security interest.

(13) "Secured party" means a lender, seller, or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement, or the like are represented by a trustee or other person, the representative is the secured party.

(14) "Transmitting utility" means any person primarily engaged in the railroad, street railway, or trolley bus business, the electric or electronic communications business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas, or water, or the provision of sewer service.

(15) "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance.

(16) "General intangible" means any personal property, including things in action, other than goods, accounts, chattel paper, documents, instruments, rights to proceeds of letters of credit, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

(B) Other definitions applying to sections 1309.01 to 1309.50 of the Revised Code are:

(1) "Attach," as defined in section 1309.14 of the Revised Code;

(2) "Construction mortgage," as defined in section 1309.32 of the Revised Code;

(3) "Consumer goods," as defined in section 1309.07 of the Revised Code;

(4) "Equipment," as defined in section 1309.07 of the Revised Code;

(5) "Farm products," as defined in section 1309.07 of the Revised Code;

(6) "Fixture," as defined in section 1309.32 of the Revised Code;

(7) "Fixture filing," as defined in section 1309.32 of the Revised Code;

(8) "Inventory," as defined in section 1309.07 of the Revised Code;

(9) "Lien creditor," as defined in section 1309.20 of the Revised Code;

(10) "Proceeds," as defined in section 1309.25 of the Revised Code;

(11) "Purchase money security interest," as defined in section 1309.05 of the Revised Code;

(12) "United States," as defined in section 1309.03 of the Revised Code;

(13) "Letter of credit," as defined in section 1305.01 Of the Revised Code;

(14) "Proceeds of a letter of credit," as defined in section 1305.13 Of the Revised Code.

(C) As used in sections 1309.01 to 1309.50 of the Revised Code, "check" and "note" have the meaning set forth in section 1303.03 of the Revised Code; "contract for sale" and "sale" have the meaning set forth in section 1302.01 of the Revised Code; and "holder in due course" has the meaning set forth in section 1303.31 of the Revised Code.

(D) The terms and principles of construction and interpretation set forth

in sections 1301.01 to 1301.14 of the Revised Code are applicable to sections 1309.01 to 1309.50 of the Revised Code.

Sec. 1309.03. (A) Documents, instruments, letters of credit, and ordinary goods:

(1) This division applies to documents ~~and~~, instruments, rights to proceeds of letters of credit, and to goods other than those covered by a certificate of title described in division (B) of this section, mobile goods described in division (C) of this section, and minerals described in division (E) of this section.

(2) Except as otherwise provided in this division, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(3) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(4) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by sections 1309.20 to 1309.37 of the Revised Code to perfect the security interest:

(a) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(b) If the action is taken before the expiration of the period specified in division (A)(4)(a) of this section, the security interest continues perfected thereafter;

(c) For the purpose of priority over a buyer of consumer goods, division (B) of section 1309.26 of the Revised Code, the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in divisions (A)(4)(a) and

(b) of this section.

(B) Certificate of title.

(1) This division applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(2) Except as otherwise provided in this division, perfection and the effect of perfection or nonperfection of the security interest are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(3) Except with respect to the rights of a buyer described in division (B)(4) of this section a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in division (A)(4) of this section.

(4) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that ~~he~~ the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(C) Accounts, general intangibles, and mobile goods.

(1) This division applies to accounts, other than an account described in division (E) of this section on minerals, and general intangibles, other than uncertificated securities, and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery, and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in division (B) of this section.

(2) The law, including the conflict of laws rules, of the jurisdiction in which the debtor is located governs the perfection and the effect of

perfection or nonperfection of the security interest.

(3) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this division, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(4) A debtor shall be deemed located at ~~his~~ the debtor's place of business if ~~he~~ the debtor has one, at ~~his~~ the debtor's chief executive office if ~~he~~ the debtor has more than one place of business; otherwise at ~~his~~ the debtor's residence. If, however, the debtor is a foreign air carrier under the "Federal Aviation Act of 1958," as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(5) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(D) Chattel Paper.

The rules stated for goods in division (A) of this section apply to a possessory security interest in chattel paper. The rule stated for accounts in division (C) of this section applies to a nonpossessory security in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(E) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like, including oil and gas, before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law, including the conflict of laws rules, of the jurisdiction wherein the wellhead or minehead is located.

(F) Uncertificated securities.

The law, including the conflict of laws rules, of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or ~~non-perfection~~ NONPERFECTION of a security interest in uncertificated securities.

Sec. 1309.04. Sections 1309.01 to 1309.50 of the Revised Code do not apply:

(A) ~~to~~ To a security interest subject to any statute of the United States such as the "Ship Mortgage Act, 1920," 41 Stat. 1000, 46 U.S.C. 911, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(B) ~~to~~ To a lien given by statute or other rule of law for services or materials except as provided in section 1309.29 of the Revised Code on priority of such liens; or

(C) ~~to~~ To a transfer of a claim for wages, salary, or other compensation of an employee; or

(D) ~~to~~ To a transfer by a governmental subdivision or agency; or

(E) ~~to~~ To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract, or a transfer of a single account to an assignee in whole or partial satisfaction of a pre-existing indebtedness; or

(F) ~~to~~ To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds under section 1309.25 of the Revised Code and priorities in proceeds under section 1309.31 of the Revised Code; or

(G) ~~to~~ To a right represented by a judgment, other than a judgment taken on a right to payment which was collateral; or

(H) ~~to~~ To any right of set-off; or

(I) ~~except~~ Except to the extent that provision is made for fixtures in section 1309.32 of the Revised Code, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(J) ~~to~~ To a transfer in whole or in part of any claim arising out of a tort; or

(K) ~~to~~ To a transfer of an interest in any deposit account, division (A)(5) of section 1309.01 of the Revised Code, except as provided with respect to proceeds under section 1309.25 of the Revised Code, and priorities in proceeds under section 1309.31 of the Revised Code; or

(L) To a transfer of an interest in a letter of credit other than the rights to proceeds of a letter of credit.

Sec. 1309.23. (A) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the right to proceeds of a letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money or instruments, other than certificated securities or instruments which constitute part of chattel paper, can be perfected only by the secured party's taking possession, except as provided in divisions (D) and (E) of this section and divisions (B) and (C) of section 1309.25 of the Revised Code on proceeds.

(B) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(C) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(D) A security interest in instruments, other than certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(E) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, other than a certificated security, a negotiable document, or goods in possession of a bailee other than one who has issued a negotiable document therefor:

(1) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, trans-shipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to division (C) of section 1309.31 of the Revised Code; or

(2) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(F) After the twenty-one day period set forth in divisions (D) and (E) of this section, perfection depends upon compliance with applicable provisions of sections 1309.01 to 1309.50 of the Revised Code.

Sec. 1309.24. A security interest in letters of credit ~~and advices of credit~~, as provided in division ~~(B)(1)~~(F) of section ~~1305.15~~ 1305.13 of the

Revised Code, goods, instruments, other than certificated securities, negotiable documents, money, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in sections 1309.01 to 1309.50 of the Revised Code. The security interest may be otherwise perfected as provided in sections 1309.01 to 1309.50 of the Revised Code, before or after the period of possession by the secured party.

SECTION 2. That existing sections 1301.05, 1302.56, 1309.01, 1309.03, 1309.04, 1309.23, and 1309.24 and sections 1305.01, 1305.02, 1305.03, 1305.04, 1305.05, 1305.06, 1305.07, 1305.08, 1305.09, 1305.10, 1305.11, 1305.12, 1305.13, 1305.14, 1305.15, and 1305.16 of the Revised Code are hereby repealed.

SECTION 3. Sections 1 and 2 of this act shall become effective July 1, 1998.

SECTION 4. This act applies to a letter of credit that is issued on or after July 1, 1998. This act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before July 1, 1998.

SECTION 5. A transaction arising out of or associated with a letter of credit that was issued before July 1, 1998, and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this act as if the amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

_____

Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

_____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

_____

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

_____

Secretary of State.

File No. _____ Effective Date _____