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HOUSE BILL 1799

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Sheahan, Appelwick, Costa and Sullivan; by request of Washington Uniform Legislation Commission

Read first time 02/10/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to letters of credit under the uniform commercial  
2 code; amending RCW 62A.5-102, 62A.5-103, 62A.5-104, 62A.5-105, 62A.5-  
3 106, 62A.5-107, 62A.5-108, 62A.5-109, 62A.5-110, 62A.5-111, 62A.5-112,  
4 62A.5-113, 62A.5-114, 62A.5-115, 62A.5-116, 62A.5-117, 62A.1-105,  
5 62A.2-512, 62A.9-103, 62A.9-104, 62A.9-105, 62A.9-106, 62A.9-304, and  
6 62A.9-305; and creating new sections.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** APPLICABILITY. This act applies to a letter  
9 of credit that is issued on or after the effective date of this act.  
10 This act does not apply to a transaction, event, obligation, or duty  
11 arising out of or associated with a letter of credit that was issued  
12 before the effective date of this act.

13 NEW SECTION. **Sec. 2.** SAVINGS CLAUSE. A transaction arising out  
14 of or associated with a letter of credit that was issued before the  
15 effective date of this act and the rights, obligations, and interests  
16 flowing from that transaction are governed by any statute or other law  
17 amended or repealed by this act as if repeal or amendment had not

1 occurred and may be terminated, completed, consummated, or enforced  
2 under that statute or other law.

3 **Sec. 3.** RCW 62A.5-102 and 1965 ex.s. c 157 s 5-102 are each  
4 amended to read as follows:

5 ~~((Scope.)) Definitions. ((1) This Article applies~~

6 ~~(a) to a credit issued by a bank if the credit requires a~~  
7 ~~documentary draft or a documentary demand for payment; and~~

8 ~~(b) to a credit issued by a person other than a bank if the credit~~  
9 ~~requires that the draft or demand for payment be accompanied by a~~  
10 ~~document of title; and~~

11 ~~(c) to a credit issued by a bank or other person if the credit is~~  
12 ~~not within subparagraphs (a) or (b) but conspicuously states that it is~~  
13 ~~a letter of credit or is conspicuously so entitled.~~

14 ~~(2) Unless the engagement meets the requirements of subsection (1),~~  
15 ~~this Article does not apply to engagements to make advances or to honor~~  
16 ~~drafts or demands for payment, to authorities to pay or purchase, to~~  
17 ~~guarantees or to general agreements.~~

18 ~~(3) This Article deals with some but not all of the rules and~~  
19 ~~concepts of letters of credit as such rules or concepts have developed~~  
20 ~~prior to this act or may hereafter develop. The fact that this Article~~  
21 ~~states a rule does not by itself require, imply or negate application~~  
22 ~~of the same or a converse rule to a situation not provided for or to a~~  
23 ~~person not specified by this Article.)) (1) The definitions in this~~  
24 ~~section apply throughout this Article unless the context clearly~~  
25 ~~requires otherwise:~~

26 ~~(a) "Adviser" means a person who, at the request of the issuer, a~~  
27 ~~confirmer, or another adviser, notifies or requests another adviser to~~  
28 ~~notify the beneficiary that a letter of credit has been issued,~~  
29 ~~confirmed, or amended.~~

30 ~~(b) "Applicant" means a person at whose request or for whose~~  
31 ~~account a letter of credit is issued. The term includes a person who~~  
32 ~~requests an issuer to issue a letter of credit on behalf of another if~~  
33 ~~the person making the request undertakes an obligation to reimburse the~~  
34 ~~issuer.~~

35 ~~(c) "Beneficiary" means a person who under the terms of a letter of~~  
36 ~~credit is entitled to have its complying presentation honored. The~~  
37 ~~term includes a person to whom drawing rights have been transferred~~  
38 ~~under a transferable letter of credit.~~

1       (d) "Confirmer" means a nominated person who undertakes, at the  
2 request or with the consent of the issuer, to honor a presentation  
3 under a letter of credit issued by another.

4       (e) "Dishonor" of a letter of credit means failure timely to honor  
5 or to take an interim action, such as acceptance of a draft, that may  
6 be required by the letter of credit.

7       (f) "Document" means a draft or other demand, document of title,  
8 investment security, certificate, invoice, or other record, statement,  
9 or representation of fact, law, right, or opinion (i) which is  
10 presented in a written or other medium permitted by the letter of  
11 credit or, unless prohibited by the letter of credit, by the standard  
12 practice referred to in RCW 62A.5-108(5) and (ii) which is capable of  
13 being examined for compliance with the terms and conditions of the  
14 letter of credit. A document may not be oral.

15       (g) "Good faith" means honesty in fact in the conduct or  
16 transaction concerned.

17       (h) "Honor" of a letter of credit means performance of the issuer's  
18 undertaking in the letter of credit to pay or deliver an item of value.  
19 Unless the letter of credit otherwise provides, "honor" occurs:

20       (i) Upon payment;

21       (ii) If the letter of credit provides for acceptance, upon  
22 acceptance of a draft and, at maturity, its payment; or

23       (iii) If the letter of credit provides for incurring a deferred  
24 obligation, upon incurring the obligation and, at maturity, its  
25 performance.

26       (i) "Issuer" means a bank or other person that issues a letter of  
27 credit, but does not include an individual who makes an engagement for  
28 personal, family, or household purposes.

29       (j) "Letter of credit" means a definite undertaking that satisfies  
30 the requirements of RCW 62A.5-104 by an issuer to a beneficiary at the  
31 request or for the account of an applicant or, in the case of a  
32 financial institution, to itself or for its own account, to honor a  
33 documentary presentation by payment or delivery of an item of value.

34       (k) "Nominated person" means a person whom the issuer (i)  
35 designates or authorizes to pay, accept, negotiate, or otherwise give  
36 value under a letter of credit and (ii) undertakes by agreement or  
37 custom and practice to reimburse.

38       (l) "Presentation" means delivery of a document to an issuer or  
39 nominated person for honor or giving of value under a letter of credit.

1 (m) "Presenter" means a person making a presentation as or on  
2 behalf of a beneficiary or nominated person.

3 (n) "Record" means information that is inscribed on a tangible  
4 medium, or that is stored in an electronic or other medium and is  
5 retrievable in perceivable form.

6 (o) "Successor of a beneficiary" means a person who succeeds to  
7 substantially all of the rights of a beneficiary by operation of law,  
8 including a corporation with or into which the beneficiary has been  
9 merged or consolidated, an administrator, executor, personal  
10 representative, trustee in bankruptcy, debtor in possession,  
11 liquidator, and receiver.

12 (2) Definitions in other Articles applying to this Article and the  
13 sections in which they appear are:

14 "Accept" or "Acceptance" RCW 62A.3-409

15 "Value" RCW 62A.3-303, RCW 62A.4-211.

16 (3) Article 1 contains certain additional general definitions and  
17 principles of construction and interpretation applicable throughout  
18 this Article.

19 **Sec. 4.** RCW 62A.5-103 and 1965 ex.s. c 157 s 5-103 are each  
20 amended to read as follows:

21 ~~((Definitions.)) Scope. ((1) In this Article unless the context~~  
22 ~~otherwise requires~~

23 ~~(a) "Credit" or "letter of credit" means an engagement by a bank or~~  
24 ~~other person made at the request of a customer and of a kind within the~~  
25 ~~scope of this Article (RCW 62A.5-102) that the issuer will honor drafts~~  
26 ~~or other demands for payment upon compliance with the conditions~~  
27 ~~specified in the credit. A credit may be either revocable or~~  
28 ~~irrevocable. The engagement may be either an agreement to honor or a~~  
29 ~~statement that the bank or other person is authorized to honor.~~

30 ~~(b) A "documentary draft" or a "documentary demand for payment" is~~  
31 ~~one honor of which is conditioned upon the presentation of a document~~  
32 ~~or documents. "Document" means any paper including document of title,~~  
33 ~~security, invoice, certificate, notice of default and the like.~~

34 ~~(c) An "issuer" is a bank or other person issuing a credit.~~

35 ~~(d) A "beneficiary" of a credit is a person who is entitled under~~  
36 ~~its terms to draw or demand payment.~~

37 ~~(e) An "advising bank" is a bank which gives notification of the~~  
38 ~~issuance of a credit by another bank.~~

1       ~~(f) A "confirming bank" is a bank which engages either that it will~~  
2 ~~itself honor a credit already issued by another bank or that such a~~  
3 ~~credit will be honored by the issuer or a third bank.~~

4       ~~(g) A "customer" is a buyer or other person who causes an issuer to~~  
5 ~~issue a credit. The term also includes a bank which procures issuance~~  
6 ~~or confirmation on behalf of that bank's customer.~~

7       ~~(2) Other definitions applying to this Article and the sections in~~  
8 ~~which they appear are:~~

9           ~~"Notation of credit".— RCW 62A.5-108.~~

10          ~~"Presenter".— RCW 62A.5-112(3).~~

11       ~~(3) Definitions in other Articles applying to this Article and the~~  
12 ~~sections in which they appear are:~~

13           ~~"Accept" or "Acceptance".— RCW 62A.3-410.~~

14           ~~"Contract for sale".— RCW 62A.2-106.~~

15           ~~"Draft".— RCW 62A.3-104.~~

16           ~~"Holder in due course".— RCW 62A.3-302.~~

17           ~~"Midnight deadline".— RCW 62A.4-104.~~

18           ~~"Security".— RCW 62A.8-102.~~

19       ~~(4) In addition, Article 1 contains general definitions and~~  
20 ~~principles of construction and interpretation applicable throughout~~  
21 ~~this Article.)) (1) This Article applies to letters of credit and to~~  
22 ~~certain rights and obligations arising out of transactions involving~~  
23 ~~letters of credit.~~

24       (2) The statement of a rule in this Article does not by itself  
25 require, imply, or negate application of the same or a different rule  
26 to a situation not provided for, or to a person not specified, in this  
27 Article.

28       (3) With the exception of this subsection, subsections (1) and (4)  
29 of this section, RCW 62A.5-102(1) (i) and (j), 62A.5-106(4), and 62A.5-  
30 114(4), and except to the extent prohibited in RCW 62A.1-102(3) and  
31 62A.5-117(4), the effect of this Article may be varied by agreement or  
32 by a provision stated or incorporated by reference in an undertaking.  
33 A term in an agreement or undertaking generally excusing liability or  
34 generally limiting remedies for failure to perform obligations is not  
35 sufficient to vary obligations prescribed by this Article.

36       (4) Rights and obligations of an issuer to a beneficiary or a  
37 nominated person under a letter of credit are independent of the  
38 existence, performance, or nonperformance of a contract or arrangement  
39 out of which the letter of credit arises or which underlies it,

1 including contracts or arrangements between the issuer and the  
2 applicant and between the applicant and the beneficiary.

3 **Sec. 5.** RCW 62A.5-104 and 1965 ex.s. c 157 s 5-104 are each  
4 amended to read as follows:

5 Formal requirements(~~(; signing)~~). (~~((1) Except as otherwise~~  
6 ~~required in subsection (1)(c) of RCW 62A.5-102 on scope, no particular~~  
7 ~~form of phrasing is required for a credit. A credit must be in writing~~  
8 ~~and signed by the issuer and a confirmation must be in writing and~~  
9 ~~signed by the confirming bank. A modification of the terms of a credit~~  
10 ~~or confirmation must be signed by the issuer or confirming bank.~~

11 ~~(2) A telegram may be a sufficient signed writing if it identifies~~  
12 ~~its sender by an authorized authentication. The authentication may be~~  
13 ~~in code and the authorized naming of the issuer in an advice of credit~~  
14 ~~is a sufficient signing.)) A letter of credit, confirmation, advice,  
15 transfer, amendment, or cancellation may be issued in any form that is  
16 a record and is authenticated (1) by a signature or (2) in accordance  
17 with the agreement of the parties or the standard practice referred to  
18 in RCW 62A.5-108(5).~~

19 **Sec. 6.** RCW 62A.5-105 and 1965 ex.s. c 157 s 5-105 are each  
20 amended to read as follows:

21 Consideration. (~~(No consideration is necessary to establish a~~  
22 ~~credit or to enlarge or otherwise modify its terms.)) Consideration is  
23 not required to issue, amend, transfer, or cancel a letter of credit,  
24 advice, or confirmation.~~

25 **Sec. 7.** RCW 62A.5-106 and 1965 ex.s. c 157 s 5-106 are each  
26 amended to read as follows:

27 (~~(Time and effect of establishment of credit.)) Issuance,  
28 amendment, cancellation, and duration. ((1) Unless otherwise agreed  
29 a credit is established:~~

30 ~~(a) as regards the customer as soon as a letter of credit is sent~~  
31 ~~to him or the letter of credit or an authorized written advice of its~~  
32 ~~issuance is sent to the beneficiary; and~~

33 ~~(b) as regards the beneficiary when he receives a letter of credit~~  
34 ~~or an authorized written advice of its issuance.~~

35 ~~(2) Unless otherwise agreed once an irrevocable credit is~~  
36 ~~established as regards the customer it can be modified or revoked only~~

1 with the consent of the customer and once it is established as regards  
2 the beneficiary it can be modified or revoked only with his consent.

3 ~~(3) Unless otherwise agreed after a revocable credit is established  
4 it may be modified or revoked by the issuer without notice to or  
5 consent from the customer or beneficiary.~~

6 ~~(4) Notwithstanding any modification or revocation of a revocable  
7 credit any person authorized to honor or negotiate under the terms of  
8 the original credit is entitled to reimbursement for or honor of any  
9 draft or demand for payment duly honored or negotiated before receipt  
10 of notice of the modification or revocation and the issuer in turn is  
11 entitled to reimbursement from its customer.))~~ (1) A letter of credit  
12 is issued and becomes enforceable according to its terms against the  
13 issuer when the issuer sends or otherwise transmits it to the person  
14 requested to advise or to the beneficiary. A letter of credit is  
15 revocable only if it so provides.

16 (2) After a letter of credit is issued, rights and obligations of  
17 a beneficiary, applicant, confirmer, and issuer are not affected by an  
18 amendment or cancellation to which that person has not consented except  
19 to the extent the letter of credit provides that it is revocable or  
20 that the issuer may amend or cancel the letter of credit without that  
21 consent.

22 (3) If there is no stated expiration date or other provision that  
23 determines its duration, a letter of credit expires one year after its  
24 stated date of issuance or, if none is stated, after the date on which  
25 it is issued.

26 (4) A letter of credit that states that it is perpetual expires  
27 five years after its stated date of issuance, or if none is stated,  
28 after the date on which it is issued.

29 **Sec. 8.** RCW 62A.5-107 and 1965 ex.s. c 157 s 5-107 are each  
30 amended to read as follows:

31 ~~((Advice of credit; confirmation; error in statement of terms.))~~  
32 Confirmer, nominated person, and adviser. ((1) Unless otherwise  
33 specified an advising bank by advising a credit issued by another bank  
34 does not assume any obligation to honor drafts drawn or demands for  
35 payment made under the credit but it does assume obligation for the  
36 accuracy of its own statement.

1       ~~(2) A confirming bank by confirming a credit becomes directly~~  
2 ~~obligated on the credit to the extent of its confirmation as though it~~  
3 ~~were its issuer and acquires the rights of an issuer.~~

4       ~~(3) Even though an advising bank incorrectly advises the terms of~~  
5 ~~a credit it has been authorized to advise the credit is established as~~  
6 ~~against the issuer to the extent of its original terms.~~

7       ~~(4) Unless otherwise specified the customer bears as against the~~  
8 ~~issuer all risks of transmission and reasonable translation or~~  
9 ~~interpretation of any message relating to a credit.))~~ (1) A confirmer  
10 is directly obligated on a letter of credit and has the rights and  
11 obligations of an issuer to the extent of its confirmation. The  
12 confirmer also has rights against and obligations to the issuer as if  
13 the issuer were an applicant and the confirmer had issued the letter of  
14 credit at the request and for the account of the issuer.

15       (2) A nominated person who is not a confirmer is not obligated to  
16 honor or otherwise give value for a presentation.

17       (3) A person requested to advise may decline to act as an adviser.  
18 An adviser that is not a confirmer is not obligated to honor or give  
19 value for a presentation. An adviser undertakes to the issuer and to  
20 the beneficiary accurately to advise the terms of the letter of credit,  
21 confirmation, amendment, or advice received by that person and  
22 undertakes to the beneficiary to check the apparent authenticity of the  
23 request to advise. Even if the advice is inaccurate, the letter of  
24 credit, confirmation, or amendment is enforceable as issued.

25       (4) A person who notifies a transferee beneficiary of the terms of  
26 a letter of credit, confirmation, amendment, or advice has the rights  
27 and obligations of an adviser under subsection (3) of this section.  
28 The terms in the notice to the transferee beneficiary may differ from  
29 the terms in any notice to the transferor beneficiary to the extent  
30 permitted by the letter of credit, confirmation, amendment, or advice  
31 received by the person who so notifies.

32       **Sec. 9.** RCW 62A.5-108 and 1965 ex.s. c 157 s 5-108 are each  
33 amended to read as follows:

34       ~~(( "Notation credit"; exhaustion of credit.))~~ Issuer's rights and  
35 obligations. ((1) A credit which specifies that any person purchasing  
36 or paying drafts drawn or demands for payment made under it must note  
37 the amount of the draft or demand on the letter or advice of credit is  
38 a "notation credit".



1       ~~(2) Under a notation credit~~

2       ~~(a) a person paying the beneficiary or purchasing a draft or demand~~  
3 ~~for payment from him acquires a right to honor only if the appropriate~~  
4 ~~notation is made and by transferring or forwarding for honor the~~  
5 ~~documents under the credit such a person warrants to the issuer that~~  
6 ~~the notation has been made; and~~

7       ~~(b) unless the credit or a signed statement that an appropriate~~  
8 ~~notation has been made accompanies the draft or demand for payment the~~  
9 ~~issuer may delay honor until evidence of notation has been procured~~  
10 ~~which is satisfactory to it but its obligation and that of its customer~~  
11 ~~continue for a reasonable time not exceeding thirty days to obtain such~~  
12 ~~evidence.~~

13       ~~(3) If the credit is not a notation credit~~

14       ~~(a) the issuer may honor complying drafts or demands for payment~~  
15 ~~presented to it in the order in which they are presented and is~~  
16 ~~discharged pro tanto by honor of any such draft or demand;~~

17       ~~(b) as between competing good faith purchasers of complying drafts~~  
18 ~~or demands the person first purchasing has priority over a subsequent~~  
19 ~~purchaser even though the later purchased draft or demand has been~~  
20 ~~first honored.)) (1) Except as otherwise provided in RCW 62A.5-109, an~~  
21 ~~issuer shall honor a presentation that, as determined by the standard~~  
22 ~~practice referred to in subsection (5) of this section, appears on its~~  
23 ~~face strictly to comply with the terms and conditions of the letter of~~  
24 ~~credit. Except as otherwise provided in RCW 62A.5-113 and unless~~  
25 ~~otherwise agreed with the applicant, an issuer shall dishonor a~~  
26 ~~presentation that does not appear so to comply.~~

27       (2) An issuer has a reasonable time after presentation, but not  
28 beyond the end of the seventh business day of the issuer after the day  
29 of its receipt of documents:

30       (a) To honor;

31       (b) If the letter of credit provides for honor to be completed more  
32 than seven business days after presentation, to accept a draft or incur  
33 a deferred obligation; or

34       (c) To give notice to the presenter of discrepancies in the  
35 presentation.

36       (3) Except as otherwise provided in subsection (4) of this section,  
37 an issuer is precluded from asserting as a basis for dishonor any  
38 discrepancy if timely notice is not given, or any discrepancy not  
39 stated in the notice if timely notice is given.

1 (4) Failure to give the notice specified in subsection (2) of this  
2 section or to mention fraud, forgery, or expiration in the notice does  
3 not preclude the issuer from asserting as a basis for dishonor fraud or  
4 forgery as described in RCW 62A.5-109(1) or expiration of the letter of  
5 credit before presentation.

6 (5) An issuer shall observe standard practice of financial  
7 institutions that regularly issue letters of credit. Determination of  
8 the issuer's observance of the standard practice is a matter of  
9 interpretation for the court. The court shall offer the parties a  
10 reasonable opportunity to present evidence of the standard practice.

11 (6) An issuer is not responsible for:

12 (a) The performance or nonperformance of the underlying contract,  
13 arrangement, or transaction;

14 (b) An act or omission of others; or

15 (c) Observance or knowledge of the usage of a particular trade  
16 other than the standard practice referred to in subsection (5) of this  
17 section.

18 (7) If an undertaking constituting a letter of credit under RCW  
19 62A.5-102(1)(j) contains nondocumentary conditions, an issuer shall  
20 disregard the nondocumentary conditions and treat them as if they were  
21 not stated.

22 (8) An issuer that has dishonored a presentation shall return the  
23 documents or hold them at the disposal of, and send advice to that  
24 effect to, the presenter.

25 (9) An issuer that has honored a presentation as permitted or  
26 required by this Article:

27 (a) Is entitled to be reimbursed by the applicant in immediately  
28 available funds not later than the date of its payment of funds;

29 (b) Takes the documents free of claims of the beneficiary or  
30 presenter;

31 (c) Is precluded from asserting a right of recourse on a draft  
32 under RCW 62A.3-414 and 62A.3-415;

33 (d) Except as otherwise provided in RCW 62A.5-110 and 62A.5-117, is  
34 precluded from restitution of money paid or other value given by  
35 mistake to the extent the mistake concerns discrepancies in the  
36 documents or tender which are apparent on the face of the presentation;  
37 and

1 (e) Is discharged to the extent of its performance under the letter  
2 of credit unless the issuer honored a presentation in which a required  
3 signature of a beneficiary was forged.

4 **Sec. 10.** RCW 62A.5-109 and 1965 ex.s. c 157 s 5-109 are each  
5 amended to read as follows:

6 ~~((Issuer's obligation to its customer.))~~ Fraud and forgery. ~~((1)~~  
7 ~~An issuer's obligation to its customer includes good faith and~~  
8 ~~observance of any general banking usage but unless otherwise agreed~~  
9 ~~does not include liability or responsibility~~

10 ~~(a) for performance of the underlying contract for sale or other~~  
11 ~~transaction between the customer and the beneficiary; or~~

12 ~~(b) for any act or omission of any person other than itself or its~~  
13 ~~own branch or for loss or destruction of a draft, demand or document in~~  
14 ~~transit or in the possession of others; or~~

15 ~~(c) based on knowledge or lack of knowledge of any usage of any~~  
16 ~~particular trade.~~

17 ~~(2) An issuer must examine documents with care so as to ascertain~~  
18 ~~that on their face they appear to comply with the terms of the credit~~  
19 ~~but unless otherwise agreed assumes no liability or responsibility for~~  
20 ~~the genuineness, falsification or effect of any document which appears~~  
21 ~~on such examination to be regular on its face.~~

22 ~~(3) A non bank issuer is not bound by any banking usage of which it~~  
23 ~~has no knowledge.))~~ (1) If a presentation is made that appears on its  
24 face strictly to comply with the terms and conditions of the letter of  
25 credit, but a required document is forged or materially fraudulent, or  
26 honor of the presentation would facilitate a material fraud by the  
27 beneficiary on the issuer or applicant:

28 (a) The issuer shall honor the presentation, if honor is demanded  
29 by (i) a nominated person who has given value in good faith and without  
30 notice of forgery or material fraud, (ii) a confirmer who has honored  
31 its confirmation in good faith, (iii) a holder in due course of a draft  
32 drawn under the letter of credit which was taken after acceptance by  
33 the issuer or nominated person, or (iv) an assignee of the issuer's or  
34 nominated person's deferred obligation that was taken for value and  
35 without notice of forgery or material fraud after the obligation was  
36 incurred by the issuer or nominated person; and

37 (b) The issuer, acting in good faith, may honor or dishonor the  
38 presentation in any other case.

1       (2) If an applicant claims that a required document is forged or  
2 materially fraudulent or that honor of the presentation would  
3 facilitate a material fraud by the beneficiary on the issuer or  
4 applicant, a court of competent jurisdiction may temporarily or  
5 permanently enjoin the issuer from honoring a presentation or grant  
6 similar relief against the issuer or other persons only if the court  
7 finds that:

8       (a) The relief is not prohibited under the law applicable to an  
9 accepted draft or deferred obligation incurred by the issuer;

10       (b) A beneficiary, issuer, or nominated person who may be adversely  
11 affected is adequately protected against loss that it may suffer  
12 because the relief is granted;

13       (c) All of the conditions to entitle a person to the relief under  
14 the law of this state have been met; and

15       (d) On the basis of the information submitted to the court, the  
16 applicant is more likely than not to succeed under its claim of forgery  
17 or material fraud and the person demanding honor does not qualify for  
18 protection under subsection (1)(a) of this section.

19       **Sec. 11.** RCW 62A.5-110 and 1965 ex.s. c 157 s 5-110 are each  
20 amended to read as follows:

21       ~~((Availability of credit in portions; presenter's reservation of~~  
22 ~~lien or claim.)) Warranties. ~~((1) Unless otherwise specified a credit~~  
23 ~~may be used in portions in the discretion of the beneficiary.~~~~

24       ~~(2) Unless otherwise specified a person by presenting a documentary~~  
25 ~~draft or demand for payment under a credit relinquishes upon its honor~~  
26 ~~all claims to the documents and a person by transferring such draft or~~  
27 ~~demand or causing such presentment authorizes such relinquishment. An~~  
28 ~~explicit reservation of claim makes the draft or demand non-~~  
29 ~~complying.)) (1) If its presentation is honored, the beneficiary~~

30 warrants:

31       (a) To the issuer, any other person to whom presentation is made,  
32 and the applicant that there is no fraud or forgery of the kind  
33 described in RCW 62A.5-109(1); and

34       (b) To the applicant that the drawing does not violate any  
35 agreement between the applicant and beneficiary or any other agreement  
36 intended by them to be augmented by the letter of credit.

37       (2) The warranties in subsection (1) of this section are in  
38 addition to warranties arising under Articles 3, 4, 7, and 8 because of

1 the presentation or transfer of documents covered by any of those  
2 Articles.

3 **Sec. 12.** RCW 62A.5-111 and 1965 ex.s. c 157 s 5-111 are each  
4 amended to read as follows:

5 ~~((Warranties on transfer and presentment.)) Remedies. ((1) Unless~~  
6 ~~otherwise agreed the beneficiary by transferring or presenting a~~  
7 ~~documentary draft or demand for payment warrants to all interested~~  
8 ~~parties that the necessary conditions of the credit have been complied~~  
9 ~~with. This is in addition to any warranties arising under Articles 3,~~  
10 ~~4, 7 and 8.~~

11 ~~(2) Unless otherwise agreed a negotiating, advising, confirming,~~  
12 ~~collecting or issuing bank presenting or transferring a draft or demand~~  
13 ~~for payment under a credit warrants only the matters warranted by a~~  
14 ~~collecting bank under Article 4 and any such bank transferring a~~  
15 ~~document warrants only the matters warranted by an intermediary under~~  
16 ~~Articles 7 and 8.)) (1) If an issuer wrongfully dishonors or repudiates~~  
17 ~~its obligation to pay money under a letter of credit before~~  
18 ~~presentation, the beneficiary, successor, or nominated person~~  
19 ~~presenting on its own behalf may recover from the issuer the amount~~  
20 ~~that is the subject of the dishonor or repudiation. If the issuer's~~  
21 ~~obligation under the letter of credit is not for the payment of money,~~  
22 ~~the claimant may obtain specific performance or, at the claimant's~~  
23 ~~election, recover an amount equal to the value of performance from the~~  
24 ~~issuer. In either case, the claimant may also recover incidental but~~  
25 ~~not consequential damages. The claimant is not obligated to take~~  
26 ~~action to avoid damages that might be due from the issuer under this~~  
27 ~~subsection. If, although not obligated to do so, the claimant avoids~~  
28 ~~damages, the claimant's recovery from the issuer must be reduced by the~~  
29 ~~amount of damages avoided. The issuer has the burden of proving the~~  
30 ~~amount of damages avoided. In the case of repudiation the claimant~~  
31 ~~need not present any document.~~

32 ~~(2) If an issuer wrongfully dishonors a draft or demand presented~~  
33 ~~under a letter of credit or honors a draft or demand in breach of its~~  
34 ~~obligation to the applicant, the applicant may recover damages~~  
35 ~~resulting from the breach, including incidental but not consequential~~  
36 ~~damages, less any amount saved as a result of the breach.~~

37 ~~(3) If an adviser or nominated person other than a confirmer~~  
38 ~~breaches an obligation under this Article or an issuer breaches an~~

1 obligation not covered in subsection (1) or (2) of this section, a  
2 person to whom the obligation is owed may recover damages resulting  
3 from the breach, including incidental but not consequential damages,  
4 less any amount saved as a result of the breach. To the extent of the  
5 confirmation, a confirmer has the liability of an issuer specified in  
6 this subsection and subsections (1) and (2) of this section.

7 (4) An issuer, nominated person, or adviser who is found liable  
8 under subsection (1), (2), or (3) of this section shall pay interest on  
9 the amount owed thereunder from the date of wrongful dishonor or other  
10 appropriate date.

11 (5) Reasonable attorney's fees and other expenses of litigation  
12 must be awarded to the prevailing party in an action in which a remedy  
13 is sought under this Article.

14 (6) Damages that would otherwise be payable by a party for breach  
15 of an obligation under this Article may be liquidated by agreement or  
16 undertaking, but only in an amount or by a formula that is reasonable  
17 in light of the harm anticipated.

18 **Sec. 13.** RCW 62A.5-112 and 1965 ex.s. c 157 s 5-112 are each  
19 amended to read as follows:

20 ~~((Time allowed for honor or rejection; withholding honor or~~  
21 ~~rejection by consent; "presenter".)) Transfer of letter of credit.  
22 ~~((1) A bank to which a documentary draft or demand for payment is~~  
23 ~~presented under a credit may without dishonor of the draft, demand or~~  
24 ~~credit~~~~

25 ~~(a) defer honor until the close of the third banking day following~~  
26 ~~receipt of the documents; and~~

27 ~~(b) further defer honor if the presenter has expressly or impliedly~~  
28 ~~consented thereto.~~

29 ~~Failure to honor within the time here specified constitutes dishonor of~~  
30 ~~the draft or demand and of the credit except as otherwise provided in~~  
31 ~~subsection (4) of RCW 62A.5-114 on conditional payment.~~

32 ~~(2) Upon dishonor the bank may unless otherwise instructed fulfill~~  
33 ~~its duty to return the draft or demand and the documents by holding~~  
34 ~~them at the disposal of the presenter and sending him an advice to that~~  
35 ~~effect.~~

36 ~~(3) "Presenter" means any person presenting a draft or demand for~~  
37 ~~payment for honor under a credit even though that person is a~~  
38 ~~confirming bank or other correspondent which is acting under an~~

1 ~~issuer's authorization.))~~ (1) Except as otherwise provided in RCW  
2 62A.5-113, unless a letter of credit provides that it is transferable,  
3 the right of a beneficiary to draw or otherwise demand performance  
4 under a letter of credit may not be transferred.

5 (2) Even if a letter of credit provides that it is transferable,  
6 the issuer may refuse to recognize or carry out a transfer if:

7 (a) The transfer would violate applicable law; or

8 (b) The transferor or transferee has failed to comply with any  
9 requirement stated in the letter of credit or any other requirement  
10 relating to transfer imposed by the issuer which is within the standard  
11 practice referred to in RCW 62A.5-108(5) or is otherwise reasonable  
12 under the circumstances.

13 **Sec. 14.** RCW 62A.5-113 and 1965 ex.s. c 157 s 5-113 are each  
14 amended to read as follows:

15 ~~((Indemnities.))~~ Transfer by operation of law. ~~((1) A bank~~  
16 ~~seeking to obtain (whether for itself or another) honor, negotiation or~~  
17 ~~reimbursement under a credit may give an indemnity to induce such~~  
18 ~~honor, negotiation or reimbursement.~~

19 ~~(2) An indemnity agreement inducing honor, negotiation or~~  
20 ~~reimbursement~~

21 ~~(a) unless otherwise explicitly agreed applies to defects in the~~  
22 ~~documents but not in the goods; and~~

23 ~~(b) unless a longer time is explicitly agreed expires at the end of~~  
24 ~~ten business days following receipt of the documents by the ultimate~~  
25 ~~customer unless notice of objection is sent before such expiration~~  
26 ~~date. The ultimate customer may send notice of objection to the person~~  
27 ~~from whom he received the documents and any bank receiving such notice~~  
28 ~~is under a duty to send notice to its transferor before its midnight~~  
29 ~~deadline.))~~ (1) A successor of a beneficiary may consent to amendments,

30 sign and present documents, and receive payment or other items of value  
31 in the name of the beneficiary without disclosing its status as a  
32 successor.

33 (2) A successor of a beneficiary may consent to amendments, sign  
34 and present documents, and receive payment or other items of value in  
35 its own name as the disclosed successor of the beneficiary. Except as  
36 otherwise provided in subsection (5) of this section, an issuer shall  
37 recognize a disclosed successor of a beneficiary as beneficiary in full  
38 substitution for its predecessor upon compliance with the requirements

1 for recognition by the issuer of a transfer of drawing rights by  
2 operation of law under the standard practice referred to in RCW  
3 62A.5-108(5) or, in the absence of such a practice, compliance with  
4 other reasonable procedures sufficient to protect the issuer.

5 (3) An issuer is not obliged to determine whether a purported  
6 successor is a successor of a beneficiary or whether the signature of  
7 a purported successor is genuine or authorized.

8 (4) Honor of a purported successor's apparently complying  
9 presentation under subsection (1) or (2) of this section has the  
10 consequences specified in RCW 62A.5-108(9) even if the purported  
11 successor is not the successor of a beneficiary. Documents signed in  
12 the name of the beneficiary or of a disclosed successor by a person who  
13 is neither the beneficiary nor the successor of the beneficiary are  
14 forged documents for the purposes of RCW 62A.5-109.

15 (5) An issuer whose rights of reimbursement are not covered by  
16 subsection (4) of this section or substantially similar law and any  
17 confirmer or nominated person may decline to recognize a presentation  
18 under subsection (2) of this section.

19 (6) A beneficiary whose name is changed after the issuance of a  
20 letter of credit has the same rights and obligations as a successor of  
21 a beneficiary under this section.

22 **Sec. 15.** RCW 62A.5-114 and 1995 c 48 s 57 are each amended to read  
23 as follows:

24 ~~((Issuer's duty and privilege to honor; right to reimbursement.))~~  
25 Assignment of proceeds. ((1) An issuer must honor a draft or demand  
26 for payment which complies with the terms of the relevant credit  
27 regardless of whether the goods or documents conform to the underlying  
28 contract for sale or other contract between the customer and the  
29 beneficiary. The issuer is not excused from honor of such a draft or  
30 demand by reason of an additional general term that all documents must  
31 be satisfactory to the issuer, but an issuer may require that specified  
32 documents must be satisfactory to it.

33 ~~(2) Unless otherwise agreed when documents appear on their face to~~  
34 ~~comply with the terms of a credit but a required document does not in~~  
35 ~~fact conform to the warranties made on negotiation or transfer of a~~  
36 ~~document of title (RCW 62A.7-507) or of a certificated security (RCW~~  
37 ~~62A.8-108) or is forged or fraudulent or there is fraud in the~~  
38 ~~transaction:~~



1 (a) the issuer must honor the draft or demand for payment if honor  
2 is demanded by a negotiating bank or other holder of the draft or  
3 demand which has taken the draft or demand under the credit and under  
4 circumstances which would make it a holder in due course (RCW 62A.3-  
5 302) and in an appropriate case would make it a person to whom a  
6 document of title has been duly negotiated (RCW 62A.7-502) or a bona  
7 fide purchaser of a certificated security (RCW 62A.8-302); and

8 (b) in all other cases as against its customer, an issuer acting in  
9 good faith may honor the draft or demand for payment despite  
10 notification from the customer of fraud, forgery or other defect not  
11 apparent on the face of the documents but a court of appropriate  
12 jurisdiction may enjoin such honor.

13 (3) Unless otherwise agreed an issuer which has duly honored a  
14 draft or demand for payment is entitled to immediate reimbursement of  
15 any payment made under the credit and to be put in effectively  
16 available funds not later than the day before maturity of any  
17 acceptance made under the credit.

18 (4) When a credit provides for payment by the issuer on receipt of  
19 notice that the required documents are in the possession of a  
20 correspondent or other agent of the issuer

21 (a) any payment made on receipt of such notice is conditional; and

22 (b) the issuer may reject documents which do not comply with the  
23 credit if it does so within three banking days following its receipt of  
24 the documents; and

25 (c) in the event of such rejection, the issuer is entitled by  
26 charge back or otherwise to return of the payment made.

27 (5) In the case covered by subsection (4) failure to reject  
28 documents within the time specified in sub-paragraph (b) constitutes  
29 acceptance of the documents and makes the payment final in favor of the  
30 beneficiary.)) (1) In this section, "proceeds of a letter of credit"

31 means the cash, check, accepted draft, or other item of value paid or  
32 delivered upon honor or giving of value by the issuer or any nominated  
33 person under the letter of credit. The term does not include a  
34 beneficiary's drawing rights or documents presented by the beneficiary.

35 (2) A beneficiary may assign its right to part or all of the  
36 proceeds of a letter of credit. The beneficiary may do so before  
37 presentation as a present assignment of its right to receive proceeds  
38 contingent upon its compliance with the terms and conditions of the  
39 letter of credit.

1 (3) An issuer or nominated person need not recognize an assignment  
2 of proceeds of a letter of credit until it consents to the assignment.

3 (4) An issuer or nominated person has no obligation to give or  
4 withhold its consent to an assignment of proceeds of a letter of  
5 credit, but consent may not be unreasonably withheld if the assignee  
6 possesses and exhibits the letter of credit and presentation of the  
7 letter of credit is a condition to honor.

8 (5) Rights of a transferee beneficiary or nominated person are  
9 independent of the beneficiary's assignment of the proceeds of a letter  
10 of credit and are superior to the assignee's right to the proceeds.

11 (6) Neither the rights recognized by this section between an  
12 assignee and an issuer, transferee beneficiary, or nominated person nor  
13 the issuer's or nominated person's payment of proceeds to an assignee  
14 or a third person affect the rights between the assignee and any person  
15 other than the issuer, transferee beneficiary, or nominated person.  
16 The mode of creating and perfecting a security interest in or granting  
17 an assignment of a beneficiary's rights to proceeds is governed by  
18 Article 9 or other law. Against persons other than the issuer,  
19 transferee beneficiary, or nominated person, the rights and obligations  
20 arising upon the creation of a security interest or other assignment of  
21 a beneficiary's right to proceeds and its perfection are governed by  
22 Article 9 or other law.

23 **Sec. 16.** RCW 62A.5-115 and 1965 ex.s. c 157 s 5-115 are each  
24 amended to read as follows:

25 ~~((Remedy for improper dishonor or anticipatory repudiation.))~~  
26 ~~Statute of Limitations. ((1) When an issuer wrongfully dishonors a~~  
27 ~~draft or demand for payment presented under a credit the person~~  
28 ~~entitled to honor has with respect to any documents the rights of a~~  
29 ~~person in the position of a seller (RCW 62A.2-707) and may recover from~~  
30 ~~the issuer the face amount of the draft or demand together with~~  
31 ~~incidental damages under RCW 62A.2-710 on seller's incidental damages~~  
32 ~~and interest but less any amount realized by resale or other use or~~  
33 ~~disposition of the subject matter of the transaction. In the event no~~  
34 ~~resale or other utilization is made the documents, goods or other~~  
35 ~~subject matter involved in the transaction must be turned over to the~~  
36 ~~issuer on payment of judgment.~~

37 ~~(2) When an issuer wrongfully cancels or otherwise repudiates a~~  
38 ~~credit before presentment of a draft or demand for payment drawn under~~

1 ~~it the beneficiary has the rights of a seller after anticipatory~~  
2 ~~repudiation by the buyer under RCW 62A.2-610 if he learns of the~~  
3 ~~repudiation in time reasonably to avoid procurement of the required~~  
4 ~~documents. Otherwise the beneficiary has an immediate right of action~~  
5 ~~for wrongful dishonor.)) An action to enforce a right or obligation~~  
6 ~~arising under this Article must be commenced within one year after the~~  
7 ~~expiration date of the relevant letter of credit or one year after the~~  
8 ~~cause of action accrues, whichever occurs later. A cause of action~~  
9 ~~accrues when the breach occurs, regardless of the aggrieved party's~~  
10 ~~lack of knowledge of the breach.~~

11 **Sec. 17.** RCW 62A.5-116 and 1981 c 41 s 5 are each amended to read  
12 as follows:

13 ~~((Transfer and assignment.)) Choice of law and forum. ((1) The~~  
14 ~~right to draw under a credit can be transferred or assigned only when~~  
15 ~~the credit is expressly designated as transferable or assignable.~~

16 ~~(2) Even though the credit specifically states that it is~~  
17 ~~nontransferable or nonassignable the beneficiary may before performance~~  
18 ~~of the conditions of the credit assign his right to proceeds. Such an~~  
19 ~~assignment is an assignment of an account under Article 9 on Secured~~  
20 ~~Transactions and is governed by that Article except that~~

21 ~~(a) the assignment is ineffective until the letter of credit or~~  
22 ~~advice of credit is delivered to the assignee which delivery~~  
23 ~~constitutes perfection of the security interest under Article 9; and~~

24 ~~(b) the issuer may honor drafts or demands for payment drawn under~~  
25 ~~the credit until it receives a notification of the assignment signed by~~  
26 ~~the beneficiary which reasonably identifies the credit involved in the~~  
27 ~~assignment and contains a request to pay the assignee; and~~

28 ~~(c) after what reasonably appears to be such a notification has~~  
29 ~~been received the issuer may without dishonor refuse to accept or pay~~  
30 ~~even to a person otherwise entitled to honor until the letter of credit~~  
31 ~~or advice of credit is exhibited to the issuer.~~

32 ~~(3) Except where the beneficiary has effectively assigned his right~~  
33 ~~to draw or his right to proceeds, nothing in this section limits his~~  
34 ~~right to transfer or negotiate drafts or demands drawn under the~~  
35 ~~credit.)) (1) The liability of an issuer, nominated person, or adviser~~  
36 ~~for action or omission is governed by the law of the jurisdiction~~  
37 ~~chosen by an agreement in the form of a record signed or otherwise~~  
38 ~~authenticated by the affected parties in the manner provided in RCW~~

1 62A.5-104 or by a provision in the person's letter of credit,  
2 confirmation, or other undertaking. The jurisdiction whose law is  
3 chosen need not bear any relation to the transaction.

4 (2) Unless subsection (1) of this section applies, the liability of  
5 an issuer, nominated person, or adviser for action or omission is  
6 governed by the law of the jurisdiction in which the person is located.  
7 The person is considered to be located at the address indicated in the  
8 person's undertaking. If more than one address is indicated, the  
9 person is considered to be located at the address from which the  
10 person's undertaking was issued. For the purpose of jurisdiction,  
11 choice of law, and recognition of interbranch letters of credit, but  
12 not enforcement of a judgment, all branches of a bank are considered  
13 separate juridical entities and a bank is considered to be located at  
14 the place where its relevant branch is considered to be located under  
15 this subsection.

16 (3) Except as otherwise provided in this subsection, the liability  
17 of an issuer, nominated person, or adviser is governed by any rules of  
18 custom or practice, such as the Uniform Customs and Practice for  
19 Documentary Credits, to which the letter of credit, confirmation, or  
20 other undertaking is expressly made subject. If (a) this Article would  
21 govern the liability of an issuer, nominated person, or adviser under  
22 subsection (1) or (2) of this section, (b) the relevant undertaking  
23 incorporates rules of custom or practice, and (c) there is conflict  
24 between this Article and those rules as applied to that undertaking,  
25 those rules govern except to the extent of any conflict with the  
26 nonvariable provisions specified in RCW 62A.5-103(3).

27 (4) If there is conflict between this Article and Article 3, 4, 4A,  
28 or 9, this Article governs.

29 (5) The forum for settling disputes arising out of an undertaking  
30 within this Article may be chosen in the manner and with the binding  
31 effect that governing law may be chosen in accordance with subsection  
32 (1) of this section.

33 **Sec. 18.** RCW 62A.5-117 and 1965 ex.s. c 157 s 5-117 are each  
34 amended to read as follows:

35 ~~((Insolvency of bank holding funds for documentary credit.))~~  
36 Subrogation of issuer, applicant, and nominated person. ((1) Where an  
37 issuer or an advising or confirming bank or a bank which has for a  
38 customer procured issuance of a credit by another bank becomes

1 insolvent before final payment under the credit and the credit is one  
2 to which this Article is made applicable by paragraphs (a) or (b) of  
3 RCW 62A.5-102(1) on scope, the receipt or allocation of funds or  
4 collateral to secure or meet obligations under the credit shall have  
5 the following results:

6 (a) to the extent of any funds or collateral turned over after or  
7 before the insolvency as indemnity against or specifically for the  
8 purpose of payment of drafts or demands for payment drawn under the  
9 designated credit, the drafts or demands are entitled to payment in  
10 preference over depositors or other general creditors of the issuer or  
11 bank; and

12 (b) on expiration of the credit or surrender of the beneficiary's  
13 rights under it unused any person who has given such funds or  
14 collateral is similarly entitled to return thereof; and

15 (c) a charge to a general or current account with a bank if  
16 specifically consented to for the purpose of indemnity against or  
17 payment of drafts or demands for payment drawn under the designated  
18 credit falls under the same rules as if the funds had been drawn out in  
19 cash and then turned over with specific instructions.

20 (2) After honor or reimbursement under this section the customer or  
21 other person for whose account the insolvent bank has acted is entitled  
22 to receive the documents involved.)) (1) An issuer that honors a  
23 beneficiary's presentation is subrogated to the rights of the  
24 beneficiary to the same extent as if the issuer were a secondary  
25 obligor of the underlying obligation owed to the beneficiary and of the  
26 applicant to the same extent as if the issuer were the secondary  
27 obligor of the underlying obligation owed to the applicant.

28 (2) An applicant that reimburses an issuer is subrogated to the  
29 rights of the issuer against any beneficiary, presenter, or nominated  
30 person to the same extent as if the applicant were the secondary  
31 obligor of the obligations owed to the issuer and has the rights of  
32 subrogation of the issuer to the rights of the beneficiary stated in  
33 subsection (1) of this section.

34 (3) A nominated person who pays or gives value against a draft or  
35 demand presented under a letter of credit is subrogated to the rights  
36 of:

37 (a) The issuer against the applicant to the same extent as if the  
38 nominated person were a secondary obligor of the obligation owed to the  
39 issuer by the applicant;

1 (b) The beneficiary to the same extent as if the nominated person  
2 were a secondary obligor of the underlying obligation owed to the  
3 beneficiary; and

4 (c) The applicant to the same extent as if the nominated person  
5 were a secondary obligor of the underlying obligation owed to the  
6 applicant.

7 (4) Notwithstanding any agreement or term to the contrary, the  
8 rights of subrogation stated in subsections (1) and (2) of this section  
9 do not arise until the issuer honors the letter of credit or otherwise  
10 pays and the rights in subsection (3) of this section do not arise  
11 until the nominated person pays or otherwise gives value. Until then,  
12 the issuer, nominated person, and the applicant do not derive under  
13 this section present or prospective rights forming the basis of a  
14 claim, defense, or excuse.

15 **Sec. 19.** RCW 62A.1-105 and 1995 c 48 s 54 are each amended to read  
16 as follows:

17 Territorial application of the title; parties' power to choose  
18 applicable law. (1) Except as provided hereafter in this section, when  
19 a transaction bears a reasonable relation to this state and also to  
20 another state or nation the parties may agree that the law either of  
21 this state or of such other state or nation shall govern their rights  
22 and duties. Failing such agreement this Title applies to transactions  
23 bearing an appropriate relation to this state.

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

28 Rights of creditors against sold goods. RCW 62A.2-402.

29 Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-  
30 106.

31 Applicability of the Article on Bank Deposits and Collections. RCW  
32 62A.4-102.

33 Applicability of the Article on Letters of Credit. RCW 62A.5-116.

34 Applicability of the Article on Investment Securities. RCW 62A.8-  
35 110.

36 Perfection provisions of the Article on Secured Transactions. RCW  
37 62A.9-103.

1       **Sec. 20.** RCW 62A.2-512 and 1965 ex.s. c 157 s 2-512 are each  
2 amended to read as follows:

3       Payment by buyer before inspection. (1) Where the contract  
4 requires payment before inspection non-conformity of the goods does not  
5 excuse the buyer from so making payment unless

6       (a) the non-conformity appears without inspection; or

7       (b) despite tender of the required documents the circumstances  
8 would justify injunction against honor under the provisions of this  
9 Title (RCW ((62A.5-114)) 62A.5-109(2)).

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

13       **Sec. 21.** RCW 62A.9-103 and 1995 c 48 s 58 are each amended to read  
14 as follows:

15       Perfection of security interest in multiple state transactions.

16 (1) Documents, instruments, letters of credit, and ordinary goods.

17       (a) This subsection applies to documents ((and)), instruments,  
18 rights to proceed of written letters of credit, and ((to)) goods other  
19 than those covered by a certificate of title described in subsection  
20 (2), mobile goods described in subsection (3), and minerals described  
21 in subsection (5).

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

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

36       (d) When collateral is brought into and kept in this state while  
37 subject to a security interest perfected under the law of the  
38 jurisdiction from which the collateral was removed, the security

1 interest remains perfected, but if action is required by Part 3 of this  
2 Article to perfect the security interest,

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

9 (ii) if the action is taken before the expiration of the period  
10 specified in subparagraph (i), the security interest continues  
11 perfected thereafter;

12 (iii) for the purpose of priority over a buyer of consumer goods  
13 (subsection (2) of RCW 62A.9-307), the period of the effectiveness of  
14 a filing in the jurisdiction from which the collateral is removed is  
15 governed by the rules with respect to perfection in subparagraphs (i)  
16 and (ii).

17 (2) Certificate of title.

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

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

31 (c) Except with respect to the rights of a buyer described in the  
32 next paragraph, a security interest, perfected in another jurisdiction  
33 otherwise than by notation on a certificate of title, in goods brought  
34 into this state and thereafter covered by a certificate of title issued  
35 by this state is subject to the rules stated in paragraph (d) of  
36 subsection (1).

37 (d) If goods are brought into this state while a security interest  
38 therein is perfected in any manner under the law of the jurisdiction  
39 from which the goods are removed and a certificate of title is issued



1 by this state and the certificate does not show that the goods are  
2 subject to the security interest or that they may be subject to  
3 security interests not shown on the certificate, the security interest  
4 is subordinate to the rights of a buyer of the goods who is not in the  
5 business of selling goods of that kind to the extent that he gives  
6 value and receives delivery of the goods after issuance of the  
7 certificate and without knowledge of the security interest.

8 (3) Accounts, general intangibles and mobile goods.

9 (a) This subsection applies to accounts (other than an account  
10 described in subsection (5) on minerals) and general intangibles (other  
11 than uncertificated securities) and to goods which are mobile and which  
12 are of a type normally used in more than one jurisdiction, such as  
13 motor vehicles, trailers, rolling stock, airplanes, shipping  
14 containers, road building and construction machinery and commercial  
15 harvesting machinery and the like, if the goods are equipment or are  
16 inventory leased or held for lease by the debtor to others, and are not  
17 covered by a certificate of title described in subsection (2).

18 (b) The law (including the conflict of laws rules) of the  
19 jurisdiction in which the debtor is located governs the perfection and  
20 the effect of perfection or nonperfection of the security interest.

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

34 (d) A debtor shall be deemed located at his place of business if he  
35 has one, at his chief executive office if he has more than one place of  
36 business, otherwise at his residence. If, however, the debtor is a  
37 foreign air carrier under the Federal Aviation Act of 1958, as amended,  
38 it shall be deemed located at the designated office of the agent upon

1 whom service of process may be made on behalf of the foreign air  
2 carrier.

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

11 (4) Chattel paper.

12 The rules stated for goods in subsection (1) apply to a possessory  
13 security interest in chattel paper. The rules stated for accounts in  
14 subsection (3) apply to a nonpossessory security interest in chattel  
15 paper, but the security interest may not be perfected by notification  
16 to the account debtor.

17 (5) Minerals.

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

25 (6) Investment property.

26 (a) This subsection applies to investment property.

27 (b) Except as otherwise provided in paragraph (f), during the time  
28 that a security certificate is located in a jurisdiction, perfection of  
29 a security interest, the effect of perfection or non-perfection, and  
30 the priority of a security interest in the certificated security  
31 represented thereby are governed by the local law of that jurisdiction.

32 (c) Except as otherwise provided in paragraph (f), perfection of a  
33 security interest, the effect of perfection or non-perfection, and the  
34 priority of a security interest in an uncertificated security are  
35 governed by the local law of the issuer's jurisdiction as specified in  
36 RCW 62A.8-110(4).

37 (d) Except as otherwise provided in paragraph (f), perfection of a  
38 security interest, the effect of perfection or non-perfection, and the  
39 priority of a security interest in a security entitlement or securities

1 account are governed by the local law of the securities intermediary's  
2 jurisdiction as specified in RCW 62A.8-110(5).

3 (e) Except as otherwise provided in paragraph (f), perfection of a  
4 security interest, the effect of perfection or non-perfection, and the  
5 priority of a security interest in a commodity contract or commodity  
6 account are governed by the local law of the commodity intermediary's  
7 jurisdiction. The following rules determine a "commodity  
8 intermediary's jurisdiction" for purposes of this paragraph:

9 (i) if an agreement between the commodity intermediary and  
10 commodity customer specifies that it is governed by the law of a  
11 particular jurisdiction, that jurisdiction is the commodity  
12 intermediary's jurisdiction.

13 (ii) if an agreement between the commodity intermediary and  
14 commodity customer does not specify the governing law as provided in  
15 subparagraph (i), but expressly specifies that the commodity account is  
16 maintained at an office in a particular jurisdiction, that jurisdiction  
17 is the commodity intermediary's jurisdiction.

18 (iii) if an agreement between the commodity intermediary and  
19 commodity customer does not specify a jurisdiction as provided in  
20 subparagraph (i) or (ii), the commodity intermediary's jurisdiction is  
21 the jurisdiction in which is located the office identified in an  
22 account statement as the office serving the commodity customer's  
23 account.

24 (iv) if an agreement between the commodity intermediary and  
25 commodity customer does not specify a jurisdiction as provided in  
26 subparagraph (i) or (ii) and an account statement does not identify an  
27 office serving the commodity customer's account as provided in  
28 subparagraph (iii), the commodity intermediary's jurisdiction is the  
29 jurisdiction in which is located the chief executive office of the  
30 commodity intermediary.

31 (f) Perfection of a security interest by filing, automatic  
32 perfection of a security interest in investment property granted by a  
33 broker or securities intermediary, and automatic perfection of a  
34 security interest in a commodity contract or commodity account granted  
35 by a commodity intermediary are governed by the local law of the  
36 jurisdiction in which the debtor is located.

37 **Sec. 22.** RCW 62A.9-104 and 1985 c 412 s 11 are each amended to  
38 read as follows:

1 Transactions excluded from Article. This Article does not apply  
2 (a) to a security interest subject to any statute of the United  
3 States to the extent that such statute governs the rights of parties to  
4 and third parties affected by transactions in particular types of  
5 property; or  
6 (b) to a landlord's lien; or  
7 (c) to a lien given by statute or other rule of law for services or  
8 materials or to a lien created under chapter 60.13 or 22.09 RCW except  
9 as provided in RCW 62A.9-310 on priority of such liens; or  
10 (d) to a transfer of a claim for wages, salary or other  
11 compensation of an employee; or  
12 (e) to a transfer by a government or governmental subdivision or  
13 agency; or  
14 (f) to a sale of accounts or chattel paper as part of a sale of the  
15 business out of which they arose, or an assignment of accounts or  
16 chattel paper which is for the purpose of collection only, or a  
17 transfer of a right to payment under a contract to an assignee who is  
18 also to do the performance under the contract or a transfer of a single  
19 account to an assignee in whole or partial satisfaction of a  
20 preexisting indebtedness; or  
21 (g) to a transfer of an interest or claim in or under any policy of  
22 insurance, except as provided with respect to proceeds (RCW 62A.9-306)  
23 and priorities in proceeds (RCW 62A.9-312); or  
24 (h) to a right represented by a judgment (other than a judgment  
25 taken on a right to payment which was collateral); or  
26 (i) to any right of set-off; or  
27 (j) except to the extent that provision is made for fixtures in RCW  
28 62A.9-313, to the creation or transfer of an interest in or lien on  
29 real estate, including a lease or rents thereunder; or  
30 (k) to a transfer in whole or in part of any claim arising out of  
31 tort; or  
32 (l) to a transfer of an interest in any deposit account (subsection  
33 (1) of RCW 62A.9-105), except as provided with respect to proceeds (RCW  
34 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or  
35 (m) to a transfer of an interest in a letter of credit other than  
36 the rights to proceeds of a written letter of credit.

37 **Sec. 23.** RCW 62A.9-105 and 1995 c 48 s 59 are each amended to read  
38 as follows:

1 Definitions and index of definitions. (1) In this Article unless  
2 the context otherwise requires:

3 (a) "Account debtor" means the person who is obligated on an  
4 account, chattel paper or general intangible;

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

12 (c) "Collateral" means the property subject to a security interest,  
13 and includes accounts and chattel paper which have been sold;

14 (d) "Debtor" means the person who owes payment or other performance  
15 of the obligation secured, whether or not he owns or has rights in the  
16 collateral, and includes the seller of accounts or chattel paper.  
17 Where the debtor and the owner of the collateral are not the same  
18 person, the term "debtor" means the owner of the collateral in any  
19 provision of the Article dealing with the collateral, the obligor in  
20 any provision dealing with the obligation, and may include both where  
21 the context so requires;

22 (e) "Deposit account" means a demand, time, savings, passbook or  
23 like account maintained with a bank, savings and loan association,  
24 credit union or like organization, other than an account evidenced by  
25 a certificate of deposit;

26 (f) "Document" means document of title as defined in the general  
27 definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind  
28 described in subsection (2) of RCW 62A.7-201;

29 (g) "Encumbrance" includes real estate mortgages and other liens on  
30 real estate and all other rights in real estate that are not ownership  
31 interests;

32 (h) "Goods" includes all things which are movable at the time the  
33 security interest attaches or which are fixtures (RCW 62A.9-313), but  
34 does not include money, documents, instruments, investment property,  
35 commodity contracts, accounts, chattel paper, general intangibles, or  
36 minerals or the like (including oil and gas) before extraction.  
37 "Goods" also includes standing timber which is to be cut and removed  
38 under a conveyance or contract for sale, the unborn young of animals  
39 and growing crops;

1 (i) "Instrument" means a negotiable instrument (defined in RCW  
2 62A.3-104), or any other writing which evidences a right to the payment  
3 of money and is not itself a security agreement or lease and is of a  
4 type which is in ordinary course of business transferred by delivery  
5 with any necessary indorsement or assignment. The term does not  
6 include investment property;

7 (j) "Mortgage" means a consensual interest created by a real estate  
8 mortgage, a trust deed on real estate, or the like;

9 (k) An advance is made "pursuant to commitment" if the secured  
10 party has bound himself to make it, whether or not a subsequent event  
11 of default or other event not within his control has relieved or may  
12 relieve him from his obligation;

13 (l) "Security agreement" means an agreement which creates or  
14 provides for a security interest;

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

21 (n) "Transmitting utility" means any person primarily engaged in  
22 the railroad, street railway or trolley bus business, the electric or  
23 electronics communications transmission business, the transmission of  
24 goods by pipeline, or the transmission or the production and  
25 transmission of electricity, steam, gas or water, or the provision of  
26 sewer service.

27 (2) Other definitions applying to this Article and the sections in  
28 which they appear are:

29 "Account".	RCW 62A.9-106.
30 "Attach".	RCW 62A.9-203.
31 "Commodity contract".	RCW 62A.9-115.
32 "Commodity customer".	RCW 62A.9-115.
33 "Commodity intermediary".	RCW 62A.9-115.
34 "Construction mortgage".	RCW 62A.9-313(1).
35 "Consumer goods".	RCW 62A.9-109(1).
36 "Control".	RCW 62A.9-115.
37 "Equipment".	RCW 62A.9-109(2).
38 "Farm products".	RCW 62A.9-109(3).
39 "Fixture".	RCW 62A.9-313.

1 "Fixture filing". RCW 62A.9-313.  
2 "General intangibles". RCW 62A.9-106.  
3 "Inventory". RCW 62A.9-109(4).  
4 "Investment property". RCW 62A.9-115.  
5 "Lien creditor". RCW 62A.9-301(3).  
6 "Proceeds". RCW 62A.9-306(1).  
7 "Purchase money security  
8 interest". RCW 62A.9-107.  
9 "United States". RCW 62A.9-103.

10 (3) The following definitions in other Articles apply to this  
11 Article:

12 "Broker". RCW 62A.8-102.  
13 "Certificated security". RCW 62A.8-102.  
14 "Check". RCW 62A.3-104.  
15 "Clearing corporation". RCW 62A.8-102.  
16 "Contract for sale". RCW 62A.2-106.  
17 "Control". RCW 62A.8-106.  
18 "Delivery". RCW 62A.8-301.  
19 "Entitlement holder". RCW 62A.8-102.  
20 "Financial asset". RCW 62A.8-102.  
21 "Holder in due course". RCW 62A.3-302.  
22 "Letter of credit". RCW 62A.5-102.  
23 "Note". RCW 62A.3-104.  
24 "Proceeds of a letter of  
25 credit". RCW 62A.5-114(1).  
26 "Sale". RCW 62A.2-106.  
27 "Securities intermediary". RCW 62A.8-102.  
28 "Security". RCW 62A.8-102.  
29 "Security certificate". RCW 62A.8-102.  
30 "Security entitlement". RCW 62A.8-102.  
31 "Uncertificated security". RCW 62A.8-102.

32 (4) In addition Article 1 contains general definitions and  
33 principles of construction and interpretation applicable throughout  
34 this Article.

35 **Sec. 24.** RCW 62A.9-106 and 1995 c 48 s 60 are each amended to  
36 read as follows:

37 Definitions: "Account"; "general intangibles". "Account" means  
38 any right to payment for goods sold or leased or for services rendered

1 which is not evidenced by an instrument or chattel paper, whether or  
2 not it has been earned by performance. "General intangibles" means any  
3 personal property (including things in action) other than goods,  
4 accounts, chattel paper, documents, instruments, investment property,  
5 rights to proceeds of written letters of credit, and money. All rights  
6 to payment earned or unearned under a charter or other contract  
7 involving the use or hire of a vessel and all rights incident to the  
8 charter or contract are accounts.

9       **Sec. 25.** RCW 62A.9-304 and 1995 c 48 s 66 are each amended to  
10 read as follows:

11       Perfection of security interest in instruments, documents, and  
12 goods covered by documents; perfection by permissive filing; temporary  
13 perfection without filing or transfer of possession. (1) A security  
14 interest in chattel paper or negotiable documents may be perfected by  
15 filing. A security interest in the rights to proceeds of a written  
16 letter of credit can be perfected only by the secured party's taking  
17 possession of the letter of credit. A security interest in money or  
18 instruments (other than instruments which constitute part of chattel  
19 paper) can be perfected only by the secured party's taking possession,  
20 except as provided in subsections (4) and (5) of this section and  
21 subsections (2) and (3) of RCW 62A.9-306 on proceeds.

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

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

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

37       (5) A security interest remains perfected for a period of twenty-  
38 one days without filing where a secured party having a perfected



1 security interest in an instrument, a certificated security, a  
2 negotiable document or goods in possession of a bailee other than one  
3 who has issued a negotiable document therefor

4 (a) makes available to the debtor the goods or documents  
5 representing the goods for the purpose of ultimate sale or exchange or  
6 for the purpose of loading, unloading, storing, shipping,  
7 transshipping, manufacturing, processing or otherwise dealing with them  
8 in a manner preliminary to their sale or exchange but priority between  
9 conflicting security interests in the goods is subject to subsection  
10 (3) of RCW 62A.9-312; or

11 (b) delivers the instrument or certificated security to the debtor  
12 for the purpose of ultimate sale or exchange or of presentation,  
13 collection, renewal, or registration of transfer.

14 (6) After the twenty-one day period in subsections (4) and (5)  
15 perfection depends upon compliance with applicable provisions of this  
16 Article.

17 **Sec. 26.** RCW 62A.9-305 and 1995 c 48 s 67 are each amended to  
18 read as follows:

19 When possession by secured party perfects security interest  
20 without filing. A security interest in (~~letters of credit and~~  
21 ~~advices of credit (subsection (2)(a) of RCW 62A.5-116),~~) goods,  
22 instruments, money, negotiable documents, or chattel paper may be  
23 perfected by the secured party's taking possession of the collateral.  
24 A security interest in the right to proceeds of a written letter of  
25 credit may be perfected by the secured party's taking possession of the  
26 letter of credit. If such collateral other than goods covered by a  
27 negotiable document is held by a bailee, the secured party is deemed to  
28 have possession from the time the bailee receives notification of the  
29 secured party's interest. A security interest is perfected by  
30 possession from the time possession is taken without relation back and  
31 continues only so long as possession is retained, unless otherwise  
32 specified in this Article. The security interest may be otherwise  
33 perfected as provided in this Article before or after the period of  
34 possession by the secured party.

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