

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

754B0412

SENATE BILL NO. 150

Introduced by: Senators Everist and Munson (David) and Representatives Hunt, Broderick,
Solum, and Volesky

1 FOR AN ACT ENTITLED, An Act to adopt and amend certain provisions of the Uniform
2 Commercial Code relating to letters of credit.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the following article on letters of credit be amended into Title 57A as chapter
5 5:

6 57A-5-101. This chapter may be cited as Uniform Commercial Code--Letters of Credit.

7 57A-5-102.

8 (a) In this chapter:

9 (1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another
10 adviser, notifies or requests another adviser to notify the beneficiary that a letter of
11 credit has been issued, confirmed, or amended.

12 (2) "Applicant" means a person at whose request or for whose account a letter of credit
13 is issued. The term includes a person who requests an issuer to issue a letter of credit
14 on behalf of another if the person making the request undertakes an obligation to
15 reimburse the issuer.

- 1 (3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to
2 have its complying presentation honored. The term includes a person to whom
3 drawing rights have been transferred under a transferable letter of credit.
- 4 (4) "Confirmer" means a nominated person who undertakes, at the request or with the
5 consent of the issuer, to honor a presentation under a letter of credit issued by
6 another.
- 7 (5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim
8 action, such as acceptance of a draft, that may be required by the letter of credit.
- 9 (6) "Document" means a draft or other demand, document of title, investment security,
10 certificate, invoice, or other record, statement, or representation of fact, law, right,
11 or opinion (i) which is presented in a written or other medium permitted by the letter
12 of credit or, unless prohibited by the letter of credit, by the standard practice referred
13 to in § 57A-5-108(e) and (ii) which is capable of being examined for compliance with
14 the terms and conditions of the letter of credit. A document may not be oral.
- 15 (7) "Good faith" means honesty in fact in the conduct or transaction concerned.
- 16 (8) "Honor" of a letter of credit means performance of the issuer's undertaking in the
17 letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise
18 provides, "honor" occurs
- 19 (i) upon payment,
- 20 (ii) if the letter of credit provides for acceptance, upon acceptance of a draft and,
21 at maturity, its payment, or
- 22 (iii) if the letter of credit provides for incurring a deferred obligation, upon
23 incurring the obligation and, at maturity, its performance.
- 24 (9) "Issuer" means a bank or other person that issues a letter of credit, but does not
25 include an individual who makes an engagement for personal, family, or household

1 purposes.

2 (10) "Letter of credit" means a definite undertaking that satisfies the requirements of
3 § 57A-5-104 by an issuer to a beneficiary at the request or for the account of an
4 applicant or, in the case of a financial institution, to itself or for its own account, to
5 honor a documentary presentation by payment or delivery of an item of value.

6 (11) "Nominated person" means a person whom the issuer (i) designates or authorizes to
7 pay, accept, negotiate, or otherwise give value under a letter of credit and (ii)
8 undertakes by agreement or custom and practice to reimburse.

9 (12) "Presentation" means delivery of a document to an issuer or nominated person for
10 honor or giving of value under a letter of credit.

11 (13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or
12 nominated person.

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

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

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

21 "Accept" or "Acceptance". § 57A-3-409.

22 "Value". §§ 57A-3-303 and 57A-4-211.

23 (c) Chapter 57A-1 contains certain additional general definitions and principles of
24 construction and interpretation applicable throughout this chapter.

25 57A-5-103.

1 (a) This chapter applies to letters of credit and to certain rights and obligations arising out
2 of transactions involving letters of credit.

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

6 (c) With the exception of this subsection, subsections (a) and (d), §§ 57A-5-102(a)(9) and
7 (10), 57A-5-106(d), and 57A-5-114(d), and except to the extent prohibited in §§ 57A-1-102(3)
8 and 57A-5-117(d), the effect of this chapter may be varied by agreement or by a provision stated
9 or incorporated by reference in an undertaking. A term in an agreement or undertaking generally
10 excusing liability or generally limiting remedies for failure to perform obligations is not sufficient
11 to vary obligations prescribed by this chapter.

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

16 57A-5-104. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may
17 be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance
18 with the agreement of the parties or the standard practice referred to in § 57A-5-108(e).

19 57A-5-105. Consideration is not required to issue, amend, transfer, or cancel a letter of credit,
20 advice, or confirmation.

21 57A-5-106.

22 (a) A letter of credit is issued and becomes enforceable according to its terms against the
23 issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the
24 beneficiary. A letter of credit is revocable only if it so provides.

25 (b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant,

1 confirmer, and issuer are not affected by an amendment or cancellation to which that person has
2 not consented except to the extent the letter of credit provides that it is revocable or that the
3 issuer may amend or cancel the letter of credit without that consent.

4 (c) If there is no stated expiration date or other provision that determines its duration, a
5 letter of credit expires one year after its stated date of issuance or, if none is stated, after the date
6 on which it is issued.

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

9 57A-5-107.

10 (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations
11 of an issuer to the extent of its confirmation. The confirmer also has rights against and
12 obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter
13 of credit at the request and for the account of the issuer.

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

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

22 (d) A person who notifies a transferee beneficiary of the terms of a letter of credit,
23 confirmation, amendment, or advice has the rights and obligations of an adviser under subsection
24 (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice
25 to the transferor beneficiary to the extent permitted by the letter of credit, confirmation,

1 amendment, or advice received by the person who so notifies.

2 57A-5-108.

3 (a) Except as otherwise provided in § 57A-5-109, an issuer shall honor a presentation that,
4 as determined by the standard practice referred to in subsection (e), appears on its face strictly
5 to comply with the terms and conditions of the letter of credit. Except as otherwise provided in
6 § 57A-5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a
7 presentation that does not appear so to comply.

8 (b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh
9 business day of the issuer after the day of its receipt of documents:

10 (1) to honor,

11 (2) if the letter of credit provides for honor to be completed more than seven business
12 days after presentation, to accept a draft or incur a deferred obligation, or

13 (3) to give notice to the presenter of discrepancies in the presentation.

14 (c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as
15 a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated
16 in the notice if timely notice is given.

17 (d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or
18 expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud
19 or forgery as described in § 57A-5-109(a) or expiration of the letter of credit before presentation.

20 (e) An issuer shall observe standard practice of financial institutions that regularly issue
21 letters of credit. Determination of the issuer's observance of the standard practice is a matter of
22 interpretation for the court. The court shall offer the parties a reasonable opportunity to present
23 evidence of the standard practice.

24 (f) An issuer is not responsible for:

25 (1) the performance or nonperformance of the underlying contract, arrangement, or

1 transaction,

2 (2) an act or omission of others, or

3 (3) observance or knowledge of the usage of a particular trade other than the standard
4 practice referred to in subsection (e).

5 (g) If an undertaking constituting a letter of credit under § 57A-5-102(a)(10) contains
6 nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat
7 them as if they were not stated.

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

10 (i) An issuer that has honored a presentation as permitted or required by this chapter:

11 (1) is entitled to be reimbursed by the applicant in immediately available funds not later
12 than the date of its payment of funds;

13 (2) takes the documents free of claims of the beneficiary or presenter;

14 (3) is precluded from asserting a right of recourse on a draft under §§ 57A-3-414 and
15 57A-3-415;

16 (4) except as otherwise provided in §§ 57A-5-110 and 57A-5-117, is precluded from
17 restitution of money paid or other value given by mistake to the extent the mistake
18 concerns discrepancies in the documents or tender which are apparent on the face of
19 the presentation; and

20 (5) is discharged to the extent of its performance under the letter of credit unless the
21 issuer honored a presentation in which a required signature of a beneficiary was
22 forged.

23 57A-5-110.

24 (a) If its presentation is honored, the beneficiary warrants:

25 (1) to the issuer, any other person to whom presentation is made, and the applicant that

1 there is no fraud or forgery of the kind described in § 57A-5-109(a); and

2 (2) to the applicant that the drawing does not violate any agreement between the
3 applicant and beneficiary or any other agreement intended by them to be augmented
4 by the letter of credit.

5 (b) The warranties in subsection (a) are in addition to warranties arising under chapters 57A-
6 3, 57A-4, 57A-7, and 57A-8 because of the presentation or transfer of documents covered by
7 any of those chapters.

8 57A-5-111.

9 (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter
10 of credit before presentation, the beneficiary, successor, or nominated person presenting on its
11 own behalf may recover from the issuer the amount that is the subject of the dishonor or
12 repudiation. If the issuer's obligation under the letter of credit is not for the payment of money,
13 the claimant may obtain specific performance or, at the claimant's election, recover an amount
14 equal to the value of performance from the issuer. In either case, the claimant may also recover
15 incidental but not consequential damages. The claimant is not obligated to take action to avoid
16 damages that might be due from the issuer under this subsection. If, although not obligated to
17 do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by
18 the amount of damages avoided. The issuer has the burden of proving the amount of damages
19 avoided. In the case of repudiation the claimant need not present any document.

20 (b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or
21 honors a draft or demand in breach of its obligation to the applicant, the applicant may recover
22 damages resulting from the breach, including incidental but not consequential damages, less any
23 amount saved as a result of the breach.

24 (c) If an adviser or nominated person other than a confirmer breaches an obligation under
25 this chapter or an issuer breaches an obligation not covered in subsection (a) or (b), a person to

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

5 (d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b),
6 or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or
7 other appropriate date.

8 (e) Reasonable attorney's fees and other expenses of litigation must be awarded to the
9 prevailing party in an action in which a remedy is sought under this chapter.

10 (f) Damages that would otherwise be payable by a party for breach of an obligation under
11 this chapter may be liquidated by agreement or undertaking, but only in an amount or by a
12 formula that is reasonable in light of the harm anticipated.

13 57A-5-112.

14 (a) Except as otherwise provided in § 57A-5-113, unless a letter of credit provides that it
15 is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter
16 of credit may not be transferred.

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

19 (1) the transfer would violate applicable law; or

20 (2) the transferor or transferee has failed to comply with any requirement stated in the
21 letter of credit or any other requirement relating to transfer imposed by the issuer
22 which is within the standard practice referred to in § 57A-5-108(e) or is otherwise
23 reasonable under the circumstances.

24 57A-5-113.

25 (a) A successor of a beneficiary may consent to amendments, sign and present documents,

1 and receive payment or other items of value in the name of the beneficiary without disclosing its
2 status as a successor.

3 (b) A successor of a beneficiary may consent to amendments, sign and present documents,
4 and receive payment or other items of value in its own name as the disclosed successor of the
5 beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed
6 successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance
7 with the requirements for recognition by the issuer of a transfer of drawing rights by operation
8 of law under the standard practice referred to in § 57A-5-108(e) or, in the absence of such a
9 practice, compliance with other reasonable procedures sufficient to protect the issuer.

10 (c) An issuer is not obliged to determine whether a purported successor is a successor of a
11 beneficiary or whether the signature of a purported successor is genuine or authorized.

12 (d) Honor of a purported successor's apparently complying presentation under subsection
13 (a) or (b) has the consequences specified in § 57A-5-108(i) even if the purported successor is
14 not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a
15 disclosed successor by a person who is neither the beneficiary nor the successor of the
16 beneficiary are forged documents for the purposes of § 57A-5-109.

17 (e) An issuer whose rights of reimbursement are not covered by subsection (d) or
18 substantially similar law and any confirmer or nominated person may decline to recognize a
19 presentation under subsection (b).

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

22 57A-5-114.

23 (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or
24 other item of value paid or delivered upon honor or giving of value by the issuer or any
25 nominated person under the letter of credit. The term does not include a beneficiary's drawing

1 rights or documents presented by the beneficiary.

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

5 (c) An issuer or nominated person need not recognize an assignment of proceeds of a letter
6 of credit until it consents to the assignment.

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

11 (e) Rights of a transferee beneficiary or nominated person are independent of the
12 beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's
13 right to the proceeds.

14 (f) Neither the rights recognized by this section between an assignee and an issuer, transferee
15 beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to
16 an assignee or a third person affect the rights between the assignee and any person other than the
17 issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a
18 security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by
19 chapter 57A-9 or other law. Against persons other than the issuer, transferee beneficiary, or
20 nominated person, the rights and obligations arising upon the creation of a security interest or
21 other assignment of a beneficiary's right to proceeds and its perfection are governed by chapter
22 57A-9 or other law.

23 57A-5-115. An action to enforce a right or obligation arising under this chapter must be
24 commenced within one year after the expiration date of the relevant letter of credit or one year
25 after the cause of action accrues, whichever occurs later. A cause of action accrues when the

1 breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

2 57A-5-116.

3 (a) The liability of an issuer, nominated person, or adviser for action or omission is governed
4 by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise
5 authenticated by the affected parties in the manner provided in § 57A-5-104 or by a provision
6 in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law
7 is chosen need not bear any relation to the transaction.

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

16 (c) Except as otherwise provided in this subsection, the liability of an issuer, nominated
17 person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs
18 and Practice for Documentary Credits, to which the letter of credit, confirmation, or other
19 undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer,
20 nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking
21 incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those
22 rules as applied to that undertaking, those rules govern except to the extent of any conflict with
23 the nonvariable provisions specified in § 57A-5-103(c).

24 (d) If there is conflict between this chapter and chapter 57A-3, 57A-4, 57A-4A, or 57A-9,
25 this chapter governs.

1 (e) The forum for settling disputes arising out of an undertaking within this chapter may be
2 chosen in the manner and with the binding effect that governing law may be chosen in
3 accordance with subsection (a).

4 57A-5-117.

5 (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the
6 beneficiary to the same extent as if the issuer were a secondary obligor of the underlying
7 obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were
8 the secondary obligor of the underlying obligation owed to the applicant.

9 (b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against
10 any beneficiary, presenter, or nominated person to the same extent as if the applicant were the
11 secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the
12 issuer to the rights of the beneficiary stated in subsection (a).

13 (c) A nominated person who pays or gives value against a draft or demand presented under
14 a letter of credit is subrogated to the rights of:

15 (1) the issuer against the applicant to the same extent as if the nominated person were a
16 secondary obligor of the obligation owed to the issuer by the applicant;

17 (2) the beneficiary to the same extent as if the nominated person were a secondary obligor
18 of the underlying obligation owed to the beneficiary; and

19 (3) the applicant to same extent as if the nominated person were a secondary obligor of
20 the underlying obligation owed to the applicant.

21 (d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated
22 in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays
23 and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives
24 value. Until then, the issuer, nominated person, and the applicant do not derive under this section
25 present or prospective rights forming the basis of a claim, defense, or excuse.

1 Section 2. This Act becomes effective on July 1, 1999.

2 Section 3. This Act repeals chapter 57A-5.

3 Section 4. This Act applies to a letter of credit that is issued on or after the effective date of
4 this Act. This Act does not apply to a transaction, event, obligation, or duty arising out of or
5 associated with a letter of credit that was issued before the effective date of this Act.

6 Section 5. A transaction arising out of or associated with a letter of credit that was issued
7 before the effective date of this Act and the rights, obligations, and interests flowing from that
8 transaction are governed by any statute or other law amended or repealed by this Act as if repeal
9 or amendment had not occurred and may be terminated, completed, consummated, or enforced
10 under that statute or other law.

11 Section 6. That subdivision (2) of § 57A-1-105 be amended to read as follows:

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

15 Rights of creditors against sold goods. § 57A-2-402.

16 Applicability of the article on leases. §§ 57A-2A-105 and 57A-2A-106.

17 Applicability of the chapters on bank deposits and collections. § 57A-4-102.

18 Governing law in the article on funds transfers. § 57A-4A-507.

19 Letters of Credit. § 57A-5-116.

20 Applicability of the chapters on investment securities. § 57A-8-106.

21 Perfection provisions of the chapter on secured transactions. § 57A-9-103.

22 Section 7. That § 57A-2-512 be amended to read as follows:

23 57A-2-512.

24 (1) Where the contract requires payment before inspection nonconformity of the goods
25 does not excuse the buyer from so making payment unless

- 1 (a) The nonconformity appears without inspection; or
- 2 (b) Despite tender of the required documents the circumstances would justify
- 3 injunction against honor under ~~the provisions of this title (§ 57A-5-114 § 57A-~~
- 4 5-109(b)).
- 5 (2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or
- 6 impair the buyer's right to inspect or any of his remedies.

7 Section 8. That subdivision (1) of § 57A-9-103 be amended to read as follows:

- 8 (1) Documents, instruments, letters of credit, and ordinary goods.
- 9 (a) This subsection applies to documents ~~and~~, instruments, rights to proceeds of
- 10 written letters of credit, and to goods other than those covered by a certificate
- 11 of title described in subsection (2), mobile goods described in subsection (3),
- 12 and minerals described in subsection (5).
- 13 (b) Except as otherwise provided in this subsection, perfection and the effect of
- 14 perfection or nonperfection of a security interest in collateral are governed by
- 15 the law of the jurisdiction where the collateral is when the last event occurs on
- 16 which is based the assertion that the security interest is perfected or
- 17 unperfected.
- 18 (c) If the parties to a transaction creating a purchase money security interest in
- 19 goods in one jurisdiction understand at the time that the security interest
- 20 attaches that the goods will be kept in another jurisdiction, then the law of the
- 21 other jurisdiction governs the perfection and the effect of perfection or
- 22 nonperfection of the security interest from the time it attaches until thirty days
- 23 after the debtor receives possession of the goods and thereafter if the goods are
- 24 taken to the other jurisdiction before the end of the thirty-day period.
- 25 (d) When collateral is brought into and kept in this state while subject to a security

1 interest perfected under the law of the jurisdiction from which the collateral
2 was removed, the security interest remains perfected, but if action is required
3 by Part 3 of this chapter to perfect the security interest,

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

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

12 (iii) for the purpose of priority over a buyer of consumer goods (subsection
13 (2) of § 57A-9-307), the period of the effectiveness of a filing in the
14 jurisdiction from which the collateral is removed is governed by the
15 rules with respect to perfection in subparagraphs (i) and (ii).

16 Section 9. That § 57A-9-104 be amended to read as follows:

17 57A-9-104. This chapter does not apply:

18 (1) To a security interest subject to any statute of the United States to the extent that
19 such statute governs the rights of parties to and third parties affected by transactions
20 in particular types of property; or

21 (2) To a landlord's lien; or

22 (3) To a lien given by statute or other rule of law for services or materials except as
23 provided in § 57A-9-310 on priority of such liens; or

24 (4) To a transfer of a claim for wages, salary or other compensation of an employee; or

25 (5) To a transfer by a government or governmental subdivision or agency; or

- 1 (6) To a sale of accounts or chattel paper as part of a sale of the business out of which
- 2 they arose, or an assignment of accounts or chattel paper which is for the purpose of
- 3 collection only, or a transfer of a right to payment under a contract to an assignee
- 4 who is also to do the performance under the contract or a transfer of a single account
- 5 to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- 6 (7) To a transfer of an interest in or claim in or under any policy of insurance, except as
- 7 provided with respect to proceeds (§ 57A-9-306) and priorities in proceeds
- 8 (§ 57A-9-312); or
- 9 (8) To a right represented by a judgment (other than a judgment taken on a right to
- 10 payment which was collateral); or
- 11 (9) To any right of setoff; or
- 12 (10) Except to the extent that provision is made for fixtures in § 57A-9-313, to the
- 13 creation or transfer of an interest in or lien on real estate, including a lease or rents
- 14 thereunder; or
- 15 (11) To a transfer in whole or in part of any claim arising out of tort; or
- 16 (12) To a transfer of an interest in any deposit account (subsection (1) of § 57A-9-105),
- 17 except as provided with respect to proceeds (§ 57A-9-306) and priorities in proceeds
- 18 (§ 57A-9-312); or
- 19 (13) To a transfer of an interest in a letter of credit other than the rights to proceeds of
- 20 written letter of credit
- 21 (14) To the pledging or segregating of collateral for public deposits as authorized by
- 22 § 51A-10-9, chapter 52-5 and chapter 4-6A.

23 Section 10. That subdivision (3) of § 57A-9-105 be amended to read as follows:

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

25 "Check." § 57A-3-104.

1 "Contract for sale." § 57A-2-106.

2 "Holder in due course." § 57A-3-302.

3 "Letter of credit." § 57A-5-102.

4 "Note." § 57A-3-104.

5 "Proceeds of a letter of credit". § 57A-5-114(a).

6 "Sale." § 57A-2-106.

7 Section 11. That § 57A-9-106 be amended to read as follows:

8 57A-9-106. "Account" means any right to payment for goods sold or leased or for services
9 rendered which is not evidenced by an instrument or chattel paper whether or not it has been
10 earned by performance. "General intangibles" means any personal property (including things in
11 action) other than goods, accounts, chattel paper, documents, instruments, rights to proceeds
12 of written letters of credit, and money. All rights to payment earned or unearned under a charter
13 or contract involving the use or hire of a vessel and all rights incident to the charter or contract
14 are accounts.

15 Section 12. That subdivision (1) of § 57A-9-304 be amended to read as follows:

16 (1) A security interest in chattel paper or negotiable documents may be perfected by
17 filing. A security interest in the rights to proceeds of a written letter of credit can be
18 perfected only by the secured party's taking possession of the letter of credit. A
19 security interest in money or instruments (other than certificated securities or
20 instruments which constitute part of chattel paper) can be perfected only by the
21 secured party's taking possession, except as provided in subsections (4) and (5) of this
22 section and subsections (2) and (3) of § 57A-9-306 on proceeds.

23 Section 13. That § 57A-9-305 be amended to read as follows:

24 57A-9-305. A security interest in ~~letters of credit and advices of credit (subsection (2) (a)~~
25 ~~of § 57A-5-116)~~, goods, instruments (other than certificated securities), money, negotiable

1 documents, or chattel paper may be perfected by the secured party's taking possession of the
2 collateral. A security interest in the right to proceeds of a written letter of credit may be
3 perfected by the secured party's taking possession of the letter of credit. If such collateral other
4 than goods covered by a negotiable document is held by a bailee, the secured party is deemed
5 to have possession from the time the bailee receives notification of the secured party's interest.
6 A security interest is perfected by possession from the time possession is taken without relation
7 back and continues only so long as possession is retained, unless otherwise specified in this
8 chapter. The security interest may be otherwise perfected as provided in this chapter before or
9 after the period of possession by the secured party.