
DIGEST

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HB No. 403

Abstract: Updates the section of the Louisiana Uniform Commercial Code relative to warehouses and documents of title including warehouse receipts, destination bills, and bills of lading, rules of negotiability of bills of lading and documents of title, liens of carriers, a carrier's duty of care, and lost or missing documents of title; establishes conforming amendments to other sections of the Louisiana Uniform Commercial Code.

Present law defines "bearer" as a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or endorsed in blank.

Proposed law defines "bearer" as a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or endorsed in blank.

Present law defines "bill of lading" as a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.

Proposed law defines "bill of lading" as a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

Present law defines "delivery", with respect to an instrument, document of title, or chattel paper, as a voluntary transfer of possession.

Proposed law defines "delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, as a voluntary transfer of possession.

Present law defines a "document of title" to include a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods the record covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

Proposed law defines a "document of title" as a record that in the regular course of business or

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

Present law defines a "holder" as either the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession or the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

Proposed law defines a "holder" as one of the following: the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; the person in possession of a negotiable tangible document of title if the goods are deliverable either to the bearer or to the order of the person in possession; or the person in control of a negotiable electronic document of title.

Present law defines a "warehouse receipt" as a receipt issued by a person engaged in the business of storing goods for hire.

Proposed law defines a "warehouse receipt" as a document of title issued by a person engaged in the business of storing goods for hire.

Present law (R.S. 10:4-104) provides that certain definitions in other chapters shall apply to present law.

Proposed law retains present law but further states that the definition of "control" as stated in R.S. 10:7-106 shall also apply.

Present law provides that receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to present law.

Proposed law retains present law but adds that so long as the bank does not give up possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to present law.

Proposed law defines "bailee" as a person that, by a warehouse receipt, bill of lading, or other document of title, acknowledges possession of goods and contracts to deliver them. "Bailor"

means a person that delivers possession of goods to a bailee.

Present law defines "depository" as the person who, by a warehouse receipt, bill of lading or other document title, acknowledges possession of goods and contracts to deliver them.

Proposed law repeals present law.

Proposed law defines "carrier" as a person that issues a bill of lading.

Proposed law changes all instances of the word "warehouseman" to the word "warehouse".

Proposed law changes all uses of the word "depository" to the word "bailee".

Present law provides that "document" means a document of title as defined in the general definitions in R.S.10:1-201.

Proposed law repeals present law.

Present law defines "goods" as all things which are treated as movable for the purposes of a contract of storage or transportation, including fungible goods.

Proposed law defines "goods" as all things that are treated as movable for the purposes of a contract for storage or transportation.

Present law defines "issuer" as a depository who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed, or that in any other respect the agent or employee violated the issuer's instructions.

Proposed law defines "issuer" as a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

Proposed law defines "person entitled under the document" as the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of or pursuant to instructions in a record under a nonnegotiable document of title.

Proposed law defines "sign" as, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or to attach to or logically associate with the record an electronic sound, symbol, or process.

Proposed law defines "shipper" as a person that enters into a contract of transportation with a carrier.

Proposed law defines "contract for sale" as both a present sale of goods and a contract to sell goods at a future time.

Proposed law defines "lessee in ordinary course of business" as a person that becomes a lessee of goods in good faith, without knowledge that the lease violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling or leasing goods of that kind. A lessee in the ordinary course of business may lease for cash, or by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting lease.

Proposed law defines "lien" as a privilege on movable property created by operation of law in favor of a creditor.

Proposed law provides that Chapter 7 of Title 10 of the 1950 R. S. does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in present law. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

Proposed law provides that Chapter 7 of Title 10 of the 1950 R. S. modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Proposed law states that to the extent there is a conflict between the La. Electronic Transactions Act (R.S. 9:2601 et seq.) and Chapter 7 of Title 10 of the 1950 R. S., Chapter 7 governs.

Present law provides that a warehouse receipt, bill of lading, or other document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person or, where recognized in overseas trade, if it runs to a named person or assigns.

Proposed law provides that, except as otherwise provided in proposed law, a document of title is negotiable if by its terms the goods are to be delivered to the bearer or to the order of a named person.

Present law provides that a provision inserted in a negotiable warehouse receipt, bill of lading, or other document of title that it is nonnegotiable is void.

Proposed law provides that a document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Present law provides that the omission from either Part 2 or Part 3 of present law of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of the law is not applicable.

Proposed law repeals present law.

Proposed law provides that upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if the person entitled under the electronic document surrenders control of the document to the issuer, and the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

Proposed law provides that upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with proposed law, the electronic document ceases to have any effect or validity, and the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

Proposed law provides that upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if the person entitled under the tangible document surrenders possession of the document to the issuer and the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

Proposed law provides that upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with proposed law, the tangible document ceases to have any effect or validity, and the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Proposed law provides that a person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

Proposed law further provides that a system satisfies proposed law, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

- (1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided, unalterable;
- (2) The authoritative copy identifies the person asserting control as the person to which the document was issued or, if the authoritative copy indicates that the document has been

transferred, the person to which the document was most recently transferred;

- (3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- (4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Present law provides that damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; however, such liability may on written request of the depositor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for misappropriation to his own use.

Proposed law provides damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for misappropriation to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods. In this event, increased rates may be charged based on an increased valuation of the goods.

Proposed law provides that reasonable provisions as to the time and manner of presenting claims and commencing actions based on the storage may be included in the warehouse receipt or storage agreement.

Proposed law provides that proposed law does not validate a provision that is null under Civil Code Art. 2004.

Present law states that a buyer in good faith of fungible goods sold and delivered by a warehouseman-dealer in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

Proposed law states that a buyer in ordinary course of business of fungible goods sold and actually delivered by a warehouse that is also in the business of buying and selling such goods

takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Present law provides that if different lots of fungible goods are commingled, the goods are owned in indivision by the persons entitled thereto and the warehouseman is liable to each owner for that owner's share.

Proposed law retains present law and clarifies that the warehouse is severally liable to each owner for that owner's share.

Present law provides that where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

Proposed law states that if a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Present law provides that a warehouseman has a lien on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation, demurrage and terminal charges, insurance, labor, or charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable to the warehouseman for like charges or expenses in relation to other goods and it is stated in the receipt that a lien is claimed for such charges and expenses, the warehouseman also has a lien against the goods covered by the receipt for such other charges and expenses, whether or not the other goods have been delivered by the warehouseman.

Proposed law provides that a warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien on the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse.

Present law provides that the warehouseman may also reserve a security interest against the depositor for a maximum amount specified on the receipt for charges other than those specified in present law, such as for money advanced and interest.

Proposed law provides that the warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in proposed law.

Present law provides that a warehouseman's lien for charges and expenses under present law is also effective against any person who so entrusted the depositor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under present law.

Proposed law provides that a warehouse's lien for charges and expenses under proposed law or a security interest under proposed law is also effective against any person that entrusted the bailor with possession of the goods. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

- (1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:
 - (a) Actual or apparent authority to ship, store, or sell.
 - (b) Power to obtain delivery under R.S. 10:7-403.
 - (c) Power of disposition under R.S. 10:9-320 or 9-321(c) or other statute.
- (2) Acquiesce in the procurement by the bailor or its nominee of any document.

Proposed law provides that a disclaimer or modification of warranty in a warehouse's disposition of goods is commercially reasonable.

Present law provides that notification of the enforcement of a warehouseman's lien on goods other than goods stored by a merchant in the course of this business must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

Proposed law repeals present law.

Present law requires that, when goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load, and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

Proposed law retains present law but deletes the requirement that the issuer be a common carrier.

Present law states that when bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain

the kind and quantity within a reasonable time after receiving the written request of the shipper to do so.

Proposed law retains present law but deletes the requirement that the issuer be a common carrier.

Present law states that unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on the instructions from:

- (1) The holder of a negotiable bill.
- (2) The consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee.
- (3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill.
- (4) The consignee on a nonnegotiable bill if he is entitled as against the consignor to dispose of them.

Present law further states that unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated may hold the depositary according to the original terms.

Proposed law retains present law and clarifies that the carrier may deliver the goods to a person or destination other than that stated in the bill or otherwise dispose of the goods without liability for misdelivery. Unless instructions from the specified persons are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Present law provides that the depositary is obliged to deliver in accordance with present law against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the depositary's obligation on the whole bill.

Proposed law provides that the bailee shall deliver in accordance with proposed law against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Present law provides that a carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of the carrier's receipt of the goods for storage or transportation, demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.

Proposed law retains present law but adds that the carrier also has a lien on the proceeds of the

goods in its possession.

Present law provides that the notification of the enforcement of a carrier's lien on goods by public or private sale of the goods, in block or in parcels, at any time or place and on any term which are commercially reasonable, must include a statement of the amount due and, in the case of public sale, the time and place thereof.

Proposed law retains present law but adds the requirement that the notice state the nature of the proposed sale.

Proposed law provides that a disclaimer or modification of warranty in a carrier's disposition of goods is commercially reasonable.

Present law provides that damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity.

Proposed law provides that damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity.

Proposed law states that reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

Present law provides that neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen, or destroyed documents.

Proposed law provides that a duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to R.S. 10:7-105.

Present law requires a depositary to deliver the goods to a person entitled under the document who complies with present law, unless and to the extent that the depositary establishes the exercise by a seller of a right to stop delivery.

Proposed law requires a bailee to deliver the goods to a person entitled under a document of title if the person complies with proposed law, unless and to the extent that the bailee establishes the

exercise by a seller or lessor of a right to stop delivery.

Present law requires the person claiming under a document to surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods.

Proposed law requires that the person claiming under a document to surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries.

Present law requires the depository to cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

Proposed law requires the bailee to cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

Present law defines "person entitled under the document" as a holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document.

Proposed law repeals present law.

Present law provides that a depository who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to present law is not liable for the goods even if the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

Proposed law provides that a bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to proposed law is not liable for the goods even if the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods or the person to which the bailee delivered the goods did not have authority to receive the goods.

Proposed law provides the following rules apply to a negotiable electronic document of title:

- (1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Endorsement by the named person is not required to negotiate the document.
- (2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

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

Present law provides that subject to R.S. 10:7-503 and to the provisions of R.S. 10:7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document.
- (2) Title to the goods.
- (3) All rights accruing under the law, including rights to goods delivered to the depository after the document was issued.
- (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under present law.

Proposed law provides that subject to R.S. 10:7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document.
- (2) Title to the goods.
- (3) All rights accruing under the law of representation or estoppel, including rights to goods delivered to the bailee after the document was issued.
- (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under proposed law.

Present law provides that, subject to R.S. 10:7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the depository, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty, or any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or misappropriation even though a previous sale or other transfer of the goods or document has been made to a third person.

Proposed law provides that, subject to R.S. 10:7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by

surrender of the goods by the bailee and are not impaired even if the due negotiation or any prior due negotiation constituted a breach of duty, any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or misappropriation, or a previous sale or other transfer of the goods or document has been made to a third person.

Proposed law provides that in the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- (1) By those creditors of the transferor which could treat the transfer as void or ineffective, under the law of the state of location of the goods, on account of the retention of possession by the transferor.
- (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights.
- (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (4) As against the bailee, by good-faith dealings of the bailee with the transferor.

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

Proposed law provides that delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller or a lessor under law other than proposed law. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Present law provides that the question whether a document is adequate to fulfill the obligations of a contract to sell on the conditions of a credit is governed by the law of Sales and the law of Letters of Credit (R.S. 10:5-101 et seq.).

Proposed law provides that whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by other than proposed law.

Present law provides that, if a document has been lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the depositary may without liability to any person comply with the order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document.

Proposed law provides that, if a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss.

Present law provides that a depository who, without court order, delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby.

Proposed law provides that a bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for all damages, foreseeable or not, that are a direct consequence of the bailee's actions. The bailee is liable only for the damages that were foreseeable at the time the document of title was issued if the bailee was in good faith in making delivery and if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

Present law provides that whoever commits the offense of fraud through the use of a document of title as defined in present law shall, for each offense, be fined not more than \$10,000, or imprisoned not more than 10 years with a minimum of 12 months without benefit of suspension, parole, pardon, or both, in the discretion of the court.

Proposed law provides that whoever commits the offense of fraud through the use of a document of title as defined in proposed law, for each offense, be fined not more than \$10,000, or imprisoned with or without hard labor not more than 10 years or both. At least 12 months of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Present law provides that whoever commits the offense of fraud through the use of a document of title as defined in present law shall, for each offense, be fined not more than \$5,000, or imprisoned not more than five years with a minimum of six months without benefit of suspension, parole, pardon, or both, in the discretion of the court.

Proposed law provides that whoever commits the offense of fraud through the use of a document of title as defined in proposed law, for each offense, be fined not more than \$5,000, or imprisoned with or without hard labor not more than five years or both. At least six months of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

Proposed law provides that a document of title is not a financial asset unless it is property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under proposed law.

Proposed law provides that the definition of "control" as provided for in R.S. 10:7-106 and the definition of "issuer" with respect to documents of title as defined in R.S. 10:7-102 applies to proposed law.

Present law provides that a security interest is enforceable against the debtor and third parties with respect to collateral if the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, electronic documents, or a life insurance policy, and the secured party has control under R.S. 10:9-104, 9-105, 9-106, 9-107, or 9-107.1 pursuant to the debtor's security agreement.

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Present law sets forth the rights and duties of a secured party having possession of collateral or control of collateral under R.S. 10:9-104, 9-105, 9-106, 9-107, or 9-107.1, unless otherwise agreed by the parties and except as otherwise provided in present law.

Proposed law sets forth the rights and duties of a secured party having possession of collateral or control of collateral under R.S. 10:7-106, 9-104, 9-105, 9-106, 9-107, or 9-107.1, unless otherwise agreed by the parties and except as otherwise provided in proposed law.

Proposed law requires a secured party having control of an electronic document to:

- (1) Give control of the electronic document to the debtor or its designated custodian.
- (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor.
- (3) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Present law provides that the filing of a financing statement is not necessary to perfect a security interest in certificated securities, documents, goods, or instruments other than collateral mortgage notes which is perfected without filing, or possession under present law.

Proposed law provides that the filing of a financing statement is not necessary to perfect a security interest in certificated securities, documents, goods, or instruments other than collateral mortgage notes which is perfected without filing, control, or possession under proposed law.

Present law provides that the filing of a financing statement is not necessary to perfect a security interest in deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or life insurance policies when the security interest is perfected by control under present law.

Proposed law provides that the filing of a financing statement is not necessary to perfect a security interest in deposit accounts, electronic chattel paper, electronic documents, investment property, letter-of-credit rights, or life insurance policies when the security interest is perfected by control under proposed law.

Present law provides that a security interest in certificated securities, negotiable documents, or instruments other than collateral mortgage notes is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

Proposed law provides that a security interest in certificated securities, negotiable documents, or instruments other than collateral mortgage notes is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

Present law provides that a security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or a life insurance policy may be perfected by control of the collateral under R.S. 10:9-104, 9-105, 9-106, 9-107, or 9-107.1.

Proposed law provides that a security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, electronic documents, or a life insurance policy may be perfected by control of the collateral under R.S. 10:7-106, 9-104, 9-105, 9-106, 9-107, or 9-107.1.

Present law provides that a security interest in deposit accounts, electronic chattel paper, a life insurance policy, or letter-of-credit rights is perfected by control under R.S. 10:9-104, 9-105, 9-107, or 9-107.1 when the secured party obtains control and remains perfected by control only while the secured party retains control.

Proposed law provides that a security interest in deposit accounts, electronic chattel paper, electronic documents, a life insurance policy, or letter-of-credit rights is perfected by control under R.S. 10:7-106, 9-104, 9-105, 9-107, or 9-107.1 when the secured party obtains control and remains perfected by control only while the secured party retains control.

Present law provides that a licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value before it is perfected.

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investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value before it is perfected.

Present law provides that a secured party in possession of collateral or control of collateral under R.S. 10:9-104, 9-105, 9-106, 9-107, or 9-107.1 has the rights and duties provided in present law.

Proposed law provides that a secured party in possession of collateral or control of collateral under R.S. 10:7-106, 9-104, 9-105, 9-106, 9-107, or 9-107.1 has the rights and duties provided in proposed law.

Proposed law authorizes the La. State Law Institute to prepare comments to its provisions.

Proposed law additionally makes technical changes to present law.

(Amends R.S. 10:1-201(b)(5), (6), (15), (16), (21), and (42), 4-104(c)(intro. para.), 4-210(c)(intro. para.), 7-101 - 7-105, 7-201 - 7-210, 7-301 - 7-309, 7-401 - 7-404, 7-501 - 7-509, 7-601 - 7-604, and 7-701, 9-102(a)(30), (b), and (d)(7), 9-203(b)(intro. para.) and (3)(D), 9-207(c), 9-208(b)(5) and (6), 9-301(3), 9-310(b)(5) and (8), 9-312(e), 9-313(a), 9-314(a) and (b), 9-317(b) and (d), 9-338, and 9-601(b); Adds R.S. 10:8-103(g) and 9-208(b)(7))