

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 753  
Second Edition Engrossed 5/9/89

Short Title: Amend Article 8 of the UCC.

(Public)

Sponsors: Senator Daniel.

Referred to: Judiciary II.

April 4, 1989

A BILL TO BE ENTITLED  
AN ACT TO AMEND ARTICLE 8, UNIFORM COMMERCIAL CODE –  
INVESTMENT SECURITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 25 of the General Statutes reads as rewritten:

**"ARTICLE 8.**

**"INVESTMENT SECURITIES.**

**"PART 1.**

**"SHORT TITLE AND GENERAL MATTERS.**

**"§ 25-8-101. Short title.**

This article shall be known and may be cited as Uniform Commercial Code –  
Investment Securities.

**"§ 25-8-102. Definitions and index of definitions.**

(1) ~~In this article unless the context otherwise requires~~

(a) ~~A "security" is an instrument which~~

(i) ~~is issued in bearer or registered form; and~~

(ii) ~~is of a type commonly dealt in upon securities exchanges or markets or  
commonly recognized in any area in which it is issued or dealt in as a medium for  
investment; and~~

(iii) ~~is either one of a class or series or by its terms is divisible into a class or  
series of instruments; and~~

(iv) ~~evidences a share, participation or other interest in property or in an  
enterprise or evidences an obligation of the issuer.~~

~~(b) A writing which is a security is governed by this article and not by Uniform Commercial Code—Commerical Paper even though it also meets the requirements of that article. This article does not apply to money.~~

~~(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.~~

~~(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.~~

~~(2) A "subsequent purchaser" is a person who takes other than by original issue.~~

~~(3) A "clearing corporation" is a corporation~~

~~(a) at least ninety percent (90%) of the capital stock of which is held by or for one or more persons (other than individuals), each of whom~~

~~(i) is subject to supervision or regulation pursuant to the provisions of federal or State banking laws or State insurance laws, or~~

~~(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or~~

~~(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, and none of whom, other than a national securities exchange or association, holds in excess of twenty percent (20%) of the capital stock of such corporation; and~~

~~(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.~~

~~(4) A "custodian bank" is any bank or trust company which is supervised and examined by State or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.~~

~~(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:~~

~~"Adverse claim." G.S. 25-8-301.~~

~~"Bona fide purchaser." G.S. 25-8-302.~~

~~"Broker." G.S. 25-8-303.~~

~~"Guarantee of the signature." G.S. 25-8-402.~~

~~"Intermediary bank." G.S. 25-4-105.~~

~~"Issuer." G.S. 25-8-201.~~

~~"Overissue." G.S. 25-8-104.~~

~~(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.~~

~~(1) In this Article, unless the context otherwise requires:~~

~~(a) A 'certificated security' is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is:~~

~~(i) Represented by an instrument issued in bearer or registered form,~~

- 1           (ii) Of a type commonly dealt in on securities exchanges or markets  
2           or commonly recognized in any area in which it is issued or  
3           dealt in as a medium for investment, and  
4           (iii) Either one of a class or series or by its terms divisible into a  
5           class or series of shares, participations, interests, or  
6           obligations.
- 7       (b) An 'uncertificated security' means a share, participation, or other  
8       interest in property or an enterprise of the issuer or an obligation of the  
9       issuer which is:
- 10       (i) Not represented by an instrument and the transfer of which is  
11       registered upon books maintained for that purpose by or on  
12       behalf of the issuer.
- 13       (ii) Of a type commonly dealt in on securities exchanges or  
14       markets, and
- 15       (iii) Either one of a class or series or by its terms divisible into a  
16       class or series of shares, participations, interest, or  
17       obligations.
- 18       (iv) Not a partnership interest in a limited partnership, unless the  
19       partnership interest is approved for trading on a national  
20       securities exchange registered under the federal securities  
21       laws or for quotation in the automated quotation system of a  
22       national securities association registered under the federal  
23       securities laws.
- 24       (c) A 'security' is either a certificated or an uncertificated security. If a  
25       security is certificated, the terms 'security' and 'certificated security'  
26       may mean either the intangible interest, the instrument representing  
27       that interest, or both, as the context requires. A writing that is a  
28       certificated security is governed by this article and not by Uniform  
29       Commercial Code – Commercial Paper, even though it also meets the  
30       requirements of that article. This article does not apply to money. If a  
31       certificated security has been retained by or surrendered to the issuer  
32       or its transfer agent for reasons other than registration of transfer, other  
33       temporary purpose, payment, exchange, or acquisition by the issuer,  
34       that security shall be treated as an uncertificated security for purposes  
35       of this article.
- 36       (d) A certificated security is in 'registered form' if
- 37       (i) It specifies a person entitled to the security or the rights it  
38       represents, and
- 39       (ii) Its transfer may be registered upon books maintained for that  
40       purpose by or on behalf of the issuer, or the security so states.
- 41       (e) A certificated security is in 'bearer form' if it runs to bearer according  
42       to its terms and not by reason of any indorsement.
- 43       (2) A 'subsequent purchaser' is a person who takes other than by original issue.

1       (3) A 'clearing corporation' is a corporation registered as a 'clearing agency'  
2 under the federal securities laws or a corporation:

- 3           (a) At least ninety percent (90%) of whose capital stock is held by or for  
4 one or more organizations, none of which, other than a national  
5 securities exchange or association, holds in excess of twenty percent  
6 (20%) of the capital stock of the corporation, and each of which is (i)  
7 subject to supervision or regulation pursuant to the provisions of  
8 federal or State banking laws or State insurance laws, (ii) a broker or  
9 dealer or investment company registered under the federal securities  
10 laws, or (iii) a national securities exchange or association registered  
11 under the federal securities laws; and  
12           (b) Any remaining capital stock of which is held by individuals who have  
13 purchased it at or prior to the time of their taking office as directors of  
14 the corporation and who have purchased only so much of the capital  
15 stock as is necessary to permit them to qualify as directors.

16       (4) A 'custodian bank' is a bank or trust company that is supervised and  
17 examined by State or federal authority having supervision over banks and is acting as  
18 custodian for a clearing corporation.

19       (5) Other definitions applying to this Article or to specified parts thereof and the  
20 sections in which they appear are:

- 21           'Adverse claim'. G.S. 25-8-302  
22           'Bona fide purchaser'. G.S. 25-8-302  
23           'Broker'. G.S. 25-8-303  
24           'Debtor'. G.S. 25-9-105  
25           'Financial intermediary'. G.S. 25-8-313  
26           'Guarantee of the signature'. G.S. 25-8-402  
27           'Initial transaction statement'. G.S. 25-8-408  
28           'Instruction'. G.S. 25-8-308  
29           'Intermediary bank'. G.S. 25-4-105  
30           'Issuer'. G.S. 25-8-201  
31           'Overissue'. G.S. 25-8-104  
32           'Secured Party'. G.S. 25-9-105  
33           'Security Agreement'. G.S. 25-9-105.

34       (6) In addition, Article 1 contains general definitions and principles of  
35 construction and interpretation applicable throughout this Article.

36 **"§ 25-8-103. Issuer's Lien.**

37 ~~A lien upon a security in favor of an issuer thereof is valid against a purchaser only~~  
38 ~~if the right of the issuer to such lien is noted conspicuously on the security.~~

39 A lien upon a security in favor of an issuer thereof is valid against a purchaser only  
40 if:

- 41           (a) The security is certificated and the right of the issuer to the lien is  
42 noted conspicuously thereon; or  
43           (b) The security is uncertificated and a notation of the right of the issuer to  
44 the lien is contained in the initial transaction statement sent to the

1 purchaser or, if his interest is transferred to him other than by  
 2 registration of transfer, pledge, or release, the initial transaction  
 3 statement sent to the registered owner or the registered pledgee.

4 **"§ 25-8-104. Effect of overissue; 'overissue.'**

5 (1) The provisions of this article which validate a security or compel its issue or  
 6 reissue do not apply to the extent that validation, issue or reissue would result in  
 7 overissue; ~~but~~ but if

8 (a) ~~if~~—An identical security which does not constitute an overissue is  
 9 reasonably available for purchase, the person entitled to issue or  
 10 validation may compel the issuer to purchase ~~and deliver such a security~~  
 11 ~~to him against surrender of the security, if any, which he holds; the security~~  
 12 for him and either to deliver a certificated security or to register the  
 13 transfer of an uncertificated security to him, against surrender of any  
 14 certificated security he holds; or

15 (b) ~~if~~—A security is not so available for purchase, the person entitled to  
 16 issue or validation may recover from the issuer the price he or the last  
 17 purchaser for value paid for it with interest from the date of his  
 18 demand.

19 (2) 'Overissue' means the issue of securities in excess of the amount which the  
 20 issuer has corporate power to issue.

21 **"§ 25-8-105. Certificated securities negotiable; statements and instructions not**  
 22 **negotiable; presumptions.**

23 (1) ~~Securities governed by this article are negotiable instruments.~~

24 (2) ~~In any action on a security~~

25 (a) ~~unless specifically denied in the pleadings, each signature on the security or~~  
 26 ~~in a necessary indorsement is admitted;~~

27 (b) ~~when the effectiveness of a signature is put in issue the burden of establishing~~  
 28 ~~it is on the party claiming under the signature but the signature is presumed to be~~  
 29 ~~genuine or authorized;~~

30 (c) ~~when signatures are admitted or established production of the instrument~~  
 31 ~~entitles a holder to recover on it unless the defendant establishes a defense or a defect~~  
 32 ~~going to the validity of the security; and~~

33 (d) ~~after it is shown that a defense or defect exists the plaintiff has the burden of~~  
 34 ~~establishing that he or some person under whom he claims is a person against whom the~~  
 35 ~~defense or defect is ineffective.~~

36 (1) Certificated securities governed by this article are negotiable instruments.

37 (2) Statements (G.S. 25-8-408), notices, or the like, sent by the issuer of  
 38 uncertificated securities and instructions (G.S. 25-8-308) are neither negotiable  
 39 instruments nor certificated securities.

40 (3) In any action on a security:

41 (a) Unless specifically denied in the pleadings, each signature on a  
 42 certificated security in a necessary indorsement, on an initial  
 43 transaction statement or on an instruction, is admitted;

- 1           (b) If the effectiveness of a signature is put in issue, the burden of  
 2 establishing it is on the party claiming under the signature, but the  
 3 signature is presumed to be genuine or authorized;  
 4           (c) If signatures on a certificated security are admitted or established,  
 5 production of the security entitles a holder to recover on it unless the  
 6 defendant establishes a defense or a defect going to the validity of the  
 7 security;  
 8           (d) If signatures on an initial transaction statement are admitted or  
 9 established, the facts stated in the statement are presumed to be true as  
 10 of the time of its issuance; and  
 11           (e) After it is shown that a defense or defect exists, the plaintiff has the  
 12 burden of establishing that he or some person under whom he claims is  
 13 a person against whom the defense or defect is ineffective (G.S. 25-8-  
 14 202).

15 **"§ 25-8-106. Applicability.**

16 ~~The validity of a security and the rights and duties of the issuer with respect to~~  
 17 ~~registration of transfer are governed by the law (including the conflict of laws rules) of~~  
 18 ~~the jurisdiction of organization of the issuer.~~

19 The law (including the conflict of laws rules) of the jurisdiction of organization of  
 20 the issuer governs the validity of a security, the effectiveness of registration by the  
 21 issuer, and the rights and duties of the issuer with respect to:

- 22           (a) Registration of transfer of a certificated security;  
 23           (b) Registration of transfer, pledge, or release of an uncertificated security;  
 24           and  
 25           (c) Sending of statements of uncertificated securities.

26 **"§ 25-8-107. Securities ~~deliverable;~~ transferable; action for price.**

27           (1) Unless otherwise agreed and subject to any applicable law or regulation  
 28 respecting short sales, a person obligated to ~~deliver-transfer~~ securities may ~~deliver any~~  
 29 ~~transfer any~~ certificated security of the specified issue in bearer form or registered in the  
 30 name of the transferee or indorsed to him or in ~~blank-blank~~, or he may transfer an  
 31 equivalent uncertificated security to the transferee or a person designated by the  
 32 transferee.

33           (2) ~~When~~ If the buyer fails to pay the price as it comes due under a contract of  
 34 sale the seller may recover the price of

- 35           (a) ~~of~~ Certificated securities accepted by the buyer; and  
 36           (a1) Uncertificated securities that have been transferred to the buyer or a  
 37 person designated by the buyer; and  
 38           (b) ~~of~~ Other securities if efforts at their resale would be unduly  
 39 burdensome or if there is no readily available market for their resale.

40 **"§ 25-8-108. Registration of pledge and release of uncertificated securities.**

41 A security interest in an uncertificated security may be evidenced by the registration  
 42 of pledge to the secured party or a person designated by him. There may be no more  
 43 than one registered pledge of an uncertificated security at any time. The registered  
 44 owner of an uncertificated security is the person in whose name the security is

1 registered, even if the security is subject to a registered pledge. The rights of a  
 2 registered pledgee of an uncertificated security under this article are terminated by the  
 3 registration of release.

4 "PART 2.

5 "ISSUE – ISSUER.

6 "§ 25-8-201. 'Issuer.'

7 (1) With respect to obligations on or defenses to a security 'issuer' includes a  
 8 person who

9 (a) Places or authorizes the placing of his name on a certificated security  
 10 (otherwise than as authenticating trustee, registrar, transfer agent or the  
 11 like) to evidence that it represents a share, participation or other  
 12 interest in his property or in an enterprise or to evidence his duty to  
 13 perform an obligation ~~evidenced—~~represented by the certificated  
 14 security; or

15 (a1) Create shares, participations, or other interests in his property or in an  
 16 enterprise or undertakes obligations, which shares, participations,  
 17 interests or obligations are certificated securities.

18 (b) Directly or indirectly creates fractional interests in his rights or  
 19 property which fractional interests are ~~evidenced—~~represented by  
 20 certificated securities; or

21 (c) Becomes responsible for or in place of any other person described as  
 22 an issuer in this section.

23 (2) With respect to obligations on or defenses to a ~~security—~~security, a guarantor is  
 24 an issuer to the extent of his guaranty whether or not his obligation is noted on ~~the~~  
 25 ~~security—a~~ certificated security or on statements of uncertificated securities sent pursuant  
 26 to G.S. 25-8-402.

27 (3) With respect to registration of ~~transfer—~~transfer, pledge, or release (part 4 of  
 28 this article) 'issuer' means a person on whose behalf transfer books are maintained.

29 "§ 25-8-202. Issuer's responsibility and defenses; notice of defect or defense.

30 (1) ~~Even against a purchaser for value and without notice, the terms of a security~~  
 31 ~~include those stated on the security and those made part of the security by reference to~~  
 32 ~~another instrument, indenture or document or to a constitution, statute, ordinance, rule,~~  
 33 ~~regulation, order or the like to the extent that the terms so referred to do not conflict~~  
 34 ~~with the stated terms. Such a reference does not of itself charge a purchaser for value~~  
 35 ~~with notice of a defect going to the validity of the security even though the security~~  
 36 ~~expressly states that a person accepting it admits such notice.~~

37 (2)(a) ~~A security other than one issued by a government or governmental agency or~~  
 38 ~~unit even though issued with a defect going to its validity is valid in the hands of a~~  
 39 ~~purchaser for value and without notice of the particular defect unless the defect involves~~  
 40 ~~a violation of constitutional provisions in which case the security is valid in the hands of~~  
 41 ~~a subsequent purchaser for value and without notice of the defect.~~

42 (b) ~~The rule of subparagraph (a) applies to an issuer which is a government or~~  
 43 ~~governmental agency or unit only if either there has been substantial compliance with~~  
 44 ~~the legal requirements governing the issue or the issuer has received a substantial~~

1 consideration for the issue as a whole or for the particular security and a stated purpose  
2 of the issue is one for which the issuer has power to borrow money or issue the security.

3 (3) ~~Except as otherwise provided in the case of certain unauthorized signatures~~  
4 ~~on issue (G.S. 25-8-205), lack of genuineness of a security is a complete defense even~~  
5 ~~against a purchaser for value and without notice.~~

6 (4) ~~All other defenses of the issuer including nondelivery and conditional~~  
7 ~~delivery of the security are ineffective against a purchaser for value who has taken~~  
8 ~~without notice of the particular defense.~~

9 (5) ~~Nothing in this section shall be construed to affect the right of a party to a~~  
10 ~~"when, as and if issued" or a "when distributed" contract to cancel the contract in the~~  
11 ~~event of a material change in the character of the security which is the subject of the~~  
12 ~~contract or in the plan or arrangement pursuant to which such security is to be issued or~~  
13 ~~distributed.~~

14 (1) Even against a purchaser for value and without notice the terms of a security  
15 include:

16 (a) If the security is certificated, those stated on the security;

17 (b) If the security is uncertificated, those contained in the initial  
18 transaction statement sent to such purchaser or, if his interest is  
19 transferred to him other than by registration of transfer, pledge, or  
20 release, the initial transaction statement sent to the registered owner or  
21 registered pledgee; and

22 (c) Those made part of the security by reference, on the certificated  
23 security or in the initial transaction statement, to another instrument,  
24 indenture, or document or to a constitution, statute, ordinance, rule,  
25 regulation, order or the like, to the extent that the terms referred to do  
26 not conflict with the terms stated on the certificated security or  
27 contained in the statement. A reference under this paragraph does not  
28 of itself charge a purchaser for value with notice of a defect going to  
29 the validity of the security, even though the certificated security or  
30 statement expressly states that a person accepting it admits notice.

31 (2) A certificated security in the hands of a purchaser for value or an  
32 uncertificated security as to which an initial transaction statement has been sent to a  
33 purchaser for value, other than a security issued by a government or governmental  
34 agency or unit, even though issued with a defect going to its validity, is valid with  
35 respect to the purchaser if he is without notice of the particular defect unless the defect  
36 involves a violation of constitutional provisions, in which case the security is valid with  
37 respect to a subsequent purchaser for value and without notice of the defect. This  
38 subsection applies to an issuer that is a government or governmental agency or unit only  
39 if either there has been substantial compliance with the legal requirements governing the  
40 issue or the issuer has received a substantial consideration for the issue as a whole or for  
41 the particular security and a stated purpose of the issue is one for which the issuer has  
42 power to borrow money or issue the security.

1       (3) Except as provided in the case of certain unauthorized signatures (G.S. 25-8-  
2 205) lack of genuineness of a certificated security or an initial transaction statement is a  
3 complete defense, even against a purchaser for value and without notice.

4       (4) All other defenses of the issuer of a certificated or uncertificated security,  
5 including nondelivery and conditional delivery of a certificated security, are ineffective  
6 against a purchaser for value who has taken without notice of the particular defense.

7       (5) Nothing in this section shall be construed to affect the right of a party to a  
8 'when, as and if issued' or a 'when distributed' contract to cancel the contract in the  
9 event of a material change in the character of the security that is the subject of the  
10 contract or in the plan or arrangement pursuant to which the security is to be issued or  
11 distributed.

12 **"§ 25-8-203. Staleness as notice of defects or defenses.**

13       (1) ~~After an act or event which creates a right to immediate performance of the~~  
14 ~~principal obligation evidenced by the~~ represented by a certificated security or which sets  
15 a date on or after which the security is to be presented or surrendered for redemption or  
16 exchange, a purchaser is charged with notice of any defect in its issue or defense of the  
17 issuer if

18           (a) ~~if The act or event is one requiring the payment of money or the delivery~~  
19 ~~of securities or both money, the delivery of certificated securities, the~~  
20 registration of transfer of uncertificated securities, or any of these on  
21 presentation or surrender of the security ~~certificated security, and such~~  
22 the funds or securities are available on the date set for payment or  
23 exchange and he takes the security more than one year after that date;  
24 and

25           (b) ~~If~~ The act or event is not covered by paragraph (a) and he takes the  
26 security more than two years after the date set for surrender or  
27 presentation or the date on which such performance became due.

28       (2) A call which has been revoked is not within subsection (1).

29 **"§ 25-8-204. Effect of issuer's restrictions on transfer.**

30 ~~Unless noted conspicuously on the security a restriction on transfer imposed by the~~  
31 ~~issuer even though otherwise lawful is ineffective except against a person with actual~~  
32 ~~knowledge of it.~~

33 A restriction on transfer of a security imposed by the issuer, even if otherwise  
34 lawful, is ineffective against any person without actual knowledge of it unless:

35           (a) The security is certificated and the restriction is noted conspicuously  
36 thereon; or

37           (b) The security is uncertificated and a notation of the restriction is  
38 contained in the initial transaction statement sent to the person or, if  
39 his interest is transferred to him other than by registration of transfer,  
40 pledge, or release, the initial transaction statement sent to the  
41 registered owner or the registered pledgee.

42 **"§ 25-8-205. ~~Effect of unauthorized signature on issue.~~ Effect of unauthorized**  
43 **signature on certificated security or initial transaction statement.**

1 ~~An unauthorized signature placed on a security prior to or in the course of issue is~~  
2 ~~ineffective except that the signature is effective in favor of a purchaser for value and~~  
3 ~~without notice of the lack of authority if the signing has been done by~~

4 ~~(a) an authenticating trustee, registrar, transfer agent or other person entrusted by~~  
5 ~~the issuer with the signing of the security or of similar securities or their immediate~~  
6 ~~preparation for signing; or~~

7 ~~(b) an employee of the issuer or of any of the foregoing entrusted with~~  
8 ~~responsible handling of the security.~~

9 An unauthorized signature placed on a certificated security prior to or in the course  
10 of issue or placed on an initial transaction statement is ineffective, but the signature is  
11 effective in favor of a purchaser for value of the certificated security or a purchaser for  
12 value of an uncertificated security to whom the initial transaction statement has been  
13 sent, if the purchaser is without notice of the lack of authority and the signing has been  
14 done by:

15 (a) An authenticating trustee, registrar, transfer agent, or other person  
16 entrusted by the issuer with the signing of the security, of similar  
17 securities, or of initial transaction statements or the immediate  
18 preparation for signing of any of them; or

19 (b) An employee of the issuer, or of any of the foregoing, entrusted with  
20 responsible handling of the security or initial transaction statement.

21 **§ 25-8-206. Completion or alteration of instrument. Completion or alteration of**  
22 **certificated security or initial transaction statement.**

23 ~~Where a security contains the signatures necessary to its issue or transfer but is~~  
24 ~~incomplete in any other respect~~

25 ~~(a) any person may complete it by filling in the blanks as authorized; and~~

26 ~~(b) even though the blanks are incorrectly filled in, the security as completed is~~  
27 ~~enforceable by a purchaser who took it for value and without notice of such~~  
28 ~~incorrectness.~~

29 ~~(2) A complete security which has been improperly altered even though~~  
30 ~~fraudulently remains enforceable but only according to its original terms.~~

31 (1) If a certificated security contains the signatures necessary to its issue or  
32 transfer but is incomplete in any other respect:

33 (a) Any person may complete it by filling in the blanks as authorized; and

34 (b) Even though the blanks are incorrectly filled in, the security as  
35 completed is enforceable by a purchaser who took it for value and  
36 without notice of the incorrectness.

37 (2) A complete certificated security that has been improperly altered, even  
38 though fraudulently, remains enforceable, but only according to its original terms.

39 (3) If an initial transaction statement contains the signatures necessary to its  
40 validity, but is incomplete in any other respect:

41 (a) Any person may complete it by filling in the blanks as authorized; and

42 (b) Even though the blanks are incorrectly filled in, the statement as  
43 completed is effective in favor of the person to whom it is sent if he

1                   purchased the security referred to therein for value and without notice  
2                   of the incorrectness.

3       (4)   A complete initial transaction statement that has been improperly altered,  
4 even though fraudulently, is effective in favor of a purchaser to whom it has been sent,  
5 but only according to its original terms.

6 **"§ 25-8-207. Rights of issuer with respect to registered owners. Rights and duties of**  
7 **issuer with respect to registered owners and registered pledgees.**

8       (1)   ~~Prior to due presentment for registration of transfer of a security in registered~~  
9 ~~form the issuer or indenture trustee may treat the registered owner as the person~~  
10 ~~exclusively entitled to vote, to receive notifications and otherwise to exercise all the~~  
11 ~~rights and powers of an owner.~~

12       (2)   ~~Nothing in this article shall be construed to affect the liability of the~~  
13 ~~registered owner of a security for calls, assessments or the like.~~

14       (1)   Prior to due presentment for registration of transfer of a certificated security  
15 in registered form, the issuer or indenture trustee may treat the registered owner as the  
16 person exclusively entitled to vote, to receive notifications, and otherwise to exercise all  
17 the rights and powers of an owner.

18       (2)   Subject to the provisions of subsections (3), (4), and (6) of this section, the  
19 issuer or indenture trustee may treat the registered owner of an uncertificated security as  
20 the person exclusively entitled to vote, to receive notifications, and otherwise to  
21 exercise all the rights and powers of an owner.

22       (3)   The registered owner of an uncertificated security that is subject to a  
23 registered pledge is not entitled to registration of transfer prior to the due presentment to  
24 the issuer of a release instruction. The exercise of conversion rights with respect to a  
25 convertible uncertificated security is a transfer within the meaning of this section.

26       (4)   Upon due presentment of a transfer instruction from the registered pledgee of  
27 an uncertificated security, the issuer shall:

28           (a)   Register the transfer of the security to the new owner free of pledge, if  
29 the instruction specifies a new owner (who may be the registered  
30 pledgee) and does not specify a pledgee;

31           (b)   Register the transfer of the security to the new owner subject to the  
32 interest of the existing pledgee, if the instruction specifies a new owner  
33 and the existing pledgee; or

34           (c)   Register the release of the security from the existing pledge and  
35 register the pledge of the security to the other pledgee, if the  
36 instruction specifies the existing owner and another pledgee.

37       (5)   Continuity of perfection of a security interest is not broken by registration of  
38 transfer under subsection (4)(b) or by registration of release and pledge under  
39 subsection (4)(c), if the security interest is assigned.

40       (6)   If an uncertificated security is subject to a registered pledge:

41           (a)   Any uncertificated securities issued in exchange for or distributed with  
42 respect to the pledged security shall be registered subject to the pledge;



1 (1) Upon transfer of a security to a purchaser (G.S. 25-8-313), the purchaser  
 2 acquires the rights in the security which his transferor had or had actual authority to  
 3 convey unless the purchaser's rights are limited by G.S. 25-8-302(4).

4 (2) A transferee of a limited interest acquires rights only to the extent of the  
 5 interest transferred. The creation or release of a security interest in a security is the  
 6 transfer of a limited interest in that security.

7 **"§ 25-8-302. "Bona fide purchaser." "Bona fide purchaser"; 'adverse claim' title**  
 8 **acquired by bona fide purchaser.**

9 A ~~"bona fide purchaser"~~ is a purchaser for value in good faith and without notice of  
 10 any adverse claim who takes delivery of a security in bearer form or of one in registered  
 11 form issued to him or indorsed to him or in blank.

12 (1) A 'bona fide purchaser' is a purchaser for value in good faith and without  
 13 notice of any adverse claim:

14 (a) Who takes delivery of a certificated security in bearer form or in  
 15 registered form, issued or indorsed to him or in blank;

16 (b) To whom the transfer, pledge, or release of an uncertificated security is  
 17 registered on the books of the issuer; or

18 (c) To whom a security is transferred under the provisions of paragraph  
 19 (c), (d)(i), or (g) of G.S. 25-8-313(1).

20 (2) 'Adverse claim' includes a claim that a transfer was or would be wrongful or  
 21 that a particular adverse person is the owner of or has an interest in the security.

22 (3) A bona fide purchaser in addition to acquiring the rights of a purchaser (G.S.  
 23 25-8-301), also acquires his interest in the security free of any adverse claim.

24 (4) Notwithstanding G.S. 25-8-301 the transferee of a particular certificated  
 25 security who has been a party to any fraud or illegality affecting the security, or who as  
 26 a prior holder of that certificated security had notice of an adverse claim, cannot  
 27 improve his position by taking from a bona fide purchaser.

28 **"§ 25-8-303. 'Broker'.**

29 'Broker' means a person engaged for all or part of his time in the business of buying  
 30 and selling securities, who in the transaction concerned acts for, or buys a security from  
 31 or sells a security to a customer. Nothing in this article determines the capacity in which  
 32 a person acts for purposes of any other statute or rule to which such person is subject.

33 **"§ 25-8-304. Notice to purchaser of adverse claims.**

34 (1) A purchaser (including a broker for the seller or buyer but excluding an  
 35 intermediary bank) of a certificated security is charged with notice of adverse claims if

36 (a) The security whether in bearer or registered form has been indorsed  
 37 'for collection' or 'for surrender' or for some other purpose not  
 38 involving transfer; or

39 (b) The security is in bearer form and has on it an unambiguous statement  
 40 that it is the property of a person other than the transferor. The mere  
 41 writing of a name on a security is not such a statement.

42 (2) ~~The fact that the purchaser (including a broker for the seller or buyer) has~~  
 43 ~~notice that the security is held for a third person or is registered in the name of or~~  
 44 ~~indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the~~

1 ~~transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an~~  
2 ~~intermediary bank) has knowledge that the proceeds are being used or that the~~  
3 ~~transaction is for the individual benefit of the fiduciary or otherwise in breach of duty,~~  
4 ~~the purchaser is charged with notice of adverse claims.~~

5 (2) A purchaser (including a broker for the seller or buyer, but excluding an  
6 intermediary bank) to whom the transfer, pledge, or release of an uncertificated security  
7 is registered is charged with notice of adverse claims as to which the issuer has a duty  
8 under G.S. 25-8-403(4) at the time of registration and which are noted in the initial  
9 transaction statement sent to the purchaser or, if his interest is transferred to him other  
10 than by registration of transfer, pledge, or release, the initial transaction statement sent  
11 to the registered owner or the registered pledgee.

12 (3) The fact that the purchaser (including a broker for the seller or buyer) of a  
13 certificated or uncertificated security has notice that the security is held for a third  
14 person or is registered in the name of or indorsed by a fiduciary does not create a duty  
15 of inquiry into the rightfulness of the transfer or constitute constructive notice of  
16 adverse claims. However, if the purchaser (excluding an intermediary bank) has  
17 knowledge that the proceeds are being used or that the transaction is for the individual  
18 benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with  
19 notice of adverse claims.

20 **"§ 25-8-305. Staleness as notice of adverse claims.**

21 An act or event which creates a right to immediate performance of the principal  
22 obligation ~~evidenced by the~~ represented by a certificated security or which sets a date on  
23 or after which ~~the a~~ certificated security is to be presented or surrendered for redemption  
24 or exchange does not of itself constitute any notice of adverse claims except in the case  
25 of a ~~purchase-transfer:~~

- 26 (a) After one year from any date set for such presentment or surrender for  
27 redemption or exchange; or  
28 (b) After six months from any date set for payment of money against  
29 presentation or surrender of the security if funds are available for  
30 payment on that date.

31 **"§ 25-8-306. Warranties on presentment and ~~transfer.~~ transfer of certificated**  
32 **securities; warranties of originators of instructions.**

33 (1) A person who presents a certificated security for registration of transfer or for  
34 payment or exchange warrants to the issuer that he is entitled to the registration,  
35 payment or exchange. But a purchaser for value without notice of adverse claims who  
36 receives a new, reissued or re-registered certificated security on registration of transfer  
37 or receives an initial transaction statement confirming the registration of transfer of an  
38 equivalent uncertificated security to him warrants only that he has no knowledge of any  
39 unauthorized signature (G.S. 25-8-311) in a necessary indorsement.

40 (2) A person by transferring a certificated security to a purchaser for value  
41 warrants only that

- 42 (a) His transfer is effective and rightful; ~~and~~  
43 (b) The security is genuine and has not been materially altered; and  
44 (c) He knows no fact which might impair the validity of the security.

1       (3) ~~Where a~~ If a certificated security is delivered by an intermediary known to be  
2 entrusted with delivery of the security on behalf of another or with collection of a draft  
3 or other claim against such delivery, the intermediary by such delivery warrants only his  
4 own good faith and authority even though he has purchased or made advances against  
5 the claim to be collected against the delivery.

6       (4) A pledgee or other holder for security who redelivers ~~the~~ a certificated  
7 security received, or after payment and on order of the debtor delivers that security to a  
8 third person makes only the warranties of an intermediary under subsection (3).

9       ~~(5) A broker gives to his customer and to the issuer and a purchaser the~~  
10 ~~warranties provided in this section and has the rights and privileges of a purchaser under~~  
11 ~~this section. The warranties of and in favor of the broker acting as an agent are in~~  
12 ~~addition to applicable warranties given by and in favor of his customer.~~

13       (5) A person who originates an instruction warrants to the issuer that:

14           (a) He is an appropriate person to originate the instruction; and

15           (b) At the time the instruction is presented to the issuer he will be entitled  
16 to the registration of transfer, pledge, or release.

17       (6) A person who originates an instruction warrants to any person specially  
18 guaranteeing his signature (G.S. 25-8-312(3)) that:

19           (a) He is an appropriate person to originate the instruction; and

20           (b) At the time the instruction is presented to the issuer:

21               (i) He will be entitled to the registration of transfer, pledge, or  
22 release; and

23               (ii) The transfer, pledge, or release requested in the instruction will  
24 be registered by the issuer free from all liens, security interests,  
25 restrictions, and claims other than those specified in the  
26 instruction.

27       (7) A person who originates an instruction warrants to a purchaser for value and  
28 to any person guaranteeing the instruction (G.S. 25-8-312(6)) that:

29           (a) He is an appropriate person to originate the instruction;

30           (b) The uncertificated security referred to therein is valid; and

31           (c) At the time the instruction is presented to the issuer:

32               (i) The transferor will be entitled to the registration of transfer,  
33 pledge, or release;

34               (ii) The transfer, pledge, or release requested in the instruction will  
35 be registered by the issuer free from all liens, security interests,  
36 restrictions, and claims other than those specified in the  
37 instruction; and

38               (iii) The requested transfer, pledge, or release will be rightful.

39       (8) If a secured party is the registered pledgee or the registered owner of an  
40 uncertificated security, a person who originates an instruction of release or transfer to  
41 the debtor, or, after payment and on order of the debtor, a transfer instruction to a third  
42 person, warrants to the debtor or the the third person only that he is an appropriate  
43 person to originate the instruction and, at the time the instruction is presented to the  
44 insurer, the transferor will be entitled to the registration of release or transfer. If a

1 transfer instruction to a third person who is a purchaser for value is originated on order  
2 of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c)(ii)  
3 and (c)(iii) of subsection (7).

4 (9) A person who transfers an uncertificated security to a purchaser for value and  
5 does not originate an instruction in connection with the transfer warrants only that:

6 (a) His transfer is effective and rightful; and

7 (b) The uncertificated security is valid.

8 (10) A broker gives to his customer and to the issuer and a purchaser the  
9 applicable warranties provided in this section and has the rights and privileges of a  
10 purchaser under this section. The warranties of and in favor of the broker, acting as an  
11 agent, are in addition to applicable warranties given by and in favor of his customer.

12 **"§ 25-8-307. Effect of delivery without indorsement; right to compel indorsement.**

13 ~~Where a~~ If a certificated security in registered form has been delivered to a purchaser  
14 without a necessary indorsement he may become a bona fide purchaser only as of the  
15 time the indorsement is supplied, but against the transferor the transfer is complete upon  
16 delivery and the purchaser has a specifically enforceable right to have any necessary  
17 indorsement supplied.

18 **"§ 25-8-308. ~~Indorsement, how made; special indorsement; indorser not a~~**  
19 **~~guarantor; partial assignment.~~ Indorsements; instructions.**

20 ~~(1) An indorsement of a security in registered form is made when an appropriate~~  
21 ~~person signs on it or on a separate document an assignment or transfer of the security or~~  
22 ~~a power to assign or transfer it or when the signature of such person is written without~~  
23 ~~more upon the back of the security.~~

24 ~~(2) An indorsement may be in blank or special. An indorsement in blank includes~~  
25 ~~an indorsement to bearer. A special indorsement specifies the person to whom the~~  
26 ~~security is to be transferred, or who has power to transfer it. A holder may convert a~~  
27 ~~blank indorsement into a special indorsement.~~

28 ~~(3) "An appropriate person" in subsection (1) means~~

29 ~~(a) the person specified by the security or by special indorsement to be entitled to~~  
30 ~~the security; or~~

31 ~~(b) where the person so specified is described as a fiduciary but is no longer~~  
32 ~~serving in the described capacity, — either that person or his successor; or~~

33 ~~(c) where the security or indorsement so specifies more than one person as~~  
34 ~~fiduciaries and one or more are no longer serving in the described capacity, — the~~  
35 ~~remaining fiduciary or fiduciaries, whether or not a successor has been appointed or~~  
36 ~~qualified; or~~

37 ~~(d) where the person so specified is an individual and is without capacity to act~~  
38 ~~by virtue of death, incompetence, infancy or otherwise, — his executor, administrator,~~  
39 ~~guardian or like fiduciary; or~~

40 ~~(e) where the security or indorsement so specifies more than one person as~~  
41 ~~tenants by the entirety or with right of survivorship and by reason of death all cannot~~  
42 ~~sign, — the survivor or survivors; or~~

43 ~~(f) a person having power to sign under applicable law or controlling instrument;~~

44 ~~or~~

1 (g) to the extent that any of the foregoing persons may act through an agent, his  
2 authorized agent.

3 (4) ~~Unless otherwise agreed the indorser by his indorsement assumes no~~  
4 ~~obligation that the security will be honored by the issuer.~~

5 (5) ~~An indorsement purporting to be only of part of a security representing units~~  
6 ~~intended by the issuer to be separately transferable is effective to the extent of the~~  
7 ~~indorsement.~~

8 (6) ~~Whether the person signing is appropriate is determined as of the date of~~  
9 ~~signing and an indorsement by such a person does not become unauthorized for the~~  
10 ~~purposes of this article by virtue of any subsequent change of circumstances.~~

11 (7) ~~Failure of a fiduciary to comply with a controlling instrument or with the law~~  
12 ~~of the state having jurisdiction of the fiduciary relationship, including any law requiring~~  
13 ~~the fiduciary to obtain court approval of the transfer, does not render his indorsement~~  
14 ~~unauthorized for the purposes of this article.~~

15 (1) An indorsement of a certificated security in registered form is made when an  
16 appropriate person signs on it or on a separate document an assignment or transfer of  
17 the security or a power to assign or transfer it or his signature is written without more  
18 upon the back of the security.

19 (2) An indorsement may be in blank or special. An indorsement in blank  
20 includes an indorsement to bearer. A special indorsement specifies to whom the  
21 security is to be transferred, or who has power to transfer it. A holder may convert a  
22 blank indorsement into a special indorsement.

23 (3) An indorsement purporting to be only of part of a certificated security  
24 representing units intended by the issuer to be separately transferable is effective to the  
25 extent of the indorsement.

26 (4) An 'instruction' is an order to the issuer of an uncertificated security  
27 requesting that the transfer, pledge, or release from pledge of the uncertificated security  
28 specified therein be registered.

29 (5) An instruction originated by an appropriate person is:

30 (a) A writing signed by an appropriate person; or

31 (b) A communication to the issuer in any form agreed upon in a writing  
32 signed by the issuer and an appropriate person.

33 If an instruction has been originated by an appropriate person but is incomplete in  
34 any other respect, any person may complete it as authorized and the issuer may rely on  
35 it as completed even though it has been completed incorrectly.

36 (6) 'An appropriate person' in subsection (1) means the person specified by the  
37 certificated security or by special indorsement to be entitled to the security.

38 (7) 'An appropriate person' in subsection (5) means:

39 (a) For an instruction to transfer or pledge an uncertificated security which  
40 is then not subject to a registered pledge, the registered owner; or

41 (b) For an instruction to transfer or release an uncertificated security  
42 which is then subject to a registered pledge, the registering pledgee.

43 (8) In addition to the persons designated in subsections (6) and (7) of this section,  
44 'an appropriate person' in subsections (1) and (5) of this section includes:

- 1 (a) If the person designated is described as a fiduciary but is no longer  
2 servicing in the described capacity, either that person or his successor;  
3 (b) If the persons designated are described as more than one person as  
4 fiduciaries and one or more are no longer servicing in the described  
5 capacity, the remaining fiduciary or fiduciaries, whether or not a  
6 successor has been appointed or qualified;  
7 (c) If the person designated is an individual and is without capacity to act  
8 by virtue of death, incompetence, infancy, or otherwise, his executor,  
9 administrator, guardian, or like fiduciary;  
10 (d) If the persons designated are described as more than one person as  
11 tenants by the entirety or with right of survivorship and by reason of  
12 death all cannot sign, the survivor or survivors;  
13 (e) A person having power to sign under applicable law or controlling  
14 instrument; and  
15 (f) To the extent that the person designated or any of the foregoing  
16 persons may act through an agent, his authorized agent.

17 (9) Unless otherwise agreed, the indorser of a certificated security by his  
18 indorsement or the originator of an instruction by his origination assume no obligation  
19 that the security will be honored by the issuer but only the obligations provided in G.S.  
20 25-8-306.

21 (10) Whether the person signing is appropriate is determined as of the date of  
22 signing and an indorsement made by or an instruction originated by him does not  
23 become unauthorized for the purposes of this article by virtue of any subsequent change  
24 of circumstances.

25 (11) Failure of a fiduciary to comply with a controlling instrument or with the law  
26 of the state having jurisdiction of the fiduciary relationship, including any law requiring  
27 the fiduciary to obtain court approval of the transfer, pledge, or release, does not render  
28 his indorsement or an instruction originated by him unauthorized for the purposes of  
29 this article.

30 **"§ 25-8-309. Effect of indorsement without delivery.**

31 An indorsement of a certificated security whether special or in blank does not  
32 constitute a transfer until delivery of the certificated security on which it appears or if  
33 the indorsement is on a separate document until delivery of both the document and the  
34 security.

35 **"§ 25-8-310. Indorsement of security in bearer form.**

36 An indorsement of a certificated security in bearer form may give notice of adverse  
37 claims (G.S. 25-8-304) but does not otherwise affect any right to registration the holder  
38 may possess.

39 **"§ 25-8-311. Effect of unauthorized ~~indorsement~~ indorsement or instruction.**

40 Unless the owner or pledgee has ratified an unauthorized indorsement or instruction  
41 or is otherwise precluded from asserting its ineffectiveness

- 42 (a) He may assert its ineffectiveness against the issuer or any purchaser  
43 other than a purchaser for value and without notice of adverse claims  
44 who has in good faith received a new, reissued or re-registered

1           certificated security on registration of transfer; and transfer or received  
 2           an initial transaction statement confirming the registration of transfer,  
 3           pledge, or release of an equivalent uncertificated security to him; and

- 4           (b) An issuer who registers the transfer of a certificated security upon the  
 5           unauthorized indorsement or who registers the transfer, pledge, or  
 6           release of an uncertificated security upon the unauthorized instruction  
 7           is subject to liability for improper registration (G.S. 25-8-404).

8   "**§ 25-8-312. Effect of guaranteeing signature or indorsement. Effect of guaranteeing**  
 9   **signature, indorsement or instruction.**

10       (1) ~~Any person guaranteeing a signature of an indorser of a security warrants that~~  
 11 ~~at the time of signing~~

- 12       (a) ~~the signature was genuine; and~~  
 13       (b) ~~the signer was an appropriate person to indorse (G.S. 25-8-308); and~~  
 14       (c) ~~the signer had legal capacity to sign.~~

15 ~~But the guarantor does not otherwise warrant the rightfulness of the particular transfer.~~

16       (2) ~~Any person may guarantee an indorsement of a security and by so doing~~  
 17 ~~warrants not only the signature (subsection 1) but also the rightfulness of the particular~~  
 18 ~~transfer in all respects. But no issuer may require a guarantee of indorsement as a~~  
 19 ~~condition to registration of transfer.~~

20       (3) ~~The foregoing warranties are made to any person taking or dealing with the~~  
 21 ~~security in reliance on the guarantee and the guarantor is liable to such person for any~~  
 22 ~~loss resulting from breach of the warranties.~~

23       (1) Any person guaranteeing a signature of an indorser of a certificated security  
 24 warrants that at the time of signing:

- 25       (a) The signature was genuine;  
 26       (b) The signer was an appropriate person to indorse (G.S. 25-8-308); and  
 27       (c) The signer had legal capacity to sign.

28       (2) Any person guaranteeing a signature of the originator of an instruction  
 29 warrants that at the time of signing:

- 30       (a) The signature was genuine;  
 31       (b) The signer was an appropriate person to originate the instruction (G.S.  
 32 25-8-308) if the person specified in the instruction as the registered  
 33 owner or registered pledgee of the uncertificated security was, in fact,  
 34 the registered owner or registered pledgee of the security, as to which  
 35 fact the signature guarantor makes no warranty;

- 36       (c) The signer had legal capacity to sign; and  
 37       (d) The taxpayer identification number, if any, appearing on the  
 38 instruction as that of the registered owner or registered pledgee was the  
 39 taxpayer identification number of the signer or of the owner or pledgee  
 40 for whom the signer was acting.

41       (3) Any person specially guaranteeing the signature of the originator of an  
 42 instruction makes not only the warranties of a signature guarantor (subsection (2) but  
 43 also warrants that at the time the instruction is presented to the issuer:

1           (a) The person specified in the instruction as the registered owner or  
2           registered pledgee of the uncertificated security will be the registered  
3           owner or registered pledgee; and

4           (b) The transfer, pledge, or release of the uncertificated security requested  
5           in the instruction will be registered by the issuer free from all liens,  
6           security interests, restrictions, and claims other than those specified in  
7           the instruction.

8           (4) The guarantor under subsections (1) and (2) or the special guarantor under  
9           subsection (3) does not otherwise warrant the rightfulness of the particular transfer,  
10          pledge, or release.

11          (5) Any person guaranteeing an indorsement of a certificated security makes not  
12          only the warranties of a signature guarantor under subsection (1) but also warrants the  
13          rightfulness of the particular transfer in all respects.

14          (6) Any person guaranteeing an instruction requesting the transfer, pledge, or  
15          release of an uncertificated security makes not only the warranties of a special signature  
16          guarantor under subsection (3) but also warrants the rightfulness of the particular  
17          transfer, pledge, or release in all respects.

18          (7) No issuer may require a special guarantee of signature (subsection (3)), a  
19          guarantee of indorsement (subsection (5)), or a guarantee of instruction (subsection (6))  
20          as a condition to registration of transfer, pledge, or release.

21          (8) The foregoing warranties are made to any person taking or dealing with the  
22          security in reliance on the guarantee, and the guarantor is liable to the person for any  
23          loss resulting from breach of the warranties.

24          "**§ 25-8-313. When delivery to the purchaser occurs; purchaser's broker as holder.**  
25                 **When transfer to purchaser occurs; financial intermediary as bona fide**  
26                 **purchaser; 'financial intermediary'.**

27          (1) ~~Delivery to a purchaser occurs when~~

28           (a) ~~he or a person designated by him acquires possession of a security; or~~

29           (b) ~~his broker acquires possession of a security specially indorsed to or issued in~~  
30          ~~the name of the purchaser; or~~

31           (c) ~~his broker sends him confirmation of the purchase and also by book entry or~~  
32          ~~otherwise identifies a specific security in the broker's possession as belonging to the~~  
33          ~~purchaser; or~~

34           (d) ~~with respect to an identified security to be delivered while still in the~~  
35          ~~possession of a third person when that person acknowledges that he holds for the~~  
36          ~~purchaser; or~~

37           (e) ~~appropriate entries on the books of a clearing corporation are made under~~  
38          ~~G.S. 25-8-320.~~

39          (2) ~~The purchaser is the owner of a security held for him by his broker, but is not~~  
40          ~~the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where~~  
41          ~~a security is part of a fungible bulk the purchaser is the owner of a proportionate~~  
42          ~~property interest in the fungible bulk.~~

43          (3) ~~Notice of an adverse claim received by the broker or by the purchaser after~~  
44          ~~the broker takes delivery as a holder for value is not effective either as to the broker or~~

1 ~~as to the purchaser. However, as between the broker and the purchaser the purchaser~~  
2 ~~may demand delivery of an equivalent security as to which no notice of an adverse~~  
3 ~~claim has been received.~~

4 (1) Transfer of a security or a limited interest (including a security interest)  
5 therein to a purchaser occurs only:

6 (a) At the time he or a person designated by him acquires possession of a  
7 certificated security;

8 (b) At the time the transfer, pledge, or release of an uncertificated security  
9 is registered to him or a person designated by him;

10 (c) At the time his financial intermediary acquires possession of a  
11 certificated security specially indorsed to or issued in the name of the  
12 purchaser;

13 (d) At the time a financial intermediary, not a clearing corporation, sends  
14 him confirmation of the purchase and also by book entry or otherwise  
15 identifies as belonging to the purchaser:

16 (i) A specific certificated security in the financial intermediary's  
17 possession;

18 (ii) A quantity of securities that constitute or are part of a fungible  
19 bulk of certificated securities in the financial intermediary's  
20 possession or of uncertificated securities registered in the name  
21 of the financial intermediary; or

22 (iii) A quantity of securities that constitute or are part of a  
23 fungible bulk of securities shown on the account of the  
24 financial intermediary on the books of another financial  
25 intermediary.

26 (e) With respect to an identified certificated security to be delivered while  
27 still in the possession of a third person, not a financial intermediary, at  
28 the time that person acknowledges that he holds for the purchaser;

29 (f) With respect to a specific uncertificated security the pledge or transfer  
30 of which has been registered to a third person, not a financial  
31 intermediary, at the time that person acknowledges that he holds for  
32 the purchaser;

33 (g) At the time appropriate entries to the account of the purchaser or a  
34 person designated by him on the books of a clearing corporation are  
35 made under G.S. 25-8-320;

36 (h) With respect to the transfer of a security interest where the debtor has  
37 signed a security agreement containing a description of the security, at  
38 the time a written notification, which, in the case of the creation of the  
39 security interest, is signed by the debtor (which may be a copy of the  
40 security agreement) or which, in the case of the release or assignment  
41 of the security interest created pursuant to this paragraph, is signed by  
42 the secured party, is received by:

43 (i) A financial intermediary on whose books the interest of the  
44 transferor in the security appears;

1           (ii) A third person, not a financial intermediary, in possession of the  
2           security, if it is certificated;

3           (iii) A third person, not a financial intermediary, who is the  
4           registered owner of the security, if it is uncertificated and  
5           not subject to a registered pledge; or

6           (iv) A third person, not a financial intermediary, who is the  
7           registered pledgee of the security, if it is uncertificated and  
8           subject to a registered pledge.

9           (i) With respect to the transfer of a security interest where the transferor  
10           has signed a security agreement containing a description of the  
11           security, at the time new value is given by the secured party; or

12           (j) With respect to the transfer of a security interest where the secured  
13           party is a financial intermediary and the security has already been  
14           transferred to the financial intermediary under paragraphs (a), (b), (c),  
15           (d), or (g), at the time the transfer has signed a security agreement  
16           containing a description of the security and value is given by the  
17           secured party.

18           (2) The purchaser is the owner of a security held for him by a financial  
19           intermediary, but cannot be a bona fide purchaser of a security so held except in the  
20           circumstances specified in paragraphs (c), (d), (i), and (g) of subsection (1). If a  
21           security so held is part of a fungible bulk, as in the circumstances specified in paragraph  
22           (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate  
23           property interest in the fungible bulk.

24           (3) Notice of an adverse claim received by the financial intermediary or by the  
25           purchaser after the financial intermediary takes delivery of a certificated security as a  
26           holder for value or after the transfer, pledge, or release of an uncertificated security has  
27           been registered free of the claim to a financial intermediary who has given value is not  
28           effective either as to the financial intermediary or as to the purchaser. However, as  
29           between the financial intermediary and the purchaser, the purchaser may demand  
30           transfer of an equivalent security as to which no notice of adverse claim has been  
31           received.

32           (4) A 'financial intermediary' is a bank, broker, clearing corporation, or other  
33           person (or the nominee of any of them) which in the ordinary course of its business  
34           maintains security accounts for its customers and is acting in that capacity. A financial  
35           intermediary may have a security interest in securities held in account for its customer.

36           "**§ 25-8-314. Duty to delivery, when completed. Duty to transfer, when completed.**

37           ~~(1) Unless otherwise agreed where a sale of a security is made on an exchange or~~  
38           ~~otherwise through brokers~~

39           ~~(a) the selling customer fulfills his duty to deliver when he places such a security~~  
40           ~~in the possession of the selling broker or of a person designated by the broker or if~~  
41           ~~requested causes an acknowledgment to be made to the selling broker that it is held for~~  
42           ~~him; and~~

43           ~~(b) the selling broker including a correspondent broker acting for a selling~~  
44           ~~customer fulfills his duty to deliver by placing the security or a like security in the~~

1 possession of the buying broker or a person designated by him or by effecting clearance  
2 of the sale in accordance with the rules of the exchange on which the transaction took  
3 place.

4 (2) ~~Except as otherwise provided in this section and unless otherwise agreed, a~~  
5 ~~transferor's duty to deliver a security under a contract of purchase is not fulfilled until he~~  
6 ~~places the security in form to be negotiated by the purchaser in the possession of the~~  
7 ~~purchaser or of a person designated by him or at the purchaser's request causes an~~  
8 ~~acknowledgment to be made to the purchaser that it is held for him. Unless made on an~~  
9 ~~exchange a sale to a broker purchasing for his own account is within this subsection and~~  
10 ~~not within subsection (1).~~

11 (1) Unless otherwise agreed, if a sale of a security is made on an exchange or  
12 otherwise through brokers:

13 (a) The selling customer fulfills his duty to transfer at the time he:

14 (i) Places a certificated security in the possession of the selling  
15 broker or a person designated by the broker;

16 (ii) Causes an uncertificated security to be registered in the name of  
17 the selling broker or a person designated by the broker;

18 (iii) If requested, causes an acknowledgment to be made to the  
19 selling broker that a certificated or uncertificated security is  
20 held for the broker; or

21 (iv) Places in the possession of the selling broker or of a person  
22 designated by the broker a transfer instruction for an  
23 uncertificated security, providing the issuer does not refuse to  
24 register the requested transfer if the instruction is presented to  
25 the issuer for registration within 30 days thereafter; and

26 (b) The selling broker, including a correspondent broker acting for a  
27 selling customer, fulfills his duty to transfer at the time he:

28 (i) Places a certificated security in the possession of the buying  
29 broker or a person designated by the buying broker;

30 (ii) Causes an uncertificated security to be registered in the name of  
31 the buying broker or a person designated by the buying broker;

32 (iii) Places in the possession of the buying broker or of a person  
33 designated by the buying broker a transfer instruction for an  
34 uncertificated security, providing the issuer does not refuse  
35 to register the requested transfer if the instruction is  
36 presented to the issuer for registration within 30 days  
37 thereafter; or

38 (iv) Effects clearance of the sale in accordance with the rules of the  
39 exchange on which the transaction took place.

40 (2) Except as provided in this section or unless otherwise agreed, a transferor's  
41 duty to transfer a security under a contract of purchase is not fulfilled until he:

42 (a) Places a certificated security in form to be negotiated by the purchaser  
43 in the possession of the purchaser or of a person designated by the  
44 purchaser;

- 1           (b) Causes an uncertificated security to be registered in the name of the  
2           purchaser or a person designated by the purchaser; or  
3           (c) If the purchaser requests, causes an acknowledgment to be made to the  
4           purchaser that a certificated or uncertificated security is held for the  
5           purchaser.

6           (3) Unless made on an exchange, a sale to a broker purchasing for his own  
7 account is within subsection (2) and not within subsection (1).

8 **"§ 25-8-315. Action against purchaser based upon wrongful transfer. Action against**  
9 **transferee based upon wrongful transfer.**

10           (1) ~~Any person against whom the transfer of a security is wrongful for any~~  
11 ~~reason, including his incapacity, may against anyone except a bona fide purchaser~~  
12 ~~reclaim possession of the security or obtain possession of any new security evidencing~~  
13 ~~all or part of the same rights or have damages.~~

14           (2) ~~If the transfer is wrongful because of an unauthorized indorsement, the owner~~  
15 ~~may also reclaim or obtain possession of the security or new security even from a bona~~  
16 ~~fide purchaser if the ineffectiveness of the purported indorsement can be asserted~~  
17 ~~against him under the provisions of this article on unauthorized indorsements (G.S. 25-~~  
18 ~~8-311).~~

19           (3) ~~The right to obtain or reclaim possession of a security may be specifically~~  
20 ~~enforced and its transfer enjoined and the security impounded pending the litigation.~~

21           (1) Any person against whom the transfer of a security is wrongful for any  
22 reason, including his incapacity, as against anyone except a bona fide purchaser, may:

- 23           (a) Reclaim possession of the certificated security wrongfully transferred;  
24           (b) Obtain possession of any new certificated security representing all or  
25           part of the same rights;  
26           (c) Compel the origination of an instruction to transfer to him or a person  
27           designated by him an uncertificated security constituting all or part of  
28           the same rights; or  
29           (d) Have damages.

30           (2) If the transfer is wrongful because of an unauthorized indorsement of a  
31 certificated security, the owner may also reclaim or obtain possession of the security or  
32 a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the  
33 purported indorsement can be asserted against him under the provisions of this Article  
34 on unauthorized indorsements (G.S. 25-8-311).

35           (3) The right to obtain or reclaim possession of a certificated security or to  
36 compel the origination of a transfer instruction may be specifically enforced and the  
37 transfer of a certificated or uncertificated security enjoined and a certificated security  
38 impounded pending the litigation.

39 **"§ 25-8-316. Purchaser's right to requisites for registration of transfer on books.**  
40 **Purchaser's right to requisites for registration of transfer, pledge, or**  
41 **release on books.**

42 ~~Unless otherwise agreed the transferor must on due demand supply his purchaser~~  
43 ~~with any proof of his authority to transfer or with any other requisite which may be~~  
44 ~~necessary to obtain registration of the transfer of the security but if the transfer is not for~~

1 value a transferor need not do so unless the purchaser furnishes the necessary expenses.  
2 Failure to comply with a demand made within a reasonable time gives the purchaser the  
3 right to reject or rescind the transfer.

4 Unless otherwise agreed, the transferor of a certificated security or the transferor,  
5 pledgor, or pledgee of an uncertificated security on due demand shall supply his  
6 purchaser with any proof of his authority to transfer, pledge, or release or with any other  
7 requisite necessary to obtain registration of the transfer, pledge, or release of the  
8 security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or  
9 pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure  
10 within a reasonable time to comply with a demand made gives the purchaser the right to  
11 reject or rescind the transfer, pledge, or release.

12 **"§ 25-8-317. Attachment or levy upon security. Creditors' rights.**

13 (1) ~~No attachment or levy upon a security or any share or other interest~~  
14 ~~evidenced thereby which is outstanding shall be valid until the security is actually~~  
15 ~~seized by the officer making the attachment or levy but a security which has been~~  
16 ~~surrendered to the issuer may be attached or levied upon at the source.~~

17 (2) ~~A creditor whose debtor is the owner of a security shall be entitled to such aid~~  
18 ~~from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such~~  
19 ~~security or in satisfying the claim by means thereof as is allowed at law or in equity in~~  
20 ~~regard to property which cannot readily be attached or levied upon by ordinary legal~~  
21 ~~process.~~

22 (1) Subject to the exceptions in subsections (3) and (4) of this section, no  
23 attachment or levy upon a certificated security or any share or other interest represented  
24 thereby which is outstanding is valid until the security is actually seized by the officer  
25 making the attachment or levy, but a certificated security which has been surrendered to  
26 the issuer may be reached by a creditor by legal process at the issuer's chief executive  
27 office in the United States.

28 (2) An uncertified security registered in the name of the debtor may not be  
29 reached by a creditor except by legal process at the issuer's chief executive office in the  
30 United States.

31 (3) The interest of a debtor in a certificated security that is in the possession of a  
32 secured party not a financial intermediary or in an uncertificated security registered in  
33 the name of a secured party not a financial intermediary (or in the name of a nominee of  
34 the secured party) may be reached by a creditor by legal process upon the secured party.

35 (4) The interest of a debtor in a certificated security that is in the possession of or  
36 registered in the name of a financial intermediary or in an uncertificated security  
37 registered in the name of a financial intermediary may be reached by a creditor by legal  
38 process upon the financial intermediary on whose books the interests of the debtor  
39 appears.

40 (5) Unless otherwise provided by law, a creditor's lien upon the interest of a  
41 debtor in a security obtained pursuant to subsection (3) or (4) of this section is not a  
42 restraint on the transfer of the security, free of the lien, to a third party for new value;  
43 but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands  
44 of the secured party or financial intermediary, subject to any claims having priority.

1       (6) A creditor whose debtor is the owner of a security is entitled to aid from  
2 courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or  
3 in satisfying the claim by means allowed at law or in equity in regard to property that  
4 cannot readily be reached by ordinary legal process.

5 **"§ 25-8-318. No conversion by good faith ~~delivery.~~ conduct.**

6       An agent or bailee who in good faith (including observance of reasonable  
7 commercial standards if he is in the business of buying, selling or otherwise dealing  
8 with securities) has received certificated securities and sold, pledged or delivered them  
9 or has sold or caused the transfer or pledge of uncertificated securities over which he  
10 had control according to the instructions of his principal is not liable for conversion or  
11 for participation in breach of fiduciary duty although the principal had no right to  
12 ~~dispose of them.~~ so deal with the securities.

13 **"§ 25-8-319. Statute of frauds.**

14       A contract for the sale of securities is not enforceable by way of action or defense  
15 unless

- 16       (a) There is some writing signed by the party against whom enforcement  
17 is sought or by his authorized agent or broker sufficient to indicate that  
18 a contract has been made for sale of a stated quantity of described  
19 securities at a defined or stated price; ~~or~~
- 20       (b) ~~Delivery of the security~~ a certificated security or transfer instruction has  
21 ~~been accepted~~ accepted, or transfer of an uncertificated security has  
22 been registered and the transferee has failed to send written objection  
23 to the issuer within 10 days after receipt of the initial transaction  
24 statement confirming the registration, or payment has been made but  
25 the contract is enforceable under this provision only to the extent of  
26 such delivery or payment; ~~or~~
- 27       (c) Within a reasonable time a writing in confirmation of the sale or  
28 purchase and sufficient against the sender under paragraph (a) has  
29 been received by the party against whom enforcement is sought and he  
30 has failed to send written objection to its contents within ten days after  
31 its receipt; or
- 32       (d) The party against whom enforcement is sought admits in his pleading,  
33 testimony or otherwise in court that a contract was made for sale of a  
34 stated quantity of described securities at a defined or stated price.

35 **"§ 25-8-320. Transfer or pledge within a central depository system.**

36       ~~(1) If a security~~  
37       ~~(a) is in the custody of a clearing corporation or of a custodian bank or a nominee~~  
38 ~~of either subject to the instructions of the clearing corporation; and~~  
39       ~~(b) is in bearer form or indorsed in blank by an appropriate person or registered~~  
40 ~~in the name of the clearing corporation or custodian bank or a nominee of either; and~~  
41       ~~(c) is shown on the account of a transferor or pledgor on the books of the~~  
42 ~~clearing corporation;~~  
43 ~~then, in addition to other methods, a transfer or pledge of the security or any interest~~  
44 ~~therein may be effected by the making of appropriate entries on the books of the~~

~~1 clearing corporation reducing the account of the transferor or pledgor and increasing the  
2 account of the transferee or pledgee by the amount of the obligation or the number of  
3 shares or rights transferred or pledged.~~

~~4 (2) Under this section entries may be with respect to like securities or interests  
5 therein as a part of a fungible bulk and may refer merely to a quantity of a particular  
6 security without reference to the name of the registered owner, certificate or bond  
7 number or the like and, in appropriate cases, may be on a net basis taking into account  
8 other transfers or pledges of the same security.~~

~~9 (3) A transfer or pledge under this section has the effect of a delivery of a  
10 security in bearer form or duly indorsed in blank (G.S. 25-8-301) representing the  
11 amount of the obligation or the number of shares or rights transferred or pledged. If a  
12 pledge or the creation of a security interest is intended, the making of entries has the  
13 effect of a taking of delivery by the pledgee or a secured party (G.S. 25-9-304 and 25-9-  
14 305). A transferee or pledgee under this section is a holder.~~

~~15 (4) A transfer or pledge under this section does not constitute a registration of  
16 transfer under part 4 of this article.~~

~~17 (5) That entries made on the books of the clearing corporation as provided in  
18 subsection (1) are not appropriate does not affect the validity or effect of the entries nor  
19 the liabilities or obligations of the clearing corporation to any person adversely affected  
20 thereby.~~

~~21 (1) In addition to other methods, a transfer, pledge, or release of a security or any  
22 interest therein may be effected by the making of appropriate entries on the books of a  
23 clearing corporation reducing the account of the transferor, pledgor, or pledgee and  
24 increasing the account of the transferee, pledgee, or pledgor by the amount of the  
25 obligation or the number of shares or rights transferred, pledged, or released, if the  
26 security is shown on the account of a transferor, pledgor, or pledgee on the books of the  
27 clearing corporation; is subject to the control of the clearing corporation; and~~

~~28 (a) If certificated,~~

~~29 (i) Is in the custody of the clearing corporation, another clearing  
30 corporation, a custodian bank, or a nominee of any of them; and~~

~~31 (ii) Is in bearer form or indorsed in blank by an appropriate person  
32 or registered in the name of the clearing corporation, a  
33 custodian bank, or a nominee of any of them; or~~

~~34 (b) If uncertificated, is registered in the name of the clearing corporation,  
35 another clearing corporation, a custodian bank, or a nominee of any of  
36 them.~~

~~37 (2) Under this section entries may be made with respect to like securities or  
38 interests therein as a part of a fungible bulk and may refer merely to a quantity of a  
39 particular security without reference to the name of the registered owner, certificate or  
40 bond number, or the like, and, in appropriate cases, may be on a net basis taking into  
41 account other transfers, pledges, or releases of the same security.~~

~~42 (3) A transfer under this section is effective (G.S. 25-8-313) and the purchaser  
43 acquires the rights of the transferor (G.S. 25-8-301). A pledge or release under this  
44 section is the transfer of a limited interest. If a pledge or the creation of a security~~

1 interest is intended, the security interest is perfected at the time when both value is  
2 given by the pledgee and the appropriate entries are made (G.S. 25-8-321). A transferee  
3 or pledgee under this section may be a bona fide purchaser (G.S. 25-8-302).

4 (4) A transfer or pledge under this section is not a registration of transfer under  
5 Part 4 of this Article.

6 (5) That entries made on the books of the clearing corporation as provided in  
7 subsection (1) are not appropriate does not affect the validity or effect of the entries or  
8 the liabilities or obligations of the clearing corporation to any person adversely affected  
9 thereby.

10 **"§ 25-8-321. Enforceability, attachment, perfection and termination of security**  
11 **interests.**

12 (1) A security interest in a security is enforceable and can attach only if it is  
13 transferred to the secured party or a person designated by him pursuant to G.S. 25-8-  
14 313(1).

15 (2) A security interest so transferred pursuant to agreement by a transferor who  
16 has rights in the security to a transferee who has given value is a perfected security  
17 interest, but a security interest that has been transferred solely under paragraph (i) of  
18 G.S. 25-8-313(1) becomes unperfected after 21 days unless, within that time, the  
19 requirements for transfer under any other provision of G.S. 25-8-313(1) are satisfied.

20 (3) A security interest in a security is subject to the provisions of Article 9, but:

21 (a) No filing is required to perfect the security interest; and

22 (b) No written security agreement signed by the debtor is necessary to  
23 make the security interest enforceable, except as provided in paragraph  
24 (h), (i), or (j) of G.S. 25-8-313(1). The secured party has the rights and  
25 duties provided under G.S. 25-9-207, to the extent they are applicable,  
26 whether or not the security is certificated, and, if certificated, whether  
27 or not it is in his possession.

28 (4) Unless otherwise agreed, a security interest in a security is terminated by  
29 transfer to the debtor or a person designated by him pursuant to a provision of G.S. 25-  
30 8-313(1). If a security is thus transferred, the security interest, if not terminated,  
31 becomes unperfected unless the security is certificated and is delivered to the debtor for  
32 the purpose of ultimate sale or exchange or presentation, collection, renewal, or  
33 registration of transfer. In that case, the security interest becomes unperfected after 21  
34 days unless, within that time, the security (or securities for which it has been  
35 exchanged) is transferred to the secured party or a person designated by him pursuant to  
36 a provision of G.S. 25-8-313(1).

37 **"PART 4.**

38 **"REGISTRATION.**

39 **"§ 25-8-401. ~~Duty of issuer to register transfer.~~ Duty of issuer to register transfer,**  
40 **pledge, or release.**

41 ~~(1) Where a security in registered form is presented to the issuer with a request to~~  
42 ~~register transfer, the issuer is under a duty to register the transfer as requested if~~

43 ~~(a) the security is indorsed by the appropriate person or persons (G.S. 25-8-308);~~  
44 ~~and~~

1 ~~(b) reasonable assurance is given that those indorsements are genuine and~~  
2 ~~effective (G.S. 25-8-402); and~~

3 ~~(c) the issuer has no duty to inquire into adverse claims or has discharged any~~  
4 ~~such duty (G.S. 25-8-403); and~~

5 ~~(d) any applicable law relating to the collection of taxes has been complied with;~~  
6 ~~and~~

7 ~~(e) the transfer is in fact rightful or is to a bona fide purchaser.~~

8 ~~(2) Where an issuer is under a duty to register a transfer of a security the issuer is~~  
9 ~~also liable to the person presenting it for registration or his principal for loss resulting~~  
10 ~~from any unreasonable delay in registration or from failure or refusal to register the~~  
11 ~~transfer.~~

12 (1) If a certificated security in registered form is presented to the issuer with a  
13 request to register transfer, or an instruction is presented to the issuer with a request to  
14 register transfer, pledge, or release, the issuer shall register the transfer, pledge, or  
15 release as requested if:

16 (a) The security is indorsed or the instruction was originated by the  
17 appropriate person or persons (G.S. 25-8-308);

18 (b) Reasonable assurance is given that those indorsements or instructions  
19 are genuine and effective (G.S. 25-8-402);

20 (c) The issuer has no duty as to adverse claims or has discharged the duty  
21 (G.S. 25-8-403);

22 (d) Any applicable law relating to the collection of taxes has been  
23 complied with; and

24 (e) The transfer, pledge, or release is in fact rightful or is to a bona fide  
25 purchaser.

26 (2) If an issuer is under a duty to register a transfer, pledge, or release of a  
27 security, the issuer is also liable to the person presenting a certificated security or an  
28 instruction for registration or his principal for loss resulting from any unreasonable  
29 delay in registration or from failure or refusal to register the transfer, pledge, or release.

30 **"§ 25-8-402. Assurance that indorsements are effective. Assurance that indorsements**  
31 **and instructions are effective.**

32 ~~(1) The issuer may require the following assurance that each necessary~~  
33 ~~indorsement (G.S. 25-8-308) is genuine and effective~~

34 ~~(a) in all cases, a guarantee of the signature (subsection (1) of G.S. 25-8-312) of~~  
35 ~~the person indorsing; and~~

36 ~~(b) where the indorsement is by an agent, appropriate assurance of authority to~~  
37 ~~sign;~~

38 ~~(c) where the indorsement is by a fiduciary, appropriate evidence of appointment~~  
39 ~~or incumbency;~~

40 ~~(d) where there is more than one fiduciary, reasonable assurance that all who are~~  
41 ~~required to sign have done so;~~

42 ~~(e) where the indorsement is by a person not covered by any of the foregoing,~~  
43 ~~assurance appropriate to the case corresponding as nearly as may be to the foregoing.~~

1       (2) A "guarantee of the signature" in subsection (1) means a guarantee signed by  
2 or on behalf of a person reasonably believed by the issuer to be responsible. The issuer  
3 may adopt standards with respect to responsibility provided such standards are not  
4 manifestly unreasonable.

5       (3) "Appropriate evidence of appointment or incumbency" in subsection (1)  
6 means

7       (a) in the case of a fiduciary appointed or qualified by a court, a certificate issued  
8 by or under the direction or supervision of that court or an officer thereof and dated  
9 within sixty days before the date of presentation for transfer; or

10       (b) in any other case, a copy of a document showing the appointment or a  
11 certificate issued by or on behalf of a person reasonably believed by the issuer to be  
12 responsible or, in the absence of such a document or certificate, other evidence  
13 reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with  
14 respect to such evidence provided such standards are not manifestly unreasonable. The  
15 issuer is not charged with notice of the contents of any document obtained pursuant to  
16 this paragraph (b) except to the extent that the contents relate directly to the  
17 appointment or incumbency.

18       (4) The issuer may elect to require reasonable assurance beyond that specified in  
19 this section but if it does so and for a purpose other than that specified in subsection (3)  
20 (b) both requires and obtains a copy of a will, trust, indenture, articles of copartnership,  
21 bylaws or other controlling instrument it is charged with notice of all matters contained  
22 therein affecting the transfer.

23       (1) The issuer may require the following assurance that each necessary  
24 indorsement of a certificated security or each instruction (G.S. 25-8-308) is genuine and  
25 effective:

26       (a) In all cases, a guarantee of the signature (G.S. 25-8-312 (1) or (2)) of  
27 the person indorsing a certificated security or originating an instruction  
28 including, in the case of an instruction, a warranty of the taxpayer  
29 identification number or, in the absence thereof, other reasonable  
30 assurance of identity;

31       (b) If the indorsement is made or the instruction is originated by an agent,  
32 appropriate assurance of authority to sign;

33       (c) If the indorsement is made or the instruction is originated by a  
34 fiduciary, appropriate evidence of appointment or incumbency;

35       (d) If there is more than one fiduciary, reasonable assurance that all who  
36 are required to sign have done so; and

37       (e) If the indorsement is made or the instruction is originated by a person  
38 not covered by any of the foregoing, assurance appropriate to the case  
39 corresponding as nearly as may be to the foregoing.

40       (2) A 'guarantee of the signature' in subsection (1) means a guarantee signed by  
41 or on behalf of a person reasonably believed by the issuer to be responsible. The issuer  
42 may adopt standards with respect to responsibility if they are not manifestly  
43 unreasonable.

1       (3) 'Appropriate evidence of appointment or incumbency' in subsection (1)  
2 means:

3           (a) In the case of a fiduciary appointed or qualified by a court, a certificate  
4 issued by or under the direction or supervision of that court or an  
5 officer thereof and dated within 60 days before the date of presentation  
6 for transfer, pledge, or release; or

7           (b) In any other case, a copy of a document showing the appointment or a  
8 certificate issued by or on behalf of a person reasonably believed by  
9 the issuer to be responsible or, in the absence of that document or  
10 certificate, other evidence reasonably deemed by the issuer to be  
11 appropriate. The issuer may adopt standards with respect to the  
12 evidence if they are not manifestly unreasonable. The issuer is not  
13 charged with notice of the contents of any document obtained pursuant  
14 to this paragraph except to the extent that the contents relate directly to  
15 the appointment or incumbency.

16       (4) The issuer may elect to require reasonable assurance beyond that specified in  
17 this section, but if it does so and, for a purpose other than that specified in subsection  
18 (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of co-  
19 partnership, bylaws, or other controlling instrument, it is charged with notice of all  
20 matters contained therein affecting the transfer, pledge, or release.

21 **"§ 25-8-403. Limited duty of inquiry. Issuer's duty as to adverse claims.**

22       (1) An issuer to whom a certificated security is presented for registration is under  
23 a duty to inquire into adverse claims if

24           (a) A written notification of an adverse claim is received at a time and in a  
25 manner which affords the issuer a reasonable opportunity to act on it  
26 prior to the issuance of a new, reissued or re-registered certificated  
27 security and the notification identifies the claimant, the registered  
28 owner and the issue of which the security is a part and provides an  
29 address for communications directed to the claimant; or

30           (b) The issuer is charged with notice of an adverse claim from a  
31 controlling instrument which it has elected to require under ~~subsection~~  
32 (4) of G.S. 25-8-402. G.S. 25-8-402(4).

33       (2) The issuer may discharge any duty of inquiry by any reasonable means,  
34 including notifying an adverse claimant by registered or certified mail at the address  
35 furnished by him or if there be no such address at his residence or regular place of  
36 business that the certificated security has been presented for registration of transfer by a  
37 named person, and that the transfer will be registered unless within thirty days from the  
38 date of mailing the notification, either

39           (a) An appropriate restraining order, injunction or other process issues  
40 from a court of competent jurisdiction; or

41           (b) There is filed with the issuer an indemnity bond sufficient in the  
42 issuer's judgment to protect the issuer and any transfer agent, registrar  
43 or other agent of the issuer involved, from any loss which it or they

1                   may suffer by complying with the adverse claim ~~is filed with the issuer.~~  
2                   claim.

3           (3)    Unless an issuer is charged with notice of an adverse claim from a controlling  
4 instrument which it has elected to require under ~~subsection (4) of G.S. 25-8-402~~ G.S. 25-  
5 8-402(4) or receives notification of an adverse claim under subsection (1) of this  
6 section, ~~where a~~ if a certificated security presented for registration is indorsed by the  
7 appropriate person or persons the issuer is under no duty to inquire into adverse claims.  
8 In particular

9           (a)    An issuer registering a security in the name of a person who is a  
10 fiduciary or who is described as a fiduciary is not bound to inquire into  
11 the existence, extent, or correct description of the fiduciary  
12 relationship and thereafter the issuer may assume without inquiry that  
13 the newly registered owner continues to be the fiduciary until the  
14 issuer receives written notice that the fiduciary is no longer acting as  
15 such with respect to the particular security;

16           (b)    An issuer registering transfer on an indorsement by a fiduciary is not  
17 bound to inquire whether the transfer is made in compliance with a  
18 controlling instrument or with the law of the state having jurisdiction  
19 of the fiduciary relationship, including any law requiring the fiduciary  
20 to obtain court approval of the transfer; and

21           (c)    The issuer is not charged with notice of the contents of any court  
22 record or file or other recorded or unrecorded document even though  
23 the document is in its possession and even though the transfer is made  
24 on the indorsement of a fiduciary to the fiduciary himself or to his  
25 nominee.

26           (4)    ~~Neither this section nor this Article shall be construed to repeal the provisions~~  
27 ~~of Article 2 of Chapter 32 entitled the Uniform Act for the Simplification of Fiduciary~~  
28 ~~Security Transfers, and if there is in any respect an inconsistency between Article 2 of~~  
29 ~~Chapter 32 and this Article the provisions of the former shall control.~~

30           (4)    An issuer is under no duty as to adverse claims with respect to an  
31 uncertificated security except:

32           (a)    Claims embodied in a restraining order, injunction, or other legal  
33 process served upon the issuer if the process was served at a time and  
34 in a manner affording the issuer a reasonable opportunity to act on it in  
35 accordance with the requirements of subsection (5);

36           (b)    Claims of which the issuer has received a written notification from the  
37 registered owner or the registered pledgee if the notification was  
38 received at a time and in a manner affording the issuer a reasonable  
39 opportunity to act on it in accordance with the requirements of  
40 subsection (5);

41           (c)    Claims (including restrictions on transfer not imposed by the issuer) to  
42 which the registration of transfer to the present registered owner was  
43 subject and were so noted in the initial transaction statement sent to  
44 him; and

1           (d) Claims as to which an issuer is charged with notice from a controlling  
2           instrument it has elected to require under G.S. 25-8-402(4).

3           (5) If the issuer of an uncertificated security is under a duty as to an adverse  
4 claim, he discharges that duty by:

5           (a) Including a notation of the claim in any statements sent with respect to  
6 the security under G.S. 25-8-408(3), (6), and (7); and

7           (b) Refusing to register the transfer or pledge of the security unless the  
8 nature of the claim does not preclude transfer or pledge subject thereto.

9           (6) If the transfer or pledge of the security is registered subject to an adverse  
10 claim, a notation of the claim must be included in the initial transaction statement and  
11 all subsequent statements sent to the transferee and pledgee under G.S. 25-8-4.

12           (7) Notwithstanding subsections (4) and (5), if an uncertificated security was  
13 subject to a registered pledge at the time the issuer first came under a duty as to a  
14 particular adverse claim, the issuer has no duty as to that claim if transfer of the security  
15 is requested by the registered pledgee or an appropriate person acting for the registered  
16 pledgee unless:

17           (a) The claim was embodied in legal process which expressly provides  
18 otherwise;

19           (b) The claim was asserted in a written notification from the registered  
20 pledgee;

21           (c) The claim was one as to which the issuer was charged with notice from  
22 a controlling instrument it required under G.S. 25-8-402(4) in  
23 connection with the pledgee's request for transfer; or

24           (d) The transfer requested is to the registered owner.

25 **"§ 25-8-404. Liability and nonliability for registration.**

26           (1) Except as otherwise provided in any law relating to the collection of taxes,  
27 the issuer is not liable to the ~~owner~~-owner, pledgee, or any other person suffering loss as  
28 a result of the registration of a ~~transfer~~-transfer, pledge, or release of a security if

29           (a) There were on or with ~~the~~—a certificated security the necessary  
30 indorsements (G.S. 25-8-308); and—or the issuer has received an  
31 instruction originated by an appropriate person (G.S. 25-8-308); and

32           (b) The issuer had no duty to inquire into adverse claims or has discharged  
33 any ~~such~~—the duty (G.S. 25-8-403).

34           (2) ~~Where~~—If an issuer has registered a transfer of a certificated security to a  
35 person not entitled to it the issuer on demand ~~must~~—shall deliver a like security to the true  
36 owner unless

37           (a) The registration was pursuant to subsection (1); or

38           (b) The owner is precluded from asserting any claim for registering the  
39 transfer under ~~subsection (1) of the following section [G.S. 25-8-405];~~  
40 G.S. 25-8-405(1); or

41           (c) ~~Such~~—The delivery would result in overissue, in which case the issuer's  
42 liability is governed by G.S. 25-8-104.

43           (3) If an issuer has improperly registered a transfer, pledge, or release of an  
44 uncertificated security, the issuer on demand from the injured party shall restore the

1 records as to the injured party to the condition that would have obtained if the improper  
2 registration had not been made unless:

3 (a) The registration was pursuant to subsection (1); or

4 (b) The registration would result in overissue, in which case the issuer's  
5 liability is governed by G.S. 25-8-104.

6 **"§ 25-8-405. Lost, destroyed and stolen certificated securities.**

7 (1) ~~Where a~~ If a certificated security has been lost, apparently destroyed or  
8 wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable  
9 time after he has notice of it and the issuer registers a transfer of the security before  
10 receiving such a notification, the owner is precluded from asserting against the issuer  
11 any claim for registering the transfer under the preceding section [G.S. 25-8-404] G.S. 25-  
12 8-404 or any claim to a new security under this section.

13 (2) ~~Where~~ If the owner of a certificated security claims that the security has been  
14 lost, destroyed or wrongfully taken, the issuer ~~must~~ shall issue a new certificated  
15 security or, at the option of the issuer, an equivalent uncertificated security in place of  
16 the original security if the owner

17 (a) So requests before the issuer has notice that the security has been  
18 acquired by a bona fide purchaser; and

19 (b) Files with the issuer a sufficient indemnity bond; and

20 (c) Satisfies any other reasonable requirements imposed by the issuer.

21 (3) If, after the issue of ~~the new~~ a new certificated or uncertificated security, a  
22 bona fide purchaser of the original certificated security presents it for registration of  
23 transfer, the issuer ~~must~~ shall register the transfer unless registration would result in  
24 overissue, in which event the issuer's liability is governed by G.S. 25-8-104. In addition  
25 to any rights on the indemnity bond, the issuer may recover the new certificated security  
26 from the person to whom it was issued or any person taking under him except a bona  
27 fide ~~purchaser~~ purchaser or may cancel the uncertificated security unless a bona fide  
28 purchaser or any person taking under a bona fide purchaser is then the registered owner  
29 or registered pledgee thereof.

30 **"§ 25-8-406. Duty of authenticating trustee, transfer agent or registrar.**

31 (1) ~~Where~~ If a person acts as authenticating trustee, transfer agent, registrar, or  
32 other agent for an issuer in the registration of transfers of its certificated securities or in  
33 the registration of transfers, pledges, and releases of its uncertificated securities, in the  
34 issue of new securities or in the cancellation of surrendered securities

35 (a) He is under a duty to the issuer to exercise good faith and due  
36 diligence in performing his functions; and

37 (b) ~~He has with~~ With regard to the particular functions he performs  
38 performs, he has the same obligation to the holder or owner of ~~the a~~  
39 certificated security or to the owner or pledgee of an uncertificated  
40 security and has the same rights and privileges as the issuer has in  
41 regard to those functions.

42 (2) Notice to an authenticating trustee, transfer agent, registrar or other such  
43 agent is notice to the issuer with respect to the functions performed by the agent.

44 **"§ 25-8-407. Exchangeability of securities.**

1       (1) No issuer is subject to the requirements of this section unless it regularly  
2 maintains a system for issuing the class of securities involved under which both  
3 certificated and uncertificated securities are regularly issued to the category of owners,  
4 which includes the person in whose name the new security is to be registered.

5       (2) Upon surrender of a certificated security with all necessary indorsements and  
6 presentation of a written request by the person surrendering the security, the issuer, if he  
7 has no duty as to adverse claims or has discharged the duty (G.S. 25-8-403), shall issue  
8 to the person or a person designated by him an equivalent uncertificated security subject  
9 to all liens, restrictions, and claims that were noted on the certificated security.

10       (3) Upon receipt of a transfer instruction originated by an appropriate person who  
11 so requests, the issuer of an uncertificated security shall cancel the uncertificated  
12 security and issue an equivalent certificated security on which must be noted  
13 conspicuously any liens and restrictions of the issuer and any adverse claims (as to  
14 which the issuer has a duty under G.S. 25-8-403(4)) to which the uncertificated security  
15 was subject. The certificated security shall be registered in the name of and delivered  
16 to:

- 17           (a) The registered owner, if the uncertificated security was not subject to a  
18 registered pledge; or  
19           (b) The registered pledgee, if the uncertificated security was subject to a  
20 registered pledge.

21 **"§ 25-8-408. Statements of uncertificated securities.**

22       (1) Within two business days after the transfer of an uncertificated security has  
23 been registered, the issuer shall send to the new registered owner and, if the security has  
24 been transferred subject to a registered pledge, to the registered pledgee a written  
25 statement containing:

- 26           (a) A description of the issue of which the uncertificated security is a part;  
27           (b) The number of shares or units transferred;  
28           (c) The name and address and any taxpayer identification number of the  
29 new registered owner and, if the security has been transferred subject  
30 to a registered pledge, the name and address and any taxpayer  
31 identification number of the registered pledgee;  
32           (d) A notation of any liens and restrictions of the issuer and any adverse  
33 claims (as to which the issuer has a duty under G.S. 25-8-403(4)) to  
34 which the uncertificated security is or may be subject at the time of  
35 registration or a statement that there are none of those liens,  
36 restrictions, or adverse claims; and  
37           (e) The date the transfer was registered.

38       (2) Within two business days after the pledge of an uncertificated security has  
39 been registered, the issuer shall send to the registered owner and the registered pledgee  
40 a written statement containing:

- 41           (a) A description of the issue of which the uncertificated security is a part;  
42           (b) The number of shares or units pledged;  
43           (c) The name and address and any taxpayer identification number of the  
44 registered owner and the registered pledgee;

- 1           (d) A notation of any liens and restrictions of the issuer and any adverse  
2           claims (as to which the issuer has duty under G.S. 25-8-403(4)) to  
3           which the uncertificated security is or may be subject at the time of  
4           registration or a statement that there are none of those liens,  
5           restrictions, or adverse claims; and  
6           (e) The date the pledge was registered.
- 7       (3) Within two business days after the release from pledge of an uncertificated  
8 security has been registered, the issuer shall send to the registered owner and the  
9 pledgee whose interest was released a written statement containing:
- 10           (a) A description of the issue of which the uncertificated security is a part;  
11           (b) The number of shares or units released from pledge;  
12           (c) The name and address and any taxpayer identification number of the  
13           registered owner and the pledgee whose interest was released;  
14           (d) A notation of any liens and restrictions of the issuer and any adverse  
15           claims (as to which the issuer has duty under G.S. 25-8-403(4)) to  
16           which the uncertificated security is or may be subject at the time of  
17           registration or a statement that there are none of those liens,  
18           restrictions, or adverse claims; and  
19           (e) The date the release was registered.
- 20       (4) An 'initial transaction statement' is the statement sent to:
- 21           (a) The new registered owner and, if applicable, to the registered pledgee  
22           pursuant to subsection (1);  
23           (b) The registered pledgee pursuant to subsection (2); or  
24           (c) The registered owner pursuant to subsection (3).
- 25       Each initial transaction statement shall be signed by or on behalf of the issuer and  
26 must be identified as 'initial transaction statement'.
- 27       (5) Within two business days after the transfer of an uncertificated security has  
28 been registered, the issuer shall send to the former registered owner and the former  
29 registered pledgee, if any, a written statement containing:
- 30           (a) A description of the issue of which the uncertificated security is a part;  
31           (b) The number of shares or units transferred;  
32           (c) The name and address and any taxpayer identification number of the  
33           former registered owner and of any former registered pledgee; and  
34           (d) The date the transfer was registered.
- 35       (6) At periodic intervals no less frequent than annually and at any time upon the  
36 reasonable written request of the registered owner, the issuer shall send to the registered  
37 owner of each uncertificated security a dated written statement containing:
- 38           (a) A description of the issue of which the uncertificated security is a part;  
39           (b) The name and address and any taxpayer identification number of the  
40           registered owner;  
41           (c) The number of shares or units of the uncertificated security registered  
42           in the name of the registered owner on the date of the statement;

1           (d) The name and address and any taxpayer identification number of any  
2           registered pledgee and the number of shares or units subject to the  
3           pledge; and

4           (e) A notation of any liens and restrictions of the issuer and any adverse  
5           claims (as to which the issuer has duty under G.S. 25-8-403(4)) to  
6           which the uncertificated security is or may be subject at the time of  
7           registration or a statement that there are none of those liens,  
8           restrictions, or adverse claims.

9           (7) At periodic intervals no less frequent than annually and at any time upon the  
10 reasonable written request of the registered pledgee, the issuer shall send to the  
11 registered pledgee of each uncertificated security a dated written statement containing:

12           (a) A description of the issue of which the uncertificated security is a part;

13           (b) The name and address and any taxpayer identification number of the  
14 registered owner;

15           (c) The name and address and any taxpayer identification number of the  
16 registered pledgee;

17           (d) The number of shares or units subject to the pledge; and

18           (e) A notation of any liens and restrictions of the issuer and any adverse  
19 claims (as to which the issuer has duty under G.S. 25-8-403(4)) to  
20 which the uncertificated security is or may be subject at the time of  
21 registration or a statement that there are none of those liens,  
22 restrictions, or adverse claims.

23           (8) If the issuer sends the statements described in subsections (6) and (7) at  
24 periodic intervals no less frequent than quarterly, the issuer is not obliged to send  
25 additional statements upon request unless the owner or pledgee requesting them pays to  
26 the issuer the reasonable cost of furnishing them.

27           (9) Each statement sent pursuant to this section must bear a conspicuous legend  
28 reading substantially as follows: "This statement is merely a record of the rights of the  
29 addressee as of the time of its issuance. Delivery of this statement, of itself, confers no  
30 rights on the recipient. This statement is neither a negotiable instrument nor a  
31 security."

32           Sec. 2. The Revisor of Statutes shall cause to be printed along with this act  
33 all relevant portions of the Official Comments to the 1977 amendments to Article 8 of  
34 the Uniform Commercial Code as prepared by the Commissioners on Uniform State  
35 Laws and such other explanatory comments as the Revisor may deem appropriate.

36           Sec. 3. This act shall become effective October 1, 1989.