

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 245*

Short Title: Letters of Credit UCC Rewrite/AB.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

March 4, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT REVISED ARTICLE 5 OF THE UNIFORM COMMERCIAL
3 CODE AND CONFORMING AND MISCELLANEOUS AMENDMENTS TO THE
4 UNIFORM COMMERCIAL CODE, AS RECOMMENDED BY THE GENERAL
5 STATUTES COMMISSION.

6 The General Assembly of North Carolina enacts:

7 Section 1. Article 5 of Chapter 25 of the General Statutes is rewritten to read:

8 **"ARTICLE 5.**

9 **"LETTERS OF CREDIT.**

10 **"§ 25-5-101. Short title.**

11 This Article may be cited as Uniform Commercial Code – Letters of Credit.

12 **"§ 25-5-102. Definitions.**

13 (a) In this Article:

14 (1) 'Adviser' means a person who, at the request of the issuer, a confirmer,
15 or another adviser, notifies or requests another adviser to notify the
16 beneficiary that a letter of credit has been issued, confirmed, or
17 amended.

18 (2) 'Applicant' means a person at whose request or for whose account a
19 letter of credit is issued. The term includes a person who requests an

- 1 issuer to issue a letter of credit on behalf of another if the person making
2 the request undertakes an obligation to reimburse the issuer.
- 3 (3) 'Beneficiary' means a person who under the terms of a letter of credit is
4 entitled to have that person's complying presentation honored. The
5 term includes a person to whom drawing rights have been transferred
6 under a transferable letter of credit.
- 7 (4) 'Confirmer' means a nominated person who undertakes, at the request or
8 with the consent of the issuer, to honor a presentation under a letter of
9 credit issued by another.
- 10 (5) 'Dishonor' of a letter of credit means timely failure to honor or to take an
11 interim action, such as acceptance of a draft, that may be required by the
12 letter of credit.
- 13 (6) 'Document' means a draft or other demand, document of title,
14 investment security, certificate, invoice, or other record, statement, or
15 representation of fact, law, right, or opinion (i) which is presented in a
16 written or other medium permitted by the letter of credit or, unless
17 prohibited by the letter of credit, by the standard practice referred to in
18 G.S. 25-5-108(e) and (ii) which is capable of being examined for
19 compliance with the terms and conditions of the letter of credit. A
20 document may not be oral.
- 21 (7) 'Good faith' means honesty in fact in the conduct or transaction
22 concerned.
- 23 (8) 'Honor' of a letter of credit means performance of the issuer's
24 undertaking in the letter of credit to pay or deliver an item of value.
25 Unless the letter of credit otherwise provides, 'honor' occurs:
26 a. Upon payment;
27 b. If the letter of credit provides for acceptance, upon acceptance of
28 a draft and, at maturity, its payment; or
29 c. If the letter of credit provides for incurring a deferred obligation,
30 upon incurring the obligation and, at maturity, its performance.
- 31 (9) 'Issuer' means a bank or other person that issues a letter of credit, but
32 does not include an individual who makes an engagement for personal,
33 family, or household purposes.
- 34 (10) 'Letter of credit' means a definite undertaking that satisfies the
35 requirements of G.S. 25-5-104 by an issuer to a beneficiary at the
36 request or for the account of an applicant or, in the case of a financial
37 institution, to itself or for its own account, to honor a documentary
38 presentation by payment or delivery of an item of value.
- 39 (11) 'Nominated person' means a person whom the issuer (i) designates or
40 authorizes to pay, accept, negotiate, or otherwise give value under a
41 letter of credit and (ii) undertakes by agreement or custom and practice
42 to reimburse.

1 Consideration is not required to issue, amend, transfer, or cancel a letter of credit,
2 advice, or confirmation.

3 **"§ 25-5-106. Issuance, amendment, cancellation, and duration.**

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

7 (b) After a letter of credit is issued, rights and obligations of a beneficiary,
8 applicant, confirmer, and issuer are not affected by an amendment or cancellation to
9 which that person has not consented except to the extent the letter of credit provides that
10 it is revocable or that the issuer may amend or cancel the letter of credit without that
11 consent.

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

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

17 **"§ 25-5-107. Confirmer, nominated person, and adviser.**

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

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

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

31 (d) A person who notifies a transferee beneficiary of the terms of a letter of credit,
32 confirmation, amendment, or advice has the rights and obligations of an adviser under
33 subsection (c) of this section. The terms in the notice to the transferee beneficiary may
34 differ from the terms in any notice to the transferor beneficiary to the extent permitted by
35 the letter of credit, confirmation, amendment, or advice received by the person who so
36 notifies.

37 **"§ 25-5-108. Issuer's rights and obligations.**

38 (a) Except as otherwise provided in G.S. 25-5-109, an issuer shall honor a
39 presentation that, as determined by the standard practice referred to in subsection (e) of
40 this section, appears on its face strictly to comply with the terms and conditions of the
41 letter of credit. Except as otherwise provided in G.S. 25-5-113 and unless otherwise
42 agreed with the applicant, an issuer shall dishonor a presentation that does not appear so
43 to comply.

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

3 **(1)** To honor;

4 **(2)** If the letter of credit provides for honor to be completed more than
5 seven business days after presentation, to accept a draft or incur a
6 deferred obligation; or

7 **(3)** To give notice to the presenter of discrepancies in the presentation.

8 **(c)** Except as otherwise provided in subsection (d) of this section, an issuer is
9 precluded from asserting as a basis for dishonor any discrepancy if timely notice is not
10 given or any discrepancy not stated in the notice if timely notice is given.

11 **(d)** Failure to give the notice specified in subsection (b) of this section or to
12 mention fraud, forgery, or expiration in the notice does not preclude the issuer from
13 asserting as a basis for dishonor (i) fraud or forgery as described in G.S. 25-5-109(a) or
14 (ii) expiration of the letter of credit before presentation.

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

19 **(f)** An issuer is not responsible for:

20 **(1)** The performance or nonperformance of the underlying contract,
21 arrangement, or transaction;

22 **(2)** An act or omission of others; or

23 **(3)** Observance or knowledge of the usage of a particular trade other than
24 the standard practice referred to in subsection (e) of this section.

25 **(g)** If an undertaking constituting a letter of credit under G.S. 25-5-102(a)(10)
26 contains nondocumentary conditions, an issuer shall disregard the nondocumentary
27 conditions and treat them as if they were not stated.

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

30 **(i)** An issuer that has honored a presentation as permitted or required by this
31 Article:

32 **(1)** Is entitled to be reimbursed by the applicant in immediately available
33 funds not later than the date of its payment of funds;

34 **(2)** Takes the documents free of claims of the beneficiary or presenter;

35 **(3)** Is precluded from asserting a right of recourse on a draft under G.S. 25-
36 3-414 and G.S. 25-3-415;

37 **(4)** Except as otherwise provided in G.S. 25-5-110 and G.S. 25-5-117, is
38 precluded from restitution of money paid or other value given by
39 mistake to the extent the mistake concerns discrepancies in the
40 documents or tender that are apparent on the face of the presentation;
41 and

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

4 **"§ 25-5-109. Fraud and forgery.**

5 (a) If a presentation is made that appears on its face strictly to comply with the
6 terms and conditions of the letter of credit, but a required document is forged or
7 materially fraudulent, or honor of the presentation would facilitate a material fraud by the
8 beneficiary on the issuer or applicant:

- 9 (1) The issuer shall honor the presentation, if honor is demanded by (i) a
10 nominated person who has given value in good faith and without notice
11 of forgery or material fraud, (ii) a confirmer who has honored its
12 confirmation in good faith, (iii) a holder in due course of a draft drawn
13 under the letter of credit which was taken after acceptance by the issuer
14 or nominated person, or (iv) an assignee of the issuer's or nominated
15 person's deferred obligation that was taken for value and without notice
16 of forgery or material fraud after the obligation was incurred by the
17 issuer or nominated person; and
18 (2) The issuer, acting in good faith, may honor or dishonor the presentation
19 in any other case.

20 (b) If an applicant claims that a required document is forged or materially
21 fraudulent or that honor of the presentation would facilitate a material fraud by the
22 beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily
23 or permanently enjoin the issuer from honoring a presentation or grant similar relief
24 against the issuer or other persons only if the court finds that:

- 25 (1) The relief is not prohibited under the law applicable to an accepted draft
26 or deferred obligation incurred by the issuer;
27 (2) A beneficiary, issuer, or nominated person who may be adversely
28 affected is adequately protected against loss that it may suffer because
29 the relief is granted;
30 (3) All of the conditions to entitle a person to the relief under the law of this
31 State have been met; and
32 (4) On the basis of the information submitted to the court, the applicant is
33 more likely than not to succeed under its claim of forgery or material
34 fraud and the person demanding honor does not qualify for protection
35 under subdivision (a)(1) of this section.

36 **"§ 25-5-110. Warranties.**

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

- 38 (1) To the issuer, any other person to whom presentation is made, and the
39 applicant that there is no fraud or forgery of the kind described in G.S.
40 25-5-109(a); and
41 (2) To the applicant that the drawing does not violate any agreement
42 between the applicant and beneficiary or any other agreement intended
43 by them to be augmented by the letter of credit.

1 (b) The warranties in subsection (a) of this section are in addition to warranties
2 arising under Articles 3, 4, 7, and 8 of this Chapter because of the presentation or transfer
3 of documents covered by any of those Articles.

4 **"§ 25-5-111. Remedies.**

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

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

21 (c) If an adviser or nominated person other than a confirmer breaches an
22 obligation under this Article or an issuer breaches an obligation not covered in subsection
23 (a) or (b) of this section, a person to whom the obligation is owed may recover damages
24 resulting from the breach, including incidental but not consequential damages, less any
25 amount saved as a result of the breach. To the extent of the confirmation, a confirmer has
26 the liability of an issuer specified in this subsection and subsections (a) and (b) of this
27 section.

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

31 (e) Reasonable attorneys' fees and other expenses of litigation must be awarded to
32 the prevailing party in an action in which a remedy is sought under this Article, and G.S.
33 6-21.2 shall not apply.

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

37 **"§ 25-5-112. Transfer of letter of credit.**

38 (a) Except as otherwise provided in G.S. 25-5-113, unless a letter of credit
39 provides that it is transferable, the right of a beneficiary to draw or otherwise demand
40 performance under a letter of credit may not be transferred.

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

43 (1) The transfer would violate applicable law; or

1 (2) The transferor or transferee has failed to comply with any requirement
2 stated in the letter of credit or any other requirement relating to transfer
3 imposed by the issuer which is within the standard practice referred to
4 in G.S. 25-5-108(e) or is otherwise reasonable under the circumstances.

5 **"§ 25-5-113. Transfer by operation of law.**

6 (a) A successor of a beneficiary may consent to amendments, sign and present
7 documents, and receive payment or other items of value in the name of the beneficiary
8 without disclosing its status as a successor.

9 (b) A successor of a beneficiary may consent to amendments, sign and present
10 documents, and receive payment or other items of value in its own name as the disclosed
11 successor of the beneficiary. Except as otherwise provided in subsection (e) of this
12 section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in
13 full substitution for its predecessor upon compliance with the requirements for
14 recognition by the issuer of a transfer of drawing rights by operation of law under the
15 standard practice referred to in G.S. 25-5-108(e) or, in the absence of such a practice,
16 compliance with other reasonable procedures sufficient to protect the issuer.

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

20 (d) Honor of a purported successor's apparently complying presentation under
21 subsection (a) or (b) of this section has the consequences specified in G.S. 25-5-108(i)
22 even if the purported successor is not the successor of a beneficiary. Documents signed
23 in the name of the beneficiary or of a disclosed successor by a person who is neither the
24 beneficiary nor the successor of the beneficiary are forged documents for the purposes of
25 G.S. 25-5-109.

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

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

31 **"§ 25-5-114. Assignment of proceeds.**

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

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

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

42 (d) An issuer or nominated person has no obligation to give or withhold its consent
43 to an assignment of proceeds of a letter of credit, but consent may not be unreasonably

1 withheld if the assignee possesses and exhibits the letter of credit and presentation of the
2 letter of credit is a condition to honor.

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

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

16 **"§ 25-5-115. Statute of limitations.**

17 An action to enforce a right or obligation arising under this Article must be
18 commenced within one year after the expiration date of the relevant letter of credit or one
19 year after the claim for relief accrues, whichever occurs later. A claim for relief accrues
20 when the breach occurs, regardless of the aggrieved party's lack of knowledge of the
21 breach.

22 **"§ 25-5-116. Choice of law and forum.**

23 (a) The liability of an issuer, nominated person, or adviser for action or omission
24 is governed by the law of the jurisdiction chosen by an agreement in the form of a record
25 signed or otherwise authenticated by the affected parties in the manner provided in G.S.
26 25-5-104 or by a provision in the person's letter of credit, confirmation, or other
27 undertaking. The jurisdiction whose law is chosen need not bear any relation to the
28 transaction.

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

38 (c) Except as otherwise provided in this subsection, the liability of an issuer,
39 nominated person, or adviser is governed by any rules of custom or practice, such as the
40 Uniform Customs and Practice for Documentary Credits, to which the letter of credit,
41 confirmation, or other undertaking is expressly made subject. If (i) this Article would
42 govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b)
43 of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and

1 (iii) there is a conflict between this Article and those rules as applied to that undertaking,
2 those rules govern except to the extent of any conflict with the nonvariable provisions
3 specified in G.S. 25-5-103(c).

4 (d) If there is conflict between this Article and Article 3, 4, 4A, or 9 of this
5 Chapter, this Article governs.

6 (e) Notwithstanding G.S. 22B-3, the forum for settling disputes arising out of an
7 undertaking within this Article may be chosen in the manner and with the binding effect
8 that governing law may be chosen in accordance with subsection (a) of this section.

9 **"§ 25-5-117. Subrogation of issuer, applicant, and nominated person.**

10 (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of
11 the beneficiary to the same extent as if the issuer were a secondary obligor of the
12 underlying obligation owed to the beneficiary and of the applicant to the same extent as if
13 the issuer were the secondary obligor of the underlying obligation owed to the applicant.

14 (b) An applicant that reimburses an issuer is subrogated to the rights of the issuer
15 against any beneficiary, presenter, or nominated person to the same extent as if the
16 applicant were the secondary obligor of the obligations owed to the issuer and has the
17 rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a)
18 of this section.

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

21 (1) The issuer against the applicant to the same extent as if the nominated
22 person were a secondary obligor of the obligation owed to the issuer by
23 the applicant;

24 (2) The beneficiary to the same extent as if the nominated person were a
25 secondary obligor of the underlying obligation owed to the beneficiary;
26 and

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

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

35 Section 2. G.S. 25-1-105(2) reads as rewritten:

36 "(2) Where one of the following provisions of this Chapter specifies the applicable
37 law, that provision governs and a contrary agreement is effective only to the extent
38 permitted by the law (including the conflict of laws rules) so specified:

39 Rights of creditors against sold goods. (G.S. 25-2-402).

40 Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

41 Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).

42 Applicability of the article on investment securities. (G.S. 25-8-110).

43 Perfection provisions of the article on secured transactions. (G.S. 25-9-103).

1 Governing law in the article on Funds Transfers. (G.S. 25-4A-507).

2 Letters of Credit. (G.S. 25-5-116)."

3 Section 3. G.S. 25-2-512(1) reads as rewritten:

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

6 (a) the nonconformity appears without inspection; or

7 (b) despite tender of the required documents the circumstances would
8 justify injunction against honor under ~~the provisions of this chapter (G.S.
9 25-5-114).~~ (G.S. 25-5-109(b))."

10 Section 4.(a) The catch line to G.S. 25-9-103(1) reads as rewritten:

11 "(1) Documents, ~~Instruments~~ Instruments, Letters of Credit, and Ordinary Goods. –".

12 Section 4.(b) G.S. 25-9-103(1)(a) reads as rewritten:

13 "(a) This subsection applies to ~~documents and instruments and to~~ documents,
14 instruments, rights to proceeds of written letters of credit, and goods
15 other than those covered by a certificate of title described in subsection
16 (2), mobile goods described in subsection (3), and minerals described in
17 subsection (5)."

18 Section 5.(a) G.S. 25-9-104(l) reads as rewritten:

19 "(l) to a transfer of an interest in any deposit account (subsection (1) of G.S.
20 25-9-105), except as provided with respect to proceeds (G.S. 25-9-306)
21 and priorities in proceeds ~~(G.S. 25-9-312).~~ (G.S. 25-9-312); or "

22 Section 5.(b) G.S. 25-9-104 is amended by adding a new subsection to read:

23 "(m) to a transfer of an interest in a letter of credit other than the rights to
24 proceeds of a written letter of credit."

25 Section 6. G.S. 25-9-105(3) reads as rewritten:

26 "(3) The following definitions in other Articles apply to this Article:

27 'Broker.' (G.S. 25-8-102).

28 'Certificated security.' (G.S. 25-8-102).

29 'Check.' (G.S. 25-3-104).

30 'Clearing corporation.' (G.S. 25-8-102).

31 'Contract for sale.' (G.S. 25-2-106).

32 'Control.' (G.S. 25-8-106).

33 'Delivery.' (G.S. 25-8-301).

34 'Entitlement holder.' (G.S. 25-8-102).

35 'Financial asset.' (G.S. 25-8-102).

36 'Holder in due course.' (G.S. 25-3-302).

37 'Letter of credit.' (G.S. 25-5-102).

38 'Note.' (G.S. 25-3-104).

39 'Proceeds of a letter of credit.' (G.S. 25-5-114(a)).

40 'Sale.' (G.S. 25-2-106).

41 'Securities intermediary.' (G.S. 25-8-102).

42 'Security.' (G.S. 25-8-102).

43 'Security certificate.' (G.S. 25-8-102).

1 'Security entitlement.' (G.S. 25-8-102).

2 'Uncertificated security.' (G.S. 25-8-102)."

3 Section 7. G.S. 25-9-106 reads as rewritten:

4 **"§ 25-9-106. Definitions: 'Account'; 'general intangibles.'**

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

13 Section 8.(a) The catch line to G.S. 25-9-304 reads as rewritten:

14 **"§ 25-9-304. Perfection of security interest in instruments, documents, proceeds of a**
15 **written letter of credit, and goods covered by documents; perfection by**
16 **permissive filing; temporary perfection without filing or transfer of**
17 **possession."**

18 Section 8.(b) G.S. 25-9-304(1) reads as rewritten:

19 "(1) A security interest in chattel paper or negotiable documents may be perfected
20 by filing. A security interest in the right to proceeds of a written letter of credit can be
21 perfected only by the secured party's taking possession of the letter of credit. A security
22 interest in money or instruments (other than instruments which constitute part of chattel
23 paper) can be perfected only by the secured party's taking possession, except as provided
24 in subsections (4) and (5) of this section and subsections (2) and (3) of G.S. 25-9-306 on
25 proceeds."

26 Section 9. G.S. 25-9-305 reads as rewritten:

27 **"§ 25-9-305. When possession by secured party perfects security interest without**
28 **filing.**

29 A security interest in ~~letters of credit and advices of credit (subsection (2)(a) of G.S. 25-5-~~
30 ~~116),~~ goods, instruments, money, negotiable documents or chattel paper may be perfected
31 by the secured party's taking possession of the collateral. A security interest in the right
32 to proceeds of a written letter of credit may be perfected by the secured party's taking
33 possession of the letter of credit. If such collateral other than goods covered by a
34 negotiable document is held by a bailee, the secured party is deemed to have possession
35 from the time the bailee receives notification of the secured party's interest. A security
36 interest is perfected by possession from the time possession is taken without relation back
37 and continues only so long as possession is retained, unless otherwise specified in this
38 article. The security interest may be otherwise perfected as provided in this article before
39 or after the period of possession by the secured party."

40 Section 10. A transaction arising out of or associated with a letter of credit that
41 was issued before the effective date of this act and the rights, obligations, and interest
42 flowing from that transaction are governed by any statute or other law amended or

1 repealed by this act as if repeal or amendment had not occurred and may be terminated,
2 completed, consummated, or enforced under that statute or other law.

3 Section 11. The Revisor of Statutes shall cause to be printed along with this
4 act all relevant portions of the official comments to the Uniform Commercial Code,
5 Revised Article 5 and conforming and miscellaneous amendments to Articles 1, 2, and 9
6 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

7 Section 12. This act becomes effective October 1, 1999, and applies to a letter
8 of credit that is issued on or after that date and does not apply to a transaction, event,
9 obligation, or duty arising out of or associated with a letter of credit that was issued
10 before that date.