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**SUBSTITUTE SENATE BILL 5335**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Smith, Long and Johnson)

Read first time 02/23/95.

1       AN ACT Relating to updating uniform commercial code provisions on  
2 investment securities; amending RCW 62A.8-101, 62A.8-102, 62A.8-103,  
3 62A.8-104, 62A.8-105, 62A.8-106, 62A.8-107, 62A.8-108, 62A.8-201,  
4 62A.8-202, 62A.8-203, 62A.8-204, 62A.8-205, 62A.8-206, 62A.8-207,  
5 62A.8-208, 62A.8-301, 62A.8-302, 62A.8-303, 62A.8-304, 62A.8-305,  
6 62A.8-306, 62A.8-307, 62A.8-401, 62A.8-402, 62A.8-403, 62A.8-404,  
7 62A.8-405, 62A.8-406, 62A.8-407, 62A.1-206, 62A.4-104, 62A.5-114,  
8 62A.9-103, 62A.9-105, 62A.9-106, 62A.9-203, 62A.9-301, 62A.9-304,  
9 62A.9-305, 62A.9-306, 62A.9-309, 62A.9-312, and 62A.10-104; reenacting  
10 and amending RCW 62A.1-105 and 62A.9-302; adding new sections to Title  
11 62A RCW; creating a new section; repealing RCW 21.17.010, 21.17.020,  
12 21.17.030, 21.17.040, 21.17.050, 21.17.060, 21.17.070, 21.17.080,  
13 21.17.090, 21.17.900, 21.17.910, 62A.8-308, 62A.8-309, 62A.8-310,  
14 62A.8-311, 62A.8-312, 62A.8-313, 62A.8-314, 62A.8-315, 62A.8-316,  
15 62A.8-317, 62A.8-318, 62A.8-319, 62A.8-320, 62A.8-321, and 62A.8-408;  
16 providing an effective date; and declaring an emergency.

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

1 PART 1

2 SHORT TITLE AND GENERAL MATTERS

3 Sec. 1. RCW 62A.8-101 and 1965 ex.s. c 157 s 8-101 are each  
4 amended to read as follows:

5 SHORT TITLE. This Article (~~shall be known and~~) may be cited as  
6 Uniform Commercial Code--Investment Securities.

7 Sec. 2. RCW 62A.8-102 and 1986 c 35 s 1 are each amended to read  
8 as follows:

9 DEFINITIONS (~~AND INDEX OF DEFINITIONS~~). (1) In this Article(~~7~~  
10 ~~unless the context otherwise requires~~):

11 (a) (~~A~~) "Adverse claim" means a claim that a claimant has a  
12 property interest in a financial asset and that it is a violation of  
13 the rights of the claimant for another person to hold, transfer, or  
14 deal with the financial asset.

15 (b) "Bearer form," as applied to a certificated security, means a  
16 form in which the security is payable to the bearer of the security  
17 certificate according to its terms but not by reason of an indorsement.

18 (c) "Broker" means a person defined as a broker or dealer under the  
19 federal securities laws, but without excluding a bank acting in that  
20 capacity.

21 (d) "Certificated security" (~~is a share, participation, or other~~  
22 interest in property of or an enterprise of the issuer or an obligation  
23 of the issuer which is

24 (i)) means a security that is represented by (~~an instrument~~  
25 issued in bearer or registered form;

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

29 (iii) either one of a class or series or by its terms divisible  
30 into a class or series of shares, participations, interests, or  
31 obligations.

32 (~~b) An~~) a certificate.

33 (e) "Clearing corporation" means:

34 (i) A person that is registered as a "clearing agency" under the  
35 federal securities laws;

36 (ii) A federal reserve bank; or

1        (iii) Any other person that provides clearance or settlement  
2 services with respect to financial assets that would require it to  
3 register as a clearing agency under the federal securities laws but for  
4 an exclusion or exemption from the registration requirement, if its  
5 activities as a clearing corporation, including adoption of rules, are  
6 subject to regulation by a federal or state governmental authority.

7        (f) "Communicate" means to:

8        (i) Send a signed writing; or

9        (ii) Transmit information by any mechanism agreed upon by the  
10 persons transmitting and receiving the information.

11        (g) "Entitlement holder" means a person identified in the records  
12 of a securities intermediary as the person having a security  
13 entitlement against the securities intermediary. If a person acquires  
14 a security entitlement by virtue of section 41(2) (b) or (c) of this  
15 act, that person is the entitlement holder.

16        (h) "Entitlement order" means a notification communicated to a  
17 securities intermediary directing transfer or redemption of a financial  
18 asset to which the entitlement holder has a security entitlement.

19        (i) "Financial asset," except as otherwise provided in RCW 62A.8-  
20 103, means:

21        (i) A security;

22        (ii) An obligation of a person or a share, participation, or other  
23 interest in a person or in property or an enterprise of a person, which  
24 is, or is of a type, dealt in or traded on financial markets, or which  
25 is recognized in any area in which it is issued or dealt in as a medium  
26 for investment; or

27        (iii) Any property that is held by a securities intermediary for  
28 another person in a securities account if the securities intermediary  
29 has expressly agreed with the other person that the property is to be  
30 treated as a financial asset under this Article.

31 As context requires, the term means either the interest itself or the  
32 means by which a person's claim to it is evidenced, including a  
33 certificated or uncertificated security, a security certificate, or a  
34 security entitlement.

35        (j) "Good faith," for purposes of the obligation of good faith in  
36 the performance or enforcement of contracts or duties within this  
37 Article, means honesty in fact and the observance of reasonable  
38 commercial standards of fair dealing.

1       (k) "Indorsement" means a signature that alone or accompanied by  
2 other words is made on a security certificate in registered form or on  
3 a separate document for the purpose of assigning, transferring, or  
4 redeeming the security or granting a power to assign, transfer, or  
5 redeem it.

6       (l) "Instruction" means a notification communicated to the issuer  
7 of an uncertificated security which directs that the transfer of the  
8 security be registered or that the security be redeemed.

9       (m) "Registered form," as applied to a certificated security, means  
10 a form in which:

11       (i) The security certificate specifies a person entitled to the  
12 security; and

13       (ii) A transfer of the security may be registered upon books  
14 maintained for that purpose by or on behalf of the issuer, or the  
15 security certificate so states.

16       (n) "Securities intermediary" means:

17       (i) A clearing corporation; or

18       (ii) A person, including a bank or broker, that in the ordinary  
19 course of its business maintains securities accounts for others and is  
20 acting in that capacity.

21       (o) "Security," except as otherwise provided in RCW 62A.8-103,  
22 means an obligation of an issuer or a share, participation, or other  
23 interest in an issuer or in property or an enterprise of an issuer:

24       (i) Which is represented by a security certificate in bearer or  
25 registered form, or the transfer of which may be registered upon books  
26 maintained for that purpose by or on behalf of the issuer;

27       (ii) Which is one of a class or series or by its terms is divisible  
28 into a class or series of shares, participations, interests, or  
29 obligations; and

30       (iii) Which:

31       (A) Is, or is of a type, dealt in or traded on securities exchanges  
32 or securities markets; or

33       (B) Is a medium for investment and by its terms expressly provides  
34 that it is a security governed by this Article.

35       (p) "Security certificate" means a certificate representing a  
36 security.

37       (q) "Security entitlement" means the rights and property interest  
38 of an entitlement holder with respect to a financial asset specified in  
39 Part 5 of this Article.

1        (r) "Uncertificated security" (~~(is a share, participation, or other~~  
2 ~~interest in property or an enterprise of the issuer or an obligation of~~  
3 ~~the issuer which is~~

4        ~~(i))~~ means a security that is not represented by (~~(an instrument~~  
5 ~~and the transfer of which is registered upon books maintained for that~~  
6 ~~purpose by or on behalf of the issuer;~~

7        ~~(ii) of a type commonly dealt in on securities exchanges or~~  
8 ~~markets; and~~

9        ~~(iii) either one of a class or series or by its terms divisible~~  
10 ~~into a class or series of shares, participations, interests, or~~  
11 ~~obligations.~~

12        ~~(c) A "security" is either a certificated or an uncertificated~~  
13 ~~security. If a security is certificated, the terms "security" and~~  
14 ~~"certificated security" may mean either the intangible interest, the~~  
15 ~~instrument representing that interest, or both, as the context~~  
16 ~~requires. A writing that is a certificated security is governed by~~  
17 ~~this Article and not by Article 3, even though it also meets the~~  
18 ~~requirements of that Article. This Article does not apply to money.~~  
19 ~~If a certificated security has been retained by or surrendered to the~~  
20 ~~issuer or its transfer agent for reasons other than registration of~~  
21 ~~transfer, other temporary purpose, payment, exchange, or acquisition by~~  
22 ~~the issuer, that security shall be treated as an uncertificated~~  
23 ~~security for purposes of this Article.~~

24        ~~(d) A certificated security is in "registered form" if~~

25        ~~(i) it specifies a person entitled to the security or the rights it~~  
26 ~~represents, and~~

27        ~~(ii) its transfer may be registered upon books maintained for that~~  
28 ~~purpose by or on behalf of the issuer, or the security so states.~~

29        ~~(e) A certificated security is in "bearer form" if it runs to~~  
30 ~~bearer according to its terms and not by reason of any indorsement.~~

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

33        ~~(3) A "clearing corporation" is a corporation registered as a~~  
34 ~~"clearing agency" under the federal securities laws or a corporation:~~

35        ~~(a) At least 90 percent of whose capital stock is held by or for~~  
36 ~~one or more organizations, none of which, other than a national~~  
37 ~~securities exchange or association, holds in excess of 20 percent of~~  
38 ~~the capital stock of the corporation, and each of which is~~

1       ~~(i) subject to supervision or regulation pursuant to the provisions~~  
2 ~~of federal or state banking laws or state insurance laws,~~  
3       ~~(ii) a broker or dealer or investment company registered under the~~  
4 ~~federal securities laws, or~~  
5       ~~(iii) a national securities exchange or association registered~~  
6 ~~under the federal securities laws; and~~  
7       ~~(b) Any remaining capital stock of which is held by individuals who~~  
8 ~~have purchased it at or prior to the time of their taking office as~~  
9 ~~directors of the corporation and who have purchased only so much of the~~  
10 ~~capital stock as is necessary to permit them to qualify as directors.~~  
11       ~~(4) A "custodian bank" is a bank or trust company that is~~  
12 ~~supervised and examined by state or federal authority having~~  
13 ~~supervision over banks and is acting as custodian for a clearing~~  
14 ~~corporation.~~  
15       ~~(5))~~ a certificate.  
16       ~~(2) Other definitions applying to this Article ((or to specified~~  
17 ~~Parts thereof)) and the sections in which they appear are:~~  
18       ~~(( "Adverse claim".— RCW 62A.8-302.~~  
19       ~~"Bona fide purchaser".— RCW 62A.8-302.~~  
20       ~~"Broker".— RCW 62A.8-303.~~  
21       ~~"Debtor".— RCW 62A.9-105.~~  
22       ~~"Financial intermediary".— RCW 62A.8-313.~~  
23       ~~"Guarantee of the signature".— RCW 62A.8-402.~~  
24       ~~"Initial transaction statement".— RCW 62A.8-408.~~  
25       ~~"Instruction".— RCW 62A.8-308.~~  
26       ~~"Intermediary bank".— RCW 62A.4-105.~~  
27       ~~"Issuer".— RCW 62A.8-201.~~  
28       ~~"Overissue".— RCW 62A.8-104.~~  
29       ~~"Secured party".— RCW 62A.9-105.~~  
30       ~~"Security agreement".— RCW 62A.9-105.~~  
31       ~~(6))~~ Appropriate person           RCW 62A.8-107  
32       Control                                   RCW 62A.8-106  
33       Delivery                                   RCW 62A.8-301  
34       Investment company security       RCW 62A.8-103  
35       Issuer                                   RCW 62A.8-201  
36       Overissue                               Section 26 of this act  
37       Protected purchaser               RCW 62A.8-303  
38       Securities account                   Section 41 of this act

1       (3) In addition Article 1 contains general definitions and  
2 principles of construction and interpretation applicable throughout  
3 this Article.

4       (4) The characterization of a person, business, or transaction for  
5 purposes of this Article does not determine the characterization of the  
6 person, business, or transaction for purposes of any other law,  
7 regulation, or rule.

8       **Sec. 3.** RCW 62A.8-103 and 1986 c 35 s 2 are each amended to read  
9 as follows:

10       (~~ISSUER'S LIEN.— A lien upon a security in favor of an issuer~~  
11 ~~thereof is valid against a purchaser only if:~~

12       ~~(a) the security is certificated and the right of the issuer to the~~  
13 ~~lien is noted conspicuously thereon; or~~

14       ~~(b) the security is uncertificated and a notation of the right of~~  
15 ~~the issuer to the lien is contained in the initial transaction~~  
16 ~~statement sent to the purchaser or, if his interest is transferred to~~  
17 ~~him other than by registration of transfer, pledge, or release, the~~  
18 ~~initial transaction statement sent to the registered owner or the~~  
19 ~~registered pledgee.)~~) RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS

20 AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (1) A share or  
21 similar equity interest issued by a corporation, business trust, joint  
22 stock company, or similar entity is a security.

23       (2) An "investment company security" is a security. "Investment  
24 company security" means a share or similar equity interest issued by an  
25 entity that is registered as an investment company under the federal  
26 investment company laws, an interest in a unit investment trust that is  
27 so registered, or a face-amount certificate issued by a face-amount  
28 certificate company that is so registered. Investment company security  
29 does not include an insurance policy or endowment policy or annuity  
30 contract issued by an insurance company.

31       (3) An interest in a partnership or limited liability company is  
32 not a security unless it is dealt in or traded on securities exchanges  
33 or in securities markets, its terms expressly provide that it is a  
34 security governed by this Article, or it is an investment company  
35 security. However, an interest in a partnership or limited liability  
36 company is a financial asset if it is held in a securities account.

37       (4) A writing that is a security certificate is governed by this  
38 Article and not by Article 3, even though it also meets the

1 requirements of that Article. However, a negotiable instrument  
2 governed by Article 3 is a financial asset if it is held in a  
3 securities account.

4 (5) An option or similar obligation issued by a clearing  
5 corporation to its participants is not a security, but is a financial  
6 asset.

7 (6) A commodity contract, as defined in section 61 of this act, is  
8 not a security or a financial asset.

9 **Sec. 4.** RCW 62A.8-104 and 1986 c 35 s 3 are each amended to read  
10 as follows:

11 ~~((EFFECT OF OVERISSUE; "OVERISSUE".—(1) The provisions of this~~  
12 ~~Article which validate a security or compel its issue or reissue do not~~  
13 ~~apply to the extent that validation, issue, or reissue would result in~~  
14 ~~overissue; but if:~~

15 ~~(a) an identical security which does not constitute an overissue is~~  
16 ~~reasonably available for purchase, the person entitled to issue or~~  
17 ~~validation may compel the issuer to purchase the security for him and~~  
18 ~~either to deliver a certificated security or to register the transfer~~  
19 ~~of an uncertificated security to him, against surrender of any~~  
20 ~~certificated security he holds; or~~

21 ~~(b) a security is not so available for purchase, the person~~  
22 ~~entitled to issue or validation may recover from the issuer the price~~  
23 ~~he or the last purchaser for value paid for it with interest from the~~  
24 ~~date of his demand.~~

25 ~~(2) "Overissue" means the issue of securities in excess of the~~  
26 ~~amount the issuer has corporate power to issue.))~~ ACQUISITION OF  
27 SECURITY OR FINANCIAL ASSET OR INTEREST THEREIN. (1) A person acquires  
28 a security or an interest therein, under this Article, if:

29 (a) The person is a purchaser to whom a security is delivered  
30 pursuant to RCW 62A.8-301; or

31 (b) The person acquires a security entitlement to the security  
32 pursuant to section 41 of this act.

33 (2) A person acquires a financial asset, other than a security, or  
34 an interest therein, under this Article, if the person acquires a  
35 security entitlement to the financial asset.

36 (3) A person who acquires a security entitlement to a security or  
37 other financial asset has the rights specified in Part 5 of this  
38 Article, but is a purchaser of any security, security entitlement, or



1 other financial asset held by the securities intermediary only to the  
2 extent provided in section 43 of this act.

3 (4) Unless the context shows that a different meaning is intended,  
4 a person who is required by other law, regulation, rule, or agreement  
5 to transfer, deliver, present, surrender, exchange, or otherwise put in  
6 the possession of another person a security or financial asset  
7 satisfies that requirement by causing the other person to acquire an  
8 interest in the security or financial asset pursuant to subsection (1)  
9 or (2) of this section.

10 **Sec. 5.** RCW 62A.8-105 and 1986 c 35 s 4 are each amended to read  
11 as follows:

12 ~~((CERTIFICATED SECURITIES NEGOTIABLE; STATEMENTS AND INSTRUCTIONS~~  
13 ~~NOT NEGOTIABLE; PRESUMPTIONS.—(1) Certificated securities governed by~~  
14 ~~this Article are negotiable instruments.~~

15 ~~(2) Statements (RCW 62A.8-408), notices, or the like, sent by the~~  
16 ~~issuer of uncertificated securities and instructions (RCW 62A.8-308)~~  
17 ~~are neither negotiable instruments nor certificated securities.~~

18 ~~(3) In any action on a security:~~

19 ~~(a) unless specifically denied in the pleadings, each signature on~~  
20 ~~a certificated security, in a necessary indorsement, on an initial~~  
21 ~~transaction statement, or on an instruction, is admitted;~~

22 ~~(b) if the effectiveness of a signature is put in issue, the burden~~  
23 ~~of establishing it is on the party claiming under the signature, but~~  
24 ~~the signature is presumed to be genuine or authorized;~~

25 ~~(c) if signatures on a certificated security are admitted or~~  
26 ~~established, production of the security entitles a holder to recover on~~  
27 ~~it unless the defendant establishes a defense or a defect going to the~~  
28 ~~validity of the security;~~

29 ~~(d) if signatures on an initial transaction statement are admitted~~  
30 ~~or established, the facts stated in the statement are presumed to be~~  
31 ~~true as of the time of its issuance; and~~

32 ~~(e) after it is shown that a defense or defect exists, the~~  
33 ~~plaintiff has the burden of establishing that he or some person under~~  
34 ~~whom he claims is a person against whom the defense or defect is~~  
35 ~~ineffective (RCW 62A.8-202).)) NOTICE OF ADVERSE CLAIM. (1) A person  
36 has notice of an adverse claim if:~~

37 (a) The person knows of the adverse claim;

1       (b) The person is aware of facts sufficient to indicate that there  
2 is a significant probability that the adverse claim exists and  
3 deliberately avoids information that would establish the existence of  
4 the adverse claim; or

5       (c) The person has a duty, imposed by statute or regulation, to  
6 investigate whether an adverse claim exists, and the investigation so  
7 required would establish the existence of the adverse claim.

8       (2) Having knowledge that a financial asset or interest therein is  
9 or has been transferred by a representative imposes no duty of inquiry  
10 into the rightfulness of a transaction and is not notice of an adverse  
11 claim. However, a person who knows that a representative has  
12 transferred a financial asset or interest therein in a transaction that  
13 is, or whose proceeds are being used, for the individual benefit of the  
14 representative or otherwise in breach of duty has notice of an adverse  
15 claim.

16       (3) An act or event that creates a right to immediate performance  
17 of the principal obligation represented by a security certificate or  
18 sets a date on or after which the certificate is to be presented or  
19 surrendered for redemption or exchange does not itself constitute  
20 notice of an adverse claim except in the case of a transfer more than:

21       (a) One year after a date set for presentment or surrender for  
22 redemption or exchange; or

23       (b) Six months after a date set for payment of money against  
24 presentation or surrender of the certificate, if money was available  
25 for payment on that date.

26       (4) A purchaser of a certificated security has notice of an adverse  
27 claim if the security certificate:

28       (a) Whether in bearer or registered form, has been indorsed "for  
29 collection" or "for surrender" or for some other purpose not involving  
30 transfer; or

31       (b) Is in bearer form and has on it an unambiguous statement that  
32 it is the property of a person other than the transferor, but the mere  
33 writing of a name on the certificate is not such a statement.

34       (5) Filing of a financing statement under Article 9 is not notice  
35 of an adverse claim to a financial asset.

36       **Sec. 6.** RCW 62A.8-106 and 1986 c 35 s 5 are each amended to read  
37 as follows:

1       (~~APPLICABILITY. The law (including the conflict of laws rules) of~~  
2 ~~the jurisdiction of organization of the issuer governs the validity of~~  
3 ~~a security, the effectiveness of registration by the issuer, and the~~  
4 ~~rights and duties of the issuer with respect to:~~

5       ~~(a) registration of transfer of a certificated security;~~

6       ~~(b) registration of transfer, pledge, or release of an~~  
7 ~~uncertificated security; and~~

8       ~~(c) sending of statements of uncertificated securities.))~~ CONTROL.

9 (1) A purchaser has "control" of a certificated security in bearer form  
10 if the certificated security is delivered to the purchaser.

11 (2) A purchaser has "control" of a certificated security in  
12 registered form if the certificated security is delivered to the  
13 purchaser, and:

14 (a) The certificate is indorsed to the purchaser or in blank by an  
15 effective indorsement; or

16 (b) The certificate is registered in the name of the purchaser,  
17 upon original issue or registration of transfer by the issuer.

18 (3) A purchaser has "control" of an uncertificated security if:

19 (a) The uncertificated security is delivered to the purchaser; or

20 (b) The issuer has agreed that it will comply with instructions  
21 originated by the purchaser without further consent by the registered  
22 owner.

23 (4) A purchaser has "control" of a security entitlement if:

24 (a) The purchaser becomes the entitlement holder; or

25 (b) The securities intermediary has agreed that it will comply with  
26 entitlement orders originated by the purchaser without further consent  
27 by the entitlement holder.

28 (5) If an interest in a security entitlement is granted by the  
29 entitlement holder to the entitlement holder's own securities  
30 intermediary, the securities intermediary has control.

31 (6) A purchaser who has satisfied the requirements of subsection  
32 (3)(b) or (4)(b) of this section has control even if the registered  
33 owner in the case of subsection (3)(b) of this section or the  
34 entitlement holder in the case of subsection (4)(b) of this section  
35 retains the right to make substitutions for the uncertificated security  
36 or security entitlement, to originate instructions or entitlement  
37 orders to the issuer or securities intermediary, or otherwise to deal  
38 with the uncertificated security or security entitlement.

1 (7) An issuer or a securities intermediary may not enter into an  
2 agreement of the kind described in subsection (3)(b) or (4)(b) of this  
3 section without the consent of the registered owner or entitlement  
4 holder, but an issuer or a securities intermediary is not required to  
5 enter into such an agreement even though the registered owner or  
6 entitlement holder so directs. An issuer or securities intermediary  
7 that has entered into such an agreement is not required to confirm the  
8 existence of the agreement to another party unless requested to do so  
9 by the registered owner or entitlement holder.

10 **Sec. 7.** RCW 62A.8-107 and 1986 c 35 s 6 are each amended to read  
11 as follows:

12 ~~((SECURITIES TRANSFERABLE; ACTION FOR PRICE. (1) Unless otherwise~~  
13 ~~agreed and subject to any applicable law or regulation respecting short~~  
14 ~~sales, a person obligated to transfer securities may transfer any~~  
15 ~~certificated security of the specified issue in bearer form or~~  
16 ~~registered in the name of the transferee, or indorsed to him or in~~  
17 ~~blank, or he may transfer an equivalent uncertificated security to the~~  
18 ~~transferee or a person designated by the transferee.~~

19 ~~(2) If the buyer fails to pay the price as it comes due under a~~  
20 ~~contract of sale, the seller may recover the price of:~~

21 ~~(a) certificated securities accepted by the buyer;~~

22 ~~(b) uncertificated securities that have been transferred to the~~  
23 ~~buyer or a person designated by the buyer; and~~

24 ~~(c) other securities if efforts at their resale would be unduly~~  
25 ~~burdensome or if there is no readily available market for their~~  
26 ~~resale.)) WHETHER INDORSEMENT, INSTRUCTION, OR ENTITLEMENT IS~~

27 EFFECTIVE. (1) "Appropriate person" means:

28 (a) With respect to an indorsement, the person specified by a  
29 security certificate or by an effective special indorsement to be  
30 entitled to the security;

31 (b) With respect to an instruction, the registered owner of an  
32 uncertificated security;

33 (c) With respect to an entitlement order, the entitlement holder;

34 (d) If the person designated in (a), (b), or (c) of this subsection  
35 is deceased, the designated person's successor taking under other law  
36 or the designated person's personal representative acting for the  
37 estate of the decedent; or

1 (e) If the person designated in (a), (b), or (c) of this subsection  
2 lacks capacity, the designated person's guardian, conservator, or other  
3 similar representative who has power under other law to transfer the  
4 security or financial asset.

5 (2) An indorsement, instruction, or entitlement order is effective  
6 if:

7 (a) It is made by the appropriate person;

8 (b) It is made by a person who has power under the law of agency to  
9 transfer the security or financial asset on behalf of the appropriate  
10 person, including, in the case of an instruction or entitlement order,  
11 a person who has control under RCW 62A.8-106 (3)(b) or (4)(b); or

12 (c) The appropriate person has ratified it or is otherwise  
13 precluded from asserting its ineffectiveness.

14 (3) An indorsement, instruction, or entitlement order made by a  
15 representative is effective even if:

16 (a) The representative has failed to comply with a controlling  
17 instrument or with the law of the state having jurisdiction of the  
18 representative relationship, including any law requiring the  
19 representative to obtain court approval of the transaction; or

20 (b) The representative's action in making the indorsement,  
21 instruction, or entitlement order or using the proceeds of the  
22 transaction is otherwise a breach of duty.

23 (4) If a security is registered in the name of or specially  
24 indorsed to a person described as a representative, or if a securities  
25 account is maintained in the name of a person described as a  
26 representative, an indorsement, instruction, or entitlement order made  
27 by the person is effective even though the person is no longer serving  
28 in the described capacity.

29 (5) Effectiveness of an indorsement, instruction, or entitlement  
30 order is determined as of the date the indorsement, instruction, or  
31 entitlement order is made, and an indorsement, instruction, or  
32 entitlement order does not become ineffective by reason of any later  
33 change of circumstances.

34 **Sec. 8.** RCW 62A.8-108 and 1986 c 35 s 7 are each amended to read  
35 as follows:

36 ~~((REGISTRATION OF PLEDGE AND RELEASE OF UNCERTIFICATED SECURITIES.~~  
37 ~~A security interest in an uncertificated security may be evidenced by~~  
38 ~~the registration of pledge to the secured party or a person designated~~

1 by him. There can be no more than one registered pledge of an  
2 uncertificated security at any time. The registered owner of an  
3 uncertificated security is the person in whose name the security is  
4 registered, even if the security is subject to a registered pledge.  
5 The rights of a registered pledgee of an uncertificated security under  
6 this Article are terminated by the registration of release.))

7 WARRANTIES IN DIRECT HOLDING. (1) A person who transfers a  
8 certificated security to a purchaser for value warrants to the  
9 purchaser, and an indorser, if the transfer is by indorsement, warrants  
10 to any subsequent purchaser, that:

11 (a) The certificate is genuine and has not been materially altered;

12 (b) The transferor or indorser does not know of any fact that might  
13 impair the validity of the security;

14 (c) There is no adverse claim to the security;

15 (d) The transfer does not violate any restriction on transfer;

16 (e) If the transfer is by indorsement, the indorsement is made by  
17 an appropriate person, or if the indorsement is by an agent, the agent  
18 has actual authority to act on behalf of the appropriate person; and

19 (f) The transfer is otherwise effective and rightful.

20 (2) A person who originates an instruction for registration of  
21 transfer of an uncertificated security to a purchaser for value  
22 warrants to the purchaser that:

23 (a) The instruction is made by an appropriate person, or if the  
24 instruction is by an agent, the agent has actual authority to act on  
25 behalf of the appropriate person;

26 (b) The security is valid;

27 (c) There is no adverse claim to the security; and

28 (d) At the time the instruction is presented to the issuer:

29 (i) The purchaser will be entitled to the registration of transfer;

30 (ii) The transfer will be registered by the issuer free from all  
31 liens, security interests, restrictions, and claims other than those  
32 specified in the instruction;

33 (iii) The transfer will not violate any restriction on transfer;  
34 and

35 (iv) The requested transfer will otherwise be effective and  
36 rightful.

37 (3) A person who transfers an uncertificated security to a  
38 purchaser for value and does not originate an instruction in connection  
39 with the transfer warrants that:

1       (a) The uncertificated security is valid;

2       (b) There is no adverse claim to the security;

3       (c) The transfer does not violate any restriction on transfer; and

4       (d) The transfer is otherwise effective and rightful.

5       (4) A person who indorses a security certificate warrants to the  
6 issuer that:

7       (a) There is no adverse claim to the security; and

8       (b) The indorsement is effective.

9       (5) A person who originates an instruction for registration of  
10 transfer of an uncertificated security warrants to the issuer that:

11       (a) The instruction is effective; and

12       (b) At the time the instruction is presented to the issuer the  
13 purchaser will be entitled to the registration of transfer.

14       (6) A person who presents a certificated security for registration  
15 of transfer or for payment or exchange warrants to the issuer that the  
16 person is entitled to the registration, payment, or exchange, but a  
17 purchaser for value and without notice of adverse claims to whom  
18 transfer is registered warrants only that the person has no knowledge  
19 of any unauthorized signature in a necessary indorsement.

20       (7) If a person acts as agent of another in delivering a  
21 certificated security to a purchaser, the identity of the principal was  
22 known to the person to whom the certificate was delivered, and the  
23 certificate delivered by the agent was received by the agent from the  
24 principal or received by the agent from another person at the direction  
25 of the principal, the person delivering the security certificate  
26 warrants only that the delivering person has authority to act for the  
27 principal and does not know of any adverse claim to the certificated  
28 security.

29       (8) A secured party who redelivers a security certificate received,  
30 or after payment and on order of the debtor delivers the security  
31 certificate to another person, makes only the warranties of an agent  
32 under subsection (7) of this section.

33       (9) Except as otherwise provided in subsection (7) of this section,  
34 a broker acting for a customer makes to the issuer and a purchaser the  
35 warranties provided in subsections (1) through (6) of this section. A  
36 broker that delivers a security certificate to its customer, or causes  
37 its customer to be registered as the owner of an uncertificated  
38 security, makes to the customer the warranties provided in subsection  
39 (1) or (2) of this section, and has the rights and privileges of a

1 purchaser under this section. The warranties of and in favor of the  
2 broker acting as an agent are in addition to applicable warranties  
3 given by and in favor of the customer.

4 NEW SECTION. Sec. 9. A new section is added to Title 62A RCW, to  
5 be codified as RCW 62A.8-109, to read as follows:

6 WARRANTIES IN INDIRECT HOLDING. (1) A person who originates an  
7 entitlement order to a securities intermediary warrants to the  
8 securities intermediary that:

9 (a) The entitlement order is made by an appropriate person, or if  
10 the entitlement order is by an agent, the agent has actual authority to  
11 act on behalf of the appropriate person; and

12 (b) There is no adverse claim to the security entitlement.

13 (2) A person who delivers a security certificate to a securities  
14 intermediary for credit to a securities account or originates an  
15 instruction with respect to an uncertificated security directing that  
16 the uncertificated security be credited to a securities account makes  
17 to the securities intermediary the warranties specified in RCW 62A.8-  
18 108 (1) or (2).

19 (3) If a securities intermediary delivers a security certificate to  
20 its entitlement holder or causes its entitlement holder to be  
21 registered as the owner of an uncertificated security, the securities  
22 intermediary makes to the entitlement holder the warranties specified  
23 in RCW 62A.8-108 (1) or (2).

24 NEW SECTION. Sec. 10. A new section is added to Title 62A RCW, to  
25 be codified as RCW 62A.8-110, to read as follows:

26 APPLICABILITY; CHOICE OF LAW. (1) The local law of the issuer's  
27 jurisdiction, as specified in subsection (4) of this section, governs:

28 (a) The validity of a security;

29 (b) The rights and duties of the issuer with respect to  
30 registration of transfer;

31 (c) The effectiveness of registration of transfer by the issuer;

32 (d) Whether the issuer owes any duties to an adverse claimant to a  
33 security; and

34 (e) Whether an adverse claim can be asserted against a person to  
35 whom transfer of a certificated or uncertificated security is  
36 registered or a person who obtains control of an uncertificated  
37 security.



1 (2) The local law of the securities intermediary's jurisdiction, as  
2 specified in subsection (5) of this section, governs:

3 (a) Acquisition of a security entitlement from the securities  
4 intermediary;

5 (b) The rights and duties of the securities intermediary and  
6 entitlement holder arising out of a security entitlement;

7 (c) Whether the securities intermediary owes any duties to an  
8 adverse claimant to a security entitlement; and

9 (d) Whether an adverse claim can be asserted against a person who  
10 acquires a security entitlement from the securities intermediary or a  
11 person who purchases a security entitlement or interest therein from an  
12 entitlement holder.

13 (3) The local law of the jurisdiction in which a security  
14 certificate is located at the time of delivery governs whether an  
15 adverse claim can be asserted against a person to whom the security  
16 certificate is delivered.

17 (4) "Issuer's jurisdiction" means the jurisdiction under which the  
18 issuer of the security is organized or, if permitted by the law of that  
19 jurisdiction, the law of another jurisdiction specified by the issuer.  
20 An issuer organized under the law of this state may specify the law of  
21 another jurisdiction as the law governing the matters specified in  
22 subsection (1) (b) through (e) of this section.

23 (5) The following rules determine a "securities intermediary's  
24 jurisdiction" for purposes of this section:

25 (a) If an agreement between the securities intermediary and its  
26 entitlement holder specifies that it is governed by the law of a  
27 particular jurisdiction, that jurisdiction is the securities  
28 intermediary's jurisdiction.

29 (b) If an agreement between the securities intermediary and its  
30 entitlement holder does not specify the governing law as provided in  
31 (a) of this subsection, but expressly specifies that the securities  
32 account is maintained at an office in a particular jurisdiction, that  
33 jurisdiction is the securities intermediary's jurisdiction.

34 (c) If an agreement between the securities intermediary and its  
35 entitlement holder does not specify a jurisdiction as provided in (a)  
36 or (b) of this subsection, the securities intermediary's jurisdiction  
37 is the jurisdiction in which is located the office identified in an  
38 account statement as the office serving the entitlement holder's  
39 account.

1 (d) If an agreement between the securities intermediary and its  
2 entitlement holder does not specify a jurisdiction as provided in (a)  
3 or (b) of this subsection and an account statement does not identify an  
4 office serving the entitlement holder's account as provided in (c) of  
5 this subsection, the securities intermediary's jurisdiction is the  
6 jurisdiction in which is located the chief executive office of the  
7 securities intermediary.

8 (6) A securities intermediary's jurisdiction is not determined by  
9 the physical location of certificates representing financial assets, or  
10 by the jurisdiction in which is organized the issuer of the financial  
11 asset with respect to which an entitlement holder has a security  
12 entitlement, or by the location of facilities for data processing or  
13 other recordkeeping concerning the account.

14 NEW SECTION. **Sec. 11.** A new section is added to Title 62A RCW, to  
15 be codified as RCW 62A.8-111, to read as follows:

16 CLEARING CORPORATION RULES. A rule adopted by a clearing  
17 corporation governing rights and obligations among the clearing  
18 corporation and its participants in the clearing corporation is  
19 effective even if the rule conflicts with this Title and affects  
20 another party who does not consent to the rule.

21 NEW SECTION. **Sec. 12.** A new section is added to Title 62A RCW, to  
22 be codified as RCW 62A.8-112, to read as follows:

23 CREDITOR'S LEGAL PROCESS. (1) The interest of a debtor in a  
24 certificated security may be reached by a creditor only by actual  
25 seizure of the security certificate by the officer making the  
26 attachment or levy, except as otherwise provided in subsection (4) of  
27 this section. However, a certificated security for which the  
28 certificate has been surrendered to the issuer may be reached by a  
29 creditor by legal process upon the issuer.

30 (2) The interest of a debtor in an uncertificated security may be  
31 reached by a creditor only by legal process upon the issuer at its  
32 chief executive office in the United States, except as otherwise  
33 provided in subsection (4) of this section.

34 (3) The interest of a debtor in a security entitlement may be  
35 reached by a creditor only by legal process upon the securities  
36 intermediary with whom the debtor's securities account is maintained,  
37 except as otherwise provided in subsection (4) of this section.

1 (4) The interest of a debtor in a certificated security for which  
2 the certificate is in the possession of a secured party, or in an  
3 uncertificated security registered in the name of a secured party, or  
4 a security entitlement maintained in the name of a secured party, may  
5 be reached by a creditor by legal process upon the secured party.

6 (5) A creditor whose debtor is the owner of a certificated  
7 security, uncertificated security, or security entitlement is entitled  
8 to aid from a court of competent jurisdiction, by injunction or  
9 otherwise, in reaching the certificated security, uncertificated  
10 security, or security entitlement or in satisfying the claim by means  
11 allowed at law or in equity in regard to property that cannot readily  
12 be reached by other legal process.

13 NEW SECTION. **Sec. 13.** A new section is added to Title 62A RCW, to  
14 be codified as RCW 62A.8-113, to read as follows:

15 STATUTE OF FRAUDS INAPPLICABLE. A contract or modification of a  
16 contract for the sale or purchase of a security is enforceable whether  
17 or not there is a writing signed or record authenticated by a party  
18 against whom enforcement is sought, even if the contract or  
19 modification is not capable of performance within one year of its  
20 making.

21 NEW SECTION. **Sec. 14.** A new section is added to Title 62A RCW, to  
22 be codified as RCW 62A.8-114, to read as follows:

23 EVIDENTIARY RULES CONCERNING CERTIFICATED SECURITIES. The  
24 following rules apply in an action on a certificated security against  
25 the issuer:

26 (1) Unless specifically denied in the pleadings, each signature on  
27 a security certificate or in a necessary indorsement is admitted.

28 (2) If the effectiveness of a signature is put in issue, the burden  
29 of establishing effectiveness is on the party claiming under the  
30 signature, but the signature is presumed to be genuine or authorized.

31 (3) If signatures on a security certificate are admitted or  
32 established, production of the certificate entitles a holder to recover  
33 on it unless the defendant establishes a defense or a defect going to  
34 the validity of the security.

35 (4) If it is shown that a defense or defect exists, the plaintiff  
36 has the burden of establishing that the plaintiff or some person under

1 whom the plaintiff claims is a person against whom the defense or  
2 defect cannot be asserted.

3 NEW SECTION. **Sec. 15.** A new section is added to Title 62A RCW, to  
4 be codified as RCW 62A.8-115, to read as follows:

5 **SECURITIES INTERMEDIARY AND OTHERS NOT LIABLE TO ADVERSE CLAIMANT.**

6 A securities intermediary that has transferred a financial asset  
7 pursuant to an effective entitlement order, or a broker or other agent  
8 or bailee that has dealt with a financial asset at the direction of its  
9 customer or principal, is not liable to a person having an adverse  
10 claim to the financial asset, unless the securities intermediary, or  
11 broker or other agent or bailee:

12 (1) Took the action after it had been served with an injunction,  
13 restraining order, or other legal process enjoining it from doing so,  
14 issued by a court of competent jurisdiction, and had a reasonable  
15 opportunity to act on the injunction, restraining order, or other legal  
16 process; or

17 (2) Acted in collusion with the wrongdoer in violating the rights  
18 of the adverse claimant; or

19 (3) In the case of a security certificate that has been stolen,  
20 acted with notice of the adverse claim.

21 NEW SECTION. **Sec. 16.** A new section is added to Title 62A RCW, to  
22 be codified as RCW 62A.8-116, to read as follows:

23 **SECURITIES INTERMEDIARY AS PURCHASER FOR VALUE.** A securities  
24 intermediary that receives a financial asset and establishes a security  
25 entitlement to the financial asset in favor of an entitlement holder is  
26 a purchaser for value of the financial asset. A securities  
27 intermediary that acquires a security entitlement to a financial asset  
28 from another securities intermediary acquires the security entitlement  
29 for value if the securities intermediary acquiring the security  
30 entitlement establishes a security entitlement to the financial asset  
31 in favor of an entitlement holder.

32 **PART 2**

33 **ISSUE((--)) AND ISSUER**

1       **Sec. 17.** RCW 62A.8-201 and 1986 c 35 s 8 are each amended to read  
2 as follows:

3       ~~((#))~~ISSUER(~~((#))~~). (1) With respect to an obligation(~~((s))~~) on or a  
4 defense(~~((s))~~) to a security, an "issuer" includes a person (~~((who))~~) that:

5       (a) Places or authorizes the placing of (~~((his))~~) its name on a  
6 (~~((certificated))~~) security (~~((+otherwise))~~) certificate, other than as  
7 authenticating trustee, registrar, transfer agent, or the like(~~((+))~~), to  
8 evidence (~~((that it represents))~~) a share, participation, or other  
9 interest in (~~((his))~~) its property or in an enterprise, or to evidence  
10 (~~((his))~~) its duty to perform an obligation represented by the  
11 (~~((certificated security))~~) certificate;

12       (b) Creates a share(~~((s))~~), participation(~~((s))~~), or other  
13 interest(~~((s))~~) in (~~((his))~~) its property or in an enterprise, or  
14 undertakes an obligation(~~((s))~~), (~~((which shares, participations,~~  
15 ~~interests, or obligations are))~~) that is an uncertificated  
16 (~~((securities))~~) security;

17       (c) Directly or indirectly creates a fractional interest(~~((s))~~) in  
18 (~~((his))~~) its rights or property, (~~((which))~~) if the fractional interest(~~((s~~  
19 ~~are))~~) is represented by (~~((certificated securities))~~) a security  
20 certificate; or

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

23       (2) With respect to an obligation(~~((s))~~) on or defense(~~((s))~~) to a  
24 security, a guarantor is an issuer to the extent of (~~((his))~~) its  
25 guaranty, whether or not (~~((his))~~) its obligation is noted on a  
26 (~~((certificated security or on statements of uncertificated securities~~  
27 ~~sent pursuant to RCW 62A.8-408))~~) security certificate.

28       (3) With respect to registration of a transfer, (~~((pledge, or~~  
29 ~~release (Part 4 of this Article),~~ ~~"))~~) issuer(~~((#))~~) means a person on  
30 whose behalf transfer books are maintained.

31       **Sec. 18.** RCW 62A.8-202 and 1986 c 35 s 9 are each amended to read  
32 as follows:

33       ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF DEFECT OR DEFENSE.

34 (1) Even against a purchaser for value and without notice, the terms of  
35 a certificated security include(~~((:~~

36       (a) ~~if the security is certificated, those stated on the security;~~

37       (b) ~~if the security is uncertificated, those contained in the~~  
38 ~~initial transaction statement sent to such purchaser, or if his~~

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

4 (c) those made part of the security by reference, on the  
5 certificated security or in the initial transaction statement, to  
6 another instrument, indenture, or document or to a constitution,  
7 statute, ordinance, rule, regulation, order or the like, to the extent  
8 that the terms referred to do not conflict with the terms stated on the  
9 certificated security or contained in the statement. A reference under  
10 this paragraph does not of itself charge a purchaser for value with  
11 notice of a defect going to the validity of the security, even though  
12 the certificated security or statement expressly states that a person  
13 accepting it admits notice.

14 (2) A certificated security in the hands of a purchaser for value  
15 or an uncertificated security as to which an initial transaction  
16 statement has been sent to a purchaser for value, other than a security  
17 issued by a government or governmental agency or unit, even though  
18 issued with a defect going to its validity, is valid with respect to  
19 the purchaser if he is without notice of the particular defect unless  
20 the defect involves a violation of constitutional provisions, in which  
21 case the security is valid with respect to a subsequent purchaser for  
22 value and without notice of the defect.

23 This subsection)) terms stated on the certificate and terms made  
24 part of the security by reference on the certificate to another  
25 instrument, indenture, or document or to a constitution, statute,  
26 ordinance, rule, regulation, order, or the like, to the extent the  
27 terms referred to do not conflict with terms stated on the certificate.  
28 A reference under this subsection does not of itself charge a purchaser  
29 for value with notice of a defect going to the validity of the  
30 security, even if the certificate expressly states that a person  
31 accepting it admits notice. The terms of an uncertificated security  
32 include those stated in any instrument, indenture, or document or in a  
33 constitution, statute, ordinance, rule, regulation, order, or the like,  
34 pursuant to which the security is issued.

35 (2) The following rules apply if an issuer asserts that a security  
36 is not valid:

37 (a) A security other than one issued by a government or  
38 governmental subdivision, agency, or instrumentality, even though  
39 issued with a defect going to its validity, is valid in the hands of a

1 purchaser for value and without notice of the particular defect unless  
2 the defect involves a violation of a constitutional provision. In that  
3 case, the security is valid in the hands of a purchaser for value and  
4 without notice of the defect, other than one who takes by original  
5 issue.

6 (b) Subsection (2)(a) of this section applies to an issuer that is  
7 a government or governmental subdivision, agency, or ((unit))  
8 instrumentality only if ((either)) there has been substantial  
9 compliance with the legal requirements governing the issue or the  
10 issuer has received a substantial consideration for the issue as a  
11 whole or for the particular security and a stated purpose of the issue  
12 is one for which the issuer has power to borrow money or issue the  
13 security.

14 (3) Except as otherwise provided in ~~((the case of certain~~  
15 ~~unauthorized signatures-))~~ RCW 62A.8-205(~~(+))~~), lack of genuineness of  
16 a certificated security ~~((or an initial transaction statement))~~ is a  
17 complete defense, even against a purchaser for value and without  
18 notice.

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

24 (5) ~~((Nothing in))~~ This section ~~((shall be construed to))~~ does not  
25 affect the right of a party to cancel a contract for a security "when,  
26 as and if issued" or ((a)) "when distributed" ((contract to cancel the  
27 ~~contract))~~ in the event of a material change in the character of the  
28 security that is the subject of the contract or in the plan or  
29 arrangement pursuant to which the security is to be issued or  
30 distributed.

31 (6) If a security is held by a securities intermediary against whom  
32 an entitlement holder has a security entitlement with respect to the  
33 security, the issuer may not assert any defense that the issuer could  
34 not assert if the entitlement holder held the security directly.

35 **Sec. 19.** RCW 62A.8-203 and 1986 c 35 s 10 are each amended to read  
36 as follows:

37 STALENESS AS NOTICE OF DEFECT((S)) OR DEFENSE((S)). ((+)) After  
38 an act or event, other than a call that has been revoked, creating a

1 right to immediate performance of the principal obligation represented  
2 by a certificated security or ~~((that sets))~~ setting a date on or after  
3 which the security is to be presented or surrendered for redemption or  
4 exchange, a purchaser is charged with notice of any defect in its issue  
5 or defense of the issuer, if ~~((+~~

6 ~~(a))~~ the act or event ~~((is one requiring))~~:

7 (1) Requires the payment of money, the delivery of a certificated  
8 ~~((securities))~~ security, the registration of transfer of an  
9 uncertificated ~~((securities))~~ security, or any of ~~((these))~~ them on  
10 presentation or surrender of the ~~((certificated))~~ security certificate,  
11 the ~~((funds))~~ money or ~~((securities are))~~ security is available on the  
12 date set for payment or exchange, and ~~((he))~~ the purchaser takes the  
13 security more than one year after that date; ~~((and~~

14 ~~(b) the act or event))~~ or

15 (2) Is not covered by ~~((paragraph (a))~~ subsection (1) of this  
16 section and ~~((he))~~ the purchaser takes the security more than ~~((2))~~ two  
17 years after the date set for surrender or presentation or the date on  
18 which performance became due.

19 ~~((2) A call that has been revoked is not within subsection (1).))~~

20 **Sec. 20.** RCW 62A.8-204 and 1986 c 35 s 11 are each amended to read  
21 as follows:

22 EFFECT OF ISSUER'S RESTRICTIONS ON TRANSFER. A restriction on  
23 transfer of a security imposed by the issuer, even ~~((though))~~ if  
24 otherwise lawful, is ineffective against ~~((any))~~ a person without  
25 ~~((actual))~~ knowledge of ~~((it))~~ the restriction unless:

26 ~~((a))~~ (1) The security is certificated and the restriction is  
27 noted conspicuously ~~((thereon))~~ on the security certificate; or

28 ~~((b))~~ (2) The security is uncertificated and ~~((a notation of the~~  
29 restriction is contained in the initial transaction statement sent to  
30 the person or, if his interest is transferred to him other than by  
31 registration of transfer, pledge, or release, the initial transaction  
32 statement sent to)) the registered owner ~~((or the registered pledgee))~~  
33 has been notified by the restriction.

34 **Sec. 21.** RCW 62A.8-205 and 1986 c 35 s 12 are each amended to read  
35 as follows:

36 EFFECT OF UNAUTHORIZED SIGNATURE ON ~~((CERTIFICATED))~~ SECURITY ~~((OR~~  
37 INITIAL TRANSACTION STATEMENT)) CERTIFICATE. An unauthorized signature



1 placed on a ~~((certificated))~~ security ~~((prior to))~~ certificate before  
2 or in the course of issue ~~((or placed on an initial transaction~~  
3 ~~statement))~~ is ineffective, but the signature is effective in favor of  
4 a purchaser for value of the certificated security ~~((or a purchaser for~~  
5 ~~value of an uncertificated security to whom such initial transaction~~  
6 ~~statement has been sent,))~~ if the purchaser is without notice of the  
7 lack of authority and the signing has been done by:

8 ~~((a))~~ (1) An authenticating trustee, registrar, transfer agent,  
9 or other person entrusted by the issuer with the signing of the  
10 security~~((,))~~ certificate or of similar ~~((securities, or of initial~~  
11 ~~transaction statements))~~ certificates, or the immediate preparation for  
12 signing of any of them; or

13 ~~((b))~~ (2) An employee of the issuer, or of any of the  
14 ~~((foregoing))~~ persons listed in subsection (1) of this section,  
15 entrusted with responsible handling of the security ~~((or initial~~  
16 ~~transaction statement))~~ certificate.

17 **Sec. 22.** RCW 62A.8-206 and 1986 c 35 s 13 are each amended to read  
18 as follows:

19 COMPLETION OR ALTERATION OF ~~((CERTIFICATED))~~ SECURITY ~~((OR INITIAL~~  
20 ~~TRANSACTION STATEMENT))~~ CERTIFICATE. (1) If a ~~((certificated))~~  
21 security certificate contains the signatures necessary to its issue or  
22 transfer but is incomplete in any other respect:

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

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

28 (2) A complete ~~((certificated))~~ security certificate that has been  
29 improperly altered, even ~~((though))~~ if fraudulently, remains  
30 enforceable, but only according to its original terms.

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

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

35 ~~(b) even though the blanks are incorrectly filled in, the statement~~  
36 ~~as completed is effective in favor of the person to whom it is sent if~~  
37 ~~he purchased the security referred to therein for value and without~~  
38 ~~notice of the incorrectness.~~

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

5       **Sec. 23.** RCW 62A.8-207 and 1986 c 35 s 14 are each amended to read  
6 as follows:

7       RIGHTS AND DUTIES OF ISSUER WITH RESPECT TO REGISTERED OWNERS (~~AND~~  
8 ~~REGISTERED PLEDGEEES~~). (1) (~~Prior to~~) Before due presentment for  
9 registration of transfer of a certificated security in registered form  
10 or of an instruction requesting registration of transfer of an  
11 uncertificated security, the issuer or indenture trustee may treat the  
12 registered owner as the person exclusively entitled to vote, (~~to~~)  
13 receive notifications, and otherwise (~~to~~) exercise all the rights and  
14 powers of an owner.

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

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

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

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

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

34       (c) ~~register the release of the security from the existing pledge~~  
35 ~~and 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~~  
38 ~~by registration of transfer under subsection (4)(b) or by registration~~

1 of release and pledge under subsection (4)(c), if the security interest  
2 is assigned.

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

5 (a) any uncertificated securities issued in exchange for or  
6 distributed with respect to the pledged security shall be registered  
7 subject to the pledge;

8 (b) any certificated securities issued in exchange for or  
9 distributed with respect to the pledged security shall be delivered to  
10 the registered pledgee; and

11 (c) any money paid in exchange for or in redemption of part or all  
12 of the security shall be paid to the registered pledgee.

13 (7) Nothing in)) This Article ((shall be construed to)) does not  
14 affect the liability of the registered owner of a security for a  
15 call((s)), assessment((s)), or the like.

16 **Sec. 24.** RCW 62A.8-208 and 1986 c 35 s 15 are each amended to read  
17 as follows:

18 EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE, REGISTRAR, OR  
19 TRANSFER AGENT. (1) A person ((placing his signature upon a  
20 certificated)) signing a security ((or an initial transaction  
21 statement)) certificate as authenticating trustee, registrar, transfer  
22 agent, or the like, warrants to a purchaser for value of the  
23 certificated security ((or a purchaser for value of an uncertificated  
24 security to whom the initial transaction statement has been sent)), if  
25 the purchaser is without notice of ((the)) a particular defect, that:

26 (a) The ((certificated security or initial transaction statement))  
27 certificate is genuine;

28 (b) ((his)) The person's own participation in the issue ((or  
29 registration of the transfer, pledge, or release)) of the security is  
30 within ((his)) the person's capacity and within the scope of the  
31 authority received by ((him)) the person from the issuer; and

32 (c) ((he)) The person has reasonable grounds to believe that the  
33 certificated security is in the form and within the amount the issuer  
34 is authorized to issue.

35 (2) Unless otherwise agreed, a person ((by so placing his  
36 signature)) signing under subsection (1) of this section does not  
37 assume responsibility for the validity of the security in other  
38 respects.

1 NEW SECTION. **Sec. 25.** A new section is added to Title 62A RCW, to  
2 be codified as RCW 62A.8-209, to read as follows:

3 **ISSUER'S LIEN.** A lien in favor of an issuer upon a certificated  
4 security is valid against a purchaser only if the right of the issuer  
5 to the lien is noted conspicuously on the security certificate.

6 NEW SECTION. **Sec. 26.** A new section is added to Title 62A RCW, to  
7 be codified as RCW 62A.8-210, to read as follows:

8 **OVERISSUE.** (1) In this section, "overissue" means the issue of  
9 securities in excess of the amount the issuer has corporate power to  
10 issue, but an overissue does not occur if appropriate action has cured  
11 the overissue.

12 (2) Except as otherwise provided in subsections (3) and (4) of this  
13 section, the provisions of this Article which validate a security or  
14 compel its issue or reissue do not apply to the extent that validation,  
15 issue, or reissue would result in overissue.

16 (3) If an identical security not constituting an overissue is  
17 reasonably available for purchase, a person entitled to issue or  
18 validation may compel the issuer to purchase the security and deliver  
19 it if certificated or register its transfer if uncertificated, against  
20 surrender of any security certificate the person holds.

21 (4) If a security is not reasonably available for purchase, a  
22 person entitled to issue or validation may recover from the issuer the  
23 price the person or the last purchaser for value paid for it with  
24 interest from the date of the person's demand.

25 **PART 3**  
26 **((PURCHASE)) TRANSFER OF CERTIFICATED AND**  
27 **UNCERTIFICATED SECURITIES**

28 **Sec. 27.** RCW 62A.8-301 and 1986 c 35 s 16 are each amended to read  
29 as follows:

30 ~~((RIGHTS ACQUIRED BY PURCHASER OR TRANSFEREE.—(1) Upon transfer of~~  
31 ~~a security to a purchaser (RCW 62A.8-313), the purchaser acquires the~~  
32 ~~rights in the security which his transferor had or had actual authority~~  
33 ~~to convey unless the purchaser's rights are limited by RCW 62A.8-~~  
34 ~~302(4).~~

1       ~~(2) A transferee of a limited interest acquires rights only to the~~  
2 ~~extent of the interest transferred. The creation or release of a~~  
3 ~~security interest in a security is the transfer of a limited interest~~  
4 ~~in that security.)) DELIVERY. (1) Delivery of a certificated security~~  
5 ~~to a purchaser occurs when:~~

6       ~~(a) The purchaser acquires possession of the security certificate;~~

7       ~~(b) Another person, other than a securities intermediary, either~~  
8 ~~acquires possession of the security certificate on behalf of the~~  
9 ~~purchaser or, having previously acquired possession of the certificate,~~  
10 ~~acknowledges that it holds for the purchaser; or~~

11       ~~(c) A securities intermediary acting on behalf of the purchaser~~  
12 ~~acquires possession of the security certificate, only if the~~  
13 ~~certificate is in registered form and has been specially indorsed to~~  
14 ~~the purchaser by an effective indorsement.~~

15       ~~(2) Delivery of an uncertificated security to a purchaser occurs~~  
16 ~~when:~~

17       ~~(a) The issuer registers the purchaser as the registered owner,~~  
18 ~~upon original issue or registration of transfer; or~~

19       ~~(b) Another person, other than a securities intermediary, either~~  
20 ~~becomes the registered owner of the uncertificated security on behalf~~  
21 ~~of the purchaser or, having previously become the registered owner,~~  
22 ~~acknowledges that it holds for the purchaser.~~

23       **Sec. 28.** RCW 62A.8-302 and 1986 c 35 s 17 are each amended to read  
24 as follows:

25       ~~(( "BONA FIDE PURCHASER"; "ADVERSE CLAIM"; TITLE ACQUIRED BY BONA~~  
26 ~~FIDE PURCHASER. (1) A "bona fide purchaser" is a purchaser for value~~  
27 ~~in good faith and without notice of any adverse claim:~~

28       ~~(a) who takes delivery of a certificated security in bearer form or~~  
29 ~~in registered form, issued or indorsed to him or in blank;~~

30       ~~(b) to whom the transfer, pledge or release of an uncertificated~~  
31 ~~security is registered on the books of the issuer; or~~

32       ~~(c) to whom a security is transferred under the provisions of~~  
33 ~~paragraph (c), (d)(i), or (g) of RCW 62A.8-313(1).~~

34       ~~(2) "Adverse claim" includes a claim that a transfer was or would~~  
35 ~~be wrongful or that a particular adverse person is the owner of or has~~  
36 ~~an interest in the security.~~

1       ~~(3) A bona fide purchaser in addition to acquiring the rights of a~~  
2 ~~purchaser (RCW 62A.8-301) also acquires his interest in the security~~  
3 ~~free of any adverse claim.~~

4       ~~(4) Notwithstanding RCW 62A.8-301(1), the transferee of a~~  
5 ~~particular certificated security who has been a party to any fraud or~~  
6 ~~illegality affecting the security, or who as a prior holder of that~~  
7 ~~certificated security had notice of an adverse claim, cannot improve~~  
8 ~~his position by taking from a bona fide purchaser.))~~ RIGHTS OF  
9 PURCHASER. (1) Except as otherwise provided in subsections (2) and (3)  
10 of this section, upon delivery of a certificated or uncertificated  
11 security to a purchaser, the purchaser acquires all rights in the  
12 security that the transferor had or had power to transfer.

13       (2) A purchaser of a limited interest acquires rights only to the  
14 extent of the interest purchased.

15       (3) A purchaser of a certificated security who as a previous holder  
16 had notice of an adverse claim does not improve its position by taking  
17 from a protected purchaser.

18       **Sec. 29.** RCW 62A.8-303 and 1986 c 35 s 18 are each amended to read  
19 as follows:

20       ~~(( "BROKER". "Broker" means a person engaged for all or part of his~~  
21 ~~time in the business of buying and selling securities, who in the~~  
22 ~~transaction concerned acts for, buys a security from, or sells a~~  
23 ~~security to, a customer. Nothing in this Article determines the~~  
24 ~~capacity in which a person acts for purposes of any other statute or~~  
25 ~~rule to which the person is subject.))~~ PROTECTED PURCHASER. (1)  
26 "Protected purchaser" means a purchaser of a certificated or  
27 uncertificated security, or of an interest therein, who:

28       (a) Gives value;

29       (b) Does not have notice of any adverse claim to the security; and

30       (c) Obtains control of the certificated or uncertificated security.

31       (2) In addition to acquiring the rights of a purchaser, a protected  
32 purchaser also acquires its interest in the security free of any  
33 adverse claim.

34       **Sec. 30.** RCW 62A.8-304 and 1986 c 35 s 19 are each amended to read  
35 as follows:

36       ~~((NOTICE TO PURCHASER OF ADVERSE CLAIMS. (1) A purchaser~~  
37 ~~(including a broker for the seller or buyer, but excluding an~~

1 intermediary bank) of a certificated security is charged with notice of  
2 adverse claims if:

3 (a) the security, whether in bearer or registered form, has been  
4 indorsed "for collection" or "for surrender" or for some other purpose  
5 not involving transfer; or

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

10 (2) A purchaser (including a broker for the seller or buyer, but  
11 excluding an intermediary bank) to whom the transfer, pledge, or  
12 release of an uncertificated security is registered is charged with  
13 notice of adverse claims as to which the issuer has a duty under RCW  
14 62A.8-403(4) at the time of registration and which are noted in the  
15 initial transaction statement sent to the purchaser or, if his interest  
16 is transferred to him other than by registration of transfer, pledge,  
17 or release, the initial transaction statement sent to the registered  
18 owner or the registered pledgee.

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

28 INDORSEMENT. (1) An indorsement may be in blank or special. An  
29 indorsement in blank includes an indorsement to bearer. A special  
30 indorsement specifies to whom a security is to be transferred or who  
31 has power to transfer it. A holder may convert a blank indorsement to  
32 a special indorsement.

33 (2) An indorsement purporting to be only of part of a security  
34 certificate representing units intended by the issuer to be separately  
35 transferable is effective to the extent of the indorsement.

36 (3) An indorsement, whether special or in blank, does not  
37 constitute a transfer until delivery of the certificate on which it  
38 appears or, if the indorsement is on a separate document, until  
39 delivery of both the document and the certificate.

1       (4) If a security certificate in registered form has been delivered  
2 to a purchaser without a necessary indorsement, the purchaser may  
3 become a protected purchaser only when the indorsement is supplied.  
4 However, against a transferor, a transfer is complete upon delivery and  
5 the purchaser has a specifically enforceable right to have any  
6 necessary indorsement supplied.

7       (5) An indorsement of a security certificate in bearer form may  
8 give notice of an adverse claim to the certificate, but it does not  
9 otherwise affect a right to registration that the holder possesses.

10       (6) Unless otherwise agreed, a person making an indorsement assumes  
11 only the obligations provided in RCW 62A.8-108 and not an obligation  
12 that the security will be honored by the issuer.

13       **Sec. 31.** RCW 62A.8-305 and 1986 c 35 s 20 are each amended to read  
14 as follows:

15       ~~((STALENESS AS NOTICE OF ADVERSE CLAIMS.— An act or event that~~  
16 ~~creates a right to immediate performance of the principal obligation~~  
17 ~~represented by a certificated security or sets a date on or after which~~  
18 ~~a certificated security is to be presented or surrendered for~~  
19 ~~redemption or exchange does not itself constitute any notice of adverse~~  
20 ~~claims except in the case of a transfer:~~

21       ~~(a) after one year from any date set for presentment or surrender~~  
22 ~~for redemption or exchange; or~~

23       ~~(b) after 6 months from any date set for payment of money against~~  
24 ~~presentation or surrender of the security if funds are available for~~  
25 ~~payment on that date.))~~ INSTRUCTION. (1) If an instruction has been

26 originated by an appropriate person but is incomplete in any other  
27 respect, any person may complete it as authorized and the issuer may  
28 rely on it as completed, even though it has been completed incorrectly.

29       (2) Unless otherwise agreed, a person initiating an instruction  
30 assumes only the obligations imposed by RCW 62A.8-108 and not an  
31 obligation that the security will be honored by the issuer.

32       **Sec. 32.** RCW 62A.8-306 and 1986 c 35 s 21 are each amended to read  
33 as follows:

34       ~~((WARRANTIES ON PRESENTMENT AND TRANSFER OF CERTIFICATED~~  
35 ~~SECURITIES; WARRANTIES OF ORIGINATORS OF INSTRUCTIONS.—(1) A person~~  
36 ~~who presents a certificated security for registration of transfer or~~  
37 ~~for payment or exchange warrants to the issuer that he is entitled to~~



1 the registration, payment, or exchange. But, a purchaser for value and  
2 without notice of adverse claims who receives a new, reissued, or re-  
3 registered certificated security on registration of transfer or  
4 receives an initial transaction statement confirming the registration  
5 of transfer of an equivalent uncertificated security to him warrants  
6 only that he has no knowledge of any unauthorized signature (RCW 62A.8-  
7 311) in a necessary indorsement.

8 (2) A person by transferring a certificated security to a purchaser  
9 for value warrants only that:

10 (a) his transfer is effective and rightful;

11 (b) the security is genuine and has not been materially altered;  
12 and

13 (c) he knows of no fact which might impair the validity of the  
14 security.

15 (3) If a certificated security is delivered by an intermediary  
16 known to be entrusted with delivery of the security on behalf of  
17 another or with collection of a draft or other claim against delivery,  
18 the intermediary by delivery warrants only his own good faith and  
19 authority, even though he has purchased or made advances against the  
20 claim to be collected against the delivery.

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

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

27 (a) he is an appropriate person to originate the instruction; and

28 (b) at the time the instruction is presented to the issuer he will  
29 be entitled to the registration of transfer, pledge, or release.

30 (6) A person who originates an instruction warrants to any person  
31 specially guaranteeing his signature (RCW 62A.8-312(3)) that:

32 (a) he is an appropriate person to originate the instruction; and

33 (b) at the time the instruction is presented to the issuer

34 (i) he will be entitled to the registration of transfer, pledge, or  
35 release; and

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

1       ~~(7) A person who originates an instruction warrants to a purchaser~~  
2 ~~for value and to any person guaranteeing the instruction (RCW 62A.8-~~  
3 ~~312(6)) that:~~

4       ~~(a) he is an appropriate person to originate the instruction;~~

5       ~~(b) the uncertificated security referred to therein is valid; and~~

6       ~~(c) at the time the instruction is presented to the issuer~~

7       ~~(i) the transferor will be entitled to the registration of~~  
8 ~~transfer, pledge, or release;~~

9       ~~(ii) the transfer, pledge, or release requested in the instruction~~  
10 ~~will be registered by the issuer free from all liens, security~~  
11 ~~interests, restrictions, and claims other than those specified in the~~  
12 ~~instruction; and~~

13       ~~(iii) the requested transfer, pledge, or release will be rightful.~~

14       ~~(8) If a secured party is the registered pledgee or the registered~~  
15 ~~owner of an uncertificated security, a person who originates an~~  
16 ~~instruction of release or transfer to the debtor or, after payment and~~  
17 ~~on order of the debtor, a transfer instruction to a third person,~~  
18 ~~warrants to the debtor or the third person only that he is an~~  
19 ~~appropriate person to originate the instruction and at the time the~~  
20 ~~instruction is presented to the issuer, the transferor will be entitled~~  
21 ~~to the registration of release or transfer. If a transfer instruction~~  
22 ~~to a third person who is a purchaser for value is originated on order~~  
23 ~~of the debtor, the debtor makes to the purchaser the warranties of~~  
24 ~~paragraphs (b), (c)(ii) and (c)(iii) of subsection (7).~~

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

28       ~~(a) his transfer is effective and rightful; and~~

29       ~~(b) the uncertificated security is valid.~~

30       ~~(10) A broker gives to his customer and to the issuer and a~~  
31 ~~purchaser the applicable warranties provided in this section and has~~  
32 ~~the rights and privileges of a purchaser under this section. The~~  
33 ~~warranties of and in favor of the broker acting as an agent are in~~  
34 ~~addition to applicable warranties given by and in favor of his~~  
35 ~~customer.))~~ EFFECT OF GUARANTEEING SIGNATURE, INDORSEMENT, OR  
36 INSTRUCTION. (1) A person who guarantees a signature of an indorser of  
37 a security certificate warrants that at the time of signing:

38       (a) The signature was genuine;

1       (b) The signer was an appropriate person to indorse, or if the  
2 signature is by an agent, the agent had actual authority to act on  
3 behalf of the appropriate person; and

4       (c) The signer had legal capacity to sign.

5       (2) A person who guarantees a signature of the originator of an  
6 instruction warrants that at the time of signing:

7       (a) The signature was genuine;

8       (b) The signer was an appropriate person to originate the  
9 instruction, or if the signature is by an agent, the agent had actual  
10 authority to act on behalf of the appropriate person, if the person  
11 specified in the instruction as the registered owner was, in fact, the  
12 registered owner, as to which fact the signature guarantor does not  
13 make a warranty; and

14       (c) The signer had legal capacity to sign.

15       (3) A person who specially guarantees the signature of an  
16 originator of an instruction makes the warranties of a signature  
17 guarantor under subsection (2) of this section and also warrants that  
18 at the time the instruction is presented to the issuer:

19       (a) The person specified in the instruction as the registered owner  
20 of the uncertificated security will be the registered owner; and

21       (b) The transfer of the uncertificated security requested in the  
22 instruction will be registered by the issuer free from all liens,  
23 security interests, restrictions, and claims other than those specified  
24 in the instruction.

25       (4) A guarantor under subsections (1) and (2) of this section or a  
26 special guarantor under subsection (3) of this section does not  
27 otherwise warrant the rightfulness of the transfer.

28       (5) A person who guarantees an indorsement of a security  
29 certificate makes the warranties of a signature guarantor under  
30 subsection (1) of this section and also warrants the rightfulness of  
31 the transfer in all respects.

32       (6) A person who guarantees an instruction requesting the transfer  
33 of an uncertificated security makes the warranties of a special  
34 signature guarantor under subsection (3) of this section and also  
35 warrants the rightfulness of the transfer in all respects.

36       (7) An issuer may not require a special guaranty of signature, a  
37 guaranty of indorsement, or a guaranty of instruction as a condition to  
38 registration of transfer.

1       (8) The warranties under this section are made to a person taking  
2 or dealing with the security in reliance on the guaranty, and the  
3 guarantor is liable to the person for loss resulting from their breach.  
4 An indorser or originator of an instruction whose signature,  
5 indorsement, or instruction has been guaranteed is liable to a  
6 guarantor for any loss suffered by the guarantor as a result of breach  
7 of the warranties of the guarantor.

8       **Sec. 33.** RCW 62A.8-307 and 1986 c 35 s 22 are each amended to read  
9 as follows:

10       ~~((EFFECT OF DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL~~  
11 ~~INDORSEMENT. If a certificated security in registered form has been~~  
12 ~~delivered to a purchaser without a necessary indorsement he may become~~  
13 ~~a bona fide purchaser only as of the time the indorsement is supplied;~~  
14 ~~but against the transferor, the transfer is complete upon delivery and~~  
15 ~~the purchaser has a specifically enforceable right to have any~~  
16 ~~necessary indorsement supplied.)) PURCHASER'S RIGHT TO REQUISITES FOR~~  
17 ~~REGISTRATION OF TRANSFER. Unless otherwise agreed, the transferor of~~  
18 ~~a security on due demand shall supply the purchaser with proof of~~  
19 ~~authority to transfer or with any other requisite necessary to obtain~~  
20 ~~registration of the transfer of the security, but if the transfer is~~  
21 ~~not for value, a transferor need not comply unless the purchaser pays~~  
22 ~~the necessary expenses. If the transferor fails within a reasonable~~  
23 ~~time to comply with the demand, the purchaser may reject or rescind the~~  
24 ~~transfer.~~

25   **PART 4**  
26   **REGISTRATION**

27       **Sec. 34.** RCW 62A.8-401 and 1986 c 35 s 37 are each amended to read  
28 as follows:

29       DUTY OF ISSUER TO REGISTER TRANSFER(~~(, PLEDGE, OR RELEASE)~~). (1)  
30 If a certificated security in registered form is presented to the  
31 issuer with a request to register transfer or an instruction is  
32 presented to the issuer with a request to register transfer(~~(, pledge,~~  
33 ~~or release)~~) of an uncertificated security, the issuer shall register  
34 the transfer(~~(, pledge, or release)~~) as requested if:

1 (a) ~~((the security is indorsed or the instruction was originated by~~  
2 ~~the appropriate person or persons (RCW 62A.8-308);~~

3 ~~(b))~~ Under the terms of the security the person seeking  
4 registration of transfer is eligible to have the security registered in  
5 its name;

6 (b) The indorsement or instruction is made by the appropriate  
7 person or by an agent who has actual authority to act on behalf of the  
8 appropriate person;

9 (c) Reasonable assurance is given that ((those)) the  
10 indorsement((s)) or instruction((s-are)) is genuine and ((effective))  
11 authorized (RCW 62A.8-402);

12 ~~((c) the issuer has no duty as to adverse claims or has discharged~~  
13 ~~the duty (RCW 62A.8-403);)~~

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

16 (e) The transfer does not violate any restriction on transfer  
17 imposed by the issuer in accordance with RCW 62A.8-204;

18 (f) A demand that the issuer not register transfer has not become  
19 effective under RCW 62A.8-403, or the issuer has complied with RCW  
20 62A.8-403(2) but no legal process or indemnity bond is obtained as  
21 provided in RCW 62A.8-403(4); and

22 (g) The transfer((, pledge, or release)) is in fact rightful or is  
23 to a ((bona fide)) protected purchaser.

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

30 **Sec. 35.** RCW 62A.8-402 and 1986 c 35 s 38 are each amended to read  
31 as follows:

32 ASSURANCE THAT INDORSEMENT((S-AND)) OR INSTRUCTION((S-ARE)) IS  
33 EFFECTIVE. (1) ((The)) An issuer may require the following assurance  
34 that each necessary indorsement ((of a certificated security)) or each  
35 instruction ((RCW 62A.8-308)) is genuine and ((effective))  
36 authorized:

37 (a) In all cases, a ((guarantee)) guaranty of the signature ((RCW  
38 62A.8-312 (1) or (2))) of the person ((indorsing a certificated

1 security)) making an indorsement or originating an instruction  
2 including, in the case of an instruction, (~~a warranty of the taxpayer~~  
3 ~~identification number or, in the absence thereof, other~~) reasonable  
4 assurance of identity;

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

7 (c) If the indorsement is made or the instruction is originated by  
8 a fiduciary pursuant to RCW 62A.8-107(1) (d) or (e), appropriate  
9 evidence of appointment or incumbency;

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

12 (e) If the indorsement is made or the instruction is originated by  
13 a person not covered by (~~any of the foregoing~~) another provision of  
14 this subsection, assurance appropriate to the case corresponding as  
15 nearly as may be to the (~~foregoing~~) provisions of this subsection.

16 (2) ((A)) An issuer may elect to require reasonable assurance  
17 beyond that specified in this section.

18 (3) In this section:

19 (a) "~~(guarantee)~~ Guaranty of the signature" (~~in subsection (1)~~)  
20 means a (~~guarantee~~) guaranty signed by or on behalf of a person  
21 reasonably believed by the issuer to be responsible. (~~The~~) An issuer  
22 may adopt standards with respect to responsibility if they are not  
23 manifestly unreasonable.

24 (~~(3)~~) (b) "Appropriate evidence of appointment or incumbency"  
25 (~~in subsection (1) means~~):

26 (~~(a)~~) (i) In the case of a fiduciary appointed or qualified by a  
27 court, a certificate issued by or under the direction or supervision of  
28 (~~that~~) the court or an officer thereof and dated within (60) sixty  
29 days before the date of presentation for transfer(~~, pledge, or~~  
30 ~~release~~)); or

31 (~~(b)~~) (ii) In any other case, a copy of a document showing the  
32 appointment or a certificate issued by or on behalf of a person  
33 reasonably believed by (~~the~~) an issuer to be responsible or, in the  
34 absence of that document or certificate, other evidence (~~reasonably~~  
35 ~~deemed by~~) the issuer (~~to be~~) reasonably considered appropriate.  
36 (~~The issuer may adopt standards with respect to the evidence if they~~  
37 ~~are not manifestly unreasonable. The issuer is not charged with notice~~  
38 ~~of the contents of any document obtained pursuant to this paragraph (b)~~

1 except to the extent that the contents relate directly to the  
2 appointment or incumbency.

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

10 **Sec. 36.** RCW 62A.8-403 and 1986 c 35 s 39 are each amended to read  
11 as follows:

12 ((ISSUER'S DUTY AS TO ADVERSE CLAIMS.—(1) An issuer to whom a  
13 certificated security is presented for registration shall inquire into  
14 adverse claims if:

15 (a) a written notification of an adverse claim is received at a  
16 time and in a manner affording the issuer a reasonable opportunity to  
17 act on it prior to the issuance of a new, reissued, or re-registered  
18 certificated security, and the notification identifies the claimant,  
19 the registered owner, and the issue of which the security is a part,  
20 and provides an address for communications directed to the claimant; or

21 (b) the issuer is charged with notice of an adverse claim from a  
22 controlling instrument it has elected to require under RCW 62A.8-  
23 402(4).

24 (2) The issuer may discharge any duty of inquiry by any reasonable  
25 means, including notifying an adverse claimant by registered or  
26 certified mail at the address furnished by him or, if there be no such  
27 address, at his residence or regular place of business that the  
28 certificated security has been presented for registration of transfer  
29 by a named person, and that the transfer will be registered unless  
30 within 30 days from the date of mailing the notification, either:

31 (a) an appropriate restraining order, injunction, or other process  
32 issues from a court of competent jurisdiction; or

33 (b) there is filed with the issuer an indemnity bond, sufficient in  
34 the issuer's judgment to protect the issuer and any transfer agent,  
35 registrar, or other agent of the issuer involved from any loss it or  
36 they may suffer by complying with the adverse claim.

37 (3) Unless an issuer is charged with notice of an adverse claim  
38 from a controlling instrument which it has elected to require under RCW

1 ~~62A.8-402(4) or receives notification of an adverse claim under~~  
2 ~~subsection (1), if a certificated security presented for registration~~  
3 ~~is indorsed by the appropriate person or persons the issuer is under no~~  
4 ~~duty to inquire into adverse claims. In particular:~~

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

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

17 ~~(c) the issuer is not charged with notice of the contents of any~~  
18 ~~court record or file or other recorded or unrecorded document even~~  
19 ~~though the document is in its possession and even though the transfer~~  
20 ~~is made on the indorsement of a fiduciary to the fiduciary himself or~~  
21 ~~to his nominee.~~

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

24 ~~(a) claims embodied in a restraining order, injunction, or other~~  
25 ~~legal process served upon the issuer if the process was served at a~~  
26 ~~time and in a manner affording the issuer a reasonable opportunity to~~  
27 ~~act on it in accordance with the requirements of subsection (5);~~

28 ~~(b) claims of which the issuer has received a written notification~~  
29 ~~from the registered owner or the registered pledgee if the notification~~  
30 ~~was received at a time and in a manner affording the issuer a~~  
31 ~~reasonable opportunity to act on it in accordance with the requirements~~  
32 ~~of subsection (5);~~

33 ~~(c) claims (including restrictions on transfer not imposed by the~~  
34 ~~issuer) to which the registration of transfer to the present registered~~  
35 ~~owner was subject and were so noted in the initial transaction~~  
36 ~~statement sent to him; and~~

37 ~~(d) claims as to which an issuer is charged with notice from a~~  
38 ~~controlling instrument it has elected to require under RCW 62A.8-~~  
39 ~~402(4).~~



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

3       ~~(a) including a notation of the claim in any statements sent with~~  
4 ~~respect to the security under RCW 62A.8-408 (3), (6), and (7); and~~

5       ~~(b) refusing to register the transfer or pledge of the security~~  
6 ~~unless the nature of the claim does not preclude transfer or pledge~~  
7 ~~subject thereto.~~

8       ~~(6) If the transfer or pledge of the security is registered subject~~  
9 ~~to an adverse claim, a notation of the claim must be included in the~~  
10 ~~initial transaction statement and all subsequent statements sent to the~~  
11 ~~transferee and pledgee under RCW 62A.8-408.~~

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

18       ~~(a) the claim was embodied in legal process which expressly~~  
19 ~~provides otherwise;~~

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

22       ~~(c) the claim was one as to which the issuer was charged with~~  
23 ~~notice from a controlling instrument it required under RCW 62A.8-402(4)~~  
24 ~~in connection with the pledgee's request for transfer; or~~

25       ~~(d) the transfer requested is to the registered owner.))~~ DEMAND  
26 THAT ISSUER NOT REGISTER TRANSFER. (1) A person who is an appropriate  
27 person to make an indorsement or originate an instruction may demand  
28 that the issuer not register transfer of a security by communicating to  
29 the issuer a notification that identifies the registered owner and the  
30 issue of which the security is a part and provides an address for  
31 communications directed to the person making the demand. The demand is  
32 effective only if it is received by the issuer at a time and in a  
33 manner affording the issuer reasonable opportunity to act on it.

34       (2) If a certificated security in registered form is presented to  
35 an issuer with a request to register transfer or an instruction is  
36 presented to an issuer with a request to register transfer of an  
37 uncertificated security after a demand that the issuer not register  
38 transfer has become effective, the issuer shall promptly communicate to  
39 (a) the person who initiated the demand at the address provided in the

1 demand and (b) the person who presented the security for registration  
2 of transfer or initiated the instruction requesting registration of  
3 transfer a notification stating that:

4 (i) The certificated security has been presented for registration  
5 of transfer or instruction for registration of transfer of  
6 uncertificated security has been received;

7 (ii) A demand that the issuer not register transfer had previously  
8 been received; and

9 (iii) The issuer will withhold registration of transfer for a  
10 period of time stated in the notification in order to provide the  
11 person who initiated the demand an opportunity to obtain legal process  
12 or an indemnity bond.

13 (3) The period described in subsection (2)(b)(iii) of this section  
14 may not exceed thirty days after the date of communication of the  
15 notification. A shorter period may be specified by the issuer if it is  
16 not manifestly unreasonable.

17 (4) An issuer is not liable to a person who initiated a demand that  
18 the issuer not register transfer for any loss the person suffers as a  
19 result of registration of a transfer pursuant to an effective  
20 indorsement or instruction if the person who initiated the demand does  
21 not, within the time stated in the issuer's communication, either:

22 (a) Obtain an appropriate restraining order, injunction, or other  
23 process from a court of competent jurisdiction enjoining the issuer  
24 from registering the transfer; or

25 (b) File with the issuer an indemnity bond, sufficient in the  
26 issuer's judgment to protect the issuer and any transfer agent,  
27 registrar, or other agent of the issuer involved from any loss it or  
28 they may suffer by refusing to register the transfer.

29 (5) This section does not relieve an issuer from liability for  
30 registering transfer pursuant to an indorsement or instruction that was  
31 not effective.

32 **Sec. 37.** RCW 62A.8-404 and 1986 c 35 s 40 are each amended to read  
33 as follows:

34 ~~((LIABILITY AND NON-LIABILITY FOR REGISTRATION.—(1) Except as~~  
35 ~~provided in any law relating to the collection of taxes, the issuer is~~  
36 ~~not liable to the owner, pledgee, or any other person suffering loss as~~  
37 ~~a result of the registration of a transfer, pledge, or release of a~~  
38 ~~security if:~~

1       ~~(a) there were on or with a certificated security the necessary~~  
2 ~~indorsements or the issuer had received an instruction originated by an~~  
3 ~~appropriate person (RCW 62A.8-308); and~~

4       ~~(b) the issuer had no duty as to adverse claims or has discharged~~  
5 ~~the duty (RCW 62A.8-403).~~

6       ~~(2) If an issuer has registered a transfer of a certificated~~  
7 ~~security to a person not entitled to it, the issuer on demand shall~~  
8 ~~deliver a like security to the true owner unless:~~

9       ~~(a) the registration was pursuant to subsection (1);~~

10       ~~(b) the owner is precluded from asserting any claim for registering~~  
11 ~~the transfer under RCW 62A.8-405(1); or~~

12       ~~(c) the delivery would result in overissue, in which case the~~  
13 ~~issuer's liability is governed by RCW 62A.8-104.~~

14       ~~(3) If an issuer has improperly registered a transfer, pledge, or~~  
15 ~~release of an uncertificated security, the issuer on demand from the~~  
16 ~~injured party shall restore the records as to the injured party to the~~  
17 ~~condition that would have obtained if the improper registration had not~~  
18 ~~been made unless:~~

19       ~~(a) the registration was pursuant to subsection (1); or~~

20       ~~(b) the registration would result in overissue, in which case the~~  
21 ~~issuer's liability is governed by RCW 62A.8-104.))~~ WRONGFUL

22 REGISTRATION. (1) Except as otherwise provided in RCW 62A.8-406, an  
23 issuer is liable for wrongful registration of transfer if the issuer  
24 has registered a transfer of a security to a person not entitled to it,  
25 and the transfer was registered:

26       (a) Pursuant to an ineffective indorsement or instruction;

27       (b) After a demand that the issuer not register transfer became  
28 effective under RCW 62A.8-403(1) and the issuer did not comply with RCW  
29 62A.8-403(2);

30       (c) After the issuer had been served with an injunction,  
31 restraining order, or other legal process enjoining it from registering  
32 the transfer, issued by a court of competent jurisdiction, and the  
33 issuer had a reasonable opportunity to act on the injunction,  
34 restraining order, or other legal process; or

35       (d) By an issuer acting in collusion with the wrongdoer.

36       (2) An issuer that is liable for wrongful registration of transfer  
37 under subsection (1) of this section on demand shall provide the person  
38 entitled to the security with a like certificated or uncertificated  
39 security, and any payments or distributions that the person did not

1 receive as a result of the wrongful registration. If an overissue  
2 would result, the issuer's liability to provide the person with a like  
3 security is governed by section 26 of this act.

4 (3) Except as otherwise provided in subsection (1) of this section  
5 or in a law relating to the collection of taxes, an issuer is not  
6 liable to an owner or other person suffering loss as a result of the  
7 registration of a transfer of a security if registration was made  
8 pursuant to an effective indorsement or instruction.

9 **Sec. 38.** RCW 62A.8-405 and 1986 c 35 s 41 are each amended to read  
10 as follows:

11 REPLACEMENT OF LOST, DESTROYED, ((AND—STOLEN—CERTIFICATED  
12 SECURITIES)) OR WRONGFULLY TAKEN SECURITY CERTIFICATE. (1) ((If a  
13 certificated security has been lost, apparently destroyed, or  
14 wrongfully taken, and the owner fails to notify the issuer of that fact  
15 within a reasonable time after he has notice of it and the issuer  
16 registers a transfer of the security before receiving notification, the  
17 owner is precluded from asserting against the issuer any claim for  
18 registering the transfer under RCW 62A.8-404 or any claim to a new  
19 security under this section.

20 (2)) If ((the)) an owner of a certificated security, whether in  
21 registered or bearer form, claims that the ((security)) certificate has  
22 been lost, destroyed, or wrongfully taken, the issuer shall issue a new  
23 ((certificated security or, at the option of the issuer, an equivalent  
24 uncertificated security in place of the original security)) certificate  
25 if the owner:

26 (a) So requests before the issuer has notice that the ((security))  
27 certificate has been acquired by a ((bona fide)) protected purchaser;

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

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

31 ((+3)) (2) If, after the issue of a new ((certificated or  
32 uncertificated)) security certificate, a ((bona fide)) protected  
33 purchaser of the original ((certificated security)) certificate  
34 presents it for registration of transfer, the issuer shall register the  
35 transfer unless ((registration would result in)) an overissue((, in  
36 which event)) would result. In that case, the issuer's liability is  
37 governed by ((RCW 62A.8-104)) section 25 of this act. In addition to  
38 any rights on the indemnity bond, ((the)) an issuer may recover the new

1 ((certificated security)) certificate from the person to whom it was  
2 issued or any person taking under ((him)) that person, except a ((bona  
3 fide)) protected purchaser ((or may cancel the uncertificated security  
4 unless a bona fide purchaser or any person taking under a bona fide  
5 purchaser is then the registered owner or registered pledgee thereof)).

6 **Sec. 39.** RCW 62A.8-406 and 1986 c 35 s 42 are each amended to read  
7 as follows:

8 ((DUTY OF AUTHENTICATING TRUSTEE, TRANSFER AGENT, OR REGISTRAR.  
9 (1) If a person acts as authenticating trustee, transfer agent,  
10 registrar, or other agent for an issuer in the registration of  
11 transfers of its certificated securities or in the registration of  
12 transfers, pledges, and releases of its uncertificated securities, in  
13 the issue of new securities, or in the cancellation of surrendered  
14 securities:

15 (a) he is under a duty to the issuer to exercise good faith and due  
16 diligence in performing his functions; and

17 (b) with regard to the particular functions he performs, he has the  
18 same obligation to the holder or owner of a certificated security or to  
19 the owner or pledgee of an uncertificated security and has the same  
20 rights and privileges as the issuer has in regard to those functions.

21 (2) Notice to an authenticating trustee, transfer agent, registrar  
22 or other agent is notice to the issuer with respect to the functions  
23 performed by the agent.)) OBLIGATION TO NOTIFY ISSUER OF LOST,  
24 DESTROYED, OR WRONGFULLY TAKEN SECURITY CERTIFICATE. If a security  
25 certificate has been lost, apparently destroyed, or wrongfully taken,  
26 and the owner fails to notify the issuer of that fact within a  
27 reasonable time after the owner has notice of it and the issuer  
28 registers a transfer of the security before receiving notification, the  
29 owner may not assert against the issuer a claim for registering the  
30 transfer under RCW 62A.8-404 or a claim to a new security certificate  
31 under RCW 62A.8-405.

32 **Sec. 40.** RCW 62A.8-407 and 1986 c 35 s 43 are each amended to read  
33 as follows:

34 ((EXCHANGEABILITY OF SECURITIES.—(1) No issuer is subject to the  
35 requirements of this section unless it regularly maintains a system for  
36 issuing the class of securities involved under which both certificated  
37 and uncertificated securities are regularly issued to the category of

1 owners, which includes the person in whose name the new security is to  
2 be registered.

3 (2) Upon surrender of a certificated security with all necessary  
4 indorsements and presentation of a written request by the person  
5 surrendering the security, the issuer, if he has no duty as to adverse  
6 claims or has discharged the duty (RCW 62A.8-403), shall issue to the  
7 person or a person designated by him an equivalent uncertificated  
8 security subject to all liens, restrictions, and claims that were noted  
9 on the certificated security.

10 (3) Upon receipt of a transfer instruction originated by an  
11 appropriate person who so requests, the issuer of an uncertificated  
12 security shall cancel the uncertificated security and issue an  
13 equivalent certificated security on which must be noted conspicuously  
14 any liens and restrictions of the issuer and any adverse claims (as to  
15 which the issuer has a duty under RCW 62A.8-403(4)) to which the  
16 uncertificated security was subject. The certificated security shall  
17 be registered in the name of and delivered to:

18 (a) the registered owner, if the uncertificated security was not  
19 subject to a registered pledge; or

20 (b) the registered pledgee, if the uncertificated security was  
21 subject to a registered pledge.) AUTHENTICATING TRUSTEE, TRANSFER  
22 AGENT, AND REGISTRAR. A person acting as authenticating trustee,  
23 transfer agent, registrar, or other agent for an issuer in the  
24 registration of a transfer of its securities, in the issue of new  
25 security certificates or uncertificated securities, or in the  
26 cancellation of surrendered security certificates has the same  
27 obligation to the holder or owner of a certificated or uncertificated  
28 security with regard to the particular functions performed as the  
29 issuer has in regard to those functions.

## 30 PART 5

### 31 SECURITY ENTITLEMENTS

32 NEW SECTION. Sec. 41. A new section is added to Title 62A RCW, to  
33 be codified as RCW 62A.8-501, to read as follows:

34 SECURITIES ACCOUNT; ACQUISITION OF SECURITY ENTITLEMENT FROM  
35 SECURITIES INTERMEDIARY. (1) "Securities account" means an account to  
36 which a financial asset is or may be credited in accordance with an  
37 agreement under which the person maintaining the account undertakes to

1 treat the person for whom the account is maintained as entitled to  
2 exercise the rights that comprise the financial asset.

3 (2) Except as otherwise provided in subsections (4) and (5) of this  
4 section, a person acquires a security entitlement if a securities  
5 intermediary:

6 (a) Indicates by book entry that a financial asset has been  
7 credited to the person's securities account;

8 (b) Receives a financial asset from the person or acquires a  
9 financial asset for the person and, in either case, accepts it for  
10 credit to the person's securities account; or

11 (c) Becomes obligated under other law, regulation, or rule to  
12 credit a financial asset to the person's securities account.

13 (3) If a condition of subsection (2) of this section has been met,  
14 a person has a security entitlement even though the securities  
15 intermediary does not itself hold the financial asset.

16 (4) If a securities intermediary holds a financial asset for  
17 another person, and the financial asset is registered in the name of,  
18 payable to the order of, or specially indorsed to the other person, and  
19 has not been indorsed to the securities intermediary or in blank, the  
20 other person is treated as holding the financial asset directly rather  
21 than as having a security entitlement with respect to the financial  
22 asset.

23 (5) Issuance of a security is not establishment of a security  
24 entitlement.

25 NEW SECTION. **Sec. 42.** A new section is added to Title 62A RCW, to  
26 be codified as RCW 62A.8-502, to read as follows:

27 **ASSERTION OF ADVERSE CLAIM AGAINST ENTITLEMENT HOLDER.** An action  
28 based on an adverse claim to a financial asset, whether framed in  
29 conversion, replevin, constructive trust, equitable lien, or other  
30 theory, may not be asserted against a person who acquires a security  
31 entitlement under section 41 of this act for value and without notice  
32 of the adverse claim.

33 NEW SECTION. **Sec. 43.** A new section is added to Title 62A RCW, to  
34 be codified as RCW 62A.8-503, to read as follows:

35 **PROPERTY INTEREST OF ENTITLEMENT HOLDER IN FINANCIAL ASSET HELD BY**  
36 **SECURITIES INTERMEDIARY.** (1) To the extent necessary for a securities  
37 intermediary to satisfy all security entitlements with respect to a

1 particular financial asset, all interests in that financial asset held  
2 by the securities intermediary are held by the securities intermediary  
3 for the entitlement holders, are not property of the securities  
4 intermediary, and are not subject to claims of creditors of the  
5 securities intermediary, except as otherwise provided in section 51 of  
6 this act.

7 (2) An entitlement holder's property interest with respect to a  
8 particular financial asset under subsection (1) of this section is a  
9 pro rata property interest in all interests in that financial asset  
10 held by the securities intermediary, without regard to the time the  
11 entitlement holder acquired the security entitlement or the time the  
12 securities intermediary acquired the interest in that financial asset.

13 (3) An entitlement holder's property interest with respect to a  
14 particular financial asset under subsection (1) of this section may be  
15 enforced against the securities intermediary only by exercise of the  
16 entitlement holder's rights under sections 45 through 48 of this act.

17 (4) An entitlement holder's property interest with respect to a  
18 particular financial asset under subsection (1) of this section may be  
19 enforced against a purchaser of the financial asset or interest therein  
20 only if:

21 (a) Insolvency proceedings have been initiated by or against the  
22 securities intermediary;

23 (b) The securities intermediary does not have sufficient interests  
24 in the financial asset to satisfy the security entitlements of all of  
25 its entitlement holders to that financial asset;

26 (c) The securities intermediary violated its obligations under  
27 section 44 of this act by transferring the financial asset or interest  
28 therein to the purchaser; and

29 (d) The purchaser is not protected under subsection (5) of this  
30 section.

31 The trustee or other liquidator, acting on behalf of all entitlement  
32 holders having security entitlements with respect to a particular  
33 financial asset, may recover the financial asset, or interest therein,  
34 from the purchaser. If the trustee or other liquidator elects not to  
35 pursue that right, an entitlement holder whose security entitlement  
36 remains unsatisfied has the right to recover its interest in the  
37 financial asset from the purchaser.

38 (5) An action based on the entitlement holder's property interest  
39 with respect to a particular financial asset under subsection (1) of



1 this section, whether framed in conversion, replevin, constructive  
2 trust, equitable lien, or other theory, may not be asserted against any  
3 purchaser of a financial asset or interest therein who gives value,  
4 obtains control, and does not act in collusion with the securities  
5 intermediary in violating the securities intermediary's obligations  
6 under section 44 of this act.

7 NEW SECTION. **Sec. 44.** A new section is added to Title 62A RCW, to  
8 be codified as RCW 62A.8-504, to read as follows:

9 DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET. (1)  
10 A securities intermediary shall promptly obtain and thereafter maintain  
11 a financial asset in a quantity corresponding to the aggregate of all  
12 security entitlements it has established in favor of its entitlement  
13 holders with respect to that financial asset. The securities  
14 intermediary may maintain those financial assets directly or through  
15 one or more other securities intermediaries.

16 (2) Except to the extent otherwise agreed by its entitlement  
17 holder, a securities intermediary may not grant any security interests  
18 in a financial asset it is obligated to maintain pursuant to subsection  
19 (1) of this section.

20 (3) A securities intermediary satisfies the duty in subsection (1)  
21 of this section if:

22 (a) The securities intermediary acts with respect to the duty as  
23 agreed upon by the entitlement holder and the securities intermediary;  
24 or

25 (b) In the absence of agreement, the securities intermediary  
26 exercises due care in accordance with reasonable commercial standards  
27 to obtain and maintain the financial asset.

28 (4) This section does not apply to a clearing corporation that is  
29 itself the obligor of an option or similar obligation to which its  
30 entitlement holders have security entitlements.

31 NEW SECTION. **Sec. 45.** A new section is added to Title 62A RCW, to  
32 be codified as RCW 62A.8-505, to read as follows:

33 DUTY OF SECURITIES INTERMEDIARY WITH RESPECT TO PAYMENTS AND  
34 DISTRIBUTIONS. (1) A securities intermediary shall take action to  
35 obtain a payment or distribution made by the issuer of a financial  
36 asset. A securities intermediary satisfies the duty if:

1 (a) The securities intermediary acts with respect to the duty as  
2 agreed upon by the entitlement holder and the securities intermediary;  
3 or

4 (b) In the absence of agreement, the securities intermediary  
5 exercises due care in accordance with reasonable commercial standards  
6 to attempt to obtain the payment or distribution.

7 (2) A securities intermediary is obligated to its entitlement  
8 holder for a payment or distribution made by the issuer of a financial  
9 asset if the payment or distribution is received by the securities  
10 intermediary.

11 NEW SECTION. Sec. 46. A new section is added to Title 62A RCW, to  
12 be codified as RCW 62A.8-506, to read as follows:

13 DUTY OF SECURITIES INTERMEDIARY TO EXERCISE RIGHTS AS DIRECTED BY  
14 ENTITLEMENT HOLDER. A securities intermediary shall exercise rights  
15 with respect to a financial asset if directed to do so by an  
16 entitlement holder. A securities intermediary satisfies the duty if:

17 (1) The securities intermediary acts with respect to the duty as  
18 agreed upon by the entitlement holder and the securities intermediary;  
19 or

20 (2) In the absence of agreement, the securities intermediary either  
21 places the entitlement holder in a position to exercise the rights  
22 directly or exercises due care in accordance with reasonable commercial  
23 standards to follow the direction of the entitlement holder.

24 NEW SECTION. Sec. 47. A new section is added to Title 62A RCW, to  
25 be codified as RCW 62A.8-507, to read as follows:

26 DUTY OF SECURITIES INTERMEDIARY TO COMPLY WITH ENTITLEMENT ORDER.

27 (1) A securities intermediary shall comply with an entitlement order if  
28 the entitlement order is originated by the appropriate person, the  
29 securities intermediary has had reasonable opportunity to assure itself  
30 that the entitlement order is genuine and authorized, and the  
31 securities intermediary has had reasonable opportunity to comply with  
32 the entitlement order. A securities intermediary satisfies the duty  
33 if:

34 (a) The securities intermediary acts with respect to the duty as  
35 agreed upon by the entitlement holder and the securities intermediary;  
36 or

1 (b) In the absence of agreement, the securities intermediary  
2 exercises due care in accordance with reasonable commercial standards  
3 to comply with the entitlement order.

4 (2) If a securities intermediary transfers a financial asset  
5 pursuant to an ineffective entitlement order, the securities  
6 intermediary shall reestablish a security entitlement in favor of the  
7 person entitled to it, and pay or credit any payments or distributions  
8 that the person did not receive as a result of the wrongful transfer.  
9 If the securities intermediary does not reestablish a security  
10 entitlement, the securities intermediary is liable to the entitlement  
11 holder for damages.

12 NEW SECTION. Sec. 48. A new section is added to Title 62A RCW, to  
13 be codified as RCW 62A.8-508, to read as follows:

14 DUTY OF SECURITIES INTERMEDIARY TO CHANGE ENTITLEMENT HOLDER'S  
15 POSITION TO OTHER FORM OF SECURITY HOLDING. A securities intermediary  
16 shall act at the direction of an entitlement holder to change a  
17 security entitlement into another available form of holding for which  
18 the entitlement holder is eligible, or to cause the financial asset to  
19 be transferred to a securities account of the entitlement holder with  
20 another securities intermediary. A securities intermediary satisfies  
21 the duty if:

22 (1) The securities intermediary acts as agreed upon by the  
23 entitlement holder and the securities intermediary; or

24 (2) In the absence of agreement, the securities intermediary  
25 exercises due care in accordance with reasonable commercial standards  
26 to follow the direction of the entitlement holder.

27 NEW SECTION. Sec. 49. A new section is added to Title 62A RCW, to  
28 be codified as RCW 62A.8-509, to read as follows:

29 SPECIFICATION OF DUTIES OF SECURITIES INTERMEDIARY BY OTHER STATUTE  
30 OR REGULATION; MANNER OF PERFORMANCE OF DUTIES OF SECURITIES  
31 INTERMEDIARY AND EXERCISE OF RIGHTS OF ENTITLEMENT HOLDER. (1) If the  
32 substance of a duty imposed upon a securities intermediary by sections  
33 44 through 48 of this act is the subject of other statute, regulation,  
34 or rule, compliance with that statute, regulation, or rule satisfies  
35 the duty.

36 (2) To the extent that specific standards for the performance of  
37 the duties of a securities intermediary or the exercise of the rights

1 of an entitlement holder are not specified by other statute,  
2 regulation, or rule or by agreement between the securities intermediary  
3 and entitlement holder, the securities intermediary shall perform its  
4 duties and the entitlement holder shall exercise its rights in a  
5 commercially reasonable manner.

6 (3) The obligation of a securities intermediary to perform the  
7 duties imposed by sections 44 through 48 of this act is subject to:

8 (a) Rights of the securities intermediary arising out of a security  
9 interest under a security agreement with the entitlement holder or  
10 otherwise; and

11 (b) Rights of the securities intermediary under other law,  
12 regulation, rule, or agreement to withhold performance of its duties as  
13 a result of unfulfilled obligations of the entitlement holder to the  
14 securities intermediary.

15 (4) Sections 44 through 48 of this act do not require a securities  
16 intermediary to take any action that is prohibited by other statute,  
17 regulation, or rule.

18 NEW SECTION. Sec. 50. A new section is added to Title 62A RCW, to  
19 be codified as RCW 62A.8-510, to read as follows:

20 RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT  
21 HOLDER. (1) An action based on an adverse claim to a financial asset  
22 or security entitlement, whether framed in conversion, replevin,  
23 constructive trust, equitable lien, or other theory, may not be  
24 asserted against a person who purchases a security entitlement, or an  
25 interest therein, from an entitlement holder if the purchaser gives  
26 value, does not have notice of the adverse claim, and obtains control.

27 (2) If an adverse claim could not have been asserted against an  
28 entitlement holder under section 42 of this act, the adverse claim  
29 cannot be asserted against a person who purchases a security  
30 entitlement, or an interest therein, from the entitlement holder.

31 (3) In a case not covered by the priority rules in Article 9, a  
32 purchaser for value of a security entitlement, or an interest therein,  
33 who obtains control has priority over a purchaser of a security  
34 entitlement, or an interest therein, who does not obtain control.  
35 Purchasers who have control rank equally, except that a securities  
36 intermediary as purchaser has priority over a conflicting purchaser who  
37 has control unless otherwise agreed by the securities intermediary.

1        NEW SECTION.    **Sec. 51.** A new section is added to Title 62A RCW, to  
2 be codified as RCW 62A.8-511, to read as follows:

3        PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS.    (1)  
4 Except as otherwise provided in subsections (2) and (3) of this  
5 section, if a securities intermediary does not have sufficient  
6 interests in a particular financial asset to satisfy both its  
7 obligations to entitlement holders who have security entitlements to  
8 that financial asset and its obligation to a creditor of the securities  
9 intermediary who has a security interest in that financial asset, the  
10 claims of entitlement holders, other than the creditor, have priority  
11 over the claim of the creditor.

12        (2) A claim of a creditor of a securities intermediary who has a  
13 security interest in a financial asset held by a securities  
14 intermediary has priority over claims of the securities intermediary's  
15 entitlement holders who have security entitlements with respect to that  
16 financial asset if the creditor has control over the financial asset.

17        (3) If a clearing corporation does not have sufficient financial  
18 assets to satisfy both its obligations to entitlement holders who have  
19 security entitlements with respect to a financial asset and its  
20 obligation to a creditor of the clearing corporation who has a security  
21 interest in that financial asset, the claim of the creditor has  
22 priority over the claims of entitlement holders.

23        NEW SECTION.    **Sec. 52.** The following acts or parts of acts are  
24 each repealed:

- 25        (1) RCW 21.17.010 and 1961 c 150 s 1;
- 26        (2) RCW 21.17.020 and 1961 c 150 s 2;
- 27        (3) RCW 21.17.030 and 1961 c 150 s 3;
- 28        (4) RCW 21.17.040 and 1961 c 150 s 4;
- 29        (5) RCW 21.17.050 and 1961 c 150 s 5;
- 30        (6) RCW 21.17.060 and 1961 c 150 s 6;
- 31        (7) RCW 21.17.070 and 1961 c 150 s 7;
- 32        (8) RCW 21.17.080 and 1967 c 208 s 1 & 1961 c 150 s 8;
- 33        (9) RCW 21.17.090 and 1961 c 150 s 9;
- 34        (10) RCW 21.17.900 and 1961 c 150 s 10;
- 35        (11) RCW 21.17.910 and 1961 c 150 s 11;
- 36        (12) RCW 62A.8-308 and 1986 c 35 s 23 & 1965 ex.s. c 157 s 8-308;
- 37        (13) RCW 62A.8-309 and 1986 c 35 s 24 & 1965 ex.s. c 157 s 8-309;
- 38        (14) RCW 62A.8-310 and 1986 c 35 s 25 & 1965 ex.s. c 157 s 8-310;

- 1 (15) RCW 62A.8-311 and 1986 c 35 s 26 & 1965 ex.s. c 157 s 8-311;  
2 (16) RCW 62A.8-312 and 1986 c 35 s 27 & 1965 ex.s. c 157 s 8-312;  
3 (17) RCW 62A.8-313 and 1986 c 35 s 28 & 1965 ex.s. c 157 s 8-313;  
4 (18) RCW 62A.8-314 and 1986 c 35 s 29 & 1965 ex.s. c 157 s 8-314;  
5 (19) RCW 62A.8-315 and 1986 c 35 s 30 & 1965 ex.s. c 157 s 8-315;  
6 (20) RCW 62A.8-316 and 1986 c 35 s 31 & 1965 ex.s. c 157 s 8-316;  
7 (21) RCW 62A.8-317 and 1986 c 35 s 32 & 1965 ex.s. c 157 s 8-317;  
8 (22) RCW 62A.8-318 and 1986 c 35 s 33 & 1965 ex.s. c 157 s 8-318;  
9 (23) RCW 62A.8-319 and 1986 c 35 s 34 & 1965 ex.s. c 157 s 8-319;  
10 (24) RCW 62A.8-320 and 1986 c 35 s 35 & 1965 ex.s. c 157 s 8-320;  
11 (25) RCW 62A.8-321 and 1986 c 35 s 36; and  
12 (26) RCW 62A.8-408 and 1986 c 35 s 44.

13 **PART 6**

14 **TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND**  
15 **CONFORMING AMENDMENTS TO ARTICLES 1, 5, 9, AND 10**

16 NEW SECTION. **Sec. 53.** SAVINGS CLAUSE. (1) This act does not  
17 affect an action or proceeding commenced before the effective date of  
18 this act.

19 (2) If a security interest in a security is perfected by the  
20 effective date of this act, and the action by which the security  
21 interest was perfected would suffice to perfect a security interest  
22 under this act, no further action is required to continue perfection.  
23 If a security interest in a security is perfected by the effective date  
24 of this act, but the action by which the security interest was  
25 perfected would not suffice to perfect a security interest under this  
26 act, the security interest remains perfected through December 31, 1995,  
27 and continues perfected thereafter if appropriate action to perfect  
28 under this act is taken by that date. If a security interest is  
29 perfected by the effective date of this act, and the security interest  
30 can be perfected by filing under this act, a financing statement signed  
31 by the secured party instead of the debtor may be filed within that  
32 period to continue perfection or thereafter to perfect.

33 **Sec. 54.** RCW 62A.1-105 and 1993 c 395 s 6-102 and 1993 c 230 s 2A-  
34 601 are each reenacted and amended to read as follows:

35 TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE  
36 APPLICABLE LAW. (1) Except as provided hereafter in this section, when

1 a transaction bears a reasonable relation to this state and also to  
2 another state or nation the parties may agree that the law either of  
3 this state or of such other state or nation shall govern their rights  
4 and duties. Failing such agreement this Title applies to transactions  
5 bearing an appropriate relation to this state.

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

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

11 Applicability of the Article on Leases. RCW 62A.2A-105 and 62A.2A-  
12 106.

13 Applicability of the Article on Bank Deposits and Collections. RCW  
14 62A.4-102.

15 Applicability of the Article on Investment Securities. ((RCW  
16 62A.8-106)) Section 10 of this act.

17 Perfection provisions of the Article on Secured Transactions. RCW  
18 62A.9-103.

19 **Sec. 55.** RCW 62A.1-206 and 1965 ex.s. c 157 s 1-206 are each  
20 amended to read as follows:

21 STATUTE OF FRAUDS FOR KINDS OF PERSONAL PROPERTY NOT OTHERWISE  
22 COVERED. (1) Except in the cases described in subsection (2) of this  
23 section a contract for the sale of personal property is not enforceable  
24 by way of action or defense beyond five thousand dollars in amount or  
25 value of remedy unless there is some writing which indicates that a  
26 contract for sale has been made between the parties at a defined or  
27 stated price, reasonably identifies the subject matter, and is signed  
28 by the party against whom enforcement is sought or by his authorized  
29 agent.

30 (2) Subsection (1) of this section does not apply to contracts for  
31 the sale of goods (RCW 62A.2-201) nor of securities ((RCW 62A.8-319))  
32 section 13 of this act) nor to security agreements (RCW 62A.9-203).

33 **Sec. 56.** RCW 62A.4-104 and 1993 c 229 s 80 are each amended to  
34 read as follows:

35 DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this Article, unless  
36 the context otherwise requires:

1 (1) "Account" means any deposit or credit account with a bank,  
2 including a demand, time, savings, passbook, share draft, or like  
3 account, other than an account evidenced by a certificate of deposit;  
4 (2) "Afternoon" means the period of a day between noon and  
5 midnight;  
6 (3) "Banking day" means the part of a day on which a bank is open  
7 to the public for carrying on substantially all of its banking  
8 functions, except that it shall not include a Saturday, Sunday, or  
9 legal holiday;  
10 (4) "Clearing house" means an association of banks or other payors  
11 regularly clearing items;  
12 (5) "Customer" means a person having an account with a bank or for  
13 whom a bank has agreed to collect items, including a bank that  
14 maintains an account at another bank;  
15 (6) "Documentary draft" means a draft to be presented for  
16 acceptance or payment if specified documents, certificated securities  
17 (RCW 62A.8-102) or instructions for uncertificated securities (RCW  
18 (~~62A.8-308~~) 62A.8-102), or other certificates, statements, or the  
19 like are to be received by the drawee or other payor before acceptance  
20 or payment of the draft;  
21 (7) "Draft" means a draft as defined in RCW 62A.3-104 or an item,  
22 other than an instrument, that is an order;  
23 (8) "Drawee" means a person ordered in a draft to make payment;  
24 (9) "Item" means an instrument or a promise or order to pay money  
25 handled by a bank for collection or payment. The term does not include  
26 a payment order governed by Article 4A or a credit or debit card slip;  
27 (10) "Midnight deadline" with respect to a bank is midnight on its  
28 next banking day following the banking day on which it receives the  
29 relevant item or notice or from which the time for taking action  
30 commences to run, whichever is later;  
31 (11) "Settle" means to pay in cash, by clearing-house settlement,  
32 in a charge or credit or by remittance, or otherwise as agreed. A  
33 settlement may be either provisional or final;  
34 (12) "Suspends payments" with respect to a bank means that it has  
35 been closed by order of the supervisory authorities, that a public  
36 officer has been appointed to take it over or that it ceases or refuses  
37 to make payments in the ordinary course of business.  
38 (b) Other definitions applying to this Article and the sections in  
39 which they appear are:



1	"Agreement for electronic	
2	presentment"	RCW 62A.4-110.
3	"Bank"	RCW 62A.4-105.
4	"Collecting bank"	RCW 62A.4-105.
5	"Depository bank"	RCW 62A.4-105.
6	"Intermediary bank"	RCW 62A.4-105.
7	"Payor bank"	RCW 62A.4-105.
8	"Presenting bank"	RCW 62A.4-105.
9	"Presentment notice"	RCW 62A.4-110.

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

12	"Acceptance"	RCW 62A.3-409.
13	"Alteration"	RCW 62A.3-407.
14	"Cashier's check"	RCW 62A.3-104.
15	"Certificate of deposit"	RCW 62A.3-104.
16	"Certified check"	RCW 62A.3-409.
17	"Check"	RCW 62A.3-104.
18	"Draft"	RCW 62A.3-104.
19	"Good faith"	RCW 62A.3-103.
20	"Holder in due course"	RCW 62A.3-302.
21	"Instrument"	RCW 62A.3-104.
22	"Notice of dishonor"	RCW 62A.3-503.
23	"Order"	RCW 62A.3-103.
24	"Ordinary care"	RCW 62A.3-103.
25	"Person entitled to enforce"	RCW 62A.3-301.
26	"Presentment"	RCW 62A.3-501.
27	"Promise"	RCW 62A.3-103.
28	"Prove"	RCW 62A.3-103.
29	"Teller's check"	RCW 62A.3-104.
30	"Unauthorized signature"	RCW 62A.3-403.

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

34 **Sec. 57.** RCW 62A.5-114 and 1986 c 35 s 54 are each amended to read  
 35 as follows:

ISSUER'S DUTY AND PRIVILEGE TO HONOR; RIGHT TO REIMBURSEMENT. (1)

An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a certificated security (RCW ((62A.8-306)) 62A.8-108) or is forged or fraudulent or there is fraud in the transaction:

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

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

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

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

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

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

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

3 (5) In the case covered by subsection (4) failure to reject  
4 documents within the time specified in sub-paragraph (b) constitutes  
5 acceptance of the documents and makes the payment final in favor of the  
6 beneficiary.

7 **Sec. 58.** RCW 62A.9-103 and 1986 c 35 s 45 are each amended to read  
8 as follows:

9 PERFECTION OF SECURITY INTEREST((S)) IN MULTIPLE STATE  
10 TRANSACTIONS. (1) Documents, instruments and ordinary goods.

11 (a) This subsection applies to documents and instruments and to  
12 goods other than those covered by a certificate of title described in  
13 subsection (2), mobile goods described in subsection (3), and minerals  
14 described in subsection (5).

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

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

29 (d) When collateral is brought into and kept in this state while  
30 subject to a security interest perfected under the law of the  
31 jurisdiction from which the collateral was removed, the security  
32 interest remains perfected, but if action is required by Part 3 of this  
33 Article to perfect the security interest,

34 (i) if the action is not taken before the expiration of the period  
35 of perfection in the other jurisdiction or the end of four months after  
36 the collateral is brought into this state, whichever period first  
37 expires, the security interest becomes unperfected at the end of that

1 period and is thereafter deemed to have been unperfected as against a  
2 person who became a purchaser after removal;

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

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

11 (2) Certificate of title.

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

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

25 (c) Except with respect to the rights of a buyer described in the  
26 next paragraph, a security interest, perfected in another jurisdiction  
27 otherwise than by notation on a certificate of title, in goods brought  
28 into this state and thereafter covered by a certificate of title issued  
29 by this state is subject to the rules stated in paragraph (d) of  
30 subsection (1).

31 (d) If goods are brought into this state while a security interest  
32 therein is perfected in any manner under the law of the jurisdiction  
33 from which the goods are removed and a certificate of title is issued  
34 by this state and the certificate does not show that the goods are  
35 subject to the security interest or that they may be subject to  
36 security interests not shown on the certificate, the security interest  
37 is subordinate to the rights of a buyer of the goods who is not in the  
38 business of selling goods of that kind to the extent that he gives

1 value and receives delivery of the goods after issuance of the  
2 certificate and without knowledge of the security interest.

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

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

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

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

29 (d) A debtor shall be deemed located at his place of business if he  
30 has one, at his chief executive office if he has more than one place of  
31 business, otherwise at his residence. If, however, the debtor is a  
32 foreign air carrier under the Federal Aviation Act of 1958, as amended,  
33 it shall be deemed located at the designated office of the agent upon  
34 whom service of process may be made on behalf of the foreign air  
35 carrier.

36 (e) A security interest perfected under the law of the jurisdiction  
37 of the location of the debtor is perfected until the expiration of four  
38 months after a change of the debtor's location to another jurisdiction,  
39 or until perfection would have ceased by the law of the first

1 jurisdiction, whichever period first expires. Unless perfected in the  
2 new jurisdiction before the end of that period, it becomes unperfected  
3 thereafter and is deemed to have been unperfected as against a person  
4 who became a purchaser after the change.

5 (4) Chattel paper.

6 The rules stated for goods in subsection (1) apply to a possessory  
7 security interest in chattel paper. The rules stated for accounts in  
8 subsection (3) apply to a nonpossessory security interest in chattel  
9 paper, but the security interest may not be perfected by notification  
10 to the account debtor.

11 (5) Minerals.

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

19 (6) ~~((Uncertificated securities.~~

20 ~~The law (including the conflict of laws rules) of the jurisdiction~~  
21 ~~of organization of the issuer governs the perfection and the effect of~~  
22 ~~perfection or non-perfection of a security interest in uncertificated~~  
23 ~~securities.)) Investment property.~~

24 (a) This subsection applies to investment property.

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

30 (c) Except as otherwise provided in paragraph (f), perfection of a  
31 security interest, the effect of perfection or non-perfection, and the  
32 priority of a security interest in an uncertificated security are  
33 governed by the local law of the issuer's jurisdiction as specified in  
34 section 10(4) of this act.

35 (d) Except as otherwise provided in paragraph (f), perfection of a  
36 security interest, the effect of perfection or non-perfection, and the  
37 priority of a security interest in a security entitlement or securities  
38 account are governed by the local law of the securities intermediary's  
39 jurisdiction as specified in section 10(5) of this act.

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

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

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

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

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

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

35 **Sec. 59.** RCW 62A.9-105 and 1986 c 35 s 46 are each amended to read  
36 as follows:

37 DEFINITIONS AND INDEX OF DEFINITIONS. (1) In this Article unless  
38 the context otherwise requires:

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

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

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

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

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

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

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

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

38 (i) "Instrument" means a negotiable instrument (defined in RCW  
39 62A.3-104), (~~(or a certificated security (defined in RCW 62A.8-102))~~)



1 or any other writing which evidences a right to the payment of money  
2 and is not itself a security agreement or lease and is of a type which  
3 is in ordinary course of business transferred by delivery with any  
4 necessary indorsement or assignment. The term does not include  
5 investment property;

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

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

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

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

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

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

28 "Account". RCW 62A.9-106.

29 "Attach". RCW 62A.9-203.

30 "Commodity contract". Section 61 of this act.

31 "Commodity customer". Section 61 of this act.

32 "Commodity intermediary". Section 61 of this act.

33 "Construction mortgage". RCW 62A.9-313(1).

34 "Consumer goods". RCW 62A.9-109(1).

35 "Control". Section 61 of this act.

36 "Equipment". RCW 62A.9-109(2).

37 "Farm products". RCW 62A.9-109(3).

38 "Fixture". RCW 62A.9-313.

39 "Fixture filing". RCW 62A.9-313.

1 "General intangibles". RCW 62A.9-106.  
2 "Inventory". RCW 62A.9-109(4).  
3 "Investment property". Section 61 of this act.  
4 "Lien creditor". RCW 62A.9-301(3).  
5 "Proceeds". RCW 62A.9-306(1).  
6 "Purchase money security interest". RCW 62A.9-107.  
7 "United States". RCW 62A.9-103.

8 (3) The following definitions in other Articles apply to this  
9 Article:

10 "Broker". RCW 62A.8-102.  
11 "Certificated security". RCW 62A.8-102.  
12 "Check". RCW 62A.3-104.  
13 "Clearing corporation". RCW 62A.8-102.  
14 "Contract for sale". RCW 62A.2-106.  
15 "Control". RCW 62A.8-106.  
16 "Delivery". RCW 62A.8-301.  
17 "Entitlement holder". RCW 62A.8-102.  
18 "Financial asset". RCW 62A.8-102.  
19 "Holder in due course". RCW 62A.3-302.  
20 "Note". RCW 62A.3-104.  
21 "Sale". RCW 62A.2-106.  
22 "Securities intermediary". RCW 62A.8-102.  
23 "Security". RCW 62A.8-102.  
24 "Security certificate". RCW 62A.8-102.  
25 "Security entitlement". RCW 62A.8-102.  
26 "Uncertificated security". RCW 62A.8-102.

27 (4) In addition Article 1 contains general definitions and  
28 principles of construction and interpretation applicable throughout  
29 this Article.

30 **Sec. 60.** RCW 62A.9-106 and 1981 c 41 s 10 are each amended to read  
31 as follows:

32 DEFINITIONS: "ACCOUNT"; "GENERAL INTANGIBLES". "Account" means  
33 any right to payment for goods sold or leased or for services rendered  
34 which is not evidenced by an instrument or chattel paper, whether or  
35 not it has been earned by performance. "General intangibles" means any  
36 personal property (including things in action) other than goods,  
37 accounts, chattel paper, documents, instruments, investment property,  
38 and money. All rights to payment earned or unearned under a charter or

1 other contract involving the use or hire of a vessel and all rights  
2 incident to the charter or contract are accounts.

3 NEW SECTION. **Sec. 61.** A new section is added to Title 62A RCW, to  
4 be codified as RCW 62A.9-115, to read as follows:

5 INVESTMENT PROPERTY. (1) In this Article:

6 (a) "Commodity account" means an account maintained by a commodity  
7 intermediary in which a commodity contract is carried for a commodity  
8 customer.

9 (b) "Commodity contract" means a commodity futures contract, an  
10 option on a commodity futures contract, a commodity option, or other  
11 contract that, in each case, is:

12 (i) traded on or subject to the rules of a board of trade that has  
13 been designated as a contract market for such a contract pursuant to  
14 the federal commodities laws; or

15 (ii) traded on a foreign commodity board of trade, exchange, or  
16 market, and is carried on the books of a commodity intermediary for a  
17 commodity customer.

18 (c) "Commodity customer" means a person for whom a commodity  
19 intermediary carries a commodity contract on its books.

20 (d) "Commodity intermediary" means:

21 (i) a person who is registered as a futures commission merchant  
22 under the federal commodities laws; or

23 (ii) a person who in the ordinary course of its business provides  
24 clearance or settlement services for a board of trade that has been  
25 designated as a contract market pursuant to the federal commodities  
26 laws.

27 (e) "Control" with respect to a certificated security,  
28 uncertificated security, or security entitlement has the meaning  
29 specified in RCW 62A.8-106. A secured party has control over a  
30 commodity contract if by agreement among the commodity customer, the  
31 commodity intermediary, and the secured party, the commodity  
32 intermediary has agreed that it will apply any value distributed on  
33 account of the commodity contract as directed by the secured party  
34 without further consent by the commodity customer. If a commodity  
35 customer grants a security interest in a commodity contract to its own  
36 commodity intermediary, the commodity intermediary as secured party has  
37 control. A secured party has control over a securities account or  
38 commodity account if the secured party has control over all security

1 entitlements or commodity contracts carried in the securities account  
2 or commodity account.

3 (f) "Investment property" means:

4 (i) a security, whether certificated or uncertificated;

5 (ii) a security entitlement;

6 (iii) a securities account;

7 (iv) a commodity contract; or

8 (v) a commodity account.

9 (2) Attachment or perfection of a security interest in a securities  
10 account is also attachment or perfection of a security interest in all  
11 security entitlements carried in the securities account. Attachment or  
12 perfection of a security interest in a commodity account is also  
13 attachment or perfection of a security interest in all commodity  
14 contracts carried in the commodity account.

15 (3) A description of collateral in a security agreement or  
16 financing statement is sufficient to create or perfect a security  
17 interest in a certificated security, uncertificated security, security  
18 entitlement, securities account, commodity contract, or commodity  
19 account whether it describes the collateral by those terms, or as  
20 investment property, or by description of the underlying security,  
21 financial asset, or commodity contract. A description of investment  
22 property collateral in a security agreement or financing statement is  
23 sufficient if it identifies the collateral by specific listing, by  
24 category, by quantity, by a computational or allocational formula or  
25 procedure, or by any other method, if the identity of the collateral is  
26 objectively determinable.

27 (4) Perfection of a security interest in investment property is  
28 governed by the following rules:

29 (a) A security interest in investment property may be perfected by  
30 control.

31 (b) Except as otherwise provided in paragraphs (c) and (d), a  
32 security interest in investment property may be perfected by filing.

33 (c) If the debtor is a broker or securities intermediary a security  
34 interest in investment property is perfected when it attaches. The  
35 filing of a financing statement with respect to a security interest in  
36 investment property granted by a broker or securities intermediary has  
37 no effect for purposes of perfection or priority with respect to that  
38 security interest.

1 (d) If a debtor is a commodity intermediary, a security interest in  
2 a commodity contract or a commodity account is perfected when it  
3 attaches. The filing of a financing statement with respect to a  
4 security interest in a commodity contract or a commodity account  
5 granted by a commodity intermediary has no effect for purposes of  
6 perfection or priority with respect to that security interest.

7 (5) Priority between conflicting security interests in the same  
8 investment property is governed by the following rules:

9 (a) A security interest of a secured party who has control over  
10 investment property has priority over a security interest of a secured  
11 party who does not have control over the investment property.

12 (b) Except as otherwise provided in paragraphs (c) and (d),  
13 conflicting security interests of secured parties each of whom has  
14 control rank equally.

15 (c) Except as otherwise agreed by the securities intermediary, a  
16 security interest in a security entitlement or a securities account  
17 granted to the debtor's own securities intermediary has priority over  
18 any security interest granted by the debtor to another secured party.

19 (d) Except as otherwise agreed by the commodity intermediary, a  
20 security interest in a commodity contract or a commodity account  
21 granted to the debtor's own commodity intermediary has priority over  
22 any security interest granted by the debtor to another secured party.

23 (e) Conflicting security interests granted by a broker, a  
24 securities intermediary, or a commodity intermediary which are  
25 perfected without control rank equally.

26 (f) In all other cases, priority between conflicting security  
27 interests in investment property is governed by RCW 62A.9-312(5), (6),  
28 and (7). RCW 62A.9-312(4) does not apply to investment property.

29 (6) If a security certificate in registered form is delivered to a  
30 secured party pursuant to agreement, a written security agreement is  
31 not required for attachment or enforceability of the security interest,  
32 delivery suffices for perfection of the security interest, and the  
33 security interest has priority over a conflicting security interest  
34 perfected by means other than control, even if a necessary indorsement  
35 is lacking.

36 NEW SECTION. **Sec. 62.** A new section is added to Title 62A RCW, to  
37 be codified as RCW 62A.9-116, to read as follows:

1 SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL  
2 ASSET. (1) If a person buys a financial asset through a securities  
3 intermediary in a transaction in which the buyer is obligated to pay  
4 the purchase price to the securities intermediary at the time of the  
5 purchase, and the securities intermediary credits the financial asset  
6 to the buyer's securities account before the buyer pays the securities  
7 intermediary, the securities intermediary has a security interest in  
8 the buyer's security entitlement securing the buyer's obligation to  
9 pay. A security agreement is not required for attachment or  
10 enforceability of the security interest, and the security interest is  
11 automatically perfected.

12 (2) If a certificated security, or other financial asset  
13 represented by a writing which in the ordinary course of business is  
14 transferred by delivery with any necessary indorsement or assignment is  
15 delivered pursuant to an agreement between persons in the business of  
16 dealing with such securities or financial assets and the agreement  
17 calls for delivery versus payment, the person delivering the  
18 certificate or other financial asset has a security interest in the  
19 certificated security or other financial asset securing the seller's  
20 right to receive payment. A security agreement is not required for  
21 attachment or enforceability of the security interest, and the security  
22 interest is automatically perfected.

23 **Sec. 63.** RCW 62A.9-203 and 1986 c 35 s 47 are each amended to read  
24 as follows:

25 ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS((~~7~~));  
26 FORMAL REQUISITES. (1) Subject to the provisions of RCW 62A.4-208 on  
27 the security interest of a collecting bank, ((~~RCW 62A.8-321~~)) sections  
28 61 and 62 of this act on security interests in ((~~securities~~))  
29 investment property, and RCW 62A.9-113 on a security interest arising  
30 under the Article on Sales, a security interest is not enforceable  
31 against the debtor or third parties with respect to the collateral and  
32 does not attach unless:

33 (a) the collateral is in the possession of the secured party  
34 pursuant to agreement, the collateral is investment property and the  
35 secured party has control pursuant to agreement, or the debtor has  
36 signed a security agreement which contains a description of the  
37 collateral and in addition, when the security interest covers crops

1 growing or to be grown or timber to be cut, a description of the land  
2 concerned;

3 (b) value has been given; and

4 (c) the debtor has rights in the collateral.

5 (2) A security interest attaches when it becomes enforceable  
6 against the debtor with respect to the collateral. Attachment occurs  
7 as soon as all of the events specified in subsection (1) have taken  
8 place unless explicit agreement postpones the time of attaching.

9 (3) Unless otherwise agreed a security agreement gives the secured  
10 party the rights to proceeds provided by RCW 62A.9-306.

11 (4) A transaction, although subject to this Article, is also  
12 subject to chapters 31.04, (~~(31.087)~~) 31.12, 31.16, 31.20, and 31.24  
13 RCW, and in the case of conflict between the provisions of this Article  
14 and any such statute, the provisions of such statute control. Failure  
15 to comply with any applicable statute has only the effect which is  
16 specified therein.

17 **Sec. 64.** RCW 62A.9-301 and 1982 c 186 s 2 are each amended to read  
18 as follows:

19 PERSONS WHO TAKE PRIORITY OVER UNPERFECTED SECURITY INTERESTS;  
20 RIGHTS OF "LIEN CREDITOR". (1) Except as otherwise provided in  
21 subsection (2), an unperfected security interest is subordinate to the  
22 rights of

23 (a) persons entitled to priority under RCW 62A.9-312;

24 (b) a person who becomes a lien creditor before the security  
25 interest is perfected;

26 (c) in the case of goods, instruments, documents, and chattel  
27 paper, a person who is not a secured party and who is a transferee in  
28 bulk or other buyer not in ordinary course of business, or is a buyer  
29 of farm products in ordinary course of business, to the extent that he  
30 gives value and receives delivery of the collateral without knowledge  
31 of the security interest and before it is perfected;

32 (d) in the case of accounts (~~(and)~~), general intangibles, and  
33 investment property, a person who is not a secured party and who is a  
34 transferee to the extent that he gives value without knowledge of the  
35 security interest and before it is perfected.

36 (2) If the secured party files with respect to a purchase money  
37 security interest before or within twenty days after the debtor  
38 receives possession of the collateral, he takes priority over the

1 rights of a transferee in bulk or of a lien creditor which arise  
2 between the time the security interest attaches and the time of filing.

3 (3) A "lien creditor" means a creditor who has acquired a lien on  
4 the property involved by attachment, levy or the like and includes an  
5 assignee for benefit of creditors from the time of assignment, and a  
6 trustee in bankruptcy from the date of the filing of the petition or a  
7 receiver in equity from the time of appointment.

8 (4) A person who becomes a lien creditor while a security interest  
9 is perfected takes subject to the security interest only to the extent  
10 that it secures advances made before he becomes a lien creditor or  
11 within forty-five days thereafter or made without knowledge of the lien  
12 or pursuant to a commitment entered into without knowledge of the lien.

13 **Sec. 65.** RCW 62A.9-302 and 1987 c 189 s 1 and 1986 c 35 s 48 are  
14 each reenacted and amended to read as follows:

15 WHEN FILING IS REQUIRED TO PERFECT SECURITY INTEREST; SECURITY  
16 INTERESTS TO WHICH FILING PROVISIONS OF THIS ARTICLE DO NOT APPLY. (1)  
17 A financing statement must be filed to perfect all security interests  
18 except the following:

19 (a) a security interest in collateral in possession of the secured  
20 party under RCW 62A.9-305;

21 (b) a security interest temporarily perfected in instruments,  
22 certificated securities, or documents without delivery under RCW 62A.9-  
23 304 or in proceeds for a ten day period under RCW 62A.9-306;

24 (c) a security interest created by an assignment of a beneficial  
25 interest in a trust or a decedent's estate;

26 (d) a purchase money security interest in consumer goods; but  
27 filing is required for a motor vehicle required to be registered and  
28 other property subject to subsection (3) of this section; and fixture  
29 filing is required for priority over conflicting interests in fixtures  
30 to the extent provided in RCW 62A.9-313;

31 (e) a security interest of a collecting bank (RCW 62A.4-208) (~~or~~  
32 ~~in securities (RCW 62A.8-321))~~) or arising under the Article on Sales  
33 (RCW 62A.9-113) or covered in subsection (3) of this section;

34 (f) an assignment for the benefit of all the creditors of the  
35 transferor, and subsequent transfers by the assignee thereunder;

36 (g) a security interest in investment property which is perfected  
37 without filing under section 61 or 62 of this act.



1 (2) If a secured party assigns a perfected security interest, no  
2 filing under this Article is required in order to continue the  
3 perfected status of the security interest against creditors of and  
4 transferees from the original debtor.

5 (3) The filing of a financing statement otherwise required by this  
6 Article is not necessary or effective to perfect a security interest in  
7 property subject to

8 (a) a statute or treaty of the United States which provides for a  
9 national or international registration or a national or international  
10 certificate of title or which specifies a place of filing different  
11 from that specified in this Article for filing of the security  
12 interest; or

13 (b) the following statute of this state: RCW 46.12.095 or  
14 88.02.070; but during any period in which collateral is inventory held  
15 for sale by a person who is in the business of selling goods of that  
16 kind, the filing provisions of this Article (Part 4) apply to a  
17 security interest in that collateral created by him as debtor; or

18 (c) a certificate of title statute of another jurisdiction under  
19 the law of which indication of a security interest on the certificate  
20 is required as a condition of perfection (subsection (2) of RCW 62A.9-  
21 103).

22 (4) Compliance with a statute or treaty described in subsection (3)  
23 is equivalent to the filing of a financing statement under this  
24 Article, and a security interest in property subject to the statute or  
25 treaty can be perfected only by compliance therewith except as provided  
26 in RCW 62A.9-103 on multiple state transactions. Duration and renewal  
27 of perfection of a security interest perfected by compliance with the  
28 statute or treaty are governed by the provisions of the statute or  
29 treaty; in other respects the security interest is subject to this  
30 Article.

31 (5) Part 4 of this Article does not apply to a security interest in  
32 property of any description created by a deed of trust or mortgage made  
33 by any corporation primarily engaged in the railroad or street railway  
34 business, the furnishing of telephone or telegraph service, the  
35 transmission of oil, gas or petroleum products by pipe line, or the  
36 production, transmission or distribution of electricity, steam, gas or  
37 water, but such security interest may be perfected under this Article  
38 by filing such deed of trust or mortgage with the department of  
39 licensing. When so filed, such instrument shall remain effective until

1 terminated, without the need for filing a continuation statement.  
2 Assignments and releases of such instruments may also be filed with the  
3 department of licensing. The director of licensing shall be a filing  
4 officer for the foregoing purposes.

5 **Sec. 66.** RCW 62A.9-304 and 1986 c 35 s 49 are each amended to read  
6 as follows:

7 PERFECTION OF SECURITY INTEREST IN INSTRUMENTS, DOCUMENTS, AND  
8 GOODS COVERED BY DOCUMENTS; PERFECTION BY PERMISSIVE FILING; TEMPORARY  
9 PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (1) A security  
10 interest in chattel paper or negotiable documents may be perfected by  
11 filing. A security interest in money or instruments (other than  
12 (~~certificated securities or~~)) instruments which constitute part of  
13 chattel paper) can be perfected only by the secured party's taking  
14 possession, except as provided in subsections (4) and (5) of this  
15 section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

16 (2) During the period that goods are in the possession of the  
17 issuer of a negotiable document therefor, a security interest in the  
18 goods is perfected by perfecting a security interest in the document,  
19 and any security interest in the goods otherwise perfected during such  
20 period is subject thereto.

21 (3) A security interest in goods in the possession of a bailee  
22 other than one who has issued a negotiable document therefor is  
23 perfected by issuance of a document in the name of the secured party or  
24 by the bailee's receipt of notification of the secured party's interest  
25 or by filing as to the goods.

26 (4) A security interest in instruments (~~(other than)~~)<sub>1</sub>  
27 certificated securities(~~(+)~~)<sub>1</sub> or negotiable documents is perfected  
28 without filing or the taking of possession for a period of twenty-one  
29 days from the time it attaches to the extent that it arises for new  
30 value given under a written security agreement.

31 (5) A security interest remains perfected for a period of twenty-  
32 one days without filing where a secured party having a perfected  
33 security interest in an instrument (~~(other than)~~)<sub>1</sub> a certificated  
34 security(~~(+)~~), a negotiable document or goods in possession of a bailee  
35 other than one who has issued a negotiable document therefor

36 (a) makes available to the debtor the goods or documents  
37 representing the goods for the purpose of ultimate sale or exchange or  
38 for the purpose of loading, unloading, storing, shipping,

1 transshipping, manufacturing, processing or otherwise dealing with them  
2 in a manner preliminary to their sale or exchange but priority between  
3 conflicting security interests in the goods is subject to subsection  
4 (3) of RCW 62A.9-312; or

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

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

11 **Sec. 67.** RCW 62A.9-305 and 1986 c 35 s 50 are each amended to read  
12 as follows:

13 WHEN POSSESSION BY SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT  
14 FILING. A security interest in letters of credit and advices of credit  
15 (subsection (2)(a) of RCW 62A.5-116), goods, instruments (~~((other than~~  
16 ~~certificated securities))~~), money, negotiable documents, or chattel  
17 paper may be perfected by the secured party's taking possession of the  
18 collateral. If such collateral other than goods covered by a  
19 negotiable document is held by a bailee, the secured party is deemed to  
20 have possession from the time the bailee receives notification of the  
21 secured party's interest. A security interest is perfected by  
22 possession from the time possession is taken without relation back and  
23 continues only so long as possession is retained, unless otherwise  
24 specified in this Article. The security interest may be otherwise  
25 perfected as provided in this Article before or after the period of  
26 possession by the secured party.

27 **Sec. 68.** RCW 62A.9-306 and 1981 c 41 s 19 are each amended to read  
28 as follows:

29 "PROCEEDS"; SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL.  
30 (1) "Proceeds" includes whatever is received upon the sale, exchange,  
31 collection or other disposition of collateral or proceeds. Insurance  
32 payable by reason of loss or damage to the collateral is proceeds,  
33 except to the extent that it is payable to a person other than a party  
34 to the security agreement. Any payments or distributions made with  
35 respect to investment property collateral are proceeds. Money, checks,  
36 deposit accounts, and the like are "cash proceeds". All other proceeds  
37 are "non-cash proceeds".

1 (2) Except where this Article otherwise provides, a security  
2 interest continues in collateral notwithstanding sale, exchange or  
3 other disposition thereof unless the disposition was authorized by the  
4 secured party in the security agreement or otherwise, and also  
5 continues in any identifiable proceeds including collections received  
6 by the debtor.

7 (3) The security interest in proceeds is a continuously perfected  
8 security interest if the interest in the original collateral was  
9 perfected but it ceases to be a perfected security interest and becomes  
10 unperfected ten days after receipt of the proceeds by the debtor unless

11 (a) a filed financing statement covers the original collateral and  
12 the proceeds are collateral in which a security interest may be  
13 perfected by filing in the office or offices where the financing  
14 statement has been filed and, if the proceeds are acquired with cash  
15 proceeds, the description of collateral in the financing statement  
16 indicates the types of property constituting the proceeds; ~~((or))~~

17 (b) a filed financing statement covers the original collateral and  
18 the proceeds are identifiable cash proceeds or instruments; ~~((or))~~

19 (c) the original collateral was investment property and the  
20 proceeds are identifiable cash proceeds; or

21 (d) the security interest in the proceeds is perfected before the  
22 expiration of the ten day period.

23 Except as provided in this section, a security interest in proceeds can  
24 be perfected only by the methods or under the circumstances permitted  
25 in this Article for original collateral of the same type.

26 (4) In the event of insolvency proceedings instituted by or against  
27 a debtor, a secured party with a perfected security interest in  
28 proceeds has a perfected security interest only in the following  
29 proceeds:

30 (a) in identifiable non-cash proceeds and in separate deposit  
31 accounts containing only proceeds;

32 (b) in identifiable cash proceeds in the form of money which is  
33 neither commingled with other money nor deposited in a deposit account  
34 prior to the insolvency proceedings;

35 (c) in identifiable cash proceeds in the form of checks and the  
36 like which are not deposited in a deposit account prior to the  
37 insolvency proceedings; and

1 (d) in all cash and deposit accounts of the debtor in which  
2 proceeds have been commingled with other funds, but the perfected  
3 security interest under this paragraph (d) is

4 (i) subject to any right of set-off; and

5 (ii) limited to an amount not greater than the amount of any cash  
6 proceeds received by the debtor within ten days before the institution  
7 of the insolvency proceedings less the sum of (I) the payments to the  
8 secured party on account of cash proceeds received by the debtor during  
9 such period and (II) the cash proceeds received by the debtor during  
10 such period to which the secured party is entitled under paragraphs (a)  
11 through (c) of this subsection (4).

12 (5) If a sale of goods results in an account or chattel paper which  
13 is transferred by the seller to a secured party, and if the goods are  
14 returned to or are repossessed by the seller or the secured party, the  
15 following rules determine priorities:

16 (a) If the goods were collateral at the time of sale for an  
17 indebtedness of the seller which is still unpaid, the original security  
18 interest attaches again to the goods and continues as a perfected  
19 security interest if it was perfected at the time when the goods were  
20 sold. If the security interest was originally perfected by a filing  
21 which is still effective, nothing further is required to continue the  
22 perfected status; in any other case, the secured party must take  
23 possession of the returned or repossessed goods or must file.

24 (b) An unpaid transferee of the chattel paper has a security  
25 interest in the goods against the transferor. Such security interest  
26 is prior to a security interest asserted under paragraph (a) to the  
27 extent that the transferee of the chattel paper was entitled to  
28 priority under RCW 62A.9-308.

29 (c) An unpaid transferee of the account has a security interest in  
30 the goods against the transferor. Such security interest is  
31 subordinate to a security interest asserted under paragraph (a).

32 (d) A security interest of an unpaid transferee asserted under  
33 paragraph (b) or (c) must be perfected for protection against creditors  
34 of the transferor and purchasers of the returned or repossessed goods.

35 **Sec. 69.** RCW 62A.9-309 and 1986 c 35 s 51 are each amended to read  
36 as follows:

37 PROTECTION OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES.  
38 Nothing in this Article limits the rights of a holder in due course of

1 a negotiable instrument (RCW 62A.3-302) or a holder to whom a  
2 negotiable document of title has been duly negotiated (RCW 62A.7-501)  
3 or a (~~bona fide~~) protected purchaser of a security (RCW (~~62A.8-302~~)  
4 62A.8-303) and such holders or purchasers take priority over an earlier  
5 security interest even though perfected. Filing under this Article  
6 does not constitute notice of the security interest to such holders or  
7 purchasers.

8 **Sec. 70.** RCW 62A.9-312 and 1989 c 251 s 1 are each amended to read  
9 as follows:

10 PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN THE SAME  
11 COLLATERAL. (1) The rules of priority stated in other sections of this  
12 Part and in the following sections shall govern when applicable: RCW  
13 62A.4-208 with respect to the security interests of collecting banks in  
14 items being collected, accompanying documents and proceeds; RCW 62A.9-  
15 103 on security interests related to other jurisdictions; RCW 62A.9-114  
16 on consignments; section 61 of this act on security interests in  
17 investment property.

18 (2) Conflicting priorities between security interests in crops  
19 shall be governed by chapter 60.11 RCW.

20 (3) A perfected purchase money security interest in inventory has  
21 priority over a conflicting security interest in the same inventory and  
22 also has priority in identifiable cash proceeds received on or before  
23 the delivery of the inventory to a buyer if

24 (a) the purchase money security interest is perfected at the time  
25 the debtor receives possession of the inventory; and

26 (b) the purchase money secured party gives notification in writing  
27 to the holder of the conflicting security interest if the holder had  
28 filed a financing statement covering the same types of inventory (i)  
29 before the date of the filing made by the purchase money secured party,  
30 or (ii) before the beginning of the twenty-one day period where the  
31 purchase money security interest is temporarily perfected without  
32 filing or possession (subsection (5) of RCW 62A.9-304); and

33 (c) the holder of the conflicting security interest receives the  
34 notification within five years before the debtor receives possession of  
35 the inventory; and

36 (d) the notification states that the person giving the notice has  
37 or expects to acquire a purchase money security interest in inventory  
38 of the debtor, describing such inventory by item or type.

1 (4) A purchase money security interest in collateral other than  
2 inventory has priority over a conflicting security interest in the same  
3 collateral or its proceeds if the purchase money security interest is  
4 perfected at the time the debtor receives possession of the collateral  
5 or within twenty days thereafter.

6 (5) In all cases not governed by other rules stated in this section  
7 (including cases of purchase money security interests which do not  
8 qualify for the special priorities set forth in subsections (3) and (4)  
9 of this section), priority between conflicting security interests in  
10 the same collateral shall be determined according to the following  
11 rules:

12 (a) Conflicting security interests rank according to priority in  
13 time of filing or perfection. Priority dates from the time a filing is  
14 first made covering the collateral or the time the security interest is  
15 first perfected, whichever is earlier, provided that there is no period  
16 thereafter when there is neither filing nor perfection.

17 (b) So long as conflicting security interests are unperfected, the  
18 first to attach has priority.

19 (6) For the purposes of subsection (5) a date of filing or  
20 perfection as to collateral is also a date of filing or perfection as  
21 to proceeds.

22 (7) If future advances are made while a security interest is  
23 perfected by filing, the taking of possession, or under (~~RCW 62A.8-321~~  
24 ~~on securities~~) section 61 or 62 of this act on investment property,  
25 the security interest has the same priority for the purposes of  
26 subsection (5) with respect to the future advances as it does with  
27 respect to the first advance. If a commitment is made before or while  
28 the security interest is so perfected, the security interest has the  
29 same priority with respect to advances made pursuant thereto. In other  
30 cases a perfected security interest has priority from the date the  
31 advance is made.

32 **Sec. 71.** RCW 62A.10-104 and 1965 ex.s. c 157 s 10-104 are each  
33 amended to read as follows:

34 LAWS NOT REPEALED. (~~(1)~~) The Article on Documents of Title  
35 (Article 7) does not repeal or modify any laws prescribing the form or  
36 contents of documents of title or the services or facilities to be  
37 afforded by bailees, or otherwise regulating bailees' businesses in  
38 respects not specifically dealt with herein; but the fact that such

1 laws are violated does not affect the status of a document of title  
2 which otherwise complies with the definition of a document of title  
3 (RCW 62A.1-201).

4 ~~((2) This Title does not repeal chapter 150, Laws of 1961 (chapter  
5 21.17 RCW), cited as the Uniform Act for the Simplification of  
6 Fiduciary Security Transfers, and if in any respect there is any  
7 inconsistency between that Act and the Article of this Title on  
8 investment securities (Article 8) the provisions of the former Act  
9 shall control.))~~

10 NEW SECTION. **Sec. 72.** This act is necessary for the immediate  
11 preservation of the public peace, health, or safety, or support of the  
12 state government and its existing public institutions, and shall take  
13 effect July 1, 1995.

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