

## HOUSE BILL No. 2453

By Committee on Judiciary

2-11

---

9 AN ACT concerning the uniform commercial code; general provisions;  
10 amending K.S.A. 16-1501, 50-682, 60-1007, 60-2409, 84-2-202, 84-2a-  
11 501, 84-2a-518, 84-2a-519, 84-2a-527, 84-2a-528, 84-3-103, 84-4-104,  
12 84-4a-105, 84-4a-106, 84-4a-204, 84-5-103 and 84-8-102 and K.S.A.  
13 2004 Supp. 16-1603, 16-1616, 58-241, 61-3703, 84-2-103, 84-2a-103  
14 and 84-9-102 and repealing the existing sections; also repealing K.S.A.  
15 84-1-101, 84-1-102, 84-1-103, 84-1-104, 84-1-106, 84-1-107, 84-1-108,  
16 84-1-109, 84-1-202, 84-1-203, 84-1-204, 84-1-205, 84-1-206, 84-1-207,  
17 84-1-208, 84-1-209, 84-2-208 and 84-2a-207 and K.S.A. 2004 Supp.  
18 84-1-105 and 84-1-201.

19

20 *Be it enacted by the Legislature of the State of Kansas:*

21 New Section. 1. (UCC 1-101.) Short titles. (a) This act may be cited  
22 as the uniform commercial code.

23 (b) This article may be cited as uniform commercial code — general  
24 provisions.

25 New Sec. 2. (UCC 1-102.) Scope of article. This article applies to a  
26 transaction to the extent that it is governed by another article of the  
27 uniform commercial code.

28 New Sec. 3. (UCC 1-103.) Construction of uniform commercial code  
29 to promote its purposes and policies; applicability of supplemental prin-  
30 ciple of law. (a) The uniform commercial code must be liberally construed  
31 and applied to promote its underlying purposes and policies, which are:

32 (1) To simplify, clarify, and modernize the law governing commercial  
33 transactions;

34 (2) to permit the continued expansion of commercial practices  
35 through custom, usage and agreement of the parties; and

36 (3) to make uniform the law among the various jurisdictions.

37 (b) Unless displaced by the particular provisions of the uniform com-  
38 mercial code, the principles of law and equity, including the law merchant  
39 and the law relative to capacity to contract, principal and agent, estoppel,  
40 fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and  
41 other validating or invalidating cause supplement its provisions.

42 New Sec. 4. (UCC 1-104.) Construction against implied repeal. The  
43 uniform commercial code being a general act intended as a unified cov-

1 erage of its subject matter, no part of it shall be deemed to be impliedly  
2 repealed by subsequent legislation if such construction can reasonably be  
3 avoided.

4 New Sec. 5. (UCC 1-105.) Severability. If any provision or clause of  
5 the uniform commercial code or its application to any person or circum-  
6 stance is held invalid, the invalidity does not affect other provisions or  
7 applications of the uniform commercial code which can be given effect  
8 without the invalid provision or application, and to this end the provisions  
9 of the uniform commercial code are severable.

10 New Sec. 6. (UCC 1-106.) Use of singular and plural; gender. In the  
11 uniform commercial code, unless the statutory context otherwise  
12 requires:

13 (1) Words in the singular number include the plural, and those in the  
14 plural include the singular; and

15 (2) words of any gender also refer to any other gender.

16 New Sec. 7. (UCC 1-107.) Section captions. Section captions are part  
17 of the uniform commercial code.

18 New Sec. 8. (UCC 1-108.) Relation to electronic signatures in global  
19 and national commerce act. This article modifies, limits, and supersedes  
20 the federal electronic signatures in global and national commerce act, 15  
21 U.S.C. Section 7001 et seq., except that nothing in this article modifies,  
22 limits, or supersedes Section 7001(c) of that act or authorizes electronic  
23 delivery of any of the notices described in Section 7003(b) of that act.

24 New Sec. 9. (UCC 1-201.) General definitions. (a) Unless the context  
25 otherwise requires, words or phrases defined in this section, or in the  
26 additional definitions contained in other articles of the uniform commer-  
27 cial code that apply to particular articles or parts thereof, have the mean-  
28 ings stated.

29 (b) Subject to definitions contained in other articles of the uniform  
30 commercial code that apply to particular articles or parts thereof:

31 (1) "Action", in the sense of a judicial proceeding, includes recoup-  
32 ment, counterclaim, set-off, suit in equity, and any other proceeding in  
33 which rights are determined.

34 (2) "Aggrieved party" means a party entitled to pursue a remedy.

35 (3) "Agreement", as distinguished from "contract", means the bar-  
36 gain of the parties in fact, as found in their language or inferred from  
37 other circumstances, including course of performance, course of dealing,  
38 or usage of trade as provided in section 17, and amendments thereto.

39 (4) "Bank" means a person engaged in the business of banking and  
40 includes a savings bank, savings and loan association, credit union, and  
41 trust company.

42 (5) "Bearer" means a person in possession of a negotiable instrument,  
43 document of title, or certificated security that is payable to bearer or

1 indorsed in blank.

2 (6) “Bill of lading” means a document evidencing the receipt of goods  
3 for shipment issued by a person engaged in the business of transporting  
4 or forwarding goods.

5 (7) “Branch” includes a separately incorporated foreign branch of a  
6 bank.

7 (8) “Burden of establishing” a fact means the burden of persuading  
8 the trier of fact that the existence of the fact is more probable than its  
9 nonexistence.

10 (9) “Buyer in ordinary course of business” means a person that buys  
11 goods in good faith, without knowledge that the sale violates the rights of  
12 another person in the goods, and in the ordinary course from a person,  
13 other than a pawnbroker, in the business of selling goods of that kind. A  
14 person buys goods in the ordinary course if the sale to the person com-  
15 ports with the usual or customary practices in the kind of business in  
16 which the seller is engaged or with the seller’s own usual or customary  
17 practices. A person that sells oil, gas, or other minerals at the wellhead  
18 or minehead is a person in the business of selling goods of that kind. A  
19 buyer in ordinary course of business may buy for cash, by exchange of  
20 other property, or on secured or unsecured credit, and may acquire goods  
21 or documents of title under a preexisting contract for sale. Only a buyer  
22 that takes possession of the goods or has a right to recover the goods from  
23 the seller under article 2 of chapter 84 of the Kansas Statutes Annotated,  
24 and amendments thereto, may be a buyer in ordinary course of business.  
25 “Buyer in ordinary course of business” does not include a person that  
26 acquires goods in a transfer in bulk or as security for or in total or partial  
27 satisfaction of a money debt.

28 (10) “Conspicuous”, with reference to a term, means so written, dis-  
29 played, or presented that a reasonable person against which it is to operate  
30 ought to have noticed it. Whether a term is “conspicuous” or not is a  
31 decision for the court. Conspicuous terms include the following:

32 (A) A heading in capitals equal to or greater in size than the sur-  
33 rounding text, or in contrasting type, font, or color to the surrounding  
34 text of the same or lesser size; and

35 (B) language in the body of a record or display in larger type than  
36 the surrounding text, or in contrasting type, font, or color to the surround-  
37 ing text of the same size, or set off from surrounding text of the same  
38 size by symbols or other marks that call attention to the language.

39 (11) “Consumer” means an individual who enters into a transaction  
40 primarily for personal, family, or household purposes.

41 (12) “Contract”, as distinguished from “agreement”, means the total  
42 legal obligation that results from the parties’ agreement as determined  
43 by the uniform commercial code as supplemented by any other applicable

1 laws.

2 (13) "Creditor" includes a general creditor, a secured creditor, a lien  
3 creditor, and any representative of creditors, including an assignee for  
4 the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and  
5 an executor or administrator of an insolvent debtor's or assignor's estate.

6 (14) "Defendant" includes a person in the position of defendant in a  
7 counterclaim, cross-claim, or third-party claim.

8 (15) "Delivery", with respect to an instrument, document of title, or  
9 chattel paper, means voluntary transfer of possession.

10 (16) "Document of title" includes bill of lading, dock warrant, dock  
11 receipt, warehouse receipt or order for the delivery of goods, and also  
12 any other document which in the regular course of business or financing  
13 is treated as adequately evidencing that the person in possession of it is  
14 entitled to receive, hold, and dispose of the document and the goods it  
15 covers. To be a document of title, a document must purport to be issued  
16 by or addressed to a bailee and purport to cover goods in the bailee's  
17 possession which are either identified or are fungible portions of an iden-  
18 tified mass.

19 (17) "Fault" means a default, breach, or wrongful act or omission.

20 (18) "Fungible goods" means:

21 (A) Goods of which any unit, by nature or usage of trade, is the equiv-  
22 alent of any other like unit; or

23 (B) goods that by agreement are treated as equivalent.

24 (19) "Genuine" means free of forgery or counterfeiting.

25 (20) "Good faith," except as otherwise provided in article 5 of chapter  
26 84 of the Kansas Statutes Annotated, and amendments thereto, means  
27 honesty in fact and the observance of reasonable commercial standards  
28 of fair dealing.

29 (21) "Holder" means:

30 (A) The person in possession of a negotiable instrument that is pay-  
31 able either to bearer or to an identified person that is the person in  
32 possession; or

33 (B) the person in possession of a document of title if the goods are  
34 deliverable either to bearer or to the order of the person in possession.

35 (22) "Insolvency proceeding" includes an assignment for the benefit  
36 of creditors or other proceeding intended to liquidate or rehabilitate the  
37 estate of the person involved.

38 (23) "Insolvent" means:

39 (A) Having generally ceased to pay debts in the ordinary course of  
40 business other than as a result of bona fide dispute;

41 (B) being unable to pay debts as they become due; or

42 (C) being insolvent within the meaning of federal bankruptcy law.

43 (24) "Money" means a medium of exchange currently authorized or

- 1 adopted by a domestic or foreign government. The term includes a mon-  
2 etary unit of account established by an intergovernmental organization or  
3 by agreement between two or more countries.
- 4 (25) “Organization” means a person other than an individual.
- 5 (26) “Party”, as distinguished from “third party”, means a person that  
6 has engaged in a transaction or made an agreement subject to the uniform  
7 commercial code.
- 8 (27) “Person” means an individual, corporation, business trust, estate,  
9 trust, partnership, limited liability company, association, joint venture,  
10 government, governmental subdivision, agency, or instrumentality, public  
11 corporation, or any other legal or commercial entity.
- 12 (28) “Present value” means the amount as of a date certain of one or  
13 more sums payable in the future, discounted to the date certain by use  
14 of either an interest rate specified by the parties if that rate is not man-  
15 ifestly unreasonable at the time the transaction is entered into or, if an  
16 interest rate is not so specified, a commercially reasonable rate that takes  
17 into account the facts and circumstances at the time the transaction is  
18 entered into.
- 19 (29) “Purchase” means taking by sale, lease, discount, negotiation,  
20 mortgage, pledge, lien, security interest, issue or reissue, gift, or any other  
21 voluntary transaction creating an interest in property.
- 22 (30) “Purchaser” means a person that takes by purchase.
- 23 (31) “Record” means information that is inscribed on a tangible me-  
24 dium or that is stored in an electronic or other medium and is retrievable  
25 in perceivable form.
- 26 (32) “Remedy” means any remedial right to which an aggrieved party  
27 is entitled with or without resort to a tribunal.
- 28 (33) “Representative” means a person empowered to act for another,  
29 including an agent, an officer of a corporation or association, and a trustee,  
30 executor, or administrator of an estate.
- 31 (34) “Right” includes remedy.
- 32 (35) “Security interest” means an interest in personal property or  
33 fixtures which secures payment or performance of an obligation. “Security  
34 interest” includes any interest of a consignor and a buyer of accounts,  
35 chattel paper, a payment intangible, or a promissory note in a transaction  
36 that is subject to article 9 of chapter 84 of the Kansas Statutes Annotated,  
37 and amendments thereto. “Security interest” does not include the special  
38 property interest of a buyer of goods on identification of those goods to  
39 a contract for sale under K.S.A. 84-2-401 and amendments thereto, but  
40 a buyer may also acquire a “security interest” by complying with article  
41 9 of chapter 84 of the Kansas Statutes Annotated, and amendments  
42 thereto. Except as otherwise provided in K.S.A. 84-2-505, and amend-  
43 ments thereto, the right of a seller or lessor of goods under article 2 or

1 2a of chapter 84 of the Kansas Statutes Annotated, and amendments  
2 thereto, to retain or acquire possession of the goods is not a “security  
3 interest”, but a seller or lessor may also acquire a “security interest” by  
4 complying with article 9 of chapter 84 of the Kansas Statutes Annotated,  
5 and amendments thereto. The retention or reservation of title by a seller  
6 of goods notwithstanding shipment or delivery to the buyer under K.S.A.  
7 84-2-401, and amendments thereto, is limited in effect to a reservation  
8 of a “security interest.” Whether a transaction in the form of a lease  
9 creates a “security interest” is determined pursuant to section 11, and  
10 amendments thereto.

11 (36) “Send” in connection with a writing, record, or notice means:

12 (A) To deposit in the mail or deliver for transmission by any other  
13 usual means of communication with postage or cost of transmission pro-  
14 vided for and properly addressed and, in the case of an instrument, to an  
15 address specified thereon or otherwise agreed, or if there be none to any  
16 address reasonable under the circumstances; or

17 (B) in any other way to cause to be received any record or notice  
18 within the time it would have arrived if properly sent.

19 (37) “Signed” includes using any symbol executed or adopted with  
20 present intention to adopt or accept a writing.

21 (38) “State” means a state of the United States, the District of Co-  
22 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
23 insular possession subject to the jurisdiction of the United States.

24 (39) “Surety” includes a guarantor or other secondary obligor.

25 (40) “Term” means a portion of an agreement that relates to a par-  
26 ticular matter.

27 (41) “Unauthorized signature” means a signature made without ac-  
28 tual, implied, or apparent authority. The term includes a forgery.

29 (42) “Warehouse receipt” means a receipt issued by a person engaged  
30 in the business of storing goods for hire.

31 (43) “Writing” includes printing, typewriting, or any other intentional  
32 reduction to tangible form. “Written” has a corresponding meaning.

33 New Sec. 10. (UCC 1-202.) Notice; knowledge. (a) Subject to sub-  
34 section (f), a person has “notice” of a fact if the person:

35 (1) Has actual knowledge of it;

36 (2) has received a notice or notification of it; or

37 (3) from all the facts and circumstances known to the person at the  
38 time in question, has reason to know that it exists.

39 (b) “Knowledge” means actual knowledge. “Knows” has a corre-  
40 sponding meaning.

41 (c) “Discover”, “learn”, or words of similar import refer to knowledge  
42 rather than to reason to know.

43 (d) A person “notifies” or “gives” a notice or notification to another

1 person by taking such steps as may be reasonably required to inform the  
2 other person in ordinary course, whether or not the other person actually  
3 comes to know of it.

4 (e) Subject to subsection (f), a person “receives” a notice or notifi-  
5 cation when:

- 6 (1) It comes to that person’s attention; or
- 7 (2) it is duly delivered in a form reasonable under the circumstances  
8 at the place of business through which the contract was made or at an-  
9 other location held out by that person as the place for receipt of such  
10 communications.

11 (f) Notice, knowledge, or a notice or notification received by an or-  
12 ganization is effective for a particular transaction from the time it is  
13 brought to the attention of the individual conducting that transaction and,  
14 in any event, from the time it would have been brought to the individual’s  
15 attention if the organization had exercised due diligence. An organization  
16 exercises due diligence if it maintains reasonable routines for communi-  
17 cating significant information to the person conducting the transaction  
18 and there is reasonable compliance with the routines. Due diligence does  
19 not require an individual acting for the organization to communicate in-  
20 formation unless the communication is part of the individual’s regular  
21 duties or the individual has reason to know of the transaction and that  
22 the transaction would be materially affected by the information.

23 New Sec. 11. (UCC 1-203.) Lease distinguished from security inter-  
24 est. (a) Whether a transaction in the form of a lease creates a lease or  
25 security interest is determined by the facts of each case.

26 (b) A transaction in the form of a lease creates a security interest if  
27 the consideration that the lessee is to pay the lessor for the right to pos-  
28 session and use of the goods is an obligation for the term of the lease and  
29 is not subject to termination by the lessee, and:

- 30 (1) The original term of the lease is equal to or greater than the  
31 remaining economic life of the goods;
- 32 (2) the lessee is bound to renew the lease for the remaining economic  
33 life of the goods or is bound to become the owner of the goods;
- 34 (3) the lessee has an option to renew the lease for the remaining  
35 economic life of the goods for no additional consideration or for nominal  
36 additional consideration upon compliance with the lease agreement; or
- 37 (4) the lessee has an option to become the owner of the goods for no  
38 additional consideration or for nominal additional consideration upon  
39 compliance with the lease agreement.

40 (c) A transaction in the form of a lease does not create a security  
41 interest merely because:

- 42 (1) The present value of the consideration the lessee is obligated to  
43 pay the lessor for the right to possession and use of the goods is substan-

- 1 tially equal to or is greater than the fair market value of the goods at the  
2 time the lease is entered into;
- 3 (2) the lessee assumes risk of loss of the goods;
- 4 (3) the lessee agrees to pay, with respect to the goods, taxes, insur-  
5 ance, filing, recording, or registration fees, or service or maintenance  
6 costs;
- 7 (4) the lessee has an option to renew the lease or to become the  
8 owner of the goods;
- 9 (5) the lessee has an option to renew the lease for a fixed rent that is  
10 equal to or greater than the reasonably predictable fair market rent for  
11 the use of the goods for the term of the renewal at the time the option  
12 is to be performed; or
- 13 (6) the lessee has an option to become the owner of the goods for a  
14 fixed price that is equal to or greater than the reasonably predictable fair  
15 market value of the goods at the time the option is to be performed.
- 16 (d) Additional consideration is nominal if it is less than the lessee's  
17 reasonably predictable cost of performing under the lease agreement if  
18 the option is not exercised. Additional consideration is not nominal if:
- 19 (1) When the option to renew the lease is granted to the lessee, the  
20 rent is stated to be the fair market rent for the use of the goods for the  
21 term of the renewal determined at the time the option is to be performed;  
22 or
- 23 (2) when the option to become the owner of the goods is granted to  
24 the lessee, the price is stated to be the fair market value of the goods  
25 determined at the time the option is to be performed.
- 26 (e) The "remaining economic life of the goods" and "reasonably pre-  
27 dictable" fair market rent, fair market value, or cost of performing under  
28 the lease agreement must be determined with reference to the facts and  
29 circumstances at the time the transaction is entered into.
- 30 New Sec. 12. (UCC 1-204.) Value. Except as otherwise provided in  
31 articles 3 and 4, of chapter 84 of the Kansas Statutes Annotated, and  
32 amendments thereto, a person gives value for rights if the person acquires  
33 them:
- 34 (1) In return for a binding commitment to extend credit or for the  
35 extension of immediately available credit, whether or not drawn upon and  
36 whether or not a charge-back is provided for in the event of difficulties  
37 in collection;
- 38 (2) as security for, or in total or partial satisfaction of, a preexisting  
39 claim;
- 40 (3) by accepting delivery under a preexisting contract for purchase;  
41 or
- 42 (4) in return for any consideration sufficient to support a simple  
43 contract.



- 1 New Sec. 13. (UCC 1-205.) Reasonable time; seasonableness. (a)  
2 Whether a time for taking an action required by the uniform commercial  
3 code is reasonable depends on the nature, purpose, and circumstances of  
4 the action.
- 5 (b) An action is taken seasonably if it is taken at or within the time  
6 agreed or, if no time is agreed, at or within a reasonable time.
- 7 New Sec. 14. (UCC 1-206.) Presumptions. Whenever the uniform  
8 commercial code creates a “presumption” with respect to a fact, or pro-  
9 vides that a fact is “presumed,” the trier of fact must find the existence  
10 of the fact unless and until evidence is introduced that supports a finding  
11 of its nonexistence.
- 12 New Sec. 15. (UCC 1-301.) Territorial applicability; parties’ power  
13 to choose applicable law. (a) In this section:
- 14 (1) “Domestic transaction” means a transaction other than an inter-  
15 national transaction.
- 16 (2) “International transaction” means a transaction that bears a rea-  
17 sonable relation to a country other than the United States.
- 18 (b) This section applies to a transaction to the extent that it is gov-  
19 erned by another article of the uniform commercial code.
- 20 (c) Except as otherwise provided in this section:
- 21 (1) An agreement by parties to a domestic transaction that any or all  
22 of their rights and obligations are to be determined by the law of this  
23 state or of another state is effective, whether or not the transaction bears  
24 a relation to the state designated; and
- 25 (2) an agreement by parties to an international transaction that any  
26 or all of their rights and obligations are to be determined by the law of  
27 this state or of another state or country is effective, whether or not the  
28 transaction bears a relation to the state or country designated.
- 29 (d) In the absence of an agreement effective under subsection (c),  
30 and except as provided in subsections (e) and (g), the rights and obliga-  
31 tions of the parties are determined by the law that would be selected by  
32 application of this state’s conflict of laws principles.
- 33 (e) If one of the parties to a transaction is a consumer, the following  
34 rules apply:
- 35 (1) An agreement referred to in subsection (c) is not effective unless  
36 the transaction bears a reasonable relation to the state or country  
37 designated.
- 38 (2) Application of the law of the state or country determined pursuant  
39 to subsection (c) or (d) may not deprive the consumer of the protection  
40 of any rule of law governing a matter within the scope of this section,  
41 which both is protective of consumers and may not be varied by  
42 agreement:
- 43 (A) Of the state or country in which the consumer principally resides,

- 1 unless subparagraph (B) applies; or  
2 (B) if the transaction is a sale of goods, of the state or country in  
3 which the consumer both makes the contract and takes delivery of those  
4 goods, if such state or country is not the state or country in which the  
5 consumer principally resides.
- 6 (f) An agreement otherwise effective under subsection (c) is not ef-  
7 fective to the extent that application of the law of the state or country  
8 designated would be contrary to a fundamental policy of the state or  
9 country whose law would govern in the absence of agreement under sub-  
10 section (d).
- 11 (g) To the extent that the uniform commercial code governs a trans-  
12 action, if one of the following provisions of the uniform commercial code  
13 specifies the applicable law, that provision governs and a contrary agree-  
14 ment is effective only to the extent permitted by the law so specified:
- 15 (1) K.S.A. 84-2-402, and amendments thereto;
  - 16 (2) K.S.A. 84-2a-105 and 84-2a-106, and amendments thereto;
  - 17 (3) K.S.A. 84-4-102, and amendments thereto;
  - 18 (4) K.S.A. 84-4a-507, and amendments thereto;
  - 19 (5) K.S.A. 84-5-116, and amendments thereto;
  - 20 (6) K.S.A. 84-8-110, and amendments thereto;
  - 21 (7) K.S.A. 2004 Supp. 84-9-301 through 84-9-307, and amendments  
22 thereto.
- 23 New Sec. 16. (UCC 1-302.) Variation by agreement. (a) Except as  
24 otherwise provided in subsection (b) or elsewhere in the uniform com-  
25 mercial code, the effect of provisions of the uniform commercial code  
26 may be varied by agreement.
- 27 (b) The obligations of good faith, diligence, reasonableness, and care  
28 prescribed by the uniform commercial code may not be disclaimed by  
29 agreement. The parties, by agreement, may determine the standards by  
30 which the performance of those obligations is to be measured if those  
31 standards are not manifestly unreasonable. Whenever the uniform com-  
32 mercial code requires an action to be taken within a reasonable time, a  
33 time that is not manifestly unreasonable may be fixed by agreement.
- 34 (c) The presence in certain provisions of the uniform commercial  
35 code of the phrase “unless otherwise agreed”, or words of similar import,  
36 does not imply that the effect of other provisions may not be varied by  
37 agreement under this section.
- 38 New Sec. 17. (UCC 1-303.) Course of performance, course of deal-  
39 ing, and usage of trade. (a) A “course of performance” is a sequence of  
40 conduct between the parties to a particular transaction that exists if:
- 41 (1) The agreement of the parties with respect to the transaction in-  
42 volves repeated occasions for performance by a party; and
  - 43 (2) the other party, with knowledge of the nature of the performance

1 and opportunity for objection to it, accepts the performance or acquiesces  
2 in it without objection.

3 (b) A “course of dealing” is a sequence of conduct concerning pre-  
4 vious transactions between the parties to a particular transaction that is  
5 fairly to be regarded as establishing a common basis of understanding for  
6 interpreting their expressions and other conduct.

7 (c) A “usage of trade” is any practice or method of dealing having  
8 such regularity of observance in a place, vocation, or trade as to justify an  
9 expectation that it will be observed with respect to the transaction in  
10 question. The existence and scope of such a usage must be proved as  
11 facts. If it is established that such a usage is embodied in a trade code or  
12 similar record, the interpretation of the record is a question of law.

13 (d) A course of performance or course of dealing between the parties  
14 or usage of trade in the vocation or trade in which they are engaged or  
15 of which they are or should be aware is relevant in ascertaining the mean-  
16 ing of the parties’ agreement, may give particular meaning to specific  
17 terms of the agreement, and may supplement or qualify the terms of the  
18 agreement. A usage of trade applicable in the place in which part of the  
19 performance under the agreement is to occur may be so utilized as to  
20 that part of the performance.

21 (e) Except as otherwise provided in subsection (f), the express terms  
22 of an agreement and any applicable course of performance, course of  
23 dealing, or usage of trade must be construed whenever reasonable as  
24 consistent with each other. If such a construction is unreasonable:

25 (1) Express terms prevail over course of performance, course of deal-  
26 ing, and usage of trade;

27 (2) course of performance prevails over course of dealing and usage  
28 of trade; and

29 (3) course of dealing prevails over usage of trade.

30 (f) Subject to K.S.A. 84-2-209, and amendments thereto, a course of  
31 performance is relevant to show a waiver or modification of any term  
32 inconsistent with the course of performance.

33 (g) Evidence of a relevant usage of trade offered by one party is not  
34 admissible unless that party has given the other party notice that the court  
35 finds sufficient to prevent unfair surprise to the other party.

36 New Sec. 18. (UCC 1-304.) Obligation of good faith. Every contract  
37 or duty within the uniform commercial code imposes an obligation of  
38 good faith in its performance and enforcement.

39 New Sec. 19. (UCC 1-305.) Remedies to be liberally administered.

40 (a) The remedies provided by the uniform commercial code must be  
41 liberally administered to the end that the aggrieved party may be put in  
42 as good a position as if the other party had fully performed but neither  
43 consequential or special damages nor penal damages may be had except

1 as specifically provided in the uniform commercial code or by other rule  
2 of law.

3 (b) Any right or obligation declared by the uniform commercial code  
4 is enforceable by action unless the provision declaring it specifies a dif-  
5 ferent and limited effect.

6 New Sec. 20. (UCC 1-306.) Waiver or renunciation of claim or right  
7 after breach. A claim or right arising out of an alleged breach may be  
8 discharged in whole or in part without consideration by agreement of the  
9 aggrieved party in an authenticated record.

10 New Sec. 21. (UCC 1-307.) *Prima facie* evidence by third-party doc-  
11 uments. A document in due form purporting to be a bill of lading, policy  
12 or certificate of insurance, official weigher's or inspector's certificate, con-  
13 sular invoice, or any other document authorized or required by the con-  
14 tract to be issued by a third party is prima facie evidence of its own  
15 authenticity and genuineness and of the facts stated in the document by  
16 the third party.

17 New Sec. 22. (UCC 1-308.) Performance or acceptance under res-  
18 ervation of rights. (a) A party that with explicit reservation of rights per-  
19 forms or promises performance or assents to performance in a manner  
20 demanded or offered by the other party does not thereby prejudice the  
21 rights reserved. Such words as "without prejudice," "under protest," or  
22 the like are sufficient.

23 (b) Subsection (a) does not apply to an accord and satisfaction.

24 New Sec. 23. (UCC 1-309.) Option to accelerate at will. A term pro-  
25 viding that one party or that party's successor in interest may accelerate  
26 payment or performance or require collateral or additional collateral "at  
27 will" or when the party "deems itself insecure," or words of similar im-  
28 port, means that the party has power to do so only if that party in good  
29 faith believes that the prospect of payment or performance is impaired.  
30 The burden of establishing lack of good faith is on the party against which  
31 the power has been exercised.

32 New Sec. 24. (UCC 1-310.) Subordinated obligations. An obligation  
33 may be issued as subordinated to performance of another obligation of  
34 the person obligated, or a creditor may subordinate its right to perform-  
35 ance of an obligation by agreement with either the person obligated or  
36 another creditor of the person obligated. Subordination does not create  
37 a security interest as against either the common debtor or a subordinated  
38 creditor.

39 Sec. 25. K.S.A. 16-1501 is hereby amended to read as follows: 16-  
40 1501. (a) For the purposes of K.S.A. 16-1501 through 16-1506, *and*  
41 *amendments thereto*, the term "contractor" means any corporation, trust,  
42 limited liability company, or limited partnership or corporate partnership  
43 other than a family farm corporation, authorized farm corporation, limited

1 liability agricultural company, limited agricultural partnership, family  
2 trust, authorized trust or testamentary trust, as defined in K.S.A. 17-5903  
3 and amendments thereto, which established a swine production facility  
4 in this state or which contracts with a producer to grow or raise hogs in  
5 this state and in either case which in the ordinary course of business buys  
6 hogs in this state.

7 (b) For the purposes of K.S.A. 16-1501 through 16-1506, *and amend-*  
8 *ments thereto*, the term producer means any individual, family farm cor-  
9 poration, authorized farm corporation, limited liability, agricultural com-  
10 pany, limited agricultural partnership, family trust, authorized trust or  
11 testamentary trust, as defined in K.S.A. 17-5903 and amendments  
12 thereto, which raises hogs in this state or provides the service of raising  
13 hogs in this state and which is able to transfer title in such hogs to another  
14 or who provides management, feed, labor, facilities, machinery or other  
15 production input for raising hogs in this state.

16 (c) For the purposes of this section production input includes, but is  
17 not limited to, management, labor, facilities, machinery or feed used in  
18 the raising of hogs in this state.

19 (d) If the contractor is the subsidiary of another corporation, part-  
20 nership, or a member of another association or other business entity, the  
21 parent corporation, partnership, association or other business entity is  
22 liable to a producer for the amount of any unpaid claim or contract per-  
23 formance claim if the contractor fails to pay or perform according to the  
24 terms of the contract.

25 (e) There is an implied promise of good faith as defined in ~~subsection~~  
26 ~~(10) of K.S.A. 84-1-201~~ *section 9(20)*, and amendments thereto, by all  
27 parties in all contracts between contractors and producers. In an action  
28 to recover damages, if the court finds that there has been a violation of  
29 this provision, damages, court costs, and attorney fees may be recovered.

30 (f) Each contractor shall require in its contract that the producer  
31 comply with any applicable state and federal environmental laws and shall  
32 provide to the producer, upon request, information regarding compliance  
33 with such laws.

34 Sec. 26. K.S.A. 2004 Supp. 16-1603 is hereby amended to read as  
35 follows: 16-1603. (a) Except as otherwise provided in subsection (b), this  
36 act applies to electronic records and electronic signatures relating to a  
37 transaction.

38 (b) This act does not apply to a transaction to the extent it is governed  
39 by:

40 (1) A law governing the creation and execution of wills, codicils or  
41 testamentary trusts; and

42 (2) the uniform commercial code, other than ~~K.S.A. 84-1-107 and 84-~~  
43 ~~1-206~~ *section 20* and articles 2 and 2a of chapter 84 of the Kansas Statutes

1 Annotated, and amendments thereto.

2 (c) This act applies to an electronic record or electronic signature  
3 otherwise excluded from the application of this act under subsection (b)  
4 to the extent it is governed by a law other than those specified in subsec-  
5 tion (b).

6 (d) A transaction subject to this act is also subject to other applicable  
7 substantive law.

8 Sec. 27. K.S.A. 2004 Supp. 16-1616 is hereby amended to read as  
9 follows: 16-1616. (a) In this section, “transferable record” means an elec-  
10 tronic record that:

11 (1) Would be a note under article 3 of chapter 84 of the Kansas  
12 Statutes Annotated, and amendments thereto or a document under article  
13 7 of chapter 84 of the Kansas Statutes Annotated, and amendments  
14 thereto if the electronic record were in writing; and

15 (2) the issuer of the electronic record expressly has agreed is a trans-  
16 ferable record.

17 (b) A person has control of a transferable record if a system employed  
18 for evidencing the transfer of interests in the transferable record reliably  
19 establishes that person as the person to which the transferable record was  
20 issued or transferred.

21 (c) A system satisfies subsection (b), and a person is deemed to have  
22 control of a transferable record, if the transferable record is created,  
23 stored and assigned in such a manner that:

24 (1) A single authoritative copy of the transferable record exists which  
25 is unique, identifiable, and, except as otherwise provided in paragraphs  
26 (4), (5) and (6), unalterable;

27 (2) the authoritative copy identifies the person asserting control as:

28 (A) The person to which the transferable record was issued; or

29 (B) if the authoritative copy indicates that the transferable record has  
30 been transferred, the person to which the transferable record was most  
31 recently transferred;

32 (3) the authoritative copy is communicated to and maintained by the  
33 person asserting control or its designated custodian;

34 (4) copies or revisions that add or change an identified assignee of  
35 the authoritative copy can be made only with the consent of the person  
36 asserting control;

37 (5) each copy of the authoritative copy and any copy of a copy is  
38 readily identifiable as a copy that is not the authoritative copy; and

39 (6) any revision of the authoritative copy is readily identifiable as au-  
40 thorized or unauthorized.

41 (d) Except as otherwise agreed, a person having control of a trans-  
42 ferable record is the holder, as defined in ~~K.S.A. 84-1-201(20)~~ section  
43 9(21), and amendments thereto, of the transferable record and has the

1 same rights and defenses as a holder of an equivalent record or writing  
2 under the uniform commercial code, including, if the applicable statutory  
3 requirements under K.S.A. 84-3-302(a), 84-7-501, or 84-9-308, and  
4 amendments thereto, are satisfied, the rights and defenses of a holder in  
5 due course, a holder to which a negotiable document of title has been  
6 duly negotiated, or a purchaser, respectively. Delivery, possession, and  
7 indorsement are not required to obtain or exercise any of the rights under  
8 this subsection.

9 (e) Except as otherwise agreed, an obligor under a transferable rec-  
10 ord has the same rights and defenses as an equivalent obligor under equiv-  
11 alent records or writings under the uniform commercial code.

12 (f) If requested by a person against which enforcement is sought, the  
13 person seeking to enforce the transferable record shall provide reasonable  
14 proof that the person is in control of the transferable record. Proof may  
15 include access to the authoritative copy of the transferable record and  
16 related business records sufficient to review the terms of the transferable  
17 record and to establish the identity of the person having control of the  
18 transferable record.

19 Sec. 28. K.S.A. 50-682 is hereby amended to read as follows: 50-682.

20 (a) Lease-purchase agreements which comply with this act are not gov-  
21 erned by the laws relating to:

22 (1) Door-to-door sales as defined in K.S.A. 50-640 and amendments  
23 thereto;

24 (2) a consumer credit transaction as defined in K.S.A. 16a-1-301 and  
25 amendments thereto;

26 (3) a security interest as defined in ~~K.S.A. 84-1-201~~ *section 9(35)*, and  
27 amendments thereto; or

28 (4) an instrument as defined in K.S.A. 16-207 and amendments  
29 thereto.

30 (b) This act does not apply to the following:

31 (1) Lease-purchase agreements primarily for business, commercial or  
32 agricultural purposes, or those made with governmental agencies or in-  
33 strumentalities or with organizations;

34 (2) a lease of a safe deposit box;

35 (3) a lease or bailment of personal property which is incidental to the  
36 lease of real property, and which provides that the consumer has no op-  
37 tion to purchase the leased property; or

38 (4) a lease of an automobile.

39 Sec. 29. K.S.A. 2004 Supp. 58-241 is hereby amended to read as  
40 follows: 58-241. As used in this act unless the context clearly requires  
41 otherwise:

42 (a) "Agricultural chemical" means fertilizers, lime or agricultural  
43 chemicals that are applied to crops or to land that is used for raising crops,

- 1 including fertilizer material, plant amendment, plant food, soil amend-  
2 ment, pesticide and plant regulator.
- 3 (b) “Agricultural production input” means crop production inputs  
4 and livestock production inputs.
- 5 (c) “Crop production input” means agricultural chemicals, seeds, pe-  
6 troleum products, custom application of agricultural chemicals and seeds  
7 and labor furnished in planting, cultivating, growing, producing, harvest-  
8 ing, drying and storing crops or crop products.
- 9 (d) “Feed” means commercial feeds, feed ingredients, mineral feeds,  
10 drugs, animal health products, supplements, customer-formula feeds or  
11 other products, including grain, that are used for feeding livestock.
- 12 (e) “Lender” means a person in the business of lending money iden-  
13 tified in the lien-notification statement.
- 14 (f) “Letter of commitment” means a binding, irrevocable and uncon-  
15 ditional agreement by a lender to honor drafts or other demands for  
16 payment upon the supplier presenting invoices signed by the purchaser  
17 or other proof of delivery.
- 18 (g) “Lien” means a lien for the unpaid retail cost of agricultural pro-  
19 duction input.
- 20 (h) “Livestock production input” means feed and labor furnished in  
21 raising livestock, but shall not include feed or labor for which the statutory  
22 lien created by K.S.A. 58-207 and 58-220, and amendments thereto, re-  
23 lating to confinement feeding of livestock may apply, which shall remain  
24 subject to that statute.
- 25 (i) “Person” means an individual or an organization as defined in ~~par-~~  
26 ~~agraph (30) of K.S.A. 84-1-201~~ *section 9(25)*, and amendments thereto.
- 27 (j) “Petroleum product” means motor fuels and special fuels that are  
28 used in the production and drying of crops and production of livestock,  
29 including motor-vehicle fuels, special fuels and liquefied petroleum gas,  
30 as defined in subsections (l) and (s) of K.S.A. 79-3401 and subsection (b)  
31 of K.S.A. 79-3490, respectively, and amendments to, these statutes and  
32 other petroleum products such as alcohol fuels, propane, lubes and oils.
- 33 (k) “Proceeds” means proceeds as defined in K.S.A. 84-9-306, and  
34 amendments thereto, except that if rights or duties are contingent upon  
35 express language in a financing statement, the requisite language may  
36 exist in a lien-notification statement under K.S.A. 58-242, and amend-  
37 ments thereto, and includes farm products, inventory, warehouse receipts  
38 and documents of title as defined in the uniform commercial code.
- 39 (l) “Seed” means agricultural seeds that are used to produce crops.
- 40 (m) “Supplier” means a person who furnishes agricultural production  
41 inputs.
- 42 Sec. 30. K.S.A. 60-1007 is hereby amended to read as follows: 60-  
43 1007. (a) Any sale conducted under the provisions of this section shall be



1 subject to the provisions of K.S.A. 60-2406, *and amendments thereto*,  
2 except that the disposition of proceeds after the satisfaction of senior  
3 security interests or liens shall be made in accordance with the provisions  
4 of K.S.A. 60-1009, *and amendments thereto*. Before the sheriff proceeds  
5 to sell the personal property pursuant to order of the court, the sheriff  
6 shall cause public notice to be given of the time and place of sale, for at  
7 least ~~ten (10)~~ 10 days before the day of sale. The notice shall be given by  
8 publication at least once each week for two ~~(2)~~ consecutive weeks in any  
9 newspaper published in the county, and which is qualified to carry legal  
10 publications, or, in the discretion of the court, by posting notices in five  
11 ~~(5)~~ public places in the county, one of which shall be on a bulletin board  
12 established for public notices in the county courthouse. Within five ~~(5)~~  
13 days of the date of first publication or posting of notice, plaintiff shall  
14 send by restricted mail a copy of ~~said such~~ notice to the defendant and  
15 to those persons known by the plaintiff to have a security interest in the  
16 property. Such notice shall be sent to the last known address of the person  
17 to whom sent and shall be in compliance with ~~subsection (26) of K.S.A.~~  
18 ~~84-1-201~~ *section 10(d) and (e), and amendments thereto*. If the personal  
19 property cannot be sold at the special execution sale for want of bidders,  
20 the judgment creditor may direct the sheriff to return the special exe-  
21 cution showing that fact or, at ~~his or her~~ *the creditor's* option, may report  
22 the same to the judge and obtain an order permitting a second sale under  
23 the same special execution and an extension of the return day of the  
24 special execution if ~~that be~~ necessary.

25 (b) If the personal property to be sold shall consist of more than one  
26 item of property, the sheriff shall sell only so much of the personalty in  
27 the sheriff's custody as is necessary to satisfy the judgment, interest and  
28 costs, and shall return the balance of any property remaining unsold to  
29 the defendant by notifying the defendant of the time and place when  
30 same may be obtained.

31 (c) Neither the sheriff nor any other member of ~~his or her~~ *the sheriff's*  
32 staff may bid at any such sale.

33 (d) The provisions of K.S.A. 60-2411, *and amendments thereto*, re-  
34 lating to advancement of printer's fees shall apply to this section.

35 Sec. 31. K.S.A. 60-2409 is hereby amended to read as follows: 60-  
36 2409. The officer who levies upon personal property, ~~shall, before said~~  
37 *before such* officer proceeds to sell the same, *shall* cause public notice to  
38 be given of the time and place of sale, for at least ~~ten (10)~~ 10 days before  
39 the day of sale. The notice shall be given by publication at least once each  
40 week for two ~~(2)~~ consecutive weeks in some newspaper meeting the qual-  
41 ifications prescribed by K.S.A. 64-101, *and amendments thereto*, or, in  
42 the discretion of the court, by putting up advertisements in five ~~(5)~~ public  
43 places in the county, one of which shall be on a bulletin board established

1 for public notices in the county courthouse. Within five ~~(5)~~ days of the  
2 date of first publication or posting of notice, plaintiff shall send by re-  
3 stricted mail a copy of ~~said such~~ notice to the defendant and to those  
4 persons known by the plaintiff to have a security interest in the property.  
5 Such notice shall be sent to the last known address of the person to whom  
6 sent and shall be in compliance with ~~subsection (26) of K.S.A. 84-1-201~~  
7 *section 10(d) and (e), and amendments thereto*. If the personal property  
8 levied upon cannot be sold at the execution sale for want of bidders, the  
9 judgment creditor may direct the officer to return the execution showing  
10 that fact or, at such creditor's option, ~~said such~~ creditor may report the  
11 same to the judge and obtain an order permitting a second sale under  
12 the same execution and an extension of the return day of the execution  
13 if that be necessary.

14 Sec. 32. K.S.A. 2004 Supp. 61-3703 is hereby amended to read as  
15 follows: 61-3703. (a) Any sale conducted under the provisions of this sec-  
16 tion shall be subject to the provisions of K.S.A. 60-2406, and amendments  
17 thereto, except that the disposition of proceeds after the satisfaction of  
18 senior security interests or liens shall be made in accordance with the  
19 provisions of K.S.A. 2004 Supp. 61-3705, and amendments thereto. The  
20 officer who shall be directed to sell the personal property, before the  
21 officer proceeds to sell the same, shall cause public notice to be given of  
22 the time and place of sale, at least 10 days before the day of sale. The  
23 notice shall be given by publication at least once each week for two con-  
24 secutive weeks in any newspaper published in the county, and which is  
25 qualified to carry legal publications, or, in the discretion of the court, by  
26 posting notices in five public places in the county, one of which shall be  
27 on a bulletin board established for public notices in the county court-  
28 house. Within five days of the date of first publication or posting of notice,  
29 plaintiff shall send by restricted mail a copy of such notice to the defend-  
30 ant and to those persons known by the plaintiff to have a security interest  
31 in the property. Such notice shall be sent to the last known address of  
32 the person to whom sent and shall be in compliance with ~~paragraph (26)~~  
33 ~~of K.S.A. 84-1-201~~ *section 10(d) and (e), and amendments thereto*. If the  
34 personal property cannot be sold at the special execution sale for want of  
35 bidders, the plaintiff may direct the officer to return the special execution  
36 showing that fact or, at the plaintiff's option, may report the same to the  
37 judge and obtain an order permitting a second sale under the same special  
38 execution and an extension of the return day of the special execution if  
39 that be necessary.

40 (b) If the personal property to be sold shall consist of more than one  
41 item of property, the appropriate officer conducting such sale shall sell  
42 only so much of the personal property in the officer's custody as is nec-  
43 essary to satisfy the judgment, interest and costs, and shall return the

1 balance of any property remaining unsold to the defendant by notifying  
2 the defendant of the time and place when same may be obtained.

3 (c) Neither the officer conducting the sale nor any other member of  
4 the officer's staff may bid at any such sale.

5 (d) The provisions of K.S.A. 60-2411, and amendments thereto, re-  
6 lating to advancement of printer's fees shall apply to this section.

7 Sec. 33. K.S.A. 2004 Supp. 84-2-103 is hereby amended to read as  
8 follows: 84-2-103. (1) In this article unless the context otherwise requires:

9 (a) "Buyer" means a person who buys or contracts to buy goods.

10 (b) ~~"Good faith" in the case of a merchant means honesty in fact and  
11 the observance of reasonable commercial standards of fair dealing in the  
12 trade. Reserved.~~

13 (c) "Receipt" of goods means taking physical possession of them.

14 (d) "Seller" means a person who sells or contracts to sell goods.

15 (2) Other definitions applying to this article or to specified parts  
16 thereof, and the sections in which they appear are:

17 "Acceptance." K.S.A. 84-2-606, *and amendments thereto*.

18 "Banker's credit." K.S.A. 84-2-325, *and amendments thereto*.

19 "Between merchants." K.S.A. 84-2-104, *and amendments thereto*

20 "Cancellation." K.S.A. 84-2-106(4), *and amendments thereto*.

21 "Commercial unit." K.S.A. 84-2-105, *and amendments thereto*.

22 "Confirmed credit." K.S.A. 84-2-325, *and amendments thereto*.

23 "Conforming to contract." K.S.A. 84-2-106, *and amendments thereto*.

24 "Contract for sale." K.S.A. 84-2-106, *and amendments thereto*.

25 "Cover." K.S.A. 84-2-712, *and amendments thereto*.

26 "Entrusting." K.S.A. 84-2-403, *and amendments thereto*.

27 "Financing agency." K.S.A. 84-2-104, *and amendments thereto*.

28 "Future goods." K.S.A. 84-2-105, *and amendments thereto*.

29 "Goods." K.S.A. 84-2-105, *and amendments thereto*.

30 "Identification." K.S.A. 84-2-501, *and amendments thereto*.

31 "Installment contract." K.S.A. 84-2-612, *and amendments thereto*.

32 "Letter of credit." K.S.A. 84-2-325, *and amendments thereto*.

33 "Lot." K.S.A. 84-2-105, *and amendments thereto*.

34 "Merchant." K.S.A. 84-2-104, *and amendments thereto*.

35 "Overseas." K.S.A. 84-2-323, *and amendments thereto*.

36 "Person in position of seller." K.S.A. 84-2-707, *and amendments*  
37 *thereto*.

38 "Present sale." K.S.A. 84-2-106, *and amendments thereto*.

39 "Sale." K.S.A. 84-2-106, *and amendments thereto*.

40 "Sale on approval." K.S.A. 84-2-326, *and amendments thereto*.

41 "Sale or return." K.S.A. 84-2-326, *and amendments thereto*.

42 "Termination." K.S.A. 84-2-106, *and amendments thereto*.

43 (3) The following definitions in other articles apply to this article:

1       “Check.” K.S.A. 84-3-104, *and amendments thereto*.  
2       “Consignee.” K.S.A. 84-7-102, *and amendments thereto*.  
3       “Consignor.” K.S.A. 84-7-102, *and amendments thereto*.  
4       “Consumer goods.” K.S.A. 2004 Supp. 84-9-102, *and amendments*  
5 *thereto*.  
6       “Dishonor.” K.S.A. 84-3-502, *and amendments thereto*.  
7       “Draft.” K.S.A. 84-3-104, *and amendments thereto*.  
8       (4) In addition article 1 contains general definitions and principles of  
9 construction and interpretation applicable throughout this article.  
10       Sec. 34. K.S.A. 84-2-202 is hereby amended to read as follows: 84-  
11 2-202. Terms with respect to which the confirmatory memoranda of the  
12 parties agree or which are otherwise set forth in a writing intended by  
13 the parties as a final expression of their agreement with respect to such  
14 terms as are included therein may not be contradicted by evidence of any  
15 prior agreement or of a contemporaneous oral agreement but may be  
16 explained or supplemented  
17       (a) by *course of performance*, course of dealing or usage of trade  
18 ~~(section 84-1-205) or by course of performance (section 84-2-208)~~ (*sec-*  
19 *tion 17, and amendments thereto*); and  
20       (b) by evidence of consistent additional terms unless the court finds  
21 the writing to have been intended also as a complete and exclusive state-  
22 ment of the terms of the agreement.  
23       Sec. 35. K.S.A. 2004 Supp. 84-2a-103 is hereby amended to read as  
24 follows: 84-2a-103. (1) In this article unless the context otherwise  
25 requires:  
26       (a) “Buyer in ordinary course of business” means a person who in  
27 good faith and without knowledge that the sale to such person is in vio-  
28 lation of the ownership rights or security interest or leasehold interest of  
29 a third party in the goods buys in ordinary course from a person in the  
30 business of selling goods of that kind but does not include a pawnbroker.  
31 “Buying” may be for cash or by exchange of other property or on secured  
32 or unsecured credit and includes receiving goods or documents of title  
33 under a preexisting contract for sale but does not include a transfer in  
34 bulk or as security for or in total or partial satisfaction of a money debt.  
35       (b) “Cancellation” occurs when either party puts an end to the lease  
36 contract for default by the other party.  
37       (c) “Commercial unit” means such a unit of goods as by commercial  
38 usage is a single whole for purposes of lease and division of which ma-  
39 terially impairs its character or value on the market or in use. A com-  
40 mercial unit may be a single article, as a machine, or a set of articles, as  
41 a suite of furniture or a line of machinery, or a quantity, as a gross or  
42 carload, or any other unit treated in use or in the relevant market as a  
43 single whole.

- 1 (d) “Conforming” goods or performance under a lease contract  
2 means goods or performance that are in accordance with the obligations  
3 under the lease contract.
- 4 (e) “Consumer lease” means a lease that a lessor regularly engaged  
5 in the business of leasing or selling makes to a lessee who is an individual  
6 and who takes under the lease primarily for a personal, family, or house-  
7 hold purpose, if the total payments to be made under the lease contract,  
8 excluding payments for options to renew or buy, do not exceed \$25,000.
- 9 (f) “Fault” means wrongful act, omission, breach or default.
- 10 (g) “Finance lease” means a lease with respect to which:
- 11 (i) The lessor does not select, manufacture or supply the goods;  
12 (ii) the lessor acquires the goods or the right to possession and use  
13 of the goods in connection with the lease; and  
14 (iii) one of the following occurs:
- 15 (A) The lessee receives a copy of the contract by which the lessor  
16 acquired the goods or the right to possession and use of the goods before  
17 signing the lease contract;
- 18 (B) the lessee’s approval of the contract by which the lessor acquired  
19 the goods or the right to possession and use of the goods is a condition  
20 to effectiveness of the lease contract;
- 21 (C) the lessee, before signing the lease contract, receives an accurate  
22 and complete statement designating the promises and warranties, and any  
23 disclaimers of warranties, limitations or modifications of remedies, or liq-  
24 uidated damages, including those of a third party, such as the manufac-  
25 turer of the goods, provided to the lessor by the person supplying the  
26 goods in connection with or as part of the contract by which the lessor  
27 acquired the goods or the right to possession and use of the goods; or
- 28 (D) if the lease is not a consumer lease, the lessor, before the lessee  
29 signs the lease contract, informs the lessee in writing (a) of the identity  
30 of the person supplying the goods to the lessor, unless the lessee has  
31 selected that person and directed the lessor to acquire the goods or the  
32 right to possession and use of the goods from that person, (b) that the  
33 lessee is entitled under this article to the promises and warranties, in-  
34 cluding those of any third party, provided to the lessor by the person  
35 supplying the goods in connection with or as part of the contract by which  
36 the lessor acquired the goods or the right to possession and use of the  
37 goods, and (c) that the lessee may communicate with the person supplying  
38 the goods to the lessor and receive an accurate and complete statement  
39 of those promises and warranties, including any disclaimers and limita-  
40 tions of them or of remedies.
- 41 (h) “Goods” means all things that are movable at the time of identi-  
42 fication to the lease contract, or are fixtures (K.S.A. 84-2a-309), but the  
43 term does not include money, documents, instruments, accounts, chattel

- 1 paper, general intangibles, or minerals or the like, including oil and gas,  
2 before extraction. The term also includes the unborn young of animals.
- 3 (i) “Installment lease contract” means a lease contract that authorizes  
4 or requires the delivery of goods in separate lots to be separately accepted,  
5 even though the lease contract contains a clause “each delivery is a sep-  
6 arate lease” or its equivalent.
- 7 (j) “Lease” means a transfer of the right to possession and use of  
8 goods for a term in return for consideration, but a sale, including a sale  
9 on approval or a sale or return, or retention or creation of a security  
10 interest is not a lease. Unless the context clearly indicates otherwise, the  
11 term includes a sublease.
- 12 (k) “Lease agreement” means the bargain, with respect to the lease,  
13 of the lessor and the lessee in fact as found in their language or by im-  
14 plication from other circumstances including course of dealing or usage  
15 of trade or course of performance as provided in this article. Unless the  
16 context clearly indicates otherwise, the term includes a sublease  
17 agreement.
- 18 (l) “Lease contract” means the total legal obligation that results from  
19 the lease agreement as affected by this article and any other applicable  
20 rules of law. Unless the context clearly indicates otherwise, the term in-  
21 cludes a sublease contract.
- 22 (m) “Leasehold interest” means the interest of the lessor or the lessee  
23 under a lease contract.
- 24 (n) “Lessee” means a person who acquires the right to possession  
25 and use of goods under a lease. Unless the context clearly indicates oth-  
26 erwise, the term includes a sublessee.
- 27 (o) “Lessee in ordinary course of business” means a person who in  
28 good faith and without knowledge that the lease is in violation of the  
29 ownership rights or security interest or leasehold interest of a third party  
30 in the goods leases in ordinary course from a person in the business of  
31 selling or leasing goods of that kind but does not include a pawnbroker.  
32 “Leasing” may be for cash or by exchange of other property or on secured  
33 or unsecured credit and includes receiving goods or documents of title  
34 under a preexisting lease contract but does not include a transfer in bulk  
35 or as security for or in total or partial satisfaction of a money debt.
- 36 (p) “Lessor” means a person who transfers the right to possession  
37 and use of goods under a lease. Unless the context clearly indicates oth-  
38 erwise, the term includes a sublessor.
- 39 (q) “Lessor’s residual interest” means the lessor’s interest in the  
40 goods after expiration, termination or cancellation of the lease contract.
- 41 (r) “Lien” means a charge against or interest in goods to secure pay-  
42 ment of a debt or performance of an obligation, but the term does not  
43 include a security interest.

- 1 (s) "Lot" means a parcel or a single article that is the subject matter  
2 of a separate lease or delivery, whether or not it is sufficient to perform  
3 the lease contract.
- 4 (t) "Merchant lessee" means a lessee that is a merchant with respect  
5 to goods of the kind subject to the lease.
- 6 (u) "Present value" means the amount as of a date certain of one or  
7 more sums payable in the future, discounted to the date certain. The  
8 discount is determined by the interest rate specified by the parties if the  
9 rate was not manifestly unreasonable at the time the transaction was en-  
10 tered into; otherwise, the discount is determined by a commercially rea-  
11 sonable rate that takes into account the facts and circumstances of each  
12 case at the time the transaction was entered into.
- 13 (v) "Purchase" includes taking by sale, lease, mortgage, security in-  
14 terest, pledge, gift, or any other voluntary transaction creating an interest  
15 in goods.
- 16 (w) "Sublease" means a lease of goods the right to possession and  
17 use of which was acquired by the lessor as a lessee under an existing lease.
- 18 (x) "Supplier" means a person from whom a lessor buys or leases  
19 goods to be leased under a finance lease.
- 20 (y) "Supply contract" means a contract under which a lessor buys or  
21 leases goods to be leased.
- 22 (z) "Termination" occurs when either party pursuant to a power cre-  
23 ated by agreement or law puts an end to the lease contract otherwise than  
24 for default.
- 25 (2) Other definitions applying to this article and the sections in which  
26 they appear are:
- 27 "Accessions," K.S.A. 84-2a-310(1), *and amendments thereto*;
- 28 "Construction mortgage," K.S.A. 84-2a-309(1)(d), *and amendments*  
29 *thereto*;
- 30 "Encumbrance," K.S.A. 84-2a-309(1)(e), *and amendments thereto*;
- 31 "Fixtures," K.S.A. 84-2a-309(1)(a), *and amendments thereto*;
- 32 "Fixture filing," K.S.A. 84-2a-309(1)(b), *and amendments thereto*; and
- 33 "Purchase money lease," K.S.A. 84-2a-309(1)(c), *and amendments*  
34 *thereto*.
- 35 (3) The following definitions in other articles apply to this article:
- 36 "Account," K.S.A. 2004 Supp. 84-9-102, and amendments thereto;
- 37 "Between merchants," K.S.A. 84-2-104(3), and amendments thereto;
- 38 "Buyer," K.S.A. 84-2-103(1)(a), and amendments thereto;
- 39 "Chattel paper," K.S.A. 2004 Supp. 84-9-102(a)(11), and amendments  
40 thereto;
- 41 "Consumer goods," K.S.A. 2004 Supp. 84-9-102(a)(23), and amend-  
42 ments thereto;
- 43 "Document," K.S.A. 2004 Supp. 84-9-102(a)(30), and amendments

1 thereto;  
2 “Entrusting,” K.S.A. 84-2-403(3), and amendments thereto;  
3 “General intangible,” K.S.A. 2004 Supp. 84-9-102(a)(42), and amend-  
4 ments thereto;  
5 ~~“Good faith,” K.S.A. 84-2-103(1)(b), and amendments thereto;~~  
6 “Instrument,” K.S.A. 2004 Supp. 84-9-102(a)(47), and amendments  
7 thereto;  
8 “Merchant,” K.S.A. 84-2-104(1), and amendments thereto;  
9 “Mortgage,” K.S.A. 2004 Supp. 84-9-102(a)(55), and amendments  
10 thereto;  
11 “Pursuant to commitment,” K.S.A. 2004 Supp. 84-9-102(a)(68), and  
12 amendments thereto;  
13 “Receipt,” K.S.A. 84-2-103(1)(c), and amendments thereto;  
14 “Sale,” K.S.A. 84-2-106(1), and amendments thereto;  
15 “Sale on approval,” K.S.A. 84-2-326, and amendments thereto;  
16 “Sale or return,” K.S.A. 84-2-326, and amendments thereto; and  
17 “Seller,” K.S.A. 84-2-103(1)(d), and amendments thereto.  
18 (4) In addition, article 1 of *chapter 84 of the Kansas Statutes Anno-*  
19 *tated, and amendments thereto*, contains general definitions and princi-  
20 ples of construction and interpretation applicable throughout this article.  
21 Sec. 36. K.S.A. 84-2a-501 is hereby amended to read as follows: 84-  
22 2a-501. (1) Whether the lessor or the lessee is in default under a lease  
23 contract is determined by the lease agreement and this article.  
24 (2) If the lessor or the lessee is in default under the lease contract,  
25 the party seeking enforcement has rights and remedies as provided in this  
26 article and, except as limited by this article, as provided in the lease  
27 agreement.  
28 (3) If the lessor or the lessee is in default under the lease contract,  
29 the party seeking enforcement may reduce the party’s claim to judgment,  
30 or otherwise enforce the lease contract by self-help or any available ju-  
31 dicial procedure or nonjudicial procedure, including administrative pro-  
32 ceeding, arbitration, or the like, in accordance with this article.  
33 (4) Except as otherwise provided in ~~K.S.A. 84-1-106(1)~~ *section 19(a)*,  
34 and amendments thereto or this article or the lease agreement, the rights  
35 and remedies referred to in subsections (2) and (3) are cumulative.  
36 (5) If the lease agreement covers both real property and goods, the  
37 party seeking enforcement may proceed under K.S.A. 84-2a-501 through  
38 84-2a-532, *and amendments thereto*, as to the goods, or under other ap-  
39 plicable law as to both the real property and the goods in accordance with  
40 that party’s rights and remedies in respect to the real property, in which  
41 case K.S.A. 84-2a-501 through 84-2a-532, *and amendments thereto*, do  
42 not apply.  
43 Sec. 37. K.S.A. 84-2a-518 is hereby amended to read as follows: 84-



1 2a-518. (1) After default by a lessor under the lease contract of the type  
2 described in K.S.A. 84-2a-508(1), *and amendments thereto*, or if agreed,  
3 after other default by the lessor, the lessee may cover by making any  
4 purchase or lease of or contract to purchase or lease goods in substitution  
5 for those due from the lessor.

6 (2) Except as otherwise provided with respect to damages liquidated  
7 in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*), or  
8 otherwise determined pursuant to agreement of the parties (~~K.S.A. 84-~~  
9 ~~1-102(3)~~ (*section 16* and K.S.A. 84-2a-503), and amendments thereto, if  
10 a lessee's cover is by a lease agreement substantially similar to the original  
11 lease agreement and the new lease agreement is made in good faith and  
12 in a commercially reasonable manner, the lessee may recover from the  
13 lessor as damages (a) the present value, as of the date of the commence-  
14 ment of the term of the new lease agreement, of the rent under the new  
15 lease agreement applicable to that period of the new lease term which is  
16 comparable to the then remaining term of the original lease agreement  
17 minus the present value as of the same date of the total rent for the then  
18 remaining lease term of the original lease agreement; and (b) any inci-  
19 dental or consequential damages, less expenses saved in consequence of  
20 the lessor's default.

21 (3) If a lessee's cover is by lease agreement that for any reason does  
22 not qualify for treatment under subsection (2), or is by purchase or oth-  
23 erwise, the lessee may recover from the lessor as if the lessee had elected  
24 not to cover and K.S.A. 84-2a-519, *and amendments thereto*, governs.

25 Sec. 38. K.S.A. 84-2a-519 is hereby amended to read as follows: 84-  
26 2a-519. (1) Except as otherwise provided with respect to damages liqui-  
27 dated in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*)  
28 or otherwise determined pursuant to agreement of the parties (~~K.S.A. 84-~~  
29 ~~1-102(3)~~ (*section 16* and K.S.A. 84-2a-504), and amendments thereto, if  
30 a lessee elects not to cover or a lessee elects to cover and the cover is by  
31 lease agreement that for any reason does not qualify for treatment under  
32 K.S.A. 84-2a-518(2), *and amendments thereto*, or is by purchase or oth-  
33 erwise, the measure of damages for nondelivery or repudiation by the  
34 lessor or for rejection or revocation of acceptance by the lessee is the  
35 present value, as of the date of the default of the then market rent minus  
36 the present value as of the same date of the original rent, computed for  
37 the remaining lease term of the original lease agreement, together with  
38 incidental and consequential damages, less expenses saved in conse-  
39 quence of the lessor's default.

40 (2) Market rent is to be determined as of the place for tender or, in  
41 cases of rejection after arrival or revocation of acceptance, as of the place  
42 of arrival.

43 (3) Except as otherwise agreed, if the lessee has accepted goods and

1 given notification (K.S.A. 84-2a-516(3), *and amendments thereto*), the  
2 measure of damages for nonconforming tender or delivery or other de-  
3 fault by a lessor is the loss resulting in the ordinary course of events from  
4 the lessor's default as determined in any manner that is reasonable to-  
5 gether with incidental and consequential damages, less expenses saved in  
6 consequence of the lessor's default.

7 (4) Except as otherwise agreed, the measure of damages for breach  
8 of warranty is the present value at the time and place of acceptance of  
9 the difference between the value of the use of the goods accepted and  
10 the value if they had been as warranted for the lease term, unless special  
11 circumstances show proximate damages of a different amount, together  
12 with incidental and consequential damages, less expenses saved in con-  
13 sequence of the lessor's default or breach of warranty.

14 Sec. 39. K.S.A. 84-2a-527 is hereby amended to read as follows: 84-  
15 2a-527. (1) After a default by a lessee under the lease contract of a type  
16 described in section K.S.A. 84-2a-523(1) or (3)(a), *and amendments*  
17 *thereto*, or after the lessor refuses to deliver or takes possession of goods  
18 (K.S.A. 84-2a-525 or 84-2a-526, *and amendments to*), or, if agreed, after  
19 other default by a lessee, the lessor may dispose of the goods concerned  
20 or the undelivered balance thereof by lease, sale or otherwise.

21 (2) Except as otherwise provided with respect to damages liquidated  
22 in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*) or  
23 otherwise determined pursuant to agreement of the parties (~~K.S.A. 84-~~  
24 ~~1-102(3)~~ (*section 16* and K.S.A. 84-2a-503), *and amendments thereto*;) if  
25 the disposition is by lease agreement substantially similar to the original  
26 lease agreement and the new lease agreement is made in good faith and  
27 in a commercially reasonable manner, the lessor may recover from the  
28 lessee as damages (a) accrued and unpaid rent as of the date of the com-  
29 mencement of the term of the new lease agreement, (b) the present value,  
30 as of the same date, of the total rent for the then remaining lease term  
31 of the original lease agreement minus present value, as of the same date,  
32 of the rent under the new lease agreement applicable to that period of  
33 the new lease term which is comparable to the then remaining term of  
34 the original lease agreement, and (c) any incidental damages allowed un-  
35 der K.S.A. 84-2a-530, *and amendments thereto*, less expenses saved in  
36 consequence of the lessee's default.

37 (3) If the lessor's disposition is by lease agreement that for any reason  
38 does not qualify for treatment under subsection (2), or is by sale or oth-  
39 erwise, the lessor may recover from the lessee as if the lessor had elected  
40 not to dispose of the goods and K.S.A. 84-2a-528, *and amendments*  
41 *thereto*, governs.

42 (4) A subsequent buyer or lessee who buys or leases from the lessor  
43 in good faith for value as a result of a disposition under this section takes

1 the goods free of the original lease contract and any rights of the original  
2 lessee even though the lessor fails to comply with one or more of the  
3 requirements of this article.

4 (5) The lessor is not accountable to the lessee for any profit made on  
5 any disposition. A lessee who has rightfully rejected or justifiably revoked  
6 acceptance shall account to the lessor for any excess over the amount of  
7 the lessee's security interest (K.S.A. 84-2a-508(5), *and amendments*  
8 *thereto*).

9 Sec. 40. K.S.A. 84-2a-528 is hereby amended to read as follows: 84-  
10 2a-528. (1) Except as otherwise provided with respect to damages liqui-  
11 dated in the lease agreement (K.S.A. 84-2a-504, *and amendments thereto*)  
12 or otherwise determined pursuant to agreement of the parties (~~K.S.A. 84-~~  
13 ~~1-102(3)~~ (*section 16* and K.S.A. 84-2a-503), *and amendments thereto*); if  
14 a lessor elects to retain the goods or a lessor elects to dispose of the goods  
15 and the disposition is by lease agreement that for any reason does not  
16 qualify for treatment under K.S.A. 84-2a-527(2), *and amendments*  
17 *thereto*, or is by sale or otherwise, the lessor may recover from the lessee  
18 as damages for a default of the type described in K.S.A. 84-2a-523(1) or  
19 (3)(a), *and amendments thereto*, or, if agreed, for other default of the  
20 lessee, (a) accrued and unpaid rent as of the date of default if the lessee  
21 has never taken possession of the goods, or, if the lessee has taken pos-  
22 session of the goods as of the date the lessor repossesses the goods or an  
23 earlier date on which the lessee makes a tender of goods to the lessor,  
24 (b) the present value as of the date determined under clause (a) of the  
25 total rent for the then remaining lease term of the original lease agree-  
26 ment minus the present value as of the same date of the market rent at  
27 the place where the goods are located computed for the same lease term,  
28 and (c) any incidental damages allowed under K.S.A. 84-2a-530, *and*  
29 *amendments thereto*, less expenses saved in consequence of the lessee's  
30 default.

31 (2) If the measure of damages provided in subsection (1) is inade-  
32 quate to put a lessor in as good a position as performance would have,  
33 the measure of damages is the present value of the profit, including rea-  
34 sonable overhead, the lessor would have made from full performance by  
35 the lessee, together with any incidental damages allowed under K.S.A.  
36 84-2a-530, *and amendments thereto*, due allowance for costs reasonably  
37 incurred and due credit for payment or proceeds of disposition.

38 Sec. 41. K.S.A. 84-3-103 is hereby amended to read as follows: 84-  
39 3-103. (a) In this article:

- 40 (1) "Acceptor" means a drawee who has accepted a draft.  
41 (2) "Drawee" means a person ordered in a draft to make payment.  
42 (3) "Drawer" means a person who signs or is identified in a draft as  
43 a person ordering payment.

- 1 (4) ~~“Good faith” means honesty in fact and the observance of rea-~~  
 2 ~~sonable commercial standards of fair dealing. *Reserved.*~~
- 3 (5) “Maker” means a person who signs or is identified in a note as a  
 4 person undertaking to pay.
- 5 (6) “Order” means a written instruction to pay money signed by the  
 6 person giving the instruction. The instruction may be addressed to any  
 7 person, including the person giving the instruction, or to one or more  
 8 persons jointly or in the alternative but not in succession. An authorization  
 9 to pay is not an order unless the person authorized to pay is also instructed  
 10 to pay.
- 11 (7) “Ordinary care” in the case of a person engaged in business means  
 12 observance of reasonable commercial standards, prevailing in the area in  
 13 which the person is located, with respect to the business in which the  
 14 person is engaged. In the case of a bank that takes an instrument for  
 15 processing for collection or payment by automated means, reasonable  
 16 commercial standards do not require the bank to examine the instrument  
 17 if the failure to examine does not violate the bank’s prescribed procedures  
 18 and the bank’s procedures do not vary unreasonably from general banking  
 19 usage not disapproved by this article or article 4.
- 20 (8) “Party” means a party to an instrument.
- 21 (9) “Promise” means a written undertaking to pay money signed by  
 22 the person undertaking to pay. An acknowledgment of an obligation by  
 23 the obligor is not a promise unless the obligor also undertakes to pay the  
 24 obligation.
- 25 (10) “Prove” with respect to a fact means to meet the burden of  
 26 establishing the fact (K.S.A. ~~84-1-201(8)~~ 84-1-201(b)(8), and amendments  
 27 thereto).
- 28 (11) “Remitter” means a person who purchases an instrument from  
 29 its issuer if the instrument is payable to an identified person other than  
 30 the purchaser.
- 31 (b) Other definitions applying to this article and the sections in which  
 32 they appear are:
- |                             |                                  |
|-----------------------------|----------------------------------|
| 33 “Acceptance”             | 84-3-409, and amendments thereto |
| 34 “Accommodated party”     | 84-3-419, and amendments thereto |
| 35 “Accommodation party”    | 84-3-419, and amendments thereto |
| 36 “Alteration”             | 84-3-407, and amendments thereto |
| 37 “Anomalous endorsement”  | 84-3-205, and amendments thereto |
| 38 “Blank endorsement”      | 84-3-205, and amendments thereto |
| 39 “Cashier’s check”        | 84-3-104, and amendments thereto |
| 40 “Certificate of deposit” | 84-3-104, and amendments thereto |
| 41 “Certified check”        | 84-3-409, and amendments thereto |
| 42 “Check”                  | 84-3-104, and amendments thereto |
| 43 “Consideration”          | 84-3-303, and amendments thereto |

1	“Draft”	84-3-104, <i>and amendments thereto</i>
2	“Endorsement”	84-3-204, <i>and amendments thereto</i>
3	“Endorser”	84-3-204, <i>and amendments thereto</i>
4	“Holder in due course”	84-3-302, <i>and amendments thereto</i>
5	“Incomplete instrument”	84-3-115, <i>and amendments thereto</i>
6	“Instrument”	84-3-104, <i>and amendments thereto</i>
7	“Issue”	84-3-105, <i>and amendments thereto</i>
8	“Issuer”	84-3-105, <i>and amendments thereto</i>
9	“Negotiable instrument”	84-3-104, <i>and amendments thereto</i>
10	“Negotiation”	84-3-201, <i>and amendments thereto</i>
11	“Note”	84-3-104, <i>and amendments thereto</i>
12	“Payable at a definite time”	84-3-108, <i>and amendments thereto</i>
13	“Payable on demand”	84-3-108, <i>and amendments thereto</i>
14	“Payable to bearer”	84-3-109, <i>and amendments thereto</i>
15	“Payable to order”	84-3-109, <i>and amendments thereto</i>
16	“Payment”	84-3-602, <i>and amendments thereto</i>
17	“Person entitled to enforce”	84-3-301, <i>and amendments thereto</i>
18	“Presentment”	84-3-501, <i>and amendments thereto</i>
19	“Reacquisition”	84-3-207, <i>and amendments thereto</i>
20	“Special endorsement”	84-3-205, <i>and amendments thereto</i>
21	“Teller’s check”	84-3-104, <i>and amendments thereto</i>
22	“Transfer of instrument”	84-3-203, <i>and amendments thereto</i>
23	“Traveler’s check”	84-3-104, <i>and amendments thereto</i>
24	“Value”	84-3-303, <i>and amendments thereto</i>
25	(c) The following definitions in other articles apply to this article:	
26	“Bank”	84-4-105, <i>and amendments thereto</i>
27	“Banking day”	84-4-104, <i>and amendments thereto</i>
28	“Clearing house”	84-4-104, <i>and amendments thereto</i>
29	“Collecting bank”	84-4-105, <i>and amendments thereto</i>
30	“Depository bank”	84-4-105, <i>and amendments thereto</i>
31	“Documentary draft”	84-4-104, <i>and amendments thereto</i>
32	“Intermediary bank”	84-4-105, <i>and amendments thereto</i>
33	“Item”	84-4-104, <i>and amendments thereto</i>
34	“Payor bank”	84-4-105, <i>and amendments thereto</i>
35	“Suspend payments”	84-4-104, <i>and amendments thereto</i>
36	(d) In addition, article 1 of <i>chapter 84 of the Kansas Statutes Annotated, and amendments thereto</i> , contains general definitions and principles of construction and interpretation applicable throughout this article.	
37		
38		
39	Sec. 42. K.S.A. 84-4-104 is hereby amended to read as follows: 84-	
40	4-104. (a) In this article, unless the context otherwise requires:	
41	(1) “Account” means any deposit or credit account with a bank, in-	
42	cluding a demand, time, savings, passbook, share draft, or like account,	
43	other than an account evidenced by a certificate of deposit;	

- 1 (2) "Afternoon" means the period of a day between noon and  
 2 midnight;
- 3 (3) "Banking day" means the part of a day on which a bank is open  
 4 to the public for carrying on substantially all of its banking functions;
- 5 (4) "Clearing house" means an association of banks or other payors  
 6 regularly clearing items;
- 7 (5) "Customer" means a person having an account with a bank or for  
 8 whom a bank has agreed to collect items, including a bank that maintains  
 9 an account at another bank;
- 10 (6) "Documentary draft" means a draft to be presented for accep-  
 11 tance or payment if specified documents, certificated securities K.S.A.  
 12 84-8-102, *and amendments thereto*, or instructions for uncertificated se-  
 13 curities (K.S.A. 84-8-308 and amendments thereto), or other certificates,  
 14 statements, or the like are to be received by the drawee or other payor  
 15 before acceptance or payment of the draft;
- 16 (7) "Draft" means a draft as defined in K.S.A. 84-3-104 and amend-  
 17 ments thereto, or an item, other than an instrument, that is an order.
- 18 (8) "Drawee" means a person ordered in a draft to make payment;
- 19 (9) "Item" means an instrument or a promise in order to pay money  
 20 handled by a bank for collection or payment. The term does not include  
 21 a payment order governed by article 4a, *and amendments thereto*, or a  
 22 credit or debit card slip;
- 23 (10) "Midnight deadline" with respect to a bank is midnight on its  
 24 next banking day following the banking day on which it receives the rel-  
 25 evant item or notice or from which the time for taking action commences  
 26 to run, whichever is later;
- 27 (11) "Settle" means to pay in cash, by clearing-house settlement, in  
 28 a charge or credit or by remittance, or otherwise as agreed. A settlement  
 29 may be either provisional or final;
- 30 (12) "Suspends payments" with respect to a bank means that it has  
 31 been closed by order of the supervisory authorities, that a public officer  
 32 has been appointed to take it over or that it ceases or refuses to make  
 33 payments in the ordinary course of business.
- 34 (b) Other definitions applying to this article and the sections in which  
 35 they appear are:
- |                             |   |
|-----------------------------|---|
| 36 "Agreement for           |   |
| 37 electronic presentment." | 84-4-110, <i>and amendments thereto</i> . |
| 38 "Bank."                  | 84-4-105, <i>and amendments thereto</i> . |
| 39 "Collecting bank."       | 84-4-105, <i>and amendments thereto</i> . |
| 40 "Depository bank."       | 84-4-105, <i>and amendments thereto</i> . |
| 41 "Intermediary bank."     | 84-4-105, <i>and amendments thereto</i> . |
| 42 "Payor bank."            | 84-4-105, <i>and amendments thereto</i> . |
| 43 "Presenting bank."       | 84-4-105, <i>and amendments thereto</i> . |

1	“Presentment notice.”	84-4-110, <i>and amendments thereto.</i>
2	(c) The following definitions in other articles apply to this article:	
3	“Acceptance.”	84-3-410, <i>and amendments thereto.</i>
4	“Alteration.”	84-3-407, <i>and amendments thereto.</i>
5	“Cashier’s check.”	84-3-104, <i>and amendments thereto.</i>
6	“Certificate of deposit.”	84-3-104, <i>and amendments thereto.</i>
7	“Certified check.”	84-3-409, <i>and amendments thereto.</i>
8	“Check.”	84-3-104, <i>and amendments thereto.</i>
9	<del>“Good Faith.”</del>	<del>84-3-103.</del>
10	“Draft.”	84-3-104, <i>and amendments thereto.</i>
11	“Holder in due course.”	84-3-302, <i>and amendments thereto.</i>
12	“Instrument.”	84-3-104, <i>and amendments thereto.</i>
13	“Notice of dishonor.”	84-3-503, <i>and amendments thereto.</i>
14	“Order.”	84-3-103, <i>and amendments thereto.</i>
15	“Ordinary care.”	84-3-103, <i>and amendments thereto.</i>
16	“Person entitled to	
17	enforce.”	84-3-301, <i>and amendments thereto.</i>
18	“Presentment.”	84-3-504, <i>and amendments thereto.</i>
19	“Promise.”	84-3-103, <i>and amendments thereto.</i>
20	“Prove.”	84-3-103, <i>and amendments thereto.</i>
21	“Teller’s check.”	84-3-104, <i>and amendments thereto.</i>
22	“Unauthorized signature.”	84-3-403, <i>and amendments thereto.</i>
23	(d) In addition, article 1 of <i>chapter 84 of the Kansas Statutes Anno-</i>	
24	<i>tated, and amendments thereto,</i> contains general definitions and princi-	
25	ples of construction and interpretation applicable throughout this article.	
26	Sec. 43. K.S.A. 84-4a-105 is hereby amended to read as follows: 84-	
27	4a-105. (a) In this article:	
28	(1) “Authorized account” means a deposit account of a customer in	
29	a bank designated by the customer as a source of payment of payment	
30	orders issued by the customer to the bank. If a customer does not so	
31	designate an account, any account of the customer is an authorized ac-	
32	count if payment of a payment order from that account is not inconsistent	
33	with a restriction on the use of that account.	
34	(2) “Bank” means a person engaged in the business of banking and	
35	includes a savings bank, savings and loan association, credit union and	
36	trust company. A branch or separate office of a bank is a separate bank	
37	for purposes of this article.	
38	(3) “Customer” means a person, including a bank, having an account	
39	with a bank or from whom a bank has agreed to receive payment orders.	
40	(4) “Funds-transfer business day” of a receiving bank means the part	
41	of a day during which the receiving bank is open for the receipt, proc-	
42	essing, and transmittal of payment orders and cancellations and amend-	
43	ments of payment orders.	

1 (5) “Funds-transfer system” means a wire transfer network, auto-  
 2 mated clearinghouse, or other communication system of a clearinghouse  
 3 or other association of banks through which a payment order by a bank  
 4 may be transmitted to the bank to which the order is addressed.

5 ~~(6) “Good faith” means honesty in fact and the observance of rea-~~  
 6 ~~sonable commercial standards of fair dealing. Reserved.~~

7 (7) “Prove” with respect to a fact means to meet the burden of es-  
 8 tablishing the fact (~~subsection (8) of K.S.A. 84-1-201(b)(8), and amend-~~  
 9 ~~ments thereto).~~

10 (b) Other definitions applying to this article and the sections in which  
 11 they appear are:

12 “Acceptance”	84-4a-209, <i>and amendments thereto</i>
13 “Beneficiary”	84-4a-103, <i>and amendments thereto</i>
14 “Beneficiary’s bank”	84-4a-103, <i>and amendments thereto</i>
15 “Executed”	84-4a-301, <i>and amendments thereto</i>
16 “Execution date”	84-4a-301, <i>and amendments thereto</i>
17 “Funds-transfer	
18 system rule”	84-4a-501, <i>and amendments thereto</i>
19 “Funds transfer”	84-4a-104, <i>and amendments thereto</i>
20 “Intermediary bank”	84-4a-104, <i>and amendments thereto</i>
21 “Originator”	84-4a-104, <i>and amendments thereto</i>
22 “Originator’s bank”	84-4a-104, <i>and amendments thereto</i>
23 “Payment by beneficiary’s	
24 bank to beneficiary”	84-4a-405, <i>and amendments thereto</i>
25 “Payment by originator	
26 to beneficiary”	84-4a-406, <i>and amendments thereto</i>
27 “Payment by sender to	
28 receiving bank”	84-4a-403, <i>and amendments thereto</i>
29 “Payment date”	84-4a-401, <i>and amendments thereto</i>
30 “Payment order”	84-4a-103, <i>and amendments thereto</i>
31 “Receiving bank”	84-4a-103, <i>and amendments thereto</i>
32 “Security procedure”	84-4a-201, <i>and amendments thereto</i>
33 “Sender”	84-4a-103, <i>and amendments thereto</i>

34 (c) The following definitions in article 4 of chapter 84 of Kansas Stat-  
 35 utes Annotated, and amendments thereto, apply to this article:

36 “Clearinghouse”	84-4-104, <i>and amendments thereto</i>
37 “Item”	84-4-104, <i>and amendments thereto</i>
38 “Suspend payments”	84-4-104, <i>and amendments thereto</i>

39 (d) In addition, article 1 of chapter 84 of Kansas Statutes Annotated,  
 40 and amendments thereto, contains general definitions and principles of  
 41 construction and interpretation applicable throughout this article.

42 Sec. 44. K.S.A. 84-4a-106 is hereby amended to read as follows: 84-  
 43 4a-106. (a) The time of receipt of a payment order or communication



1 canceling or amending a payment order is determined by the rules ap-  
2 plicable to receipt of a notice stated in ~~subsection (27) of K.S.A. 84-1-~~  
3 ~~201~~ *section 10*, and amendments thereto. A receiving bank may fix a cut-  
4 off time or times on a funds-transfer business day for the receipt and  
5 processing of payment orders and communications canceling or amending  
6 payment orders. Different cut-off times may apply to receipt of payment  
7 orders, cancellations, or amendments, or to different categories of pay-  
8 ment orders, cancellations, or amendments. A cut-off time may apply to  
9 senders generally or different cut-off times may apply to different senders  
10 or categories of payment orders. If a payment order or communication  
11 canceling or amending a payment order is received after the close of a  
12 funds-transfer business day or after the appropriate cut-off time on a  
13 funds-transfer business day, the receiving bank may treat the payment  
14 order or communication as received at the opening of the next funds-  
15 transfer business day.

16 (b) If this article refers to an execution date or payment date or states  
17 a day on which a receiving bank is required to take action, and the date  
18 or day does not fall on a funds-transfer business day, the next day that is  
19 a funds-transfer business day is treated as the date or day stated, unless  
20 the contrary is stated in this article.

21 Sec. 45. K.S.A. 84-4a-204 is hereby amended to read as follows: 84-  
22 4a-204. (a) If a receiving bank accepts a payment order issued in the name  
23 of its customer as sender which is: (i) Not authorized and not effective as  
24 the order of the customer under K.S.A. 84-4a-202, *and amendments*  
25 *thereto*; or (ii) not enforceable, in whole or in part, against the customer  
26 under K.S.A. 84-4a-203, *and amendments thereto*, the bank shall refund  
27 any payment of the payment order received from the customer to the  
28 extent the bank is not entitled to enforce payment, and shall pay interest  
29 on the refundable amount calculated from the date the bank received  
30 payment to the date of the refund. However, the customer is not entitled  
31 to interest from the bank on the amount to be refunded if the customer  
32 fails to exercise ordinary care to determine that the order was not au-  
33 thorized by the customer and to notify the bank of the relevant facts  
34 within a reasonable time not exceeding 90 days after the date the cus-  
35 tomer received notification from the bank that the order was accepted or  
36 that the customer's account was debited with respect to the order. The  
37 bank is not entitled to any recovery from the customer on account of a  
38 failure by the customer to give notification as stated in this section.

39 (b) Reasonable time under subsection (a) may be fixed by agreement  
40 as stated in ~~subsection (a) of K.S.A. 84-1-204~~ *section 16(b)*, and amend-  
41 ments thereto, but the obligation of a receiving bank to refund payment  
42 as stated in subsection (a) may not otherwise be varied by agreement.

43 Sec. 46. K.S.A. 84-5-103 is hereby amended to read as follows: 84-

1 5-103. (a) This article applies to letters of credit and to certain rights and  
2 obligations arising out of transactions involving letters of credit.

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

6 (c) With the exception of this subsection, subsections (a) and (d),  
7 K.S.A. 84-5-102(a)(9) and (10), K.S.A. 84-5-106(d) and K.S.A. 84-5-  
8 114(d), *and amendments thereto*, and except to the extent prohibited in  
9 ~~K.S.A. 84-5-102(3)~~ *section 16* and K.S.A. 84-5-117(d), *and amendments*  
10 *thereto*, the effect of this article may be varied by agreement or by a  
11 provision stated or incorporated by reference in an undertaking. A term  
12 in an agreement or undertaking generally excusing liability or generally  
13 limiting remedies for failure to perform obligations is not sufficient to  
14 vary obligations prescribed by this article.

15 (d) Rights and obligations of an issuer to a beneficiary or a nominated  
16 person under a letter of credit are independent of the existence, perform-  
17 ance or nonperformance of a contract or arrangement out of which the  
18 letter of credit arises or which underlies it, including contracts or arrange-  
19 ments between the issuer and the applicant and between the applicant  
20 and the beneficiary.

21 Sec. 47. K.S.A. 84-8-102 is hereby amended to read as follows: 84-  
22 8-102. (a) In this article:

23 (1) "Adverse claim" means a claim that a claimant has a property  
24 interest in a financial asset and that it is a violation of the rights of the  
25 claimant for another person to hold, transfer or deal with the financial  
26 asset.

27 (2) "Bearer form," as applied to a certificated security, means a form  
28 in which the security is payable to the bearer of the security certificate  
29 according to its terms but not by reason of an indorsement.

30 (3) "Broker" means a person defined as a broker or dealer under the  
31 federal securities laws, but without excluding a bank acting in that  
32 capacity.

33 (4) "Certificated security" means a security that is represented by a  
34 certificate.

35 (5) "Clearing corporation" means:

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

38 (ii) a federal reserve bank; or

39 (iii) any other person that provides clearance or settlement services  
40 with respect to financial assets that would require it to register as a clear-  
41 ing agency under the federal securities laws but for an exclusion or ex-  
42 emption from the registration requirement, if its activities as a clearing  
43 corporation, including promulgation of rules, are subject to regulation by

- 1 a federal or state governmental authority.
- 2 (6) "Communicate" means to:
- 3 (i) Send a signed writing; or
- 4 (ii) transmit information by any mechanism agreed upon by the per-
- 5 sons transmitting and receiving the information.
- 6 (7) "Entitlement holder" means a person identified in the records of
- 7 a securities intermediary as the person having a security entitlement
- 8 against the securities intermediary. If a person acquires a security enti-
- 9 tlement by virtue of subsection (b)(2) or (3) of K.S.A. 84-8-501, *and*
- 10 *amendments thereto*, that person is the entitlement holder.
- 11 (8) "Entitlement order" means a notification communicated to a se-
- 12 curities intermediary directing transfer or redemption of a financial asset
- 13 to which the entitlement holder has a security entitlement.
- 14 (9) "Financial asset," except as otherwise provided in K.S.A. 84-8-
- 15 103, *and amendments thereto*, means:
- 16 (i) A security;
- 17 (ii) an obligation of a person or a share, participation, or other interest
- 18 in a person or in property or an enterprise of a person, which is, or is of
- 19 a type, dealt in or traded on financial markets, or which is recognized in
- 20 any area in which it is issued or dealt in as a medium for investment; or
- 21 (iii) any property that is held by a securities intermediary for another
- 22 person in a securities account if the securities intermediary has expressly
- 23 agreed with the other person that the property is to be treated as a fi-
- 24 nancial asset under this article. As context requires, the term means either
- 25 the interest itself or the means by which a person's claim to it is evidenced,
- 26 including a certificated or uncertificated security, a security certificate or
- 27 a security entitlement.
- 28 (10) ~~"Good faith," for purposes of the obligation of good faith in the~~
- 29 ~~performance or enforcement of contracts or duties within this article,~~
- 30 ~~means honesty in fact and the observance of reasonable commercial stan-~~
- 31 ~~dards of fair dealing. Reserved.~~
- 32 (11) "Indorsement" means a signature that alone or accompanied by
- 33 other words is made on a security certificate in registered form or on a
- 34 separate document for the purpose of assigning, transferring or redeem-
- 35 ing the security or granting a power to assign, transfer or redeem it.
- 36 (12) "Instruction" means a notification communicated to the issuer
- 37 of an uncertificated security which directs that the transfer of the security
- 38 be registered or that the security be redeemed.
- 39 (13) "Registered form," as applied to a certificated security, means a
- 40 form in which:
- 41 (i) The security certificate specifies a person entitled to the security;
- 42 and
- 43 (ii) a transfer of the security may be registered upon books main-

1 tained for that purpose by or on behalf of the issuer, or the security  
 2 certificate so states.

3 (14) “Securities intermediary” means:

4 (i) A clearing corporation; or

5 (ii) a person, including a bank or broker, that in the ordinary course  
 6 of business maintains securities accounts for others and is acting in that  
 7 capacity.

8 (15) “Security,” except as otherwise provided in K.S.A. 84-8-103, *and*  
 9 *amendments thereto*, means an obligation of an issuer or a share, partic-  
 10 ipation or other interest in an issuer or in property or an enterprise of an  
 11 issuer:

12 (i) Which is represented by a security certificate in bearer or regis-  
 13 tered form, or the transfer of which may be registered upon books main-  
 14 tained for that purpose by or on behalf of the issuer;

15 (ii) which is one of a class or series or by its terms is divisible into a  
 16 class or series of shares, participations, interests or obligations; and

17 (iii) which:

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

20 (B) is a medium for investment and by its terms expressly provides  
 21 that it is a security governed by this article.

22 (16) “Security certificate” means a certificate representing a security.

23 (17) “Security entitlement” means the rights and property interest of  
 24 an entitlement holder with respect to a financial asset specified in K.S.A.  
 25 84-8-501 through 84-8-511, *and amendments thereto*.

26 (18) “Uncertificated security” means a security that is not repre-  
 27 sented by a certificate.

28 (b) Other definitions applying to this article and the sections in which  
 29 they appear are:

30	Appropriate person	84-8-107, <i>and amendments thereto</i>
31	Control	84-8-106, <i>and amendments thereto</i>
32	Delivery	84-8-301, <i>and amendments thereto</i>
33	Investment company security	84-8-103, <i>and amendments thereto</i>
34	Issuer	84-8-201, <i>and amendments thereto</i>
35	Overissue	84-8-210, <i>and amendments thereto</i>
36	Protected purchaser	84-8-303, <i>and amendments thereto</i>
37	Securities account	84-8-501, <i>and amendments thereto</i>

38 (c) In addition, article 1 of *chapter 84 of the Kansas Statutes Anno-*  
 39 *tated, and amendments thereto*, contains general definitions and princi-  
 40 ples of construction and interpretation applicable throughout this article.

41 (d) The characterization of a person, business or transaction for pur-  
 42 poses of this article does not determine the characterization of the person,  
 43 business or transaction for purposes of any other law, regulation or rule.

- 1     Sec. 48. K.S.A. 2004 Supp. 84-9-102 is hereby amended to read as  
2 follows: 84-9-102. (a) **Article 9 definitions.** In this article:
- 3     (1) “Accession” means goods that are physically united with other  
4 goods in such a manner that the identity of the original goods is not lost.
- 5     (2) “Account,” except as used in “account for,” means a right to pay-  
6 ment of a monetary obligation, whether or not earned by performance,  
7 (A) for property that has been or is to be sold, leased, licensed, assigned,  
8 or otherwise disposed of, (B) for services rendered or to be rendered, (C)  
9 for a policy of insurance issued or to be issued, (D) for a secondary ob-  
10 ligation incurred or to be incurred, (E) for energy provided or to be  
11 provided, (F) for the use or hire of a vessel under a charter or other  
12 contract, (G) arising out of the use of a credit or charge card or infor-  
13 mation contained on or for use with the card, or (H) as winnings in a  
14 lottery or other game of chance operated or sponsored by a state, gov-  
15 ernmental unit of a state, or person licensed or authorized to operate the  
16 game by a state or governmental unit of a state. The term includes health-  
17 care-insurance receivables. The term does not include: (A) rights to pay-  
18 ment evidenced by chattel paper or an instrument, (B) commercial tort  
19 claims, (C) deposit accounts, (D) investment property, (E) letter-of-credit  
20 rights or letters of credit, or (F) rights to payment for money or funds  
21 advanced or sold, other than rights arising out of the use of a credit or  
22 charge card or information contained on or for use with the card.
- 23     (3) “Account debtor” means a person obligated on an account, chattel  
24 paper, or general intangible. The term does not include persons obligated  
25 to pay a negotiable instrument, even if the instrument constitutes part of  
26 chattel paper.
- 27     (4) “Accounting,” except as used in “accounting for,” means a record:  
28     (A) Authenticated by a secured party;  
29     (B) indicating the aggregate unpaid secured obligations as of a date  
30 not more than 35 days earlier or 35 days later than the date of the record;  
31 and  
32     (C) identifying the components of the obligations in reasonable de-  
33 tail.
- 34     (5) “Agricultural lien” means an interest, other than a security inter-  
35 est, in farm products: (A) Which secures payment or performance of an  
36 obligation for:  
37     (i) Goods or services furnished in connection with a debtor’s farming  
38 operation; or  
39     (ii) rent on real property leased by a debtor in connection with its  
40 farming operation;  
41     (B) which is created by statute in favor of a person that:  
42     (i) In the ordinary course of its business furnished goods or services  
43 to a debtor in connection with a debtor’s farming operation; or

- 1 (ii) leased real property to a debtor in connection with the debtor's  
2 farming operation; and
- 3 (C) whose effectiveness does not depend on the person's possession  
4 of the personal property. Agricultural lien shall not include statutory liens.
- 5 (6) "As-extracted collateral" means: (A) Oil, gas, or other minerals  
6 that are subject to a security interest that:
- 7 (i) Is created by a debtor having an interest in the minerals before  
8 extraction; and
- 9 (ii) attaches to the minerals as extracted; or
- 10 (B) accounts arising out of the sale at the wellhead or minehead of  
11 oil, gas, or other minerals in which the debtor had an interest before  
12 extraction.
- 13 (7) "Authenticate" means:
- 14 (A) To sign; or
- 15 (B) to execute or otherwise adopt a symbol, or encrypt or similarly  
16 process a record in whole or in part, with the present intent of the au-  
17 thenticating person to identify the person and adopt or accept a record.
- 18 (8) "Bank" means an organization that is engaged in the business of  
19 banking. The term includes savings banks, savings and loan associations,  
20 credit unions, and trust companies.
- 21 (9) "Cash proceeds" means proceeds that are money, checks, deposit  
22 accounts, or the like.
- 23 (10) "Certificate of title" means a certificate of title with respect to  
24 which a statute provides for the security interest in question to be indi-  
25 cated on the certificate as a condition or result of the security interest's  
26 obtaining priority over the rights of a lien creditor with respect to the  
27 collateral.
- 28 (11) "Chattel paper" means a record or records that evidence both a  
29 monetary obligation and a security interest in specific goods, a security in-  
30 terest in specific goods and software used in the goods, a security in-  
31 terest in specific goods and license of software used in the goods, a lease  
32 of specific goods, or a lease of specific goods and license of software used  
33 in the goods. In this subsection, "monetary obligation" means a monetary  
34 obligation secured by the goods or owed under a lease of the goods and  
35 includes a monetary obligation with respect to software used in the goods.  
36 The term does not include (i) charters or other contracts involving the  
37 use or hire of a vessel or (ii) records that evidence a right to payment  
38 arising out of the use of a credit or charge card or information contained  
39 on or for use with the card. If a transaction is evidenced by records that  
40 include an instrument or series of instruments, the group of records taken  
41 together constitutes chattel paper.
- 42 (12) "Collateral" means the property subject to a security interest or  
43 agricultural lien. The term includes:

- 1 (A) Proceeds to which a security interest attaches;  
2 (B) accounts, chattel paper, payment intangibles, and promissory  
3 notes that have been sold; and  
4 (C) goods that are the subject of a consignment.
- 5 (13) “Commercial tort claim” means a claim arising in tort with re-  
6 spect to which:  
7 (A) The claimant is an organization; or  
8 (B) the claimant is an individual and the claim:  
9 (i) arose in the course of the claimant’s business or profession; and  
10 (ii) does not include damages arising out of personal injury to or the  
11 death of an individual.
- 12 (14) “Commodity account” means an account maintained by a com-  
13modity intermediary in which a commodity contract is carried for a com-  
14modity customer.
- 15 (15) “Commodity contract” means a commodity futures contract, an  
16option on a commodity futures contract, a commodity option, or another  
17contract if the contract or option is:  
18 (A) Traded on or subject to the rules of a board of trade that has  
19been designated as a contract market for such a contract pursuant to  
20federal commodities laws; or  
21 (B) traded on a foreign commodity board of trade, exchange, or mar-  
22ket, and is carried on the books of a commodity intermediary for a com-  
23modity customer.
- 24 (16) “Commodity customer” means a person for which a commodity  
25intermediary carries a commodity contract on its books.
- 26 (17) “Commodity intermediary” means a person that:  
27 (A) Is registered as a futures commission merchant under federal  
28commodities law; or  
29 (B) in the ordinary course of its business provides clearance or set-  
30tlement services for a board of trade that has been designated as a contract  
31market pursuant to federal commodities law.
- 32 (18) “Communicate” means:  
33 (A) To send a written or other tangible record;  
34 (B) to transmit a record by any means agreed upon by the persons  
35sending and receiving the record; or  
36 (C) in the case of transmission of a record to or by a filing office, to  
37transmit a record by any means prescribed by filing-office rule.
- 38 (19) “Consignee” means a merchant to which goods are delivered in  
39a consignment.
- 40 (20) “Consignment” means a transaction, regardless of its form, in  
41which a person delivers goods to a merchant for the purpose of sale and:  
42 (A) The merchant:  
43 (i) Deals in goods of that kind under a name other than the name of

- 1 the person making delivery;
- 2 (ii) is not an auctioneer; and
- 3 (iii) is not generally known by its creditors to be substantially engaged
- 4 in selling the goods of others;
- 5 (B) with respect to each delivery, the aggregate value of the goods is
- 6 \$1,000 or more at the time of delivery;
- 7 (C) the goods are not consumer goods immediately before delivery;
- 8 and
- 9 (D) the transaction does not create a security interest that secures an
- 10 obligation.
- 11 (21) “Consignor” means a person that delivers goods to a consignee
- 12 in a consignment.
- 13 (22) “Consumer debtor” means a debtor in a consumer transaction.
- 14 (23) “Consumer goods” means goods that are used or bought for use
- 15 primarily for personal, family, or household purposes.
- 16 (24) “Consumer-goods transaction” means a consumer transaction in
- 17 which:
- 18 (A) An individual incurs an obligation primarily for personal, family,
- 19 or household purposes; and
- 20 (B) a security interest in consumer goods secures the obligation.
- 21 (25) “Consumer obligor” means an obligor who is an individual and
- 22 who incurred the obligation as part of a transaction entered into primarily
- 23 for personal, family, or household purposes.
- 24 (26) “Consumer transaction” means a transaction in which (i) an in-
- 25 dividual incurs an obligation primarily for personal, family, or household
- 26 purposes, (ii) a security interest secures the obligation, and (iii) the col-
- 27 lateral is held or acquired primarily for personal, family, or household
- 28 purposes. The term includes consumer-goods transactions.
- 29 (27) “Continuation statement” means an amendment of a financing
- 30 statement which:
- 31 (A) Identifies, by its file number, the initial financing statement to
- 32 which it relates; and
- 33 (B) indicates that it is a continuation statement for, or that it is filed
- 34 to continue the effectiveness of, the identified financing statement.
- 35 (28) “Debtor” means:
- 36 (A) A person having an interest, other than a security interest or other
- 37 lien, in the collateral, whether or not the person is an obligor;
- 38 (B) a seller of accounts, chattel paper, payment intangibles, or prom-
- 39 issory notes; or
- 40 (C) a consignee.
- 41 (29) “Deposit account” means a demand, time, savings, passbook, or
- 42 similar account maintained with a bank. The term does not include in-
- 43 vestment property or accounts evidenced by an instrument.



- 1 (30) "Document" means a document of title or a receipt of the type  
2 described in subsection (2) of K.S.A. 84-7-201 and amendments thereto.
- 3 (31) "Electronic chattel paper" means chattel paper evidenced by a  
4 record or records consisting of information stored in an electronic me-  
5 dium.
- 6 (32) "Encumbrance" means a right, other than an ownership interest,  
7 in real property. The term includes mortgages and other liens on real  
8 property.
- 9 (33) "Equipment" means goods other than inventory, farm products,  
10 or consumer goods.
- 11 (34) "Farm products" means goods, other than standing timber, with  
12 respect to which the debtor is engaged in a farming operation and which  
13 are: (A) Crops grown, growing, or to be grown, including:  
14 (i) Crops produced on trees, vines, and bushes; and  
15 (ii) aquatic goods produced in aquacultural operations;  
16 (B) livestock, born or unborn, including aquatic goods produced in  
17 aquacultural operations;  
18 (C) supplies used or produced in a farming operation; or  
19 (D) products of crops or livestock in their unmanufactured states.
- 20 (35) "Farming operation" means raising, cultivating, propagating, fat-  
21 tening, grazing, or any other farming, livestock, or aquacultural operation.
- 22 (36) "File number" means the number assigned to an initial financing  
23 statement pursuant to subsection (a) of K.S.A. 2004 Supp. 84-9-519 and  
24 amendments thereto.
- 25 (37) "Filing office" means an office designated in K.S.A. 2004 Supp.  
26 84-9-501 and amendments thereto as the place to file a financing state-  
27 ment.
- 28 (38) "Filing-office rule" means a rule adopted pursuant to K.S.A.  
29 2004 Supp. 84-9-526 and amendments thereto.
- 30 (39) "Financing statement" means a record or records composed of  
31 an initial financing statement and any filed record relating to the initial  
32 financing statement.
- 33 (40) "Fixture filing" means the filing of a financing statement cov-  
34 ering goods that are or are to become fixtures and satisfying subsections  
35 (a) and (b) of K.S.A. 2004 Supp. 84-9-502 and amendments thereto. The  
36 term includes the filing of a financing statement covering goods of a  
37 transmitting utility which are or are to become fixtures.
- 38 (41) "Fixtures" means goods that have become so related to partic-  
39 ular real property that an interest in them arises under real property law.
- 40 (42) "General intangible" means any personal property, including  
41 things in action, other than accounts, chattel paper, commercial tort  
42 claims, deposit accounts, documents, goods, instruments, investment  
43 property, letter-of-credit rights, letters of credit, money, and oil, gas, or

1 other minerals before extraction. The term includes payment intangibles  
2 and software.

3 (43) ~~“Good faith” means honesty in fact and the observance of rea-~~  
4 ~~sonable commercial standards of fair dealing. *Reserved.*~~

5 (44) “Goods” means all things that are movable when a security in-  
6 terest attaches. The term includes (A) fixtures, (B) standing timber that  
7 is to be cut and removed under a conveyance or contract for sale, (C) the  
8 unborn young of animals, (D) crops grown, growing, or to be grown, even  
9 if the crops are produced on trees, vines, or bushes, and (E) manufactured  
10 homes. The term also includes a computer program embedded in goods  
11 and any supporting information provided in connection with a transaction  
12 relating to the program if (A) the program is associated with the goods in  
13 such a manner that it customarily is considered part of the goods, or (B)  
14 by becoming the owner of the goods, a person acquires a right to use the  
15 program in connection with the goods. The term does not include a com-  
16 puter program embedded in goods that consist solely of the medium in  
17 which the program is embedded. The term also does not include ac-  
18 counts, chattel paper, commercial tort claims, deposit accounts, docu-  
19 ments, general intangibles, instruments, investment property, letter-of-  
20 credit rights, letters of credit, money, or oil, gas, or other minerals before  
21 extraction.

22 (45) “Governmental unit” means a subdivision, agency, department,  
23 county, parish, municipality, or other unit of the government of the  
24 United States, a state, or a foreign country. The term includes an organ-  
25 ization having a separate corporate existence if the organization is eligible  
26 to issue debt on which interest is exempt from income taxation under the  
27 laws of the United States.

28 (46) “Health-care-insurance receivable” means an interest in or claim  
29 under a policy of insurance which is a right to payment of a monetary  
30 obligation for health-care goods or services provided.

31 (47) “Instrument” means a negotiable instrument, a writing that  
32 would otherwise qualify as a certificate of deposit (defined in subsection  
33 (j) of K.S.A. 84-3-104, and amendments thereto) but for the fact that the  
34 writing contains a limitation on transfer, or any other writing that evi-  
35 dences a right to the payment of a monetary obligation, is not itself a  
36 security agreement or lease, and is of a type that in ordinary course of  
37 business is transferred by delivery with any necessary indorsement or  
38 assignment. The term does not include (i) investment property, (ii) letters  
39 of credit, or (iii) writings that evidence a right to payment arising out of  
40 the use of a credit or charge card or information contained on or for use  
41 with the card.

42 (48) “Inventory” means goods, other than farm products, which:

43 (A) Are leased by a person as lessor;

1 (B) are held by a person for sale or lease or to be furnished under a  
2 contract of service;

3 (C) are furnished by a person under a contract of service; or

4 (D) consist of raw materials, work in process, or materials used or  
5 consumed in a business.

6 (49) "Investment property" means a security, whether certificated or  
7 uncertificated, security entitlement, securities account, commodity con-  
8 tract, or commodity account.

9 (50) "Jurisdiction of organization," with respect to a registered or-  
10 ganization, means the jurisdiction under whose law the organization is  
11 organized.

12 (51) "Letter-of-credit right" means a right to payment or perform-  
13 ance under a letter of credit, whether or not the beneficiary has de-  
14 manded or is at the time entitled to demand payment or performance.  
15 The term does not include the right of a beneficiary to demand payment  
16 or performance under a letter of credit.

17 (52) "Lien creditor" means:

18 (A) A creditor that has acquired a lien on the property involved by  
19 attachment, levy, or the like;

20 (B) an assignee for benefit of creditors from the time of assignment;

21 (C) a trustee in bankruptcy from the date of the filing of the petition;  
22 or

23 (D) a receiver in equity from the time of appointment.

24 (53) "Manufactured home" means a structure, transportable in one  
25 or more sections, which, in the traveling mode, is eight body feet or more  
26 in width or 40 body feet or more in length, or, when erected on site, is  
27 320 or more square feet, and which is built on a permanent chassis and  
28 designed to be used as a dwelling with or without a permanent foundation  
29 when connected to the required utilities, and includes the plumbing,  
30 heating, air conditioning, and electrical systems contained therein. The  
31 term includes any structure that meets all of the requirements of this  
32 paragraph except the size requirements and with respect to which the  
33 manufacturer voluntarily files a certification required by the United States  
34 Secretary of Housing and Urban Development and complies with the  
35 standards established under Title 42 of the United States Code.

36 (54) "Manufactured-home transaction" means a secured transaction:

37 (A) That creates a purchase-money security interest in a manufac-  
38 tured home, other than a manufactured home held as inventory; or

39 (B) in which a manufactured home, other than a manufactured home  
40 held as inventory, is the primary collateral.

41 (55) "Mortgage" means a consensual interest in real property, in-  
42 cluding fixtures, which secures payment or performance of an obligation.

43 (56) "New debtor" means a person that becomes bound as a debtor

1 under subsection (d) of K.S.A. 2004 Supp. 84-9-203 and amendments  
2 thereto by a security agreement previously entered into by another per-  
3 son.

4 (57) “New value” means (A) money, (B) money’s worth in property,  
5 services, or new credit, or (C) release by a transferee of an interest in  
6 property previously transferred to the transferee. The term does not in-  
7 clude an obligation substituted for another obligation.

8 (58) “Noncash proceeds” means proceeds other than cash proceeds.

9 (59) “Obligor” means a person that, with respect to an obligation  
10 secured by a security interest in or an agricultural lien on the collateral,  
11 (A) owes payment or other performance of the obligation, (B) has pro-  
12 vided property other than the collateral to secure payment or other per-  
13 formance of the obligation, or (C) is otherwise accountable in whole or  
14 in part for payment or other performance of the obligation. The term  
15 does not include issuers or nominated persons under a letter of credit.

16 (60) “Original debtor” except as used in K.S.A. 2004 Supp. 84-9-  
17 310(c), and amendments thereto means a person that, as debtor, entered  
18 into a security agreement to which a new debtor has become bound under  
19 subsection (d) of K.S.A. 2004 Supp. 84-9-203 and amendments thereto.

20 (61) “Payment intangible” means a general intangible under which  
21 the account debtor’s principal obligation is a monetary obligation.

22 (62) “Person related to,” with respect to an individual, means:

23 (A) The spouse of the individual;

24 (B) a brother, brother-in-law, sister, or sister-in-law of the individual;

25 (C) an ancestor or lineal descendant of the individual or the individ-  
26 ual’s spouse; or

27 (D) any other relative, by blood or marriage, of the individual or the  
28 individual’s spouse who shares the same home with the individual.

29 (63) “Person related to,” with respect to an organization, means:

30 (A) A person directly or indirectly controlling, controlled by, or under  
31 common control with the organization;

32 (B) an officer or director of, or a person performing similar functions  
33 with respect to, the organization;

34 (C) an officer or director of, or a person performing similar functions  
35 with respect to, a person described in subparagraph (A);

36 (D) the spouse of an individual described in subparagraph (A), (B),  
37 or (C); or

38 (E) an individual who is related by blood or marriage to an individual  
39 described in subparagraph (A), (B), (C), or (D) and shares the same home  
40 with the individual.

41 (64) “Proceeds” except as used in K.S.A. 2004 Supp. 84-9-609(b), and  
42 amendments thereto means the following property:

43 (A) Whatever is acquired upon the sale, lease, license, exchange, or

- 1 other disposition of collateral;
- 2 (B) whatever is collected on, or distributed on account of, collateral;
- 3 (C) rights arising out of collateral;
- 4 (D) to the extent of the value of collateral, claims arising out of the
- 5 loss, nonconformity, or interference with the use of, defects or infringe-
- 6 ment of rights in, or damage to, the collateral; or
- 7 (E) to the extent of the value of collateral and to the extent payable
- 8 to the debtor or the secured party, insurance payable by reason of the
- 9 loss or nonconformity of, defects or infringement of rights in, or damage
- 10 to, the collateral.
- 11 (65) "Promissory note" means an instrument that evidences a prom-
- 12 ise to pay a monetary obligation, does not evidence an order to pay, and
- 13 does not contain an acknowledgment by a bank that the bank has received
- 14 for deposit a sum of money or funds.
- 15 (66) "Proposal" means a record authenticated by a secured party
- 16 which includes the terms on which the secured party is willing to accept
- 17 collateral in full or partial satisfaction of the obligation it secures pursuant
- 18 to K.S.A. 2004 Supp. 84-9-620, 84-9-621 and 84-9-622 and amendments
- 19 thereto.
- 20 (67) "Pursuant to commitment," with respect to an advance made or
- 21 other value given by a secured party, means pursuant to the secured
- 22 party's obligation, whether or not a subsequent event of default or other
- 23 event not within the secured party's control has relieved or may relieve
- 24 the secured party from its obligation.
- 25 (68) "Record," except as used in "for record," "of record," "record
- 26 or legal title," and "record owner," means information that is inscribed
- 27 on a tangible medium or which is stored in an electronic or other medium
- 28 and is retrievable in perceivable form.
- 29 (69) "Registered organization" means an organization organized
- 30 solely under the law of a single state or the United States and as to which
- 31 the state or the United States must maintain a public record showing the
- 32 organization to have been organized.
- 33 (70) "Secondary obligor" means an obligor to the extent that:
- 34 (A) The obligor's obligation is secondary; or
- 35 (B) The obligor has a right of recourse with respect to an obligation
- 36 secured by collateral against the debtor, another obligor, or property of
- 37 either.
- 38 (71) "Secured party" means:
- 39 (A) A person in whose favor a security interest is created or provided
- 40 for under a security agreement, whether or not any obligation to be se-
- 41 cured is outstanding;
- 42 (B) a person that holds an agricultural lien;
- 43 (C) a consignor;

- 1 (D) a person to which accounts, chattel paper, payment intangibles,  
2 or promissory notes have been sold;
- 3 (E) a trustee, indenture trustee, agent, collateral agent, or other rep-  
4 resentative in whose favor a security interest or agricultural lien is created  
5 or provided for; or
- 6 (F) a person that holds a security interest arising under K.S.A. 84-2-  
7 401, 84-2-505, subsection (3) of 84-2-711, subsection (5) of 84-2a-508,  
8 84-4-210 and 84-5-118 and amendments thereto.
- 9 (72) “Security agreement” means an agreement that creates or pro-  
10 vides for a security interest.
- 11 (73) “Send,” in connection with a record or notification, means:
- 12 (A) To deposit in the mail, deliver for transmission, or transmit by  
13 any other usual means of communication, with postage or cost of trans-  
14 mission provided for, addressed to any address reasonable under the cir-  
15 cumstances; or
- 16 (B) to cause the record or notification to be received within the time  
17 that it would have been received if properly sent under subparagraph (A).
- 18 (74) “Software” means a computer program and any supporting in-  
19 formation provided in connection with a transaction relating to the pro-  
20 gram. The term does not include a computer program that is included in  
21 the definition of goods.
- 22 (75) “State” means a state of the United States, the District of Co-  
23 lumbia, Puerto Rico, the United States Virgin Islands, or any territory or  
24 insular possession subject to the jurisdiction of the United States.
- 25 (76) “Statutory lien” means liens created by K.S.A. 2-1319, 2-2608,  
26 2-3007, 34-239, 47-836, 58-201, 58-203, 58-204, 58-207, 58-218, 58-220,  
27 58-221, 58-241, 58-242, 58-2524, 58-2525, 58-2526, 58-2527, 58-2528 and  
28 84-7-209, and amendments thereto.
- 29 (77) “Supporting obligation” means a letter-of-credit right or second-  
30 ary obligation that supports the payment or performance of an account,  
31 chattel paper, a document, a general intangible, an instrument, or in-  
32 vestment property.
- 33 (78) “Tangible chattel paper” means chattel paper evidenced by a  
34 record or records consisting of information that is inscribed on a tangible  
35 medium.
- 36 (79) “Termination statement” means an amendment of a financing  
37 statement which:
- 38 (A) Identifies, by its file number, the initial financing statement to  
39 which it relates; and
- 40 (B) indicates either that it is a termination statement or that the iden-  
41 tified financing statement is no longer effective.
- 42 (80) “Transmitting utility” means a person primarily engaged in the  
43 business of:

1	(A)	Operating a railroad, subway, street railway, or trolley bus;	
2	(B)	transmitting communications electrically, electromagnetically, or	
3		by light;	
4	(C)	transmitting goods by pipeline or sewer; or	
5	(D)	transmitting or producing and transmitting electricity, steam, gas,	
6		or water.	
7	(b)	<b>Definitions in other articles.</b> The following definitions in other	
8		articles apply to this article:	
9		“Applicant”	K.S.A. 84-5-102, <i>and amendments thereto</i>
10		“Beneficiary”	K.S.A. 84-5-102, <i>and amendments thereto</i>
11		“Broker”	K.S.A. 84-8-102, <i>and amendments thereto</i>
12		“Certificated	
13		security”	K.S.A. 84-8-102, <i>and amendments thereto</i>
14		“Check”	K.S.A. 84-3-104, <i>and amendments thereto</i>
15		“Clearing	
16		corporation”	K.S.A. 84-8-102, <i>and amendments thereto</i>
17		“Contract for sale”	K.S.A. 84-2-106, <i>and amendments thereto</i>
18		“Customer”	K.S.A. 84-4-104, <i>and amendments thereto</i>
19		“Entitlement holder”	K.S.A. 84-8-102, <i>and amendments thereto</i>
20		“Financial asset”	K.S.A. 84-8-102, <i>and amendments thereto</i>
21		“Holder in	
22		due course”	K.S.A. 84-3-302, <i>and amendments thereto</i>
23		“Issuer” (with respect to a	
24		letter of credit or	
25		letter-of-credit right)	K.S.A. 84-5-102, <i>and amendments thereto</i>
26		“Issuer” (with respect to	
27		a security)	K.S.A. 84-8-102, <i>and amendments thereto</i>
28		“Lease”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
29		“Lease agreement”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
30		“Lease contract”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
31		“Leasehold interest”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
32		“Lessee”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
33		“Lessee in ordinary	
34		course of business”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
35		“Lessor”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
36		“Lessor’s	
37		residual interest”	K.S.A. 84-2a-103, <i>and amendments thereto</i>
38		“Letter of credit”	K.S.A. 84-5-102, <i>and amendments thereto</i>
39		“Merchant”	K.S.A. 84-2-104, <i>and amendments thereto</i>
40		“Negotiable	
41		instrument”	K.S.A. 84-3-104, <i>and amendments thereto</i>
42		“Nominated person”	K.S.A. 84-5-102, <i>and amendments thereto</i>
43		“Note”	K.S.A. 84-3-104, <i>and amendments thereto</i>

1	“Proceeds of	
2	a letter of credit”	K.S.A. 84-5-114, <i>and amendments thereto</i>
3	“Prove”	K.S.A. 84-3-103, <i>and amendments thereto</i>
4	“Sale”	K.S.A. 84-2-106, <i>and amendments thereto</i>
5	“Securities account”	K.S.A. 84-8-501, <i>and amendments thereto</i>
6	“Securities	
7	intermediary”	K.S.A. 84-8-102, <i>and amendments thereto</i>
8	“Security”	K.S.A. 84-8-102, <i>and amendments thereto</i>
9	“Security	
10	certificate”	K.S.A. 84-8-102, <i>and amendments thereto</i>
11	“Security	
12	entitlement”	K.S.A. 84-8-102, <i>and amendments thereto</i>
13	“Uncertificated	
14	security”	K.S.A. 84-8-102, <i>and amendments thereto</i>
15	(c) Article 1 of chapter 84 of the Kansas Statutes Annotated, and	
16	<i>amendments thereto</i> , <b>definitions and principles</b> . Article 1 of chapter 84	
17	<i>of the Kansas Statutes Annotated, and amendments thereto</i> , contains gen-	
18	eral definitions and principles of construction and interpretation appli-	
19	cable throughout this article.	
20	Sec. 49. K.S.A. 16-1501, 50-682, 60-1007, 60-2409, 84-1-101, 84-1-	
21	102, 84-1-103, 84-1-104, 84-1-106, 84-1-107, 84-1-108, 84-1-109, 84-1-	
22	202, 84-1-203, 84-1-204, 84-1-205, 84-1-206, 84-1-207, 84-1-208, 84-1-	
23	209, 84-2-202, 84-2-208, 84-2a-207, 84-2a-501, 84-2a-518, 84-2a-519,	
24	84-2a-527, 84-2a-528, 84-3-103, 84-4-104, 84-4a-105, 84-4a-106, 84-4a-	
25	204, 84-5-103 and 84-8-102 and K.S.A. 2004 Supp. 16-1603, 16-1616, 58-	
26	241, 61-3703, 84-1-105, 84-1-201, 84-2-103, 84-2a-103 and 84-9-102 are	
27	hereby repealed.	
28	Sec. 50. This act shall take effect and be in force from and after July	
29	1, 2006, and its publication in the statute book.	