

12A:1-201

**LEGISLATIVE HISTORY CHECKLIST**  
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**NJSA:** 12A:1-201 et al

(Uniform  
Commercial  
Code--amend  
article 8)

**LAWS OF:** 1989

**CHAPTER:** 348

**Bill No:** S3484

**Sponsor(s):** Ambrosio

**Date Introduced:** April 27, 1989

**Committee: Assembly:** Economic Growth, Agriculture & Tourism

**Senate:** Labor, Industry & Professions

**Amended during passage:** No Senate Committee Substitute  
enacted. Not Attached

**Date of Passage: Assembly:** January 4, 1990

**Senate:** June 26, 1989

**Date of Approval:** January 16, 1990

**Following statements are attached if available:**

**Sponsor statement:** Yes

**Committee Statement: Assembly:** Yes

**Senate:** Yes

**Fiscal Note:** No

**Veto Message:** No

**Message on signing:** No

**Following were printed:**

**Reports:** No

**Hearings:** No

**KBG/SLJ**

P.L.1989, CHAPTER 348, *approved January 16, 1990*  
Senate Committee Substitute for  
1989 Senate No. 3484 and 1988 Assembly No. 962

1 **AN ACT** concerning the Uniform Commercial Code, revising  
2 parts of the statutory law pertaining thereto and adding certain  
3 sections to Title 12A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the  
6 *State of New Jersey*:

7 1. N.J.S.12A:1-201 is amended to read as follows:

8 12A:1-201. **General Definitions.**

9 Subject to additional definitions contained in the subsequent  
10 chapters of this act which are applicable to specific chapters or  
11 subchapters thereof, and unless the context otherwise requires, in  
12 this act:

13 (1) "Action" in the sense of a judicial proceeding includes  
14 recoupment, counterclaim, set-off, suit in equity and any other  
15 proceedings in which rights are determined.

16 (2) "Aggrieved party" means a party entitled to resort to a  
17 remedy.

18 (3) "Agreement" means the bargain of the parties in fact as  
19 found in their language or by implication from other  
20 circumstances including course of dealing or usage of trade or  
21 course of performance as provided in this act (12A:1-205 and  
22 2-208). Whether an agreement has legal consequences is  
23 determined by the provisions in this act, if applicable; otherwise  
24 by the law of contracts (12A:1-103). (Compare "Contract.")

25 (4) "Banker" means any person engaged in the business of  
26 banking.

27 (5) "Bearer" means the person in possession of an instrument,  
28 document of title, or certificated security payable to bearer or  
29 indorsed in blank.

30 (6) "Bill of lading" means a document evidencing the receipt  
31 of goods for shipment issued by a person engaged in the business  
32 of transporting or forwarding goods, and includes an airbill.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "Airbill" means a document serving for air transportation as a  
2 bill of lading does for marine or rail transportation, and includes  
3 an air consignment note or air waybill.

4 (7) "Branch" includes a separately incorporated foreign branch  
5 of a bank.

6 (8) "Burden of establishing" a fact means the burden of  
7 persuading the triers of fact that the existence of the fact is  
8 more probable than its nonexistence.

9 (9) "Buyer in ordinary course of business" means a person who  
10 in good faith and without knowledge that the sale to him is in  
11 violation of the ownership rights or security interest of a third  
12 party in the goods buys in ordinary course from a person in the  
13 business of selling goods of that kind but does not include a  
14 pawnbroker. All persons who sell minerals or the like (including  
15 oil and gas) at wellhead or minehead shall be deemed to be  
16 persons in the business of selling goods of that kind. "Buying"  
17 may be for cash or by exchange of other property or on secured  
18 or unsecured credit and includes receiving goods or documents of  
19 title under a pre-existing contract for sale but does not include a  
20 transfer in bulk or as security for or in total or partial  
21 satisfaction of a money debt.

22 (10) "Conspicuous": A term or clause is conspicuous when it is  
23 so written that a reasonable person against whom it is to operate  
24 ought to have noticed it. A printed heading in capitals (as:  
25 NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language  
26 in the body of a form is "conspicuous" if it is in larger or other  
27 contrasting type or color. But in a telegram any stated term is  
28 "conspicuous." Whether a term or clause is "conspicuous" or not  
29 is for decision by the court.

30 (11) "Contract" means the total legal obligation which results  
31 from the parties' agreement as affected by this act and any  
32 other applicable rules of law. (Compare "Agreement.")

33 (12) "Creditor" includes a general creditor, a secured creditor,  
34 a lien creditor and any representative of creditors, including an  
35 assignee for the benefit of creditors, a trustee in bankruptcy, a  
36 receiver in equity and an executor or administrator of an  
37 insolvent debtor's or assignor's estate.

38 (13) "Defendant" includes a person in the position of defendant  
39 in a cross-action or counterclaim.

1       (14) "Delivery" with respect to instruments, documents of  
2 title, chattel paper, or certificated securities means voluntary  
3 transfer of possession.

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

13       (16) "Fault" means wrongful act, omission or breach.

14       (17) "Fungible" with respect to goods or securities means  
15 goods or securities of which any unit is, by nature or usage of  
16 trade, the equivalent of any other like unit. Goods which are not  
17 fungible shall be deemed fungible for the purposes of this act to  
18 the extent that under a particular agreement or document unlike  
19 units are treated as equivalents.

20       (18) "Genuine" means free of forgery or counterfeiting.

21       (19) "Good faith" means honesty in fact in the conduct or  
22 transaction concerned.

23       (20) "Holder" means a person who is in possession of a  
24 document of title or an instrument or [an] a certificated  
25 investment security drawn, issued, or indorsed to him or to his  
26 order or to bearer or in blank.

27       (21) To "honor" is to pay or accept and pay, where a credit so  
28 engages to purchase or discount a draft complying with the terms  
29 of the credit.

30       (22) "Insolvency proceedings" includes any assignment for the  
31 benefit of creditors or other proceedings intended to liquidate or  
32 rehabilitate the estate of the person involved.

33       (23) A person is "insolvent" who either has ceased to pay his  
34 debts in the ordinary course of business or cannot pay his debts as  
35 they become due or is insolvent within the meaning of the federal  
36 bankruptcy law.

37       (24) "Money" means a medium of exchange authorized or  
38 adopted by a domestic or foreign government as a part of its  
39 currency.

1 (25) A person has "notice" of a fact when:

2 (a) He has actual knowledge of it; or

3 (b) He has received a notice or notification of it; or

4 (c) From all the facts and circumstances known to him at the  
5 time in question he has reason to know that it exists.

6 A person "knows" or has "knowledge" of a fact when he has  
7 actual knowledge of it. "Discover" or "learn" or a word or  
8 phrase of similar import refers to knowledge rather than to  
9 reason to know. The time and circumstances under which a  
10 notice or notification may cease to be effective are not  
11 determined by this act.

12 (26) A person "notifies" or "gives" a notice or notification to  
13 another by taking such steps as may be reasonably required to  
14 inform the other in ordinary course whether or not such other  
15 actually comes to know of it. A person "receives" a notice or  
16 notification when:

17 (a) It comes to his attention; or

18 (b) It is duly delivered at the place of business through which  
19 the contract was made or at any other place held out by him as  
20 the place for receipt of such communications.

21 (27) Notice, knowledge or a notice or notification received by  
22 an organization is effective for a particular transaction from the  
23 time which it is brought to the attention of the individual  
24 conducting that transaction, and in any event from the time when  
25 it would have been brought to his attention if the organization  
26 had exercised due diligence. An organization exercises due  
27 diligence if it maintains reasonable routines for communicating  
28 significant information to the person conducting the transaction  
29 and there is reasonable compliance with the routines. Due  
30 diligence does not require an individual acting for the  
31 organization to communicate information unless such  
32 communication is part of his regular duties or unless he has  
33 reason to know of the transaction and that the transaction would  
34 be materially affected by the information.

35 (28) "Organization" includes a corporation, government or  
36 governmental subdivision or agency, business trust, estate, trust,  
37 partnership or association, two or more persons having a joint or  
38 common interest, or any other legal or commercial entity.

39 (29) "Party," as distinct from "third party," means a person

1 who has engaged in a transaction or made an agreement within  
2 this act.

3 (30) "Person" includes an individual or an organization (See  
4 12A:1-102).

5 (31) "Presumption" or "presumed" means that the trier of fact  
6 must find the existence of the fact presumed unless and until  
7 evidence is introduced which would support a finding of its  
8 nonexistence.

9 (32) "Purchase" includes taking by sale, discount, negotiation,  
10 mortgage, pledge, lien, issue or reissue, gift or any other  
11 voluntary transaction creating an interest in property.

12 (33) "Purchaser" means a person who takes by purchase.

13 (34) "Remedy" means any remedial right to which an  
14 aggrieved party is entitled with or without resort to a tribunal.

15 (35) "Representative" includes an agent, an officer of a  
16 corporation or association, and a trustee, executor or  
17 administrator of an estate, or any other person empowered to act  
18 for another.

19 (36) "Rights" includes remedies.

20 (37) "Security interest" means an interest in personal property  
21 or fixtures which secures payment or performance of an  
22 obligation. The retention or reservation of title by a seller of  
23 goods notwithstanding shipment or delivery to the buyer  
24 (12A:2-401) is limited in effect to a reservation of a "security  
25 interest." The term also includes any interest of a buyer of  
26 accounts or chattel paper which is subject to chapter 9. The  
27 special property interest of a buyer of goods on identification of  
28 such goods to a contract for sale under 12A:2-401 is not a  
29 "security interest," but a buyer may also acquire a "security  
30 interest" by complying with chapter 9. Unless a lease or  
31 consignment is intended as security, reservation of title  
32 thereunder is not a "security interest" but a consignment is in  
33 any event subject to the provisions on consignment sales  
34 (12A:2-326). Whether a lease is intended as security is to be  
35 determined by the facts of each case; however, (a) the inclusion  
36 of an option to purchase does not of itself make the lease one  
37 intended for security, and (b) an agreement that upon compliance  
38 with the terms of the lease the lessee shall become or has the  
39 option to become the owner of the property for no additional

1 consideration or for a nominal consideration does make the lease  
2 one intended for security.

3 (38) "Send" in connection with any writing or notice means to  
4 deposit in the mail or deliver for transmission by any other usual  
5 means of communication with postage or cost of transmission  
6 provided for and properly addressed and in the case of an  
7 instrument to an address specified thereon or otherwise agreed,  
8 or if there be none to any address reasonable under the  
9 circumstances. The receipt of any writing or notice within the  
10 time at which it would have arrived if properly sent has the  
11 effect of a proper sending.

12 (39) "Signed" includes any symbol executed or adopted by a  
13 party with present intention to authenticate a writing.

14 (40) "Surety" includes guarantor.

15 (41) "Telegram" includes a message transmitted by radio,  
16 teletype, cable, any mechanical method of transmission, or the  
17 like.

18 (42) "Term" means that portion of an agreement which relates  
19 to a particular matter.

20 (43) "Unauthorized" signature or indorsement means one made  
21 without actual, implied or apparent authority and includes a  
22 forgery.

23 (44) "Value." Except as otherwise provided with respect to  
24 negotiable instruments and bank collections (12A:3-303, 4-208  
25 and 4-209) a person gives "value" for rights if he acquires them;

26 (a) In return for a binding commitment to extend credit or for  
27 the extension of immediately available credit whether or not  
28 drawn upon and whether or not a charge-back is provided for in  
29 the event of difficulties in collection; or

30 (b) As security for or in total or partial satisfaction of a  
31 pre-existing claim; or

32 (c) By accepting delivery pursuant to a pre-existing contract  
33 for purchase; or

34 (d) Generally, in return for any consideration sufficient to  
35 support a simple contract.

36 (45) "Warehouse receipt" means a receipt issued by a person  
37 engaged in the business of storing goods for hire.

38 (46) "Written" or "writing" includes printing, typewriting, or  
39 any other intentional reduction to tangible form.

40 (cf: P.L.1981, c.138, s.2)

1           2. N.J.S.12A:5-114 is amended to read as follows:

2           12A:5-114. Issuer's Duty and Privilege to Honor; Right to  
3 Reimbursement.

4           (1) An issuer [must] shall honor a draft or demand for payment  
5 which complies with the terms of the relevant credit regardless  
6 of whether the goods or documents conform to the underlying  
7 contract for sale or other contract between the customer and the  
8 beneficiary. The issuer is not excused from honor of such a draft  
9 or demand by reason of an additional general term that all  
10 documents [must] shall be satisfactory to the issuer, but an issuer  
11 may require that specified documents [must] shall be satisfactory  
12 to it.

13           (2) Unless otherwise agreed when documents appear on their  
14 face to comply with the terms of a credit but a required  
15 document does not in fact conform to the warranties made on  
16 negotiation or transfer of a document of title (12A:7-507) or of a  
17 certificated security (12A:8-306) or is forged or fraudulent or  
18 there is fraud in the transaction;

19           (a) The issuer [must] shall honor the draft [or] on demand for  
20 payment if honor is demanded by a negotiating bank or other  
21 holder of the draft or demand which has taken the draft or  
22 demand under the credit and under circumstances which would  
23 make it a holder in due course (12A:3-302) and in an appropriate  
24 case would make it a person to whom a document of title has  
25 been duly negotiated (12A:7-502) or a bona fide purchaser of a  
26 certificated security (12A:8-302); and

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

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

37 (cf: N.J.S.12A:5-114)

38           3. N.J.S.12A:8-102 is amended to read as follows:

39           12A:8-102. Definitions and Index of Definitions.

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

2 (a) [A "security" is an instrument which

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

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

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

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

12 A "certificated security" is a share, participation, or other  
13 interest in property of or an enterprise of the issuer or an  
14 obligation of the issuer which is

15 (i) represented by an instrument issued in bearer or registered  
16 form;

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

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

22 (b) An "uncertificated security" is a share, participation, or  
23 other interest in property or an enterprise of the issuer or an  
24 obligation of the issuer which is

25 (i) not represented by an instrument and the transfer of which  
26 is registered upon books maintained for that purpose by or on  
27 behalf of the issuer;

28 (ii) of a type commonly dealt in on securities exchanges or  
29 markets; and

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

32 [(b)] (c) A "security" is either a certificated or an  
33 uncertificated security. If a security is certificated, the terms  
34 "security" and "certificated security" may mean either the  
35 intangible interest, the instrument representing that interest, or  
36 both, as the context requires. A writing [which] that is a  
37 certificated security is governed by this chapter and not by  
38 [Uniform Commercial Code--Commercial Paper] chapter 3, even  
39 though it also meets the requirements of that chapter. This

1 chapter does not apply to money. If a certificated security has  
2 been retained by or surrendered to the issuer or its transfer agent  
3 for reasons other than registration of transfer, other temporary  
4 purpose, payment, exchange, or acquisition by the issuer, that  
5 security shall be treated as an uncertificated security for  
6 purposes of this chapter.

7 [(c)] (d) A certificated security is in "registered form" [when] if  
8 (i) it specifies a person entitled to the security or [to] the  
9 rights it [evidences] represents, and [when]

10 (ii) its transfer may be registered upon books maintained for  
11 that purpose by or on behalf of [an] the issuer, or the security so  
12 states.

13 [(d)] (e) A certificated security is in "bearer form" [when] if it  
14 runs to bearer according to its terms and not by reason of any  
15 indorsement.

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

18 (3) A "clearing corporation" is a corporation registered as a  
19 "clearing agency" under the federal securities laws or a  
20 corporation:

21 (a) At least 90% of [the] who~~s~~ capital stock [of which] is held  
22 by or for one or more [persons (other than individuals),]  
23 organizations, none of which, other than a national securities  
24 exchange or association, holds in excess of 20% of the capital  
25 stock of the corporation, and each of [whom] which is

26 (i) [is] subject to supervision or regulation pursuant to the  
27 provisions of federal or State banking laws or State insurance  
28 laws, [or]

29 (ii) [is] a broker or dealer or investment company registered  
30 under the [Securities Exchange Act of 1934 or the Investment  
31 Company Act of 1940] federal securities laws, or

32 (iii) [is] a national securities exchange or association registered  
33 under [a statute of the United States such as the Securities  
34 Exchange Act of 1934,] the federal securities laws [and none of  
35 whom, other than a national securities exchange or association,  
36 holds in excess of 20% of the capital stock of such  
37 corporation];[and]

38 (b) Any remaining capital stock of which is held by individuals  
39 who have purchased [such capital stock] it at or prior to the time

1 of their taking office as directors of [such] the corporation and  
 2 who have purchased only so much of [such] the capital stock as  
 3 [may be] is necessary to permit them to qualify as [such]  
 4 directors.

5 (4) A "custodian bank" is [any] a bank or trust company [which]  
 6 that is supervised and examined by State or federal authority  
 7 having supervision over banks and [which] is acting as custodian  
 8 for a clearing corporation.

9 (5) Other definitions applying to this chapter or to specified  
 10 subchapters thereof and the sections in which they appear are:

11	"Adverse claim" . . . . .	[12A:8-301] <u>12A:8-302</u>	
12	"Bona fide purchaser" . . . . .		1
13	2A:8-302		
14	"Broker" . . . . .		1
15	2A:8-303		
16	<u>"Debtor" . . . . .</u>		<u>1</u>
17	<u>2A:9-105</u>		
18	<u>"Financial intermediary" . . . . .</u>		<u>1</u>
19	<u>2A:8-313</u>		
20	"Guarantee of the signature" . . . . .		1
21	2A:8-402		
22	<u>"Initial transaction statement" . . . . .</u>		<u>1</u>
23	<u>2A:8-402</u>		
24	<u>"Instruction" . . . . .</u>		<u>1</u>
25	<u>2A:8-302</u>		
26	"Intermediary bank" . . . . .	[12A:8-105] <u>12A:4-105</u>	
27	"Issuer" . . . . .		1
28	2A:8-201		
29	"Overissue" . . . . .		1
30	2A:8-104		
31	<u>"Secured party" . . . . .</u>		<u>1</u>
32	<u>2A:9-105</u>		
33	<u>"Security agreement" . . . . .</u>		<u>1</u>
34	<u>2A:9-105</u>		

35 (6) In addition chapter 1 contains general definitions and  
 36 principles of construction and interpretation applicable  
 37 throughout this chapter.

38 (cf: P.L.1973, c.361, s.1)

39 4. N.J.S.12A:8-103 is amended to read as follows:

1 12A:8-103. Issuer's Lien.

2 A lien upon a security in favor of an issuer thereof is valid  
3 against a purchaser only if [the right of the issuer to such lien is  
4 noted conspicuously on the security];

5 (a) The security is certificated and the right of the issuer to  
6 the lien is noted conspicuously thereon; or

7 (b) The security is uncertificated and a notation of the right of  
8 the issuer to the lien is contained in the initial transaction  
9 statements sent to the purchaser or, if his interest is transferred  
10 to him other than by registration of transfer, pledge, or release,  
11 the initial transaction statement sent to the registered owner or  
12 the registered pledgee.

13 (cf: N.J.S.12A:8-103)

14 5. N.J.S.12A:8-104 is amended to read as follows:

15 12A:8-104. Effect of Overissue; "Overissue."

16 (1) The provisions of this chapter which validate a security or  
17 compel its issue or reissue do not apply to the extent that  
18 validation, issue, or reissue would result in overissue; but if:

19 (a) [If an] An identical security which does not constitute an  
20 overissue is reasonably available for purchase, the person entitled  
21 to issue or validation may compel the issuer to purchase [and  
22 deliver such a] the security [to] for him and either to deliver a  
23 certificated security or to register the transfer of an  
24 uncertificated security to him, against surrender of [the] any  
25 certificated security[, if any,] which he holds; or

26 (b) [If a] A security is not so available for purchase, the person  
27 entitled to issue or validation may recover from the issuer the  
28 price he or the last purchaser for value paid for it with interest  
29 from the date of his demand.

30 (2) "Overissue" means the issue of securities in excess of the  
31 amount [which] the issuer has corporate power to issue.

32 (cf: N.J.S.12A:8-104)

33 6. N.J.S.12A:8-106 is amended to read as follows:

34 12A:8-106. Certificated Securities Negotiable; Statements and  
35 Instructions Not Negotiable; Presumptions.

36 (1) Certificated [Securities] securities governed by this  
37 chapter are negotiable instruments.

38 (2) Statements (12A:8-408), notices, or the like, sent by the  
39 issuer of uncertificated securities and instructions (12A:8-308)

1 are neither negotiable instruments nor certificated securities.

2 ~~[(2)]~~ (3) In any action on a security:

3 (a) Unless specifically denied in the pleadings, each signature  
4 on [the] a certificated security [or], in a necessary indorsement,  
5 on an initial transaction statement, or an instruction, is admitted;

6 (b) [When] If the effectiveness of a signature is put in issue,  
7 the burden of establishing it is on the party claiming under the  
8 signature, but the signature is presumed to be genuine or  
9 authorized;

10 (c) [When] If signatures on a certificated security are admitted  
11 or established, production of the [instrument] security entitles a  
12 holder to recover on it unless the defendant establishes a defense  
13 or a defect going to the validity of the security; [and]

14 (d) If signatures on an initial transaction statement are  
15 admitted or established, the facts stated in the statement are  
16 presumed to be true as of the time of its issuance; and

17 ~~[(d)]~~ (e) After it is shown that a defense or defect exists, the  
18 plaintiff has the burden of establishing that he or some person  
19 under whom he claims is a person against whom the defense or  
20 defect is ineffective (12A:8-202).

21 (cf: N.J.S.12A:8-105)

22 7. N.J.S.12A:8-106 is amended to read as follows:

23 12A:8-106. Applicability.

24 [The validity of a security and the rights and duties of the  
25 issuer with respect to registration of transfer are governed by the  
26 law (including the conflict of laws rules) of the jurisdiction of  
27 organization of the issuer.]

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

32 (a) Registration of transfer of a certificated security;

33 (b) Registration of transfer, pledge, or release of an  
34 uncertificated security; and

35 (c) Sending of statements of uncertificated securities.

36 (cf: N.J.S.12A:8-106)

37 8. Section 13 of P.L.1964, c.166 (C.12A:8-107) is amended to  
38 read as follows:

39 13. Securities [Deliverable] Transferable; Action for Price.

1 (1) Unless otherwise agreed and subject to any applicable law  
2 or regulation respecting short sales, a person obligated to  
3 [deliver] transfer securities may [deliver] transfer any  
4 certificated security of the specified issue in bearer form or  
5 registered in the name of the transferee, or indorsed to him or in  
6 blank, or he may transfer an equivalent uncertificated security to  
7 the transferee or a person designated by the transferee.

8 (2) [When] if the buyer fails to pay the price as it comes due  
9 under a contract of sale, the seller may recover the price of:

10 (a) [Of] Certificated securities accepted by the buyer; [and]

11 (b) [Of other securities if efforts at their resale would be  
12 unduly burdensome or if there is no readily available market for  
13 their resale.] Uncertificated securities that have been  
14 transferred to the buyer or a person designated by the buyer; and

15 (c) Other securities if efforts at their resale would be unduly  
16 burdensome or if there is no readily available market for their  
17 resale.

18 (cf: P.L.1964, c.166, s.13)

19 9. Section 12A:8-108 is added to the New Jersey Statutes:

20 12A:8-108. (New section) Registration of Pledge and Release  
21 of Uncertificated Securities.

22 A security interest in an uncertificated security may be  
23 evidenced by the registration of pledge to the secured party or a  
24 person designated by him. There can be no more than one  
25 registered pledge of an uncertificated security at any time. The  
26 registered owner of an uncertificated security is the person in  
27 whose name the security is registered, even if the security is  
28 subject to a registered pledge. The rights of a registered pledgee  
29 of an uncertificated security under this chapter are terminated  
30 by the registration of release.

31 10. N.J.S.12A:8-201 is amended to read as follows:

32 12A:8-201. "Issuer."

33 (1) With respect to obligations on or defenses to a security,  
34 "issuer" includes a person who:

35 (a) Places or authorizes the placing of his name on a  
36 certificated security (otherwise than as authenticating trustee,  
37 registrar, transfer agent, or the like) to evidence that it  
38 represents a share, participation, or other interest in his property  
39 or in an enterprise, or to evidence his duty to perform an

1 obligation [evidenced] represented by the certificated security;  
2 [or]

3 (b) Creates shares, participations, or other interests in his  
4 property or in an enterprise or undertakes obligations, which  
5 shares, participations, interests, or obligations are uncertificated  
6 securities;

7 ~~[(b)]~~ (c) Directly or indirectly creates fractional interests in  
8 his rights or property, which fractional interests are [evidenced]  
9 represented by certificated securities; or

10 ~~[(c)]~~ (d) Becomes responsible for or in place of any other  
11 person described as an issuer in this section.

12 (2) With respect to obligations on or defenses to a security, a  
13 guarantor is an issuer to the extent of his guaranty, whether or  
14 not his obligation is noted on [the] a certificated security or on  
15 statements of uncertificated securities sent pursuant to  
16 12A:8-408.

17 (3) With respect to registration of transfer, pledge, or release  
18 (Subchapter 4 of this chapter), "issuer" means a person on whose  
19 behalf transfer books are maintained.

20 (cf: N.J.S.12A:8-201)

21 11. N.J.S.12A:8-202 is amended to read as follows:

22 12A:8-202. Issuer's Responsibility and Defenses; Notice of  
23 Defect or Defense.

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

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

36 (b) If the security is uncertificated, those contained in the  
37 initial transaction statement sent to the purchaser, or if his  
38 interest is transferred to him other than by registration of  
39 transfer, pledge, or release, the initial transaction statement sent

1 to the registered owner or registered pledgee; and

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

13 (2) [(a) A security other than one issued by a government or  
14 governmental agency or unit even though issued with a defect  
15 going to its validity is valid in the hands of a purchaser for value  
16 and without notice of the particular defect unless the defect  
17 involves a violation of constitutional provisions in which case the  
18 security is valid in the hands of a subsequent purchaser for value  
19 and without notice of the defect.

20 (b) The rule of subparagraph (a) applies to an issuer which is a  
21 government or governmental agency or unit only if either there  
22 has been substantial compliance with the legal requirements  
23 governing the issue or the issuer has received a substantial  
24 consideration for the issue as a whole or for the particular  
25 security and a stated purpose of the issue is one for which the  
26 issuer has power to borrow money or issue the security.]

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

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

4 (3) Except as [otherwise] provided in the case of certain  
5 unauthorized signatures [on issue] (12A:8-205), lack of  
6 genuineness of a certificated security or an initial transaction  
7 statement is a complete defense, even against a purchaser for  
8 value and without notice.

9 (4) All other defenses of the issuer of a certificated or  
10 uncertificated security, including nondelivery and conditional  
11 delivery of [the] a certificated security, are ineffective against a  
12 purchaser for value who has taken without notice of the  
13 particular defense.

14 (5) Nothing in this section shall be construed to affect the  
15 right of a party to a "when, as and if issued" or a "when  
16 distributed" contract to cancel the contract in the event of a  
17 material change in the character of the security [which] that is  
18 the subject of the contract or in the plan or arrangement  
19 pursuant to which [such] the security is to be issued or distributed.  
20 (cf: N.J.S.12A:8-202)

21 12. N.J.S.12A:8-203 is amended to read as follows:

22 12A:8-203. Staleness as Notice of Defects or Defenses.

23 (1) After an act or event [which creates] creating a right to  
24 immediate performance of the principal obligation [evidenced]  
25 represented by [the] a certificated security or [which] that sets a  
26 date on or after which the security is to be presented or  
27 surrendered for redemption or exchange, a purchaser is charged  
28 with notice of any defect in its issue or defense of the issuer if:

29 (a) [If the] The act or event is one requiring the payment of  
30 money [or], the delivery of certificated securities, the  
31 registration of transfer of uncertificated securities, or [both] any  
32 of these on presentation or surrender of the certificated security  
33 [and such], the funds or securities are available on the date set  
34 for payment or exchange, and he takes the security more than  
35 one year after that date; and

36 (b) [If the] The act or event is not covered by paragraph (a)  
37 and he takes the security more than two years after the date set  
38 for surrender or presentation or the date on which [such]  
39 performance became due.

1 (2) A call [which; that has been revoked is not within  
2 subsection (1).

3 (cf: N.J.S.12A:8-203)

4 13. N.J.S.12A:8-204 is amended to read as follows:

5 12A:8-204. Effect of Issuer's Restrictions on Transfer.

6 [Unless noted conspicuously on the security a] A restriction on  
7 transfer of a security imposed by the issuer, even though  
8 otherwise lawful, is ineffective [except] against [a] any person  
9 [with] without actual knowledge of it[.] unless:

10 (a) The security is certificated and the restriction is noted  
11 conspicuously thereon; or

12 (b) The security is uncertificated and a notation of the  
13 restriction is contained in the initial transaction statement sent  
14 to the person or, if his interest is transferred to him other than  
15 by registration of transfer, pledge, or release, the initial  
16 transaction statement sent to the registered owner or the  
17 registered pledgee.

18 (cf: N.J.S.12A:8-204)

19 14. N.J.S.12A:8-205 is amended to read as follows:

20 12A:8-205. Effect of Unauthorized Signature on [Issue]  
21 Certificated Security or Initial Transaction Statement.

22 An unauthorized signature placed on a certificated security  
23 prior to or in the course of issue or placed on an initial  
24 transaction statement is ineffective, [except that] but the  
25 signature is effective in favor of a purchaser for value of the  
26 certificated security or a purchaser for value of an uncertificated  
27 security to whom the initial transaction statement has been sent,  
28 if the purchaser is [and] without notice of the lack of authority  
29 and [if] the signing has been done by:

30 (a) An authenticating trustee, registrar, transfer agent, or  
31 other person entrusted by the issuer with the signing of the  
32 security [or], of similar securities, or of initial transaction  
33 statements or [their] the immediate preparation for signing of  
34 any of them; or

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

38 (cf: N.J.S.12A:8-205)

39 15. N.J.S.12A:8-206 is amended to read as follows:

1       **12A:8-206. Completion or Alteration of [Instrument]**  
2       **Certificated Security or Initial Transaction Statement.**

3       (1) [Where] If a certificated security contains the signatures  
4       necessary to its issue or transfer but is incomplete in any other  
5       respect:

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

8       (b) Even though the blanks are incorrectly filled in, the  
9       security as completed is enforceable by a purchaser who took it  
10      for value and without notice of [such] the incorrectness.

11      (2) A complete certificated security [which] that has been  
12      improperly altered, even though fraudulently, remains  
13      enforceable, but only according to its original terms.

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

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

18      (b) Even though the blanks are incorrectly filled in, the  
19      statement as completed is effective in favor of the person to  
20      whom it is sent if he purchased the security referred to therein  
21      for value and without notice of the incorrectness.

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

26      (cf: N.J.S.12A:8-206)

27      16. N.J.S.12A:8-207 is amended to read as follows:

28      **12A:8-207. Rights and Duties of Issuer With Respect to**  
29      **Registered Owners and Registered Pledges.**

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

35      (2) [Nothing in this chapter shall be construed to affect the  
36      liability of the registered owner of a security for calls,  
37      assessments or the like.] Subject to the provisions of subsections  
38      (3), (4), and (6), the issuer or indenture trustee may treat the  
39      registered owner of an uncertificated security as the person

1 exclusively entitled to vote, to receive notifications, and  
2 otherwise to exercise all the rights and powers of an owner.

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

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

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

14 (b) Register the transfer of the security to the new owner  
15 subject to the interest of the existing pledgee, if the instruction  
16 specifies a new owner and the existing pledgee; or

17 (c) Register the release of the security from the existing  
18 pledge and register the pledge of the security to the other  
19 pledgee, if the instruction specifies the existing owner and  
20 another pledgee.

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

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

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

30 (b) Any certificated securities issued in exchange for or  
31 distributed with respect to the pledged security shall be delivered  
32 to the registered pledgee; and

33 (c) Any money paid in exchange for or in redemption of part or  
34 all of the security shall be paid to the registered pledgee.

35 (7) Nothing in this chapter shall be construed to affect the  
36 liability of the registered owner of a security for calls,  
37 assessments, or the like.

38 (cf: N.J.S.12A:8-207)

39 17. N.J.S.12A:8-208 is amended to read as follows:

1 12A:8-208. Effect of Signature of Authenticating Trustee,  
2 Registrar or Transfer Agent.

3 (1) A person placing his [signatures] signature upon a  
4 certificated security or an initial transaction statement as  
5 authenticating trustee, registrar, transfer agent, or the like,  
6 warrants to a purchaser for value of the certificated security or a  
7 purchaser for value of an uncertificated security to whom the  
8 initial transaction statement has been sent, if the purchaser is  
9 without notice of the particular defect, that:

10 (a) The certificated security or initial transaction statement is  
11 genuine; [and]

12 (b) His own participation in the issue or registration of the  
13 transfer, pledge, or release of the security is within his capacity  
14 and within the scope of [his authorization] the authority received  
15 by him from the issuer; and

16 (c) He has reasonable grounds to believe that the security is in  
17 the form and within the amount the issuer is authorized to issue.

18 (2) Unless otherwise agreed, a person by so placing his  
19 signature does not assume responsibility for the validity of the  
20 security in other respects.

21 (cf: P.L.1964, c.166, s.14)

22 18. The title of subchapter 3 of chapter 8 of Title 12A of the  
23 New Jersey Statutes is amended to read as follows:

24 [PURCHASE] TRANSFER

25 19. N.J.S.12A:8-301 is amended to read as follows:

26 12A:8-301. Rights Acquired by Purchaser; "Adverse Claim";  
27 Title Acquired by Bona Fide Purchaser].

28 (1) Upon [delivery] transfer of a security to a purchaser  
29 (12A:8-313), the purchaser acquires the rights in the security  
30 which his transferor had or had actual authority to convey unless  
31 the purchaser's rights are limited by 12A:8-302 (4). [except that  
32 a purchaser who has himself been a party to any fraud or  
33 illegality affecting the security or who as prior holder had notice  
34 of an adverse claim cannot improve his position by taking from a  
35 later bona fide purchaser. "Adverse claim" includes a claim that  
36 a transfer was or would be wrongful or that a particular adverse  
37 person is the owner of or has an interest in the security.]

38 [(2) A bona fide purchaser in addition to acquiring the rights of  
39 a purchaser also acquires the security free of any adverse claim.]

1       **[(3)] (2) A [purchaser] transferee of a limited interest acquires**  
2 **rights only to the extent of the interest [purchased] transferred.**  
3 **The creation or release of a security interest in a security is the**  
4 **transfer of a limited interest in that security.**

5 (cf: N.J.S.12A:8-301)

6       20. N.J.S.12A:8-302 is amended to read as follows:

7       12A:8-302. "Bona Fide Purchaser[.]" ; "Adverse Claim"; Title  
8 **Acquired by Bona Fide Purchaser.**

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

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

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

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

19       **(c) To whom a security is transferred under the provisions of**  
20 **paragraph (c), (d), (i), or (g) of 12A:8-313 (1).**

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

24       **(3) A bona fide purchaser in addition to acquiring the rights of**  
25 **a purchaser (12A:8-301) also acquires his interest in the security**  
26 **free of any adverse claim.**

27       **(4) Notwithstanding 12A:8-301(1), the transferee of a**  
28 **particular certificated security who has been a party to any fraud**  
29 **or illegality affecting the security, or who as a prior holder of**  
30 **that certificated security had notice of an adverse claim, cannot**  
31 **improve his position by taking from a bona fide purchaser.**

32 (cf: N.J.S.12A:8-302)

33       21. N.J.S.12A:8-303 is amended to read as follows:

34       12A:8-303. "Broker."

35       "Broker" means a person engaged for all or part of his time in  
36 the business of buying and selling securities, who in the  
37 transaction concerned acts for, [or] buys a security from, or sells  
38 a security to, a customer. Nothing in this chapter determines the  
39 capacity in which a person acts for purposes of any other statute

1 or rule to which [such] the person is subject.

2 (cf: N.J.S.12A:8-303)

3 22. N.J.S.12A:8-304 is amended to read as follows:

4 12A:8-304. Notice to Purchaser of Adverse Claims.

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

8 (a) The security, whether in bearer or registered form, has  
9 been indorsed "for collection" or "for surrender" or for some  
10 other purpose not involving transfer; or

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

15 (2) A purchaser (including a broker for the seller or buyer, but  
16 excluding an intermediary bank) to whom the transfer, pledge or  
17 release of an uncertificated security is registered is charged with  
18 notice of adverse claims as to which the issuer has a duty under  
19 12A:8-403 (4) at the time of registration and which are noted in  
20 the initial transaction statement sent to the purchaser or, if his  
21 interest is transferred to him other than by registration of  
22 transfer, pledge, or release, the initial transaction statement sent  
23 to the registered owner or the registered pledgee.

24 ~~[(2)]~~ (3) The fact that the purchaser (including a broker for the  
25 seller or buyer) of a certificated or uncertificated security has  
26 notice that the security is held for a third person or is registered  
27 in the name of or indorsed by a fiduciary does not create a duty  
28 of inquiry into the rightfulness of the transfer or constitute  
29 constructive notice of adverse claims. [If, however,] However, if  
30 the purchaser (excluding an intermediary bank) has knowledge  
31 that the proceeds are being used or [that] the transaction is for  
32 the individual benefit of the fiduciary or otherwise in breach of  
33 duty, the purchaser is charged with notice of adverse claims.

34 (cf: N.J.S.12A:8-304)

35 23. N.J.S.12A:8-305 is amended to read as follows:

36 12A:8-305. Staleness as Notice of Adverse Claims.

37 An act or event [which] that creates a right to immediate  
38 performance of the principal obligation [evidenced] represented  
39 by [the] a certificated security or [which] sets a date on or after

1 which [the] a certificated security is to be presented or  
2 surrendered for redemption or exchange does not [of] itself  
3 constitute any notice of adverse claims except in the case of a  
4 [purchase] transfer:

5 (a) After one year from any date set for [such] presentment or  
6 surrender for redemption or exchange; or

7 (b) After six months from any date set for payment of money  
8 against presentation or surrender of the security if funds are  
9 available for payment on that date.

10 (cf: N.J.S.12A:8-305)

11 24. N.J.S.12A:8-306 is amended to read as follows:

12 12A:8-306. Warranties on Presentment and Transfer of  
13 Certificated Securities; Warranties of Originators of Instructions.

14 (1) A person who presents a certificated security for  
15 registration [or] of transfer or for payment or exchange warrants  
16 to the issuer that he is entitled to the registration, payment, or  
17 exchange. But, a purchaser for value and without notice of  
18 adverse claims who receives a new, reissued, or reregistered  
19 certificated security on registration of transfer or receives an  
20 initial transaction statement confirming the registration of  
21 transfer of an equivalent uncertificated security to him warrants  
22 only that he has no knowledge of any unauthorized signature  
23 (12A:8-311) in a necessary indorsement.

24 (2) A person by transferring a certificated security to a  
25 purchaser for value warrants only that;

26 (a) His transfer is effective and rightful; [and]

27 (b) The security is genuine and has not been materially altered;  
28 and

29 (c) He knows of no fact which might impair the validity of the  
30 security.

31 (3) [Where] If a certificated security is delivered by an  
32 intermediary known to be entrusted with delivery of the security  
33 on behalf of another or with collection of a draft or other claim  
34 against [such] delivery, the intermediary by [such] delivery  
35 warrants only his own good faith and authority, even though he  
36 has purchased or made advances against the claim to be collected  
37 against the delivery.

38 (4) A pledgee or other holder for security who redelivers [the]  
39 a certificated security received, or after payment and on order of

1 the debtor delivers that security to a third person, makes only the  
2 warranties of an intermediary under subsection (3).

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

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

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

8 (6) A person who originates an instruction warrants to any  
9 person specially guaranteeing his signature (12A:8-312(3)) that:

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

11 (b) At the time the instruction is presented to the issuer

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

14 (ii) the transfer, pledge, or release requested in the instruction  
15 will be registered by the issuer free from all liens, security  
16 interests, restrictions, and claims other than those specified in  
17 the instruction.

18 (7) A person who originates an instruction warrants to a  
19 purchaser for value and to any person guaranteeing the  
20 instruction (12A:8-312 (6)) that:

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

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

23 (c) At the time the instruction is presented to the issuer

24 (i) the transferor will be entitled to the registration of  
25 transfer, pledge, or release;

26 (ii) the transfer, pledge or release requested in the instruction  
27 will be registered by the issuer free from all liens, security  
28 interests, restrictions, and claims other than those specified in  
29 the instruction; and

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

31 (8) If a secured party is the registered pledgee or the  
32 registered owner of an uncertificated security, a person who  
33 originates an instruction of release or transfer to the debtor or,  
34 after payment and on order of the debtor, a transfer instruction  
35 to a third person, warrants to the debtor or the third person only  
36 that he is an appropriate person to originate the instruction and  
37 at the time the instruction is presented to the issuer, the  
38 transferor will be entitled to the registration of release or  
39 transfer. If a transfer instruction to a third person who is a

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

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

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

8 (b) The uncertificated security is valid.

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

15 (cf: P.L.1964, c.166, s.15)

16 25. N.J.S.12A:8-307 is amended to read as follows:

17 12A:8-307. Effect of Delivery Without Indorsement; Right to  
18 Compel Indorsement.

19 [Where] If a certificated security in registered form has been  
20 delivered to a purchaser without a necessary indorsement he may  
21 become a bona fide purchaser only as of the time the indorsement  
22 is supplied[,] but against the transferor, the transfer is complete  
23 upon delivery and the purchaser has a specifically enforceable  
24 right to have any necessary indorsement supplied.

25 (cf: N.J.S.12A:8-307)

26 26. N.J.S.12A:8-308 is amended to read as follows:

27 12A:8-308. [Indorsement, How Made; Special Indorsement;  
28 Indorser Not a Guarantor; Partial Assignment] Indorsements;  
29 Instructions.

30 (1) An endorsement of a certificated security in registered  
31 form is made when an appropriate person signs on it or on a  
32 separate document an assignment or transfer of the security or a  
33 power to assign or transfer it or [when the] his signature [of such  
34 person] is written without more upon the back of the security.

35 (2) An indorsement may be in blank or special. An  
36 indorsement in blank includes an indorsement to bearer. A  
37 special indorsement specifies [the person] to whom the security is  
38 to be transferred, or who has power to transfer it. A holder may  
39 convert a blank indorsement into a special indorsement.

1       **[(3) "An appropriate person" in subsection (1) means**

2       **(a) The person specified by the security or by special**  
3       **indorsement to be entitled to the security; or**

4       **(b) Where the person so specified is described as a fiduciary**  
5       **but is no longer serving in the described capacity, either that**  
6       **person or his successor; or**

7       **(c) Where the security or indorsement so specifies more than**  
8       **one person as fiduciaries and one or more are no longer serving in**  
9       **the described capacity, the remaining fiduciary or fiduciaries,**  
10       **whether or not a successor has been appointed or qualified; or**

11       **(d) Where the person so specified is an individual and is**  
12       **without capacity to act by virtue of death, incompetence, infancy**  
13       **or otherwise, his executor, administrator, guardian or like**  
14       **fiduciary; or**

15       **(e) Where the security or indorsement so specifies more than**  
16       **one person as tenants by the entirety or with right of survivorship**  
17       **and by reason of death all cannot sign, the survivor or survivors;**  
18       **or**

19       **(f) A person having power to sign under applicable law or**  
20       **controlling instrument; or**

21       **(g) To the extent that any of the foregoing persons may act**  
22       **through an agent, his authorized agent.**

23       **(4) Unless otherwise agreed the indorser by his indorsement**  
24       **assumes no obligation that the security will be honored by the**  
25       **issuer.**

26       **(5) An indorsement purporting to be only of part of a security**  
27       **representing units intended by the issuer to be separately**  
28       **transferable is effective to the extent of the indorsement.**

29       **(6) Whether the person signing is appropriate is determined as**  
30       **of the date of signing and an indorsement by such a person does**  
31       **not become unauthorized for the purposes of this chapter by**  
32       **virtue of any subsequent change of circumstances.**

33       **(7) Failure of a fiduciary to comply with a controlling**  
34       **instrument or with the law of the State having jurisdiction of the**  
35       **fiduciary relationship, including any law requiring the fiduciary to**  
36       **obtain court approval of the transfer, does not render his**  
37       **indorsement unauthorized for the purposes of this chapter.]**

38       **(3) An indorsement purporting to be only a part of a**  
39       **certificated security representing units intended by the issuer to**

1 be separately transferable is effective to the extent of the  
2 indorsement.

3 (4) An "instruction" is an order to the issuer of an  
4 uncertificated security requesting that the transfer, pledge, or  
5 release from pledge of the uncertificated security specified  
6 therein be registered.

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

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

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

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

15 (6) "An appropriate person" in subsection (1) means the person  
16 specified by the certificated security or by special indorsement  
17 to be entitled to the security.

18 (7) "An appropriate person" in subsection (5) means:

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

22 (b) For an instruction to transfer or release an uncertificated  
23 security which is then subject to a registered pledge, the  
24 registered pledgee.

25 (8) In addition to the persons designated in subsection (6) and  
26 (7), "an appropriate person" in subsections (1) and (5) includes:

27 (a) If the person designated is described as a fiduciary but is no  
28 longer serving in the described capacity, either that person or his  
29 successor;

30 (b) If the persons designated are described as more than one  
31 person as fiduciaries and one or more are no longer serving in the  
32 described capacity, the remaining fiduciary or fiduciaries,  
33 whether or not a successor has been appointed or qualified;

34 (c) If the person designated is an individual and is without  
35 capacity to act by virtue of death, incompetence, infancy, or  
36 otherwise, his executor, administrator, guardian, or like fiduciary;

37 (d) If the persons designated are described as more than one  
38 person as tenants by the entirety or with right of survivorship and  
39 by reason of death all cannot sign, the survivor or survivors;

1 (e) A person having power to sign under applicable law or  
2 controlling instrument; and

3 (f) To the extent that the person designated or any of the  
4 foregoing persons may act through an agent, his authorized agent.

5 (9) Unless otherwise agreed, the indorser of a certificated  
6 security by his indorsement or the originator of an instruction by  
7 his origination assumes no obligation that the security will be  
8 honored by the issuer but only the obligations provided in  
9 12A:8-306.

10 (10) Whether the person signing is appropriate is determined as  
11 of the date of signing and an indorsement made by or an  
12 instruction originated by him does not become unauthorized for  
13 the purposes of this chapter by virtue of any subsequent change  
14 of circumstances.

15 (11) Failure of a fiduciary to comply with a controlling  
16 instrument or with the law of the State having jurisdiction of the  
17 fiduciary relationship, including any law requiring the fiduciary to  
18 obtain court approval of the transfer, pledge, or release, does not  
19 render his indorsement or an instruction originated by him  
20 unauthorized for the purposes of this chapter.

21 (cf: P.L.1964, c.166, s.16)

22 27. N.J.S.12A:8-309 is amended to read as follows:

23 12A:8-309. Effect of Indorsement Without Delivery.

24 An indorsement of a certificated security, whether special or  
25 in blank, does not constitute a transfer until delivery of the  
26 certificated security on which it appears or, if the indorsement is  
27 on a separate document, until delivery of both the document and  
28 the certificated security.

29 (cf: N.J.S.12A:8-309)

30 28. N.J.S.12A:8-310 is amended to read as follows:

31 12A:8-310. Indorsement of Certificated Security in Bearer  
32 Form. An indorsement of a certificated security in bearer form  
33 may give notice of adverse claims (12A:8-304) but does not  
34 otherwise affect any right to registration the holder [may  
35 possess] possesses.

36 (cf: N.J.S.12A:8-310)

37 29. N.J.S.12A:8-311 is amended to read as follows:

38 12A:8-311. Effect of Unauthorized Indorsement or Instruction.

39 Unless the owner or pledgee has ratified an unauthorized

1 indorsement or instruction or is otherwise precluded from  
2 asserting its ineffectiveness;

3 (a) He may assert its ineffectiveness against the issuer or any  
4 purchaser, other than a purchaser for value and without notice of  
5 adverse claims, who has in good faith received a new, reissued, or  
6 reregistered certificated security on registration of transfer or  
7 received an initial transaction statement confirming the  
8 registration of transfer, pledge, or release of an equivalent  
9 uncertificated security to him; and

10 (b) An issuer who registers the transfer of a certificated  
11 security upon the unauthorized indorsement or who registers the  
12 transfer, pledge, or release of an uncertificated security upon the  
13 unauthorized instruction is subject to liability for improper  
14 registration (12A:8-404).

15 (cf: N.J.S.12A:8-311)

16 30. N.J.S.12A:8-312 is amended to read as follows:

17 12A:8-312. Effect of Guaranteeing Signature [or]. Indorsement  
18 or Instruction.

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

21 (a) The signature was genuine; [and]

22 (b) The signer was an appropriate person to indorse  
23 (12A:8-308); and

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

25 [But the guarantor does not otherwise warrant the rightfulness of  
26 the particular transfer.]

27 (2) [Any person may guarantee an indorsement of a security  
28 and by so doing warrants not only the signature (subsection 1) but  
29 also the rightfulness of the particular transfer in all respects.  
30 But no issuer may require a guarantee of indorsement as a  
31 condition to registration of transfer.]

32 Any person guaranteeing a signature of the originator of an  
33 instruction warrants that at the time of signing:

34 (a) The signature was genuine;

35 (b) The signer was an appropriate person to originate the  
36 instruction (12A:8-308) if the person specified in the instruction  
37 as the registered owner or registered pledgee of the  
38 uncertificated security was, in fact, the registered owner or  
39 registered pledgee of the security, as to which fact the signature

1 guarantor makes no warranty;

2 (c) The signer had legal capacity to sign; and

3 (d) The taxpayer identification number, if any, appearing on  
4 the instruction as that of the registered owner or registered  
5 pledgee was the taxpayer identification number of the signer or  
6 of the owner or pledgee for whom the signer was acting.

7 (3) [The foregoing warranties are made to any person taking or  
8 dealing with the security in reliance on the guarantee and the  
9 guarantor is liable to such person for any loss resulting from  
10 breach of the warranties.]

11 Any person specially guaranteeing the signature of the  
12 originator of an instruction makes not only the warranties of a  
13 signature guarantor (subsection (2)) but also warrants that at the  
14 time the instruction is presented to the issuer:

15 (a) The person specified in the instruction as the registered  
16 owner or registered pledgee of the uncertificated security will be  
17 the registered owner or registered pledgee; and

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

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

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

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

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

38 (8) The foregoing warranties are made to any person taking or  
39 dealing with the security in reliance on the guarantee, and the

1 guarantor is liable to the person for any loss resulting from  
2 breach of the warranties.

3 (cf: N.J.S.12A:8-312)

4 31. N.J.S.12A:8-313 is amended to read as follows:

5 12A:8-313. When [Delivery] Transfer to [the] Purchaser  
6 Occurs; [Purchaser's Broker] Financial Intermediary as [Holder]  
7 Bona Fide Purchaser; "Financial Intermediary."

8 [(1) Delivery to a purchaser occurs when

9 (a) He or a person designated by him acquires possession of a  
10 security; or

11 (b) His broker acquires possession of a security specially  
12 indorsed to or issued in the name of the purchaser; or

13 (c) His broker sends him confirmation of the purchase and also  
14 by book entry or otherwise identifies a specific security in the  
15 broker's possession as belonging to the purchaser; or

16 (d) With respect to an identified security to be delivered while  
17 still in the possession of a third person when that person  
18 acknowledges that he holds for the purchaser; or

19 (e) Appropriate entries on the books of a clearing corporation  
20 are made under 12A:8-320.

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

26 (3) Notice of an adverse claim received by the broker or by the  
27 purchaser after the broker takes delivery as a holder for value is  
28 not effective either as to the broker or as to the purchaser.  
29 However, as between the broker and the purchaser the purchaser  
30 may demand delivery of an equivalent security as to which no  
31 notice of an adverse claim has been received.]

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

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

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

39 (c) At the time his financial intermediary acquires possession

1 of a certificated security specially indorsed to or issued in the  
2 name of the purchaser;

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

6 (i) a specific certificated security in the financial  
7 intermediary's possession;

8 (ii) a quantity of securities that constitute or are part of a  
9 fungible bulk of certificated securities in the financial  
10 intermediary's possession or of uncertificated securities  
11 registered in the name of the financial intermediary; or

12 (iii) a quantity of securities that constitute or are part of a  
13 fungible bulk of securities shown on the account of the financial  
14 intermediary on the books of another financial intermediary;

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

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

23 (g) At the time appropriate entries to the account of the  
24 purchaser or a person designated by him on the books of a  
25 clearing corporation are made under 12A:8-320;

26 (h) With respect to the transfer of a security interest where  
27 the debtor has signed a security agreement containing a  
28 description of the security, at the time a written notification,  
29 which, in the case of the creation of the security interest, is  
30 signed by the debtor (which may be a copy of the security  
31 agreement) or which, in the case of the release or assignment of  
32 the security interest created pursuant to this paragraph, is signed  
33 by the secured party, is received by

34 (i) a financial intermediary on whose books the interest of the  
35 transferor in the security appears;

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

38 (iii) a third person, not a financial intermediary, who is the  
39 registered owner of the security, if it is uncertificated and not

1 subject to a registered pledge; or

2 (iv) a third person, not a financial intermediary, who is the  
3 registered pledgee of the security, if it is uncertificated and  
4 subject to a registered pledge;

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

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

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

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

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

39 (cf: P.L.1964, c.166, s.17)

1 32. N.J.S.12A:8-314 is amended to read as follows:

2 12A:8-314. Duty to [Deliver] Transfer, When Completed.

3 [(1) Unless otherwise agreed where a sale of a security is made  
4 on an exchange or otherwise through brokers

5 (a) The selling customer fulfills his duty to deliver when he  
6 places such a security in the possession of the selling broker or of  
7 a person designated by the broker or if requested causes an  
8 acknowledgment to be made to the selling broker that it is held  
9 for him; and

10 (b) The selling broker including a correspondent broker acting  
11 for a selling customer fulfills his duty to deliver by placing the  
12 security or a like security in the possession of the buying broker  
13 or a person designated by him or by effecting clearance of the  
14 sale in accordance with the rules of the exchange on which the  
15 transaction took place.

16 (2) Except as otherwise provided in this section and unless  
17 otherwise agreed, a transferor's duty to deliver a security under  
18 a contract of purchase is not fulfilled until he places the security  
19 in form to be negotiated by the purchaser in the possession of the  
20 purchaser or of a person designated by him or at the purchaser's  
21 request causes an acknowledgment to be made to the purchaser  
22 that it is held for him. Unless made on an exchange a sale to a  
23 broker purchasing for his own account is within this subsection  
24 and not within subsection (1).]

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

27 (a) The selling customer fulfills his duty to transfer at the  
28 time he

29 (i) places a certificated security in the possession of the selling  
30 broker or of a person designated by the broker;

31 (ii) causes an uncertificated security to be registered in the  
32 name of the selling broker or a person designated by the broker;

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

36 (iv) places in the possession of the selling broker or of a person  
37 designated by the broker a transfer instruction for an  
38 uncertificated security, providing the issuer does not refuse to  
39 register the requested transfer if the instruction is presented to

1 the issuer for registration within 30 days thereafter; and

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

4 (i) places a certificated security in the possession of the buying  
5 broker or a person designated by the buying broker;

6 (ii) causes an uncertificated security to be registered in the  
7 name of the buying broker or a person designated by the buying  
8 broker;

9 (iii) places in the possession of the buying broker or of a person  
10 designated by the buying broker a transfer instruction for an  
11 uncertificated security, providing the issuer does not refuse to  
12 register the requested transfer if the instruction is presented to  
13 the issuer for registration within 30 days thereafter; or

14 (iv) effects clearance of the sale in accordance with the rules  
15 of the exchange on which the transaction took place.

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

19 (a) Places a certificated security in form to be negotiated by  
20 the purchaser in the possession of the purchaser or of a person  
21 designated by the purchaser;

22 (b) Causes an uncertificated security to be registered in the  
23 name of the purchaser or a person designated by the purchaser; or

24 (c) If the purchaser requests, causes an acknowledgment to be  
25 made to the purchaser that a certificated or uncertificated  
26 security is held for the purchaser.

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

30 (cf: N.J.S.12A:8-314)

31 33. N.J.S.12A:8-315 is amended to read as follows:

32 12A:8-315. Action Against [Purchaser] Transferee Based Upon  
33 Wrongful Transfer.

34 (1) Any person against whom the transfer of a security is  
35 wrongful for any reason, including his incapacity, [may] as against  
36 anyone except a bona fide purchaser [reclaim possession of the  
37 security or obtain possession of any new security evidencing all or  
38 part of the same rights or have damages], may:

39 (a) Reclaim possession of the certificated security wrongfully

1 transferred;

2 (b) Obtain possession of any new certificated security  
3 representing all or part of the same rights;

4 (c) Compel the origination of an instruction to transfer to him  
5 or a person designated by him an uncertificated security  
6 constituting all or part of the same rights; or

7 (d) Have damages.

8 (2) If the transfer is wrongful because of an unauthorized  
9 indorsement of a certificated security, the owner may also  
10 reclaim or obtain possession of the security or a new certificated  
11 security, even from a bona fide purchaser, if the ineffectiveness  
12 of the purported indorsement can be asserted against him under  
13 the provisions of this chapter on unauthorized indorsements  
14 (12A:8-311).

15 (3) The right to obtain or reclaim possession of a certificated  
16 security or to compel the origination of a transfer instruction  
17 may be specifically enforced and [its] the transfer of a  
18 certificated or uncertificated security enjoined and [the] a  
19 certificated security impounded pending the litigation.  
20 (cf: N.J.S.12A:8-315)

21 34. N.J.S.12A:8-316 is amended to read as follows:

22 12A:8-316. Purchaser's Right to Requisites for Registration  
23 of Transfer, Pledge, or Release on Books.

24 Unless otherwise agreed, the transferor of a certificated  
25 security or the transferor, pledgor, or pledgee of an  
26 uncertificated security [must] on due demand shall supply his  
27 purchaser with any proof of his authority to transfer, pledge, or  
28 release or with any other requisite [which may be] necessary to  
29 obtain registration of the transfer, pledge, or release of the  
30 security; but if the transfer, pledge, or release is not for value, a  
31 transferor, pledgor, or pledgee need not do so unless the  
32 purchaser furnishes the necessary expenses. Failure within a  
33 reasonable time to comply with a demand made [within a  
34 reasonable time] gives the purchaser the right to reject or rescind  
35 the transfer, pledge, or release.

36 (cf: N.J.S.12A:8-316)

37 35. N.J.S.12A:8-317 is amended to read as follows:

38 12A:8-317. [Attachment or Levy Upon Security] Creditors'  
39 Rights.

1       **(1) Subject to the exceptions in subsections (3) and (4), [No] no**  
2       **attachment or levy upon a certificated security or any share or**  
3       **other interest [evidenced] represented thereby which is**  
4       **outstanding [shall be] is valid until the security is actually seized**  
5       **by the officer making the attachment or levy, but a certificated**  
6       **security which has been surrendered to the issuer may be**  
7       **[attached or levied upon at the source] reached by a creditor by**  
8       **legal process at the issuer's chief executive office in the United**  
9       **States.**

10       **(2) [A creditor whose debtor is the owner of a security shall be**  
11       **entitled to such aid from courts of appropriate jurisdiction, by**  
12       **injunction or otherwise, in reaching such security or in satisfying**  
13       **the claim by means thereof as is allowed at law or in equity in**  
14       **regard to property which cannot readily be attached or levied**  
15       **upon by ordinary legal process.]**

16       **An uncertificated security registered in the name of the debtor**  
17       **may not be reached by a creditor except by legal process at the**  
18       **issuer's chief executive office in the United States.**

19       **(3) The interest of a debtor in a certificated security that is in**  
20       **the possession of a secured party not a financial intermediary or**  
21       **in an uncertificated security registered in the name of a secured**  
22       **party not a financial intermediary (or in the name of a nominee**  
23       **of the secured party) may be reached by a creditor by legal**  
24       **process upon the secured party.**

25       **(4) The interest of a debtor in a certificated security that is in**  
26       **the possession of or registered in the name of a financial**  
27       **intermediary or in an uncertificated security registered in the**  
28       **name of a financial intermediary may be reached by a creditor by**  
29       **legal process upon the financial intermediary on whose books the**  
30       **interest of the debtor appears.**

31       **(5) Unless otherwise provided by law, a creditor's lien upon**  
32       **the interest of a debtor in a security obtained pursuant to**  
33       **subsection (3) or (4) is not a restraint on the transfer of the**  
34       **security, free of the lien, to a third party for new value; but in**  
35       **the event of a transfer, the lien applies to the proceeds of the**  
36       **transfer in the hands of the secured party or financial**  
37       **intermediary, subject to any claims having priority.**

38       **(6) A creditor whose debtor is the owner of a security is**  
39       **entitled to aid from courts of appropriate jurisdiction, by**

1 injunction or otherwise, in reaching the security or in satisfying  
2 the claim by means allowed at law or in equity in regard to  
3 property that cannot readily be reached by ordinary legal process.

4 (cf: N.J.S.12A:8-317)

5 36. N.J.S.12A:8-318 is amended to read as follows:

6 12A:8-318. No Conversion by Good Faith [Delivery] Conduct.

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

16 (cf: N.J.S.12A:8-318)

17 37. N.J.S.12A:8-319 is amended to read as follows:

18 12A:8-319. Statute of Frauds.

19 A contract for the sale of securities is not enforceable by way  
20 of action or defense unless:

21 (a) There is some writing signed by the party against whom  
22 enforcement is sought or by his authorized agent or broker,  
23 sufficient to indicate that a contract has been made for sale of a  
24 stated quantity of described securities at a defined or stated  
25 price; [or]

26 (b) Delivery of [the] a certificated security or transfer  
27 instruction has been accepted, or transfer of an uncertificated  
28 security has been registered and the transferee has failed to send  
29 written objection to the issuer within 10 days after receipt of the  
30 initial transaction statement confirming the registration, or  
31 payment has been made, but the contract is enforceable under  
32 this provision only to the extent of [such] the delivery,  
33 registration, or payment; [or]

34 (c) Within a reasonable time a writing in confirmation of the  
35 sale or purchase and sufficient against the sender under  
36 paragraph (a) has been received by the party against whom  
37 enforcement is sought and he has failed to send written objection  
38 to its contents within [ten] 10 days after its receipt; or

39 (d) The party against whom enforcement is sought admits in

1 his pleading, testimony, or otherwise in court that a contract was  
2 made for the sale of a stated quantity of described securities at a  
3 defined or stated price.

4 (cf: N.J.S.12A:8-319)

5 38. Section 18 of P.L.1964, c.166 (C.12A:8-320) is amended to  
6 read as follows:

7 18. Transfer or Pledge within [a] Central Depository System.

8 (1) [If a security

9 (a) is in the custody of a clearing corporation or of a custodian  
10 bank or a nominee of either subject to the instructions of the  
11 clearing corporation; and

12 (b) is in bearer form or indorsed in blank by an appropriate  
13 person or registered in the name of the clearing corporation or  
14 custodian bank or a nominee of either; and

15 (c) is shown on the account of a transferor or pledgor on the  
16 books of the clearing corporation;

17 then, in addition to other methods, a transfer or pledge of the  
18 security or any interest therein may be effected by the making of  
19 appropriate entries on the books of the clearing corporation  
20 reducing the account of the transferor or pledgor and increasing  
21 the account of the transferee or pledgee by the amount of the  
22 obligation or the number of shares or rights transferred or  
23 pledged.]

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

34 (a) If certificated,

35 (i) is in the custody of the clearing corporation, another  
36 clearing corporation, a custodian bank, or a nominee of any of  
37 them; and

38 (ii) is in bearer form or indorsed in blank by an appropriate  
39 person or registered in the name of the clearing corporation, a

1 custodian bank, or a nominee of any of them; or

2 (b) If uncertificated, is registered in the name of the clearing  
3 corporation, another clearing corporation, a custodian bank, or a  
4 nominee of any of them.

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

12 (3) [A transfer or pledge under this section has the effect of a  
13 delivery of a security in bearer form or duly indorsed in blank  
14 (12A:8-301) representing the amount of the obligation or the  
15 number of shares or rights transferred or pledged. If a pledge or  
16 the creation of a security interest is intended, the making of  
17 entries has the effect of a taking of delivery by the pledgee or a  
18 secured party (12A:9-304 and 9-305). A transferee or pledgee  
19 under this section is a holder.] A transfer under this section is  
20 effective (12A:8-313) and the purchaser acquires the rights of the  
21 transferor (12A:8-301). A pledge or release under this section is  
22 the transfer of a limited interest. If a pledge or the creation of a  
23 security interest is intended, the security interest is perfected at  
24 the time when both value is given by the pledgee, and the  
25 appropriate entries are made (12A:8-321). A transferee or  
26 pledgee under this section may be a bona fide purchaser  
27 (12A:8-302).

28 (4) A transfer or pledge under this section [does] is not  
29 [constitute] a registration of transfer under [subsection 4 of this  
30 chapter] subchapter 4.

31 (5) That entries made on the books of the clearing corporation  
32 as provided in subsection (1) are not appropriate does not affect  
33 the validity or effect of the entries [nor] or the liabilities or  
34 obligations of the clearing corporation to any person adversely  
35 affected thereby.

36 (cf. P.L.1964, c.166, s.18)

37 39. Section 12A:8-321 is added to the New Jersey Statutes:

38 12A:8-321. (New section) Enforceability, Attachment,  
39 Perfection and Termination of Security, Interests.

1 (1) A security interest in a security is enforceable and can  
2 attach only if it is transferred to the secured party or a person  
3 designated by him pursuant to a provision of 12A:8-313 (1).

4 (2) A security interest so transferred pursuant to agreement by  
5 a transferor who has rights in the security to a transferee who  
6 has given value is a perfected security interest, but a security  
7 interest that has been transferred solely under paragraph (i) of  
8 12A:8-313 (1) becomes unperfected after 21 days unless, within  
9 that time, the requirements for transfer under any other  
10 provision of 12A:8-313 (1) are satisfied.

11 (3) A security interest in a security is subject to the provisions  
12 of chapter 9, but:

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

14 (b) No written security agreement signed by the debtor is  
15 necessary to make the security interest enforceable, except as  
16 provided in paragraph (h), (i), or (j) of 12A:8-313 (1). The secured  
17 party has the rights and duties provided under 12A:9-207, to the  
18 extent they are applicable, whether or not the security is  
19 certificated, and, if certificated, whether or not it is in his  
20 possession.

21 (4) Unless otherwise agreed, a security interest in a security is  
22 terminated by transfer to the debtor or a person designated by  
23 him pursuant to a provision of 12A:8-313 (1). If a security is thus  
24 transferred, the security interest, if not terminated, becomes  
25 unperfected unless the security is certificated and is delivered to  
26 the debtor for the purpose of ultimate sale or exchange or  
27 presentation, collection, renewal, or registration of transfer. In  
28 that case, the security interest becomes unperfected after 21  
29 days unless, within that time, the security (or securities for which  
30 it has been exchanged) is transferred to the secured party or a  
31 person designated by him pursuant to a provision of 12A:8-313 (1).

32 40. N.J.S.12A:8-401 is amended to read as follows:

33 12A:8-401. Duty of Issuer to Register Transfer, Pledge, or  
34 Release.

35 (1) [Where] If a certificated security in registered form is  
36 presented to the issuer with a request to register transfer or an  
37 instruction is presented to the issuer with a request to register  
38 transfer, pledge, or release, the issuer [is under a duty to] shall  
39 register the transfer, pledge, or release as requested if:

1 (a) The security is indorsed or the instruction was originated  
2 by the appropriate person or persons (12A:8-308); [and]

3 (b) Reasonable assurance is given that those indorsements or  
4 instructions are genuine and effective (12A:8-402); [and]

5 (c) The issuer has no duty [to inquire into] as to adverse claims  
6 or has discharged [any such] the duty, (12A:8-403); [and]

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

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

11 (2) [Where] If an issuer is under a duty to register a transfer,  
12 pledge, or release of a security, the issuer is also liable to the  
13 person presenting a certificated security or an instruction [it] for  
14 registration or his principal for loss resulting from any  
15 unreasonable delay in registration or from failure or refusal to  
16 register the transfer, pledge, or release.

17 (cf: N.J.S.12A:8-401)

18 41. N.J.S.12A:8-402 is amended to read as follows:

19 12A:8-402. Assurance that Indorsements and Instructions Are  
20 Effective.

21 (1) The issuer may require the following assurance that each  
22 necessary indorsement of a certificated security or each  
23 instruction (12A:8-308) is genuine and effective:

24 (a) In all cases, a guarantee of the signature ([subsection (1) of]  
25 12A:8-312 (1) or (2)) of the person indorsing a certificated  
26 security or originating an instruction including, in the case of an  
27 instruction, a warranty of the taxpayer identification number or,  
28 in the absence thereof, other reasonable assurance of identity;  
29 [and]

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

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

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

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

1 be to the foregoing.

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

7 (3) "Appropriate evidence of appointment or incumbency" in  
8 subsection (1) means:

9 (a) In the case of a fiduciary appointed or qualified by a court,  
10 a certificate issued by or under the direction or supervision of  
11 that court or an officer thereof and dated within [sixty] 60 days  
12 before the date of presentation for transfer, pledge, or release; or

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

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

30 (cf: N.J.S.12A:8-402)

31 42. N.J.S.12A:8-403 is amended to read as follows:

32 12A:8-403. [Limited Duty of Inquiry] Issuer's Duty as to  
33 Adverse Claims.

34 (1) An issuer to whom a certificated security is presented for  
35 registration [is under a duty to] shall inquire into adverse claims  
36 if:

37 (a) A written notification of an adverse claim is received at a  
38 time and in a manner [which affords] affording the issuer a  
39 reasonable opportunity to act on it prior to the issuance of a new,

1 reissued, or reregistered certificated security, and the  
2 notification identifies the claimant, the registered owner, and the  
3 issue of which the security is a part, and provides an address for  
4 communications directed to the claimant; or

5 (b) The issuer is charged with notice of an adverse claim from  
6 a controlling instrument [which] it has elected to require under  
7 [subsection (4) of] 12A:8-402 (4).

8 (2) The issuer may discharge any duty of inquiry by any  
9 reasonable means, including notifying an adverse claimant by  
10 registered or certified mail at the address furnished by him or, if  
11 there be no such address, at his residence or regular place of  
12 business that the certificated security has been presented for  
13 registration of transfer by a named person, and that the transfer  
14 will be registered unless within [thirty] 30 days from the date of  
15 mailing the notification, either:

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

18 (b) There is filed with the issuer an indemnity bond, sufficient  
19 in the issuer's judgment to protect the issuer and any transfer  
20 agent, registrar, or other agent of the issuer involved[,] from any  
21 loss [which] it or they may suffer by complying with the adverse  
22 claim [is filed with the issuer].

23 (3) Unless an issuer is charged with notice of an adverse claim  
24 from a controlling instrument which it has elected to require  
25 under [subsection (4) of] 12A:8-402 (4) or receives notification of  
26 an adverse claim under subsection (1) [of this section, where], if a  
27 certificated security presented for registration is indorsed by the  
28 appropriate person or persons the issuer is under no duty to  
29 inquire into adverse claims. In particular:

30 (a) An issuer registering a certificated security in the name of  
31 a person who is a fiduciary or who is described as a fiduciary is  
32 not bound to inquire into the existence, extent, or correct  
33 description of the fiduciary relationship; and thereafter the issuer  
34 may assume without inquiry that the newly registered owner  
35 continues to be the fiduciary until the issuer receives written  
36 notice that the fiduciary is no longer acting as such with respect  
37 to the particular security;

38 (b) An issuer registering transfer on an indorsement by a  
39 fiduciary is not bound to inquire whether the transfer is made in

1 compliance with a controlling instrument or with the law of the  
2 state having jurisdiction of the fiduciary relationship, including  
3 any law requiring the fiduciary to obtain court approval of the  
4 transfer; and

5 (c) The issuer is not charged with notice of the contents of any  
6 court record or file or other recorded or unrecorded document  
7 even though the document is in its possession and even though the  
8 transfer is made on the indorsement of a fiduciary to the  
9 fiduciary himself or to his nominee.

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

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

17 (b) Claims of which the issuer has received a written  
18 notification from the registered owner or the registered pledgee  
19 if the notification was received at a time and in a manner  
20 affording the issuer a reasonable opportunity to act on it in  
21 accordance with the requirements of subsection (5);

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

26 (d) Claims as to which an issuer is charged with notice from a  
27 controlling instrument it has elected to require under 12A:8-402  
28 (4).

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

31 (a) Including a notation of the claim in any statements sent  
32 with respect to the security under 12A:8-408 (3), (6), and (7); and

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

36 (6) If the transfer or pledge of the security is registered  
37 subject to an adverse claim, a notation of the claim must be  
38 included in the initial transaction statement and all subsequent  
39 statements sent to the transferee and pledgee under 12A:8-408.

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

7 (a) The claim was embodied in legal process which expressly  
8 provides otherwise;

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

11 (c) The claim was one as to which the issuer was charged with  
12 notice from a controlling instrument it required under 12A:8-402

13 (4) in connection with the pledgee's request for transfer; or

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

15 (cf: N.J.S.12A:8-403)

16 43. N.J.S.12A:8-404 is amended to read as follows:

17 12A:8-404. Liability and Non-Liability for Registration.

18 (1) Except as [otherwise] provided in any law relating to the  
19 collection of taxes, the issuer is not liable to the owner, pledgee,  
20 or any other person suffering loss as a result of the registration  
21 of a transfer, pledge, or release of a security if:

22 (a) There were on or with [the] a certificated security the  
23 necessary indorsements or the issuer had received an instruction  
24 originated by an appropriate person (12A:8-308); and

25 (b) The issuer had no duty [to inquire into] as to adverse claims  
26 or has discharged [any such] the duty (12A:8-403).

27 (2) [Where] If an issuer has registered a transfer of a  
28 certificated security to a person not entitled to it, the issuer on  
29 demand [must] shall deliver a like security to the true owner  
30 unless:

31 (a) The registration was pursuant to subsection (1); [or]

32 (b) The owner is precluded from asserting any claim for  
33 registering the transfer under [subsection (1) of the following  
34 section] 12A:8-405 (1); or

35 (c) [Such] The delivery would result in overissue, in which case  
36 the issuer's liability is governed by 12A:8-104.

37 (3) If an issuer has improperly registered a transfer, pledge, or  
38 release of an uncertificated security, the issuer on demand from  
39 the injured party shall restore the records as to the injured party

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

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

4 (b) The registration would result in overissue, in which case  
5 the issuer's liability is governed by 12A:8-104.

6 (cf: N.J.S.12A:8-404)

7 44. N.J.S.12A:8-405 is amended to read as follows:

8 12A:8-405. Lost, Destroyed, and Stolen Certificated Securities.

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

17 (2) [Where] If the owner of a certificated security claims that  
18 the security has been lost, destroyed, or wrongfully taken, the  
19 issuer [must] shall issue a new certificated security or, at the  
20 option of the issuer, an equivalent uncertificated security in  
21 place of the original security if the owner:

22 (a) So requests before the issuer has notice that the security  
23 has been acquired by a bona fide purchaser; [and]

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

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

27 (3) If, after the issue of [the] a new certificated or  
28 uncertificated security, a bona fide purchaser of the original  
29 certificated security presents it for registration of transfer, the  
30 issuer [must] shall register the transfer unless registration would  
31 result in overissue, in which event the issuer's liability is  
32 governed by 12A:8-104. In addition to any rights on the  
33 indemnity bond, the issuer may recover the new certificated  
34 security from the person to whom it was issued or any person  
35 taking under him except a bona fide purchaser or may cancel the  
36 uncertificated security unless a bona fide purchaser or any person  
37 taking under a bona fide purchaser is then the registered owner or  
38 registered pledgee thereof.

39 (cf: N.J.S.12A:8-405)

1 45. N.J.S.12A:8-406 is amended to read as follows:

2 12A:8-406. Duty of Authenticating Trustee, Transfer Agent or  
3 Registrar.

4 (1) [Where] If a person acts as authenticating trustee, transfer  
5 agent, registrar, or other agent for an issuer in the registration of  
6 transfers of its certificated securities or in the registration of  
7 transfers, pledges, and releases of its uncertificated securities,  
8 [or] in the issue of new securities, or in the cancellation of  
9 surrendered securities;

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

12 (b) [He has with] With regard to the particular functions he  
13 performs, he has the same obligation to the holder or owner of  
14 [the] a certificated security or to the owner or pledgee of an  
15 uncertificated security and has the same rights and privileges as  
16 the issuer has in regard to those functions.

17 (2) Notice to an authenticating trustee, transfer agent,  
18 registrar or other [such] agent is notice to the issuer with respect  
19 to the functions performed by the agent.

20 (cf: N.J.S.12A:8-406)

21 46. Section 12A:8-407 is added to the New Jersey Statutes:

22 12A:8-407. (New section) Exchangeability of Securities.

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

29 (2) Upon surrender of a certificated security with all necessary  
30 indorsements and presentation of a written request by the person  
31 surrendering the security, the issuer, if he has no duty as to  
32 adverse claims or has discharged the duty (12A:8-403), shall issue  
33 to the person or a person designated by him an equivalent  
34 uncertificated security subject to all liens, restrictions, and  
35 claims that were noted on the certificated security.

36 (3) Upon receipt of a transfer instruction originated by an  
37 appropriate person who so requests, the issuer of an  
38 uncertificated security shall cancel the uncertificated security  
39 and issue an equivalent certificated security on which shall be

1 notad conspicuously any liens and restrictions of the issuer and  
2 any adverse claims (as to which the issuer has a duty under  
3 12A:8-403 (4)) to which the uncertificated security was subject.  
4 The certificated security shall be registered in the name of and  
5 delivered to:

6 (a) The registered owner, if the uncertificated security was  
7 not subject to a registered pledge; or

8 (b) The registered pledgee, if the uncertificated security was  
9 subject to a registered pledge.

10 47. Section 12A:8-408 is added to the New Jersey Statutes:

11 12A:8-408. (New section) Statements of Uncertificated  
12 Securities.

13 (1) Within two business days after the transfer of an  
14 uncertificated security has been registered, the issuer shall send  
15 to the new registered owner and, if the security has been  
16 transferred subject to a registered pledge, to the registered  
17 pledgee a written statement containing:

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

20 (b) The number of shares or units transferred;

21 (c) The name and address and any taxpayer identification  
22 number of the new registered owner and, if the security has been  
23 transferred subject to a registered pledge, the name and address  
24 and any taxpayer identification number of the registered pledgee;

25 (d) A notation of any liens and restrictions of the issuer and  
26 any adverse claims (as to which the issuer has a duty under  
27 12A:8-403 (4)) to which the uncertificated security is or may be  
28 subject at the time of registration or a statement that there are  
29 none of those liens, restrictions, or adverse claims; and

30 (e) The date the transfer was registered.

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

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

37 (b) The number of share or units pledged;

38 (c) The name and address and any taxpayer identification  
39 number of the registered owner and the registered pledgee;

1 (d) A notation of any liens and restrictions of the issuer and  
2 any adverse claims (as to which the issuer has a duty under  
3 12A:8-403 (4)) to which the uncertificated security is or may be  
4 subject at the time of registration or a statement that there are  
5 none of those liens, restrictions, or adverse claims; and

6 (e) The date the pledge was registered.

7 (3) Within two business days after the release from pledge of  
8 an uncertificated security has been registered, the issuer shall  
9 send to the registered owner and the pledgee whose interest was  
10 released a written statement containing:

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

13 (b) The number of shares or units released from pledge;

14 (c) The name and address and any taxpayer identification  
15 number of the registered owner and the pledgee whose interest  
16 was released;

17 (d) A notation of any liens and restrictions of the issuer and  
18 any adverse claims (as to which the issuer has a duty under  
19 12A:8-403 (4)) to which the uncertificated security is or may be  
20 subject at the time of registration or a statement that there are  
21 none of those liens, restrictions, or adverse claims; and

22 (e) The date the release was registered.

23 (4) An "initial transaction statement" is the statement sent to:

24 (a) The new registered owner and, if applicable, to the  
25 registered pledgee pursuant to subsection (1);

26 (b) The registered pledgee pursuant to subsection (2); or

27 (c) The registered owner pursuant to subsection (3). Each  
28 initial transaction statement shall be signed by or on behalf of  
29 the issuer and shall be identified as "Initial Transaction  
30 Statement."

31 (5) Within two business days after the transfer of an  
32 uncertificated security has been registered, the issuer shall send  
33 to the former registered owner and the former registered  
34 pledgee, if any, a written statement containing:

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

37 (b) The number of shares or units transferred;

38 (c) The name and address and any taxpayer identification  
39 number of the former registered owner and of any former

1 registered pledgee; and

2 (d) The date the transfer was registered.

3 (6) At periodic intervals no less frequent than annually and at  
4 any time upon the reasonable written request of the registered  
5 owner, the issuer shall send to the registered owner of each  
6 uncertificated security a dated written statement containing:

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

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

11 (c) The number of shares or units of the uncertificated  
12 security registered in the name of the registered owner on the  
13 date of the statement;

14 (d) The name and address and any taxpayer identification  
15 number of any registered pledgee and the number of shares or  
16 units subject to the pledge; and

17 (e) A notation of any liens and restrictions of the issuer and  
18 any adverse claims (as to which the issuer has a duty under  
19 12A:8-403 (4)) to which the uncertificated security is or may be  
20 subject or a statement that there are none of those liens,  
21 restrictions, or adverse claims.

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

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

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

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

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

33 (e) A notation of any liens and restrictions of the issuer and  
34 any adverse claims (as to which the issuer has a duty under  
35 12A:8-403 (4)) to which the uncertificated security is or may be  
36 subject or a statement that there are none of those liens,  
37 restrictions, or adverse claims.

38 (8) If the issuer sends the statements described in subsections  
39 (6) and (7) at periodic intervals no less frequent than quarterly.

1 the issuer is not obliged to send additional statements upon  
2 request unless the owner or pledgee requesting them pays to the  
3 issuer the reasonable cost of furnishing them.

4 (9) Each statement sent pursuant to this section shall bear a  
5 conspicuous legend reading substantially as follows: "This  
6 statement is merely a record of the rights of the addressee as of  
7 the time of its issuance. Delivery of this statement, of itself,  
8 confers no rights on the recipient. This statement is neither a  
9 negotiable instrument nor a security."

10 48. N.J.S.12A:9-103 is amended to read as follows:

11 12A:9-103. Perfection of Security Interests in Multiple State  
12 Transactions.

13 (1) Documents, instruments and ordinary goods.

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

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

24 (c) If the parties to a transaction creating a purchase money  
25 security interest in goods in one jurisdiction understand at the  
26 time that the security interest attaches that the goods will be  
27 kept in another jurisdiction, then the law of the other jurisdiction  
28 governs the perfection and the effect of perfection or  
29 nonperfection of the security interest from the time it attaches  
30 until 30 days after the debtor receives possession of the goods  
31 and thereafter if the goods are taken to the other jurisdiction  
32 before the end of the 30-day period.

33 (d) When collateral is brought into and kept in this State while  
34 subject to a security interest perfected under the law of the  
35 jurisdiction from which the collateral was removed, the security  
36 interest remains perfected, but if action is required by  
37 subchapter 3 of this chapter to perfect the security interest,

38 (i) if the action is not taken before the expiration of the period  
39 of perfection in the other jurisdiction or the end of four months

1 after the collateral is brought into this State, whichever period  
2 first expires, the security interest becomes unperfected at the  
3 end of that period and is thereafter deemed to have been  
4 unperfected as against a person who became a purchaser after  
5 removal;

6 (ii) if the action is taken before the expiration of the period  
7 specified in subparagraph (i), the security interest continues  
8 perfected thereafter;

9 (iii) for the purpose of priority over a buyer of consumer goods  
10 (subsection (2) of 12A:9-307), the period of the effectiveness of a  
11 filing in the jurisdiction from which the collateral is removed is  
12 governed by the rules with respect to perfection in subparagraphs  
13 (i) and (ii).

14 (2) Certificate of title.

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

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

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

34 (d) If goods are brought into this State while a security  
35 interest therein is perfected in any manner under the law of the  
36 jurisdiction from which the goods are removed and a certificate  
37 of title is issued by this State and the certificate does not show  
38 that the goods are subject to the security interest or that they  
39 may be subject to security interests not shown on the certificate,

1 the security interest is subordinate to the rights of a buyer of the  
2 goods who is not in the business of selling goods of that kind to  
3 the extent that he gives value and receives delivery of the goods  
4 after issuance of the certificate and without the knowledge of  
5 the security interest.

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

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

17 (b) The law (including the conflict of laws rules) of the  
18 jurisdiction in which the debtor is located governs the perfection  
19 and the effect of perfection or nonperfection of the security  
20 interest.

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

35 (d) A debtor shall be deemed located at his place of business if  
36 he has one, at his chief executive office if he has more than one  
37 place of business, otherwise at his residence. If, however, the  
38 debtor is a foreign air carrier under the Federal Aviation Act of  
39 1958, as amended, it shall be deemed located at the designated

1 office of the agent upon whom service of process may be made on  
2 behalf of the foreign air carrier.

3 (e) A security interest perfected under the law of the  
4 jurisdiction of the location of the debtor is perfected until the  
5 expiration of four months after a change of the debtor's location  
6 to another jurisdiction, or until perfection would have ceased by  
7 the law of the first jurisdiction, whichever period first expires.  
8 Unless perfected in the new jurisdiction before the end of that  
9 period, it becomes unperfected thereafter and is deemed to have  
10 been unperfected as against a person who became a purchaser  
11 after the change.

12 (4) Chattel paper.

13 The rules stated for goods in subsection (1) apply to a  
14 possessory security interest in chattel paper. The rules stated for  
15 accounts in subsection (3) apply to a nonpossessory security  
16 interest in chattel paper, but the security interest may not be  
17 perfected by notification to the account debtor.

18 (5) Minerals.

19 Perfection and the effect of perfection or nonperfection of a  
20 security interest which is created by a debtor who has an interest  
21 in minerals or the like (including oil and gas) before extraction  
22 and which attaches thereto as extracted, or which attaches to an  
23 account resulting from the sale thereof at the wellhead or  
24 minehead are governed by the law (including the conflict of laws  
25 rules) of the jurisdiction wherein the wellhead or minehead is  
26 located.

27 (6) Uncertificated securities.

28 The law (including the conflict of laws rules) of the jurisdiction  
29 of organization of the issuer governs the perfection and the  
30 effect of perfection or nonperfection of a security interest in  
31 uncertificated securities.

32 (cf: P.L.1981, c.138, s.7)

33 49. N.J.S.12A:9-105 is amended to read as follows:

34 12A:9-105. Definitions and Index of Definitions.

35 (1) In this chapter unless the context otherwise requires:

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

38 (b) "Chattel paper" means a writing or writings which  
39 evidence both a monetary obligation and a security interest in or

1 a lease of specific goods, but a charter or other contract  
2 involving the use or hire of a vessel is not chattel paper. When a  
3 transaction is evidenced both by such a security agreement or a  
4 lease and by an instrument or a series of instruments, the group  
5 of writings taken together constitutes chattel paper;

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

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

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

21 (f) "Document" means document of title as defined in the  
22 general definitions of chapter 1 (12A:1-201), and a receipt of the  
23 kind described in subsection (2) of 12A:7-201;

24 (g) "Encumbrance" includes real estate mortgages and other  
25 liens on real estate and all other rights in real estate that are not  
26 ownership interests;

27 (h) "Goods" includes all things which are movable at the time  
28 the security interest attaches or which are fixtures (12A:9-313),  
29 but does not include money, documents, instruments, accounts,  
30 chattel paper, general intangibles, or minerals or the like  
31 (including oil and gas) before extraction. "Goods" also includes  
32 standing timber which is to be cut and removed under a  
33 conveyance or contract for sale, the unborn young of animals, and  
34 growing crops;

35 (i) "Instrument" means a negotiable instrument (defined in  
36 12A:3-104), or a certificated security (defined in 12A:8-102) or  
37 any other writing which evidences a right to the payment of  
38 money and is not itself a security agreement or lease and is of a  
39 type which is in ordinary course of business transferred by

1 delivery with any necessary indorsement or assignment;

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

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

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

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

16 (2) Other definitions applying to this chapter and the sections  
17 in which they appear are:

18 "Account." 12A:9-106.

19 "Attach." 12A:9-203.

20 "Construction mortgage." 12A:9-313 (1).

21 "Consumer goods." 12A:9-109 (1).

22 "Equipment." 12A:9-109 (2).

23 "Farm products." 12A:9-109 (3).

24 "Fixture." 12A:9-313.

25 "Fixture filing." 12A:9-313.

26 "General intangibles." 12A:9-106.

27 "Inventory." 12A:9-109 (4).

28 "Lien creditor." 12A:9-301 (3).

29 "Proceeds." 12A:9-306 (1).

30 "Purchase money security interest." 12A:9-107.

31 "United States." 12A:9-103 (3).

32 (3) The following definitions in other chapters apply to this  
33 chapter:

34 "Check." 12A:3-104.

35 "Contract for sale." 12A:2-106.

36 "Holder in due course." 12A:3-302.

37 "Note." 12A:3-104.

38 "Sale." 12A:2-106.

39 (4) In addition chapter 1 contains general definitions and

1 principles of construction and interpretation applicable  
2 throughout this chapter.

3 (cf: P.L.1981, c.138, s.9)

4 50. N.J.S.12A:9-203 is amended to read as follows:

5 12A:9-203. Attachment and Enforceability of Security  
6 Interest; Proceeds; Formal Requisites.

7 (1) Subject to the provisions of 12A:4-208 on the security  
8 interest of a collecting bank, 12A:8-321 on security interests in  
9 securities and 12A:9-113 on a security interest arising under the  
10 chapter on sales, a security interest is not enforceable against  
11 the debtor or third parties with respect to the collateral and does  
12 not attach unless:

13 (a) The collateral is in the possession of the secured party  
14 pursuant to agreement, or the debtor has signed a security  
15 agreement which contains a description of the collateral and in  
16 addition, when the security interest covers crops growing or to be  
17 grown or timber to be cut, a description of the land concerned;  
18 [and]

19 (b) Value has been given; and

20 (c) The debtor has rights in the collateral.

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

26 (3) Unless otherwise agreed a security agreement gives the  
27 secured party the rights to proceeds provided by 12A:9-306.

28 (4) A transaction, although subject to this chapter, is also  
29 subject to the provisions of those statutes set forth as saved from  
30 repeal by this subtitle in section 12A:10-104, and in case of  
31 conflict between the provisions of this chapter and any such  
32 statute so saved from repeal, the provisions of such statute  
33 control. Failure to comply with any such applicable statute has  
34 only the effect which is specified therein.

35 (5) In case of conflict between this chapter and the provisions  
36 of "The Credit Union Act of 1984," P.L.1984, c.171, ss.2 to 46  
37 (C.17:13-79 [et seq.] to C.17:13-124), concerning a transaction  
38 subject to this chapter and also subject to the provisions of "The  
39 Credit Union Act of 1984," the provisions of "The Credit Union

1 Act of 1984" shall control.

2 (cf: P.L.1984, c.171, s.47)

3 51. N.J.S.12A:9-302 is amended to read as follows:

4 12A:9-302. When Filing Is Required to Perfect Security  
5 Interests; Security Interests to Which Filing Provisions of This  
6 Chapter Do Not Apply.

7 (1) A financing statement [must] shall be filed to perfect all  
8 security interests except the following:

9 (a) A security interest in collateral in possession of the  
10 secured party under 12A:9-305;

11 (b) A security interest temporarily perfected in instruments or  
12 documents without delivery under 12A:9-304 or in proceeds for a  
13 10-day period under 12A:9-306;

14 (c) [a] A security interest created by an assignment of a  
15 beneficial interest in a trust or a decedent's estate;

16 (d) A purchase money security interest in consumer goods; but  
17 filing is required for a motor vehicle required to be registered;  
18 and fixture filing is required for priority over conflicting  
19 interests in fixtures to the extent provided in 12A:9-313;

20 (e) An assignment of accounts which does not alone or in  
21 conjunction with other assignments to the same assignee transfer  
22 a significant part of the outstanding accounts of the assignor;

23 (f) A security interest of a collecting bank (12A:4-208) or in  
24 securities (12A:8-321) or arising under the chapter on sales (see  
25 12A:9-113) or covered in subsection (3) of this section[.];

26 (g) An assignment for the benefit of all the creditors of the  
27 transferor, and subsequent transfers by the assignee thereunder.

28 (2) If a secured party assigns a perfected security interest, no  
29 filing under this chapter is required in order to continue the  
30 perfected status of the security interest against creditors of and  
31 transferees from the original debtor.

32 (3) The filing of a financing statement otherwise required by  
33 this chapter is not necessary or effective to perfect a security  
34 interest in property subject to:

35 (a) A statute or treaty of the United States which provides for  
36 a national or international registration or a national or  
37 international certificate of title or which specifies a place of  
38 filing different from that specified in this chapter for filing of  
39 the security interest; or

1 (b) The following statutes of this State:

2 R.S.39:10-1 to R.S.39:10-9 both inclusive;

3 P.L.1971, c.311 (C.39:10-9.1 and C.39:10-9.2);

4 R.S.39:10-10 to R.S.39:10-16 both inclusive;

5 R.S.39:10-18 to R.S.39:10-25 both inclusive;

6 but during any period in which collateral is inventory held for sale  
7 by a person who is in the business of selling goods of that kind,  
8 the filing provisions of this chapter (subchapter 4) apply to a  
9 security interest in that collateral created by him as debtor; or

10 (c) A certificate of title statute of another jurisdiction under  
11 the law of which indication of a security interest on the  
12 certificate is required as a condition of perfection (subsection (2)  
13 of 12A:9-103).

14 (4) Compliance with a statute or treaty described in subsection  
15 (3) is equivalent to the filing of a financing statement under this  
16 chapter, and a security interest in property subject to the statute  
17 or treaty can be perfected only by compliance therewith except  
18 as provided in 12A:9-103 on multiple state transactions.  
19 Duration and renewal of perfection of a security interest  
20 perfected by compliance with the statute or treaty are governed  
21 by the provisions of the statute or treaty; in other respects the  
22 security interest is subject to this chapter.

23 (cf: P.L.1981, c.138, s.16)

24 52. N.J.S.12A:9-304 is amended to read as follows:

25 12A:9-304. Perfection of Security Interest In Instruments,  
26 Documents, and Goods Covered by Documents; Perfection by  
27 Permissive Filing; Temporary Perfection Without Filing or  
28 Transfer of Possession.

29 (1) A security interest in chattel paper or negotiable  
30 documents may be perfected by filing. A security interest in  
31 money or instruments (other than certificated securities or  
32 instruments which constitute part of chattel paper) can be  
33 perfected only by the secured party's taking possession, except  
34 as provided in subsections (4) and (5) of this section and  
35 subsections (2) and (3) of 12A:9-306 on proceeds.

36 (2) During the period that goods are in the possession of the  
37 issuer of a negotiable document therefor, a security interest in  
38 the goods is perfected by perfecting a security interest in the  
39 document, and any security interest in the goods otherwise

1 perfected during such period is subject thereto.

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

7 (4) A security interest in instruments (other than certificated  
8 securities) or negotiable documents is perfected without filing or  
9 the taking of possession for a period of 21 days from the time it  
10 attaches to the extent that it arises for new value given under a  
11 written security agreement.

12 (5) A security interest remains perfected for a period of 21  
13 days without filing where a secured party having a perfected  
14 security interest in an instrument (other than a certificated  
15 security), a negotiable document or goods in possession of a  
16 bailee other than one who has issued a negotiable document  
17 therefor:

18 (a) Makes available to the debtor the goods or documents  
19 representing the goods for the purpose of ultimate sale or  
20 exchange or for the purpose of loading, unloading, storing,  
21 shipping, transshipping, manufacturing, processing or otherwise  
22 dealing with them in a manner preliminary to their sale or  
23 exchange, but priority between conflicting security interests in  
24 the goods is subject to subsection (3) of 12A:9-312; or

25 (b) Delivers the instrument to the debtor for the purpose of  
26 ultimate sale or exchange or of presentation, collection, renewal,  
27 or registration of transfer.

28 (6) After the 21-day period in subsections (4) and (5)  
29 perfection depends upon compliance with applicable provisions of  
30 this chapter.

31 (cf: P.L.1981, c.138, s.17)

32 53. N.J.S.12A:9-305 is amended to read as follows:

33 12A:9-305. When Possession by Secured Party Perfects  
34 Security Interest Without Filing.

35 A security interest in letters of credit and advices of credit  
36 (subsection (2) (a) of 12A:5-116), goods, instruments (other than  
37 certificated securities), money, negotiable documents or chattel  
38 paper may be perfected by the secured party's taking possession  
39 of the collateral. If such collateral other than goods covered by a

1 negotiable document is held by a bailee, the secured party is  
2 deemed to have possession from the time the bailee receives  
3 notification of the secured party's interest. A security interest  
4 is perfected by possession from the time possession is taken  
5 without relation back and continues only so long as possession is  
6 retained, unless otherwise specified in this chapter. The security  
7 interest may be otherwise perfected as provided in this chapter  
8 before or after the period of possession by the secured party.

9 (cf: P.L.1981, c.138, s.18)

10 54. N.J.S.12A:9-309 is amended to read as follows:

11 12A:9-309. Protection of Purchasers of Instruments [and],  
12 Documents and Securities.

13 Nothing in this chapter limits the rights of a holder in due  
14 course of a negotiable instrument (12A:3-302) or a holder to  
15 whom a negotiable document of title has been duly negotiated  
16 (12A:7-501) or a bona fide purchaser of a security [(12A:8-301)]  
17 (12A:8-302) and such holders or purchasers take priority over an  
18 earlier security interest even though perfected. Filing under this  
19 chapter does not constitute notice of the security interest to such  
20 holders or purchasers.

21 (cf: N.J.S.12A:9-309)

22 55. N.J.S.12A:9-312 is amended to read as follows:

23 12A:9-312. Priorities Among Conflicting Security Interests in  
24 the Same Collateral.

25 (1) The rules of priority stated in other sections of this  
26 subchapter and in the following sections shall govern when  
27 applicable: 12A:4-208 with respect to the security interests of  
28 collecting banks in items being collected, accompanying  
29 documents and proceeds; 12A:9-103 on security interests related  
30 to other jurisdictions; 12A:9-114 on consignments.

31 (2) (Deleted by amendment, P.L.1982, c.203, s.4.)

32 (3) A perfected purchase money security interest in inventory  
33 has priority over a conflicting security interest in the same  
34 inventory and also has priority in identifiable cash proceeds  
35 received on or before the delivery of the inventory to a buyer if:

36 (a) The purchase money security interest is perfected at the  
37 time the debtor receives possession of the inventory; and

38 (b) The purchase money secured party gives notification in  
39 writing to the holder of the conflicting security interest if the

1 holder had filed a financing statement covering the same types of  
2 inventory (i) before the date of the filing made by the purchase  
3 money secured party, or (ii) before the beginning of the 21-day  
4 period where the purchase money security interest is temporarily  
5 perfected without filing or possession (subsection (5) of  
6 12A:9-304); and

7 (c) The holder of the conflicting security interest receives the  
8 notification within five years before the debtor receives  
9 possession of the inventory; and

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

13 (4) A purchase money security interest in collateral other than  
14 inventory has priority over a conflicting security interest in the  
15 same collateral or its proceeds if the purchase money security  
16 interest is perfected at the time the debtor receives possession of  
17 the collateral or within 10 days thereafter.

18 (5) In all cases not governed by other rules stated in this  
19 section (including cases of purchase money security interests  
20 which do not qualify for the special priorities set forth in  
21 subsections (3) and (4) of this section), priority between  
22 conflicting security interests in the same collateral shall be  
23 determined according to the following rules:

24 (a) Conflicting security interests rank according to priority in  
25 time of filing or perfection. Priority dates from the time a filing  
26 is first made covering the collateral or the time the security  
27 interest is first perfected, whichever is earlier, provided that  
28 there is no period thereafter when there is neither filing nor  
29 perfection.

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

32 (6) For the purposes of subsection (5) a date of filing or  
33 perfection as to collateral is also a date of filing or perfection as  
34 to proceeds.

35 (7) If future advances are made while a security interest is  
36 perfected by filing [or], the taking of possession, or under  
37 12A:8-321 on securities, the security interest has the same  
38 priority for the purposes of subsection (5) with respect to the  
39 future advances as it does with respect to the first advance. If a

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1 **commitment is made before or while the security interest is so**  
2 **perfected, the security interest has the same priority with**  
3 **respect to advances, made pursuant thereto. In other cases a**  
4 **perfected security interest has priority from the date the**  
5 **advance is made.**

6 **(cf: P.L.1981, c.138, s.22)**

7 **56. This act shall take effect immediately.**

8

9

10 **COMMERCE AND INDUSTRY**

11 **Corporations**

12

13 **Amends Article 8 and other related sections of Uniform**  
14 **Commercial Code; adds sections to Title 12A of N.J.S.**

1 there is no period thereafter when there is neither filing nor  
perfection.

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

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

9 (7) If future advances are made while a security interest is  
perfected by filing [or], the taking of possession, or under  
12A:8-321 on securities, the security interest has the same  
11 priority for the purposes of subsection (5) with respect to the  
future advances as it does with respect to the first advance. If a  
13 commitment is made before or while the security interest is so  
perfected, the security interest has the same priority with  
15 respect to advances, made pursuant thereto. In other cases a  
perfected security interest has priority from the date the  
17 advance is made.

(cf: P.L.1981, c.138, s.22)

19 56. This act shall take effect immediately.

21

## STATEMENT

23

The purpose of this bill is to update New Jersey's Uniform  
25 Commercial Code to include the bulk of the amendments set  
forth in the 1977 Official Text of Article 8 (chapter 8 in New  
27 Jersey) and related sections of the Uniform Commercial Code, as  
approved by the National Conference of Commissioners on  
29 Uniform State Laws and the American Law Institute.

31 As a result of the "paper crunch" in the late 1960's the  
Commissioners on Uniform Laws deemed it advisable to propose  
uniform legislation for the elimination of or reduction in the use  
33 of investment certificates and to provide rules to regulate  
"uncertificated" investment securities.

35 The proposed amendments do not compel the issuance of  
uncertificated securities by any issuer nor do they authorize the  
37 issuance of uncertificated securities. The issuance of  
uncertificated securities is a matter properly taken care of under  
39 State corporation laws or other State laws.

1 Article 8 in the 1977 Official Text (chapter 8 in New Jersey)  
2 and related sections of the Uniform Commercial Code are  
3 amended to provide rules to regulate the rights, duties and  
4 obligations of the issuers of and persons dealing with  
5 uncertificated investment securities, and at the same time these  
6 rules have been formulated to conform as closely as possible to  
7 the rules of certificated securities.

8 The amendments have been structured in a way to produce a  
9 minimum of disparity of results and procedures, whether  
10 certificated or uncertificated securities are involved.

11 Following is a summary of the changes set forth in this bill:

12 Sections 1, 2, 48 through 55 (N.J.S.12A:1-201, 12A:5-114,  
13 12A:9-103, 12A:9-105, 12A:9-203, 12A:9-302, 12A:9-304,  
14 12A:9-305, 12A:9-309 and 12A:9-312) are amendments to  
15 nonchapter 8 sections and are necessary to have these areas of  
16 the code which tangentially touch on investment securities  
17 correspond to the changes made in chapter 8.

18 Section 3 (N.J.S.12A:8-102) deals with the definition of terms  
19 as used throughout chapter 8. The section has been restructured.

20 Subsection (1) (a) defines "certificated security" in essentially  
21 the same terms as "security" is defined in the present law.

22 Subsection (1) (b) defines "uncertificated security," and, as  
23 defined therein, it is not represented by an instrument and is  
24 always registered upon the books of the issuer.

25 Subsection (1) (c) defines a "security" to be either a  
26 certificated or uncertificated security.

27 Other changes made in this section relate to the definitions of  
28 a "clearing corporation" and a "custodian bank."

29 Section 4 (N.J.S.12A:8-103) relates to an "issuer's lien."  
30 Subsection (a), relating to a "certificated security," is  
31 substantially the same as present law. Subsection (b) is new  
32 material relating to an "uncertificated security" and conditions  
33 the validity of an issuer's lien on a notation in the statement  
34 which is required to be sent to a purchaser upon registration of a  
35 transfer, pledge or release under N.J.S. 12A:8-408.

36 Section 5 (N.J.S.12A:8-104) deals with the effect of the  
37 "overissue" of a security. Subsection (a) has been amended to  
38 give the issuer, of the security the alternatives of either  
39 delivering a certificated security or registering the transfer of an  
uncertificated security to the person entitled.

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2 and related sections of the Uniform Commercial Code are  
3 amended to provide rules to regulate the rights, duties and  
4 obligations of the issuers of and persons dealing with  
5 uncertificated investment securities, and at the same time these  
6 rules have been formulated to conform as closely as possible to  
7 the rules of certificated securities.

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9 minimum of disparity of results and procedures, whether  
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14 12A:9-305, 12A:9-309 and 12A:9-312) are amendments to  
15 nonchapter 8 sections and are necessary to have these areas of  
16 the code which tangentially touch on investment securities  
17 correspond to the changes made in chapter 8.

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19 as used throughout chapter 8. The section has been restructured.

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21 the same terms as "security" is defined in the present law.

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23 defined therein, it is not represented by an instrument and is  
24 always registered upon the books of the issuer.

25 Subsection (1) (c) defines a "security" to be either a  
26 certificated or uncertificated security.

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28 a "clearing corporation" and a "custodian bank."

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31 substantially the same as present law. Subsection (b) is new  
32 material relating to an "uncertificated security" and conditions  
33 the validity of an issuer's lien on a notation in the statement  
34 which is required to be sent to a purchaser upon registration of a  
35 transfer, pledge or release under N.J.S. 12A:8-408.

36 Section 5 (N.J.S.12A:8-104) deals with the effect of the  
37 "overissue" of a security. Subsection (a) has been amended to  
38 give the issuer of the security the alternatives of either  
39 delivering a certificated security or registering the transfer of an  
uncertificated security to the person entitled.

1       Section 6 amends the title to N.J.S.12A:8-105, and the section  
is substantially unchanged with respect to certificated  
3 securities. Subsection (2) has been added and states that the  
various writings, or statements required to be, or which may be  
5 sent by the issuer of uncertificated securities and instructions are  
not to be regarded as negotiable instruments or certificated  
7 securities. In subsection (3) language has been added to extend  
the presumption of validity of signatures on initial transaction  
9 statements sent by issuers of uncertificated securities and on  
instructions originated by owners and pledgees of uncertificated  
11 securities.

Section 7 (N.J.S.12A:8-106) deals with the applicable law  
13 relating to the validity of a security, the rights and duties of an  
issuer and has been amended to include the effectiveness of  
15 registration by the issuer to the transfer, pledge or release of an  
uncertificated security.

17       Section 8 amends the title to Section 13 of P.L.1984, c.166  
(C.12A:8-107) by changing "Deliverable" to "Transferable." The  
19 section is further amended so that it will apply to the transfer of  
both "certificated" and "uncertificated" securities and result in  
21 the same obligation to pay.

Section 9 adds a new section "N.J.S.12A:8-108. Registration  
23 of Pledge and Release of Uncertificated Securities" to the New  
Jersey Statutes. This section introduces the concept of the  
25 registered pledge of an uncertificated security. There can only  
be one registered pledge of an uncertificated security at any time  
27 and the owner of the security is the one in whose name it is  
registered. Rights under the pledge are terminated by a  
29 registration of release.

Section 10 (N.J.S.12A:8-201) deals with an issuer and has been  
31 amended to redefine an issuer to include persons who create  
either certificated securities, uncertificated securities, or both.

33       Section 11 (N.J.S.12A:8-202) deals with an issuer's  
responsibility and defenses and notice of defect or defense. This  
35 section has been expanded to provide that the terms noted or  
referred to in an initial transaction statement sent to a purchaser  
37 of an uncertificated security or his successor will constitute  
constructive notice to persons who deal with the security. It has  
39 also been expanded to estop an issuer of an uncertificated

1 security from asserting its invalidity against a purchaser for  
value and without notice to whom an initial transaction  
3 statement has been sent. The defenses set forth in subsections  
(3) and (4) are extended to include purchasers of uncertificated  
5 securities.

Section 12 (N.J.S.12A:8-203) deals with staleness as notice of  
7 defects or defenses and has been amended so that it applies only  
to certificated securities because they may be transferred to a  
9 purchaser by delivery after maturity or called, redeemed or  
become exchangeable.

11 Section 13 (N.J.S.12A:8-204) deals with an issuer's restriction  
on transfer. The section has been amended to provide that a  
13 restriction on transfer of a security is ineffective against a  
person without actual knowledge unless it is noted conspicuously  
15 on a certificated security or notice of the restriction is contained  
in the initial transaction statement sent to the registered owner  
17 or the registered pledgee.

Section 14 amends the title of N.J.S.12A:8-205 by deleting  
19 "Issue" and adding "Certificated Security or Initial Transaction  
Statement." This section has been amended so that the effect or  
21 ineffectiveness of an unauthorized signature will apply to both  
certificated and uncertificated securities.

23 Section 15 amends the title to N.J.S.12A:8-206 by deleting  
"Instrument" and adding "Certificated Security or Initial  
25 Transaction Statement." The present basic law as to completion  
or alteration has not been changed but the subsections have been  
27 changed so that subsections (1) and (2) relate to certificated  
securities and subsections (3) and (4) relate to initial transaction  
29 statements.

Section 16 amends the title to N.J.S.12A:8-207 making it  
31 applicable to the rights and duties of an issuer with respect to  
registered owners and registered pledgees.

33 Subsection (1) is amended so that rights thereunder apply only  
to the registered owner of a certificated security.

35 Subsection (2) is new and provides that the issuer subject to the  
provisions of subsections (3), (4) and (6), may treat the registered  
37 owner of an uncertificated security as the person exclusively  
entitled to all rights and powers with respect thereto.

1 Subsection (3) is new and provides that the owner of an  
uncertificated security subject to a registered pledge cannot  
3 register a transfer without presenting a release of the pledge.

Subsection (4) is new and provides that upon presentment of a  
5 transfer instruction from a registered pledge of an uncertificated  
security, the issuer shall register the transfer of the security in  
7 accordance with the instructions.

Subsection (5) is new and provides that the continuity of  
9 perfection of a security interest is not broken by registration of  
transfer under subsection (4) (b) or by registration of release and  
pledge under subsection (4) (c) if the security is assigned.  
11

Subsection (6) is new and provides that if an uncertificated  
13 security is subject to a registered pledge any securities,  
uncertificated or certificated, issued in exchange for or  
15 distributed with respect to the pledged security shall be  
registered subject to the pledge and, if certificated, delivered to  
17 the registered pledgee. The subsection further provides that any  
money paid in exchange for or in redemption of an uncertificated  
19 security shall be paid to the registered pledgee.

Section 17 (N.J.S.12A:8-208) deals with the effect of the  
21 signature of an authenticating trustee, etc. The section has been  
amended to extend the warranties of a signing authenticating  
23 trustee, registrar, transfer agent or the like to the addressees of  
initial transaction statements.

Section 18 amends the title of subchapter 3 of chapter 8 from  
25 "Purchase" to "Transfer."

Section 19 amends the title of N.J.S.12A:8-301 by deleting  
27 "Adverse Claim; Title Acquired by Bona Fide Purchaser." This  
section has also been amended:  
29

(a) By deleting "delivery" and inserting "transfer" in place  
31 thereof;

(b) By inserting in subsection (1) "to a purchaser (12A:8-313)"  
33 and "unless the purchaser's rights are limited by 12A:8-302 (4)"  
and deleting the language commencing "except that a purchaser"  
35 through to the end and inserting a reference to N.J.S.12A:8-302  
(4) as to limitation of a purchaser's rights;

(c) Subsection (2) of the present law has been deleted; and

(d) The last sentence has been added to subsection (2),  
39 formerly subsection (3) of the present law, to include the creation

1 or release of a security interest in a security as a transfer of a  
limited interest in that security.

3 Section 20 amends the title of N.J.S.12A:8-302 to include  
"Adverse Claim" and "Title Acquired by Bona Fide Purchaser"  
5 and the entire section has been restructured.

7 Subsection (1) defines a "bona fide purchaser" of a certificated  
or uncertificated security and the times for testing knowledge or  
constructive knowledge of the purchaser.

9 Subsection (2) defines an "adverse claim."

11 Subsection (3) provides that in addition to rights acquired under  
N.J.S.12A:8-301, a bona fide purchaser also acquires his interest  
free of any adverse claim.

13 Subsection (4) provides that the transferee of a certificated  
security who has been a party to any wrongdoing or had notice of  
15 an adverse claim affecting the security cannot improve his  
position by taking from a bona fide purchaser.

17 Section 21 (N.J.S.12A:8-303) defines a "broker" and the  
amendments make no substantive changes.

19 Section 22 (N.J.S.12A:8-304) deals with notice to purchaser of  
adverse claims.

21 Subsection (1) of the present law is amended so that it will  
apply only to the purchaser of a "certificated" security with  
23 respect to notice of adverse claims.

25 A new subsection (2) has been added providing that the  
purchaser of an "uncertificated" security is subject to those  
adverse claims noted on the initial transaction statement sent to  
27 him.

29 Subsection (3), formerly subsection (2) in the present law, has  
been amended so that it is applicable to the purchaser of a  
"certificated" or "uncertificated" security.

31 Section 23 (N.J.S.12A:8-305) deals with staleness as notice of  
adverse claim. The section has been amended so that it will  
33 relate only to a "certificated" security.

35 Section 24 amends the title to N.J.S.12A:8-306 by adding "of  
Certificated Securities; Warranties of Originators of  
Instructions."

37 Subsections (1) through (4) have been amended so that the  
warranties set forth therein apply only to "certificated"  
39 securities.

1       New subsection (5) establishes warranties made by a person  
who is the originator of an instruction to an issuer.

3       New subsection (6) establishes warranties made by a person  
who is the originator of an instruction to a person specially  
5       guaranteeing the originator's signature under N.J.S.12A:8-312 (3).

7       New subsection (7) establishes warranties made by a person  
who originates an instruction to a purchaser for value and any  
person guaranteeing the instruction under N.J.S.12A:8-312 (6).

9       New subsection (8) limits the warranties made by the originator  
of an instruction when an "uncertificatéd" security is subject to a  
11       security interest and the originator is or acts for either the  
registered pledgee or the registered owner who is the secured  
13       party.

15       New subsection (9) establishes the warranties of a person who  
transfers an "uncertificated" security and does not originate an  
instruction in connection with its transfer.

17       New subsection (10), formerly subsection (5) under present law,  
states that a broker gives to his customer and to the issuer and a  
19       purchaser the applicable warranties under this section.

21       Section 25 (N.J.S.12A:8-307) deals with the effect of delivery  
without indorsement, and has been amended so that it is only  
applicable to a certificated security.

23       Section 26 amends the title to N.J.S.12A:8-308 so that it now  
reads "Indorsements; Instructions." This section has been  
25       restructured.

27       Subsections (1), (2) and (3) deal with indorsement of a  
certificated security for the purposes of assignment or transfer.

29       Subsections (4) and (5) relate to and define an "instruction" to  
the issuer of an uncertificated security for the purpose of  
requesting the transfer, pledge or release from pledge of the  
31       uncertificated security.

33       Subsection (6), subsection (3) in the present law, defines "an  
appropriate person" under subsection (1) as the person entitled to  
a certificated security.

35       Subsection (7) defines "an appropriate person" under subsection  
(5) to mean the person authorized to issue an instruction for the  
37       transfer, pledge or release of pledge.

39       Subsection (8) further defines "an appropriate person" for the  
purposes of subsections (1) and (5) when that person is acting in a

1     **fiduciary capacity, persons designated as tenants by the entirety  
or joint tenants, or acting through an agent.**

3     **Subsection (9), subsection (4) in the present law, has been  
broadened to include both certificated and uncertificated  
5 securities so that the indorser of a certificate or the originator of  
an instruction will only assume the obligations of N.J.S.12A:8-306  
7 unless otherwise agreed.**

9     **Subsection (10), subsection (6) in the present law, has been  
broadened to include both certificated and uncertificated  
securities. The time for determining the appropriate person  
11 remains unchanged.**

13     **Subsection (11), subsection (7) under present law, relating to  
the authority of a fiduciary remains unchanged but has been  
broadened to include certificated and uncertificated securities.**

15     **Section 27 (N.J.S.12A:8-309) relates to the effect of  
indorsement without delivery, and has been amended so that it  
17 applies only to a certificated security.**

19     **Section 28 amends the title to N.J.S.12A:8-310 to include  
"Certificated" and has been amended to apply only to a  
certificated security.**

21     **Section 29 amends the title to N.J.S.12A:8-311 to include "or  
Instruction." The section has been amended so that it applies to  
23 certificated and uncertificated securities.**

25     **Section 30 amends the title to N.J.S.12A:8-312 to include "or  
Instruction" and the section has been restructured.**

27     **Subsection (1) has been amended so that it applies to a  
certificated security and sets forth the warranties of a guarantor  
as to the signatures on an indorsement.**

29     **Subsections (2), (3) and (4) relate to an uncertificated security  
and set forth the warranties of a guarantor and a special  
31 guarantor of the signature of the originator of an instruction.**

33     **Subsection (5), subsection (2) under present law, provides that  
the guarantor of an indorsement not only makes the warranties  
under subsection (1) but also warrants the rightfulness of the  
35 particular transfer in all respects.**

37     **Subsection (6) provides that the guarantor of an instruction not  
only makes the warranties under subsection (3) but also warrants  
the rightfulness of the particular transfer, pledge or release.**

1 Subsection (7) sets forth limitations as to conditions an issuer  
2 may require to registration of a transfer, pledge or release.

3 Subsection (8), subsection (3) under present law, restates the  
4 present law but is made applicable to certificated and  
5 uncertificated securities.

6 Section 31 amends the title to N.J.S.12A:8-313 so that it will  
7 read: "When Transfer to Purchaser Occurs; Financial  
8 Intermediary as Bona Fide Purchaser; 'Financial Intermediary'."  
9 Extensive technical changes have been made in the section and  
10 only a general explanation of those changes are made.

11 Subsection (1) relates to both certificated and uncertificated  
12 securities. As set forth in this subsection a transfer of a security  
13 or a limited interest therein to a purchaser occurs only at the  
14 times and upon the conditions set forth therein.

15 Subsection (2) sets forth the conditions under which a purchaser  
16 acting through a financial intermediary becomes the bona fide  
17 purchaser of a security.

18 Subsection (3) provides that once a financial intermediary has  
19 become a bona fide purchaser of a certificated or uncertificated  
20 security, notice of adverse claims to him or his customer are  
21 ineffective.

22 Subsection (4) defines the term "financial intermediary" and it  
23 replaces "broker."

24 Section 32 amends the title to N.J.S.12A:8-314 by deleting  
25 "Deliver" and inserting "Transfer."

26 This section deals with the sale of a certificated or  
27 uncertificated security when made on an exchange or through a  
28 broker.

29 Subsection (1) (a) sets forth the circumstances under which a  
30 selling customer fulfills his duty to transfer and subsection (1) (b)  
31 sets forth the circumstances under which a selling broker acting  
32 for a selling customer fulfills his duty to transfer.

33 Subsection (2) sets forth the circumstances under which a  
34 transferor's duty to transfer a security is not fulfilled.

35 Section 33 amends the title to N.J.S.12A:8-315 by deleting  
36 "Purchaser" and inserting "Transferee." This section deals with  
37 the rights of a person against a transferee for the wrongful  
transfer of a security.

1       A new subsection (1) (c) has been added granting the transferor  
the right to compel the origination of an instruction to transfer  
3       an uncertificated security which is the functional equivalent of  
subsection (1) (b).

5       Subsection (2) has been amended so that it is only applicable to  
a certified security.

7       Subsection (3) has been amended to make the remedies  
provided therein applicable to certificated and uncertificated  
9       securities.

11       Section 34 amends the title to N.J.S.12A:8-316 by adding  
"Pledge or Release." This section deals with the right of a  
transferee to require his transferor to furnish him with the  
13       requisites to transfer, pledge or release or obtain the transfer,  
pledge or release of a certificated or uncertificated security.

15       Section 35 amends the title to N.J.S.12A:8-317 so that it will  
read "Creditors' Rights." Extensive changes have been made to  
17       the present law.

19       Subsection (1) has been amended to apply only to a certificated  
security, and, as to a certificated security which has been  
surrendered to the issuer, can only be reached by legal process at  
21       the issuer's chief executive office in the United States.

23       Subsection (2) provides that an uncertificated security  
registered in the name of the debtor can only be reached by legal  
process at the issuer's chief executive office in the United States.

25       Subsection (3) provides that a debtor's interest in a  
certificated or uncertificated security which is the subject of a  
27       secured transaction can only be reached by legal process upon the  
secured party.

29       Subsection (4) provides that a debtor's interest in a  
certificated or uncertificated security in the possession of or  
31       registered in the name of a financial intermediary can only be  
reached by legal process upon the financial intermediary upon  
33       whose books the debtor's interest appears.

35       Subsection (5) provides, that unless otherwise provided by law,  
a creditor's lien obtained pursuant to subsections (3) or (4) is not  
a restraint on the transfer of the security, free of the lien, to a  
37       third party for new value. In that event, the creditor's lien  
attaches to the proceeds of sale.

1        Subsection (6), subsection (2) under present law, remains  
virtually unchanged.

3        Section 36 amends the title to N.J.S.12A:8-318 by deleting  
"Delivery" and inserting "Conduct." This section has been  
5 further amended to make it applicable to certificated and  
uncertificated securities so that the exoneration provided therein  
7 to an agent or bailee will apply to both types of securities.

9        Section 37 (N.J.S.12A:8-319) deals with the statute of frauds  
relating to contracts for the sale of securities.

Subsection (a) remains the same.

11       Subsection (b) has been amended to apply to both certificated  
and uncertificated securities, and the performance exceptions of  
13 the subsection now include acceptance of a transfer instruction  
by a transferee and the registration of transfer of an  
15 uncertificated security where written objections by the  
transferee have not been made to the registration within 10 days  
17 after receipt of the initial transaction statement confirming the  
registration.

19       Subsections (c) and (d) remain unchanged.

21       Section 38 makes a very small change in the title of Section 18  
of P.L.1964, c.166 (C.12A:8-320). This section deals with the  
transfer and pledge of securities, both certificated and  
23 uncertificated, within a security depository such as a clearing  
house. The section has been restructured.

25       Subsection (1) provides that securities may be transferred,  
pledged, or a release may be effected by making the appropriate  
27 entries on the books of the clearing house as provided in  
subsections (a) and (b) thereof.

29       Subsection (2) has been amended by inserting "or releases" at  
the end thereof.

31       Subsection (3) has been rewritten to address certain  
consequences resulting from a transfer, pledge or release under  
33 the section. It further provides that a transferee or pledgee may  
be a bona fide purchaser.

35       Subsections (4) and (5) remain unchanged.

37       Section 39 adds "12A:8-321. Enforceability, Attachment,  
Perfection and Termination of Security Interests" to the New  
Jersey Statutes.

39       This section governs the creation, perfection and termination  
of security interests in certificated and uncertificated securities.

1 Subsection (1) provides that an effective transfer under  
N.J.S.12A:8-313 (1) is an essential element to the creation of an  
3 enforceable security interest.

5 Subsection (2) provides that when value has been given and the  
debtor has rights in the collateral, an appropriate transfer will  
7 result not only in an enforceable security interest but also in one  
that is perfected. A security interest created by transfer under  
N.J.S.12A:8-313 (1) (i) may become unperfected if, within 21  
9 days, the requirements of another method of effective transfer  
under N.J.S.12A:8-313 (1) are not satisfied.

11 Subsection (3) makes a security interest in a security subject to  
the provisions of chapter 9 except as provided in subsections (3)  
13 (a) and (3) (b).

15 Subsection (4) provides that a security interest in a security is  
terminated by transfer to the debtor or a person designated by  
him under N.J.S.12A:8-313 (1). This subsection also provides  
17 conditions for the continued or renewed perfection of a security  
interest.

19 Section 40 amends the title to N.J.S.12A:8-401 by adding  
"Pledge or Release." This section deals with the duty of an  
21 issuer to honor instructions relating to the transfer of securities  
and the liability of the issuer resulting from failure to take  
23 timely action on the instructions. The section has been amended  
so that it will apply to certificated and uncertificated securities.

25 Section 41 amends the title to N.J.S.12A:8-402 by adding "and  
Instructions." The section has been amended to provide that an  
27 issuer may require substantially the same assurances for the  
registration of an uncertificated security as are required for the  
29 registration of a certificated security.

31 Section 42 amends the title of N.J.S.12A:8-403 to read  
"Issuer's Duty as to Adverse Claims." As stated in the amended  
title, this section deals with an issuer's duty with respect to  
33 adverse claims when a security is presented for registration.  
Subsection (1) has been amended so that requirements set forth  
35 therein as to inquiry relate only to certificated securities.

37 Subsection (2) has been amended so that the manner in which  
an issuer may discharge any duty of inquiry under subsection (1)  
applies only to certificated securities.

1        Subsection (3) has been amended so that an issuer is not  
3        required to inquire into adverse claims under the particulars set  
      forth in the subsection and the subsection applies only to  
      certificated securities.

5        Subsection (4) is new. This subsection provides that the issuer  
      of an uncertificated security is under no duty as to adverse  
7        claims except under the conditions set forth in the subsection.

9        Subsection (5) is new. This subsection sets forth the manner in  
      which an issuer of an uncertificated security may discharge his  
      duty as to an adverse claim.

11       Subsection (6) is new and provides that if the transfer or pledge  
      of a security is registered subject to an adverse claim, the claim  
13       shall be noted in the initial transaction statement and all  
      subsequent statements sent to the transferee and pledgee under  
15       N.J.S.12A:8-408.

      Subsection (7) is new. This section provides that where an  
17       uncertificated security is already subject to a registered pledge  
      which the issuer first learns of an adverse claim as to which he  
19       has a duty, the issuer has no duty as to the claim if transfer of  
      the security is requested by the registered pledgee unless it  
21       comes within one of the exceptions set forth in the subsection.

      Section 43 (N.J.S.12A:8-404) deals with the liability and  
23       nonliability of an issuer for registration of a security.

      Subsection (1) dealing with exoneration of an issuer from  
25       liability arising from registration has been amended to apply to  
      certificated and uncertificated securities.

27       Subsection (2) dealing with the remedy for improper  
      registration has been amended to apply only to certificated  
29       securities.

      Subsection (3) is new and deals with the remedy for the  
31       improper registration of an uncertificated security.

      Section 44 amends the title of N.J.S.12A:8-405 by adding  
33       "Certificated" which makes the section applicable to lost,  
      destroyed and stolen certificated securities.

35       Subsection (1) has been amended so that it will only apply to  
      certificated securities.

37       Subsection (2) has been amended to permit the issuer to replace  
      a lost, destroyed or stolen certificated security by issuing a  
39       replacement in either certificated or uncertificated form in the  
      manner provided in the subsection.

1        Subsection (3) has been amended to provide that, where a bona  
2        fide purchaser of an original certificated security presents it for  
3        registration of transfer after the issuance of a new certificated  
4        or uncertificated security as a replacement, the issuer may  
5        recover the certificated security or cancel the uncertificated  
6        security unless the rights of a bona fide purchaser have  
7        intervened.

8        Section 45 (N.J.S.12A:8-406) deals with the duty of an  
9        authenticating trustee, transfer agent or registrar. The section  
10       has been amended so that it will apply to both certificated and  
11       uncertificated securities.

12       Section 46 adds "12A:8-407. Exchangeability of Securities" to  
13       the New Jersey Statutes.

14       Subsection (1) deals with the right of the holder of a  
15       certificated security to exchange it for an equivalent  
16       uncertificated security and the right of the registered owner or  
17       registered pledgee of an uncertificated security to obtain a  
18       certificated security in exchange for it. This subsection is  
19       limited to those situations where both certificated and  
20       uncertificated securities exist within the same issue and either  
21       form is available to the owner.

22       Subsection (2) sets forth the procedures for exchanging a  
23       certificated security. The issuer, after discharging his duties as  
24       to adverse claims, shall issue an uncertificated security subject  
25       to all liens, restrictions and claims which were noted on the  
26       certificated security.

27       Subsection (3) sets forth the procedure for exchanging an  
28       uncertificated security. The issuer shall issue an equivalent  
29       certificated security on which shall be noted any liens and  
30       restrictions of the issuer and any adverse claims which the issuer  
31       has to discharge to which the uncertificated security was subject.

32       Section 47 adds "12A:8-408. Statements of Uncertificated  
33       Securities" to the New Jersey Statutes.

34       Subsection (1) requires the issuer of an uncertificated security  
35       to send a statement to the new registered owner thereof and, if  
36       the security has been transferred subject to a registered pledge,  
37       to the registered pledgee within two business days after the  
38       transfer of the security has been registered containing the  
39       information set forth in the subsection.

1        Subsection (2) requires the issuer of an uncertificated security  
to send a statement to the registered owner and the registered  
3        pledgee within two business days after the pledge of the security  
has been registered containing the information set forth in the  
5        subsection.

7        Subsection (3) requires the issuer of an uncertificated security  
to send a statement to the registered owner and a pledgee whose  
interest has been released within two business days after the  
9        release from pledge of the security has been registered  
containing the information set forth in the subsection.

11       Subsection (4) sets forth those persons to whom an "initial  
transaction statement" shall be sent, manner of signing and how  
13       identified.

15       Subsection (5) requires the issuer of an uncertificated security  
to send a statement to the former registered owner and the  
former registered pledgee, if any, within two business days after  
17       the transfer of a security has been registered containing the  
information set forth in the subsection.

19       Subsection (6) requires the issuer of an uncertificated security  
to send to the registered owner of the security at least annually  
21       or at his request a statement containing the information set forth  
in the subsection.

23       Subsection (7) requires the issuer of an uncertificated security  
to send to the registered pledgee of the security at least annually  
25       or at his request a statement containing the information set forth  
in the subsection.

27       Subsection (8) provides that if the issuer sends the statements  
described in subsections (6) and (7) at least quarterly, he is not  
29       obligated to send additional statements upon request unless the  
owner or pledgee pays for furnishing them.

31       Subsection (9) expressly provides for the legend which shall  
appear upon each statement.

33

35

## COMMERCE AND INDUSTRY

### Corporations

37

39       Amends Article 8 and other related sections of Uniform  
Commercial Code; adds sections to Title 12A of N.J.S.

ASSEMBLY ECONOMIC GROWTH, AGRICULTURE  
AND TOURISM COMMITTEE

STATEMENT TO

ASSEMBLY, No. 962  
STATE OF NEW JERSEY

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DATED: January 19, 1989

The Assembly Economic Growth, Agriculture and Tourism Committee favorably reports Assembly Bill No. 962.

This bill would revise Title 12A of the New Jersey Statutes, the "Uniform Commercial Code," to provide uniform rules governing the transfer of uncertificated securities. Uncertificated securities are securities which are not issued in the form of paper certificates. P.L.1988, c.94 amended the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq., to authorize corporations to issue uncertificated shares.

This revision would bring New Jersey into conformity with the 1977 Official Text of Article 8 and related sections of the Uniform Commercial Code as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Thirty-five other states, including California, Illinois, New York and Delaware, have adopted the 1977 amendments.

This bill would amend various sections of chapter 8 of Title 12A of the New Jersey Statutes and related sections in other chapters of Title 12A of the New Jersey Statutes to provide rules to regulate the rights, duties and obligations of the issuers of and persons dealing with uncertificated investment securities. These rules have been formulated to conform as closely as possible to the rules of certificated securities.

The bill defines both an uncertificated security and a certificated security as a share, participation, or other interest in property of an enterprise of the issuer or an obligation of an issuer. A certificated security is one represented by an instrument issued in bearer or registered form and an uncertificated security is one not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer.

The bill also would add four sections to the chapter 8 of Title 12A of the New Jersey Statutes. Section 9 of the bill

would add N.J.S.12A:8-108 which provides for the registration of pledge and release of uncertificated securities. Section 39 of the bill would add N.J.S.12A:8-321 to provide for the enforceability, attachment, perfection and termination of security interests in securities. Section 46 of the bill would add N.J.S.12A:8-407 to govern the exchangeability of certificated and uncertificated securities. Section 47 of the bill would add N.J.S.12A:8-408 to establish requirements for statements of uncertificated securities.

This bill was pre-filed for introduction in the 1988 session pending technical review. As reported the bill includes changes required by technical review which has been performed.

ASSEMBLY ECONOMIC GROWTH, AGRICULTURE AND  
TOURISM COMMITTEE.

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 3484 and ASSEMBLY, No. 962**

**STATE OF NEW JERSEY**

DATED: DECEMBER 11, 198

The Assembly Economic Growth, Agriculture and Tourism Committee reports favorably Senate Committee Substitute for Senate Bill No. 3484 and Assembly Bill No. 962.

This bill amends and supplements Title 12A of the New Jersey Statutes, the Uniform Commercial Code, to provide uniform rules to regulate the rights, duties and obligations of the issuers of, and persons dealing with, "uncertificated" investment securities. These rules were formulated to conform as closely as possible to the current rules of "certificated" investment securities, with variances where the inherent differences in the form of the securities require distinctions.

A certificated security is a corporate stock or bond represented by a paper certificate or an instrument. That paper certificate or instrument is the means of transfer and the evidence of the obligation. An uncertificated security is a corporate stock or bond that is "not represented by an instrument and the transfer of which is registered upon the books maintained for that purpose by or on behalf of the issuer".

This bill does not authorize the issuance of uncertificated securities. The issuance of uncertificated shares by corporations incorporated in this State was authorized by the recent amendments in P.L.1988, c.94 to the "New Jersey Business Corporation Act," N.J.S.14A:1-1 et seq. The bill does not compel the issuance of uncertificated securities by an issuer. An issuer may use certificated securities, uncertificated securities or both.

The revisions provided by this bill will bring New Jersey into conformity with the 1977 Official Text of Article 8 and related sections of the Uniform Commercial Code as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Thirty-five other states, including California, Illinois, New York and Delaware, have adopted these 1977 amendments.

**SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE**

**STATEMENT TO**

**SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 3484 and ASSEMBLY, No. 962**

**STATE OF NEW JERSEY**

**DATED: JUNE 19, 1989**

The Senate Labor, Industry and Professions Committee reports favorably Senate Committee Substitute for Senate, No. 3484 and Assembly, No. 962.

This bill amends and supplements Title 12A of the New Jersey Statutes, the Uniform Commercial Code, to provide uniform rules to regulate the rights, duties and obligations of the issuers of, and persons dealing with, "uncertificated" investment securities. These rules were formulated to conform as closely as possible to the current rules of "certificated" investment securities, with variances where the inherent differences in the form of the securities require distinctions.

A certificated security is a corporate stock or bond represented by a paper certificate or an instrument. That paper certificate or instrument is the means of transfer and the evidence of the obligation. An uncertificated security is a corporate stock or bond that is "not represented by an instrument and the transfer of which is registered upon the books maintained for that purpose by or on behalf of the issuer".

This bill does not authorize the issuance of uncertificated securities. The issuance of uncertificated shares by corporations incorporated in this State was authorized by the recent amendments in P.L. 1988, c. 94 to the "New Jersey Business Corporation Act," N.J.S. 14A:1-1 et seq. The bill does not compel the issuance of uncertificated securities by an issuer. An issuer may use certificated securities, uncertificated securities or both.

The revisions provided by this bill will bring New Jersey into conformity with the 1977 Official Text of Article 8 and related sections of the Uniform Commercial Code as approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. 35 other states, including California, Illinois, New York and Delaware, have adopted these 1977 amendments.