Chapter 77

2003 EDITION

Warehouse Receipts, Bills of Lading and Other Documents of Title

GENERAL PROVISIONS

77.1010 Short title

77.1020 Definitions and index of definitions

77.1030 Relation of chapter to treaty, statute, tariff, classification or regulation

77.1040 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title

77.1050 Construction against negative implication

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

77.2010 Who may issue a warehouse receipt; storage under government bond

77.2020 Form of warehouse receipt; essential terms; optional terms

77.2030 Liability for nonreceipt or misdescription

77.2040 Duty of care; contractual limitation of warehouseman's liability

77.2050 Title under warehouse receipt defeated in certain cases

77.2060 Termination of storage at warehouseman's option

77.2070 Goods must be kept separate; fungible goods

77.2080 Altered warehouse receipts

77.2090 Lien or security interest of warehouseman

77.2100 Enforcement of warehouseman's lien

BILLS OF LADING: SPECIAL PROVISIONS

77.3010 Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling

77.3020 Through bills of lading and similar documents

77.3030 Diversion; reconsignment; change of instructions

77.3040 Bills of lading in a set

77.3050 Destination bills

77.3060 Altered bills of lading

77.3070 Lien of carrier

77.3080 Enforcement of carrier's lien

77.3090 Duty of care; contractual limitation of carrier's liability

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

77.4010 Irregularities in issue of receipt or bill or conduct of issuer

77.4020 Duplicate receipt or bill; overissue

77.4030 Obligation of warehouseman or carrier to deliver; excuse

77.4040 No liability for good faith delivery pursuant to receipt or bill

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

77.5010 Form of negotiation and requirements of "due negotiation"

77.5020 Rights acquired by due negotiation

77.5030 Document of title to goods defeated in certain cases

77.5040 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery

77.5050 Indorser not a guarantor for other parties

77.5060 Delivery without indorsement; right to compel indorsement

77.5070 Warranties on negotiation or transfer of receipt or bill

77.5080 Warranties of collecting bank as to documents

77.5090 Receipt or bill; when adequate compliance with commercial contract

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

77.6010 Lost and missing documents

77.6020 Attachment of goods covered by a negotiable document

77.6030 Conflicting claims; interpleader

77.6040 Laws not repealed

GENERAL PROVISIONS

77.1010 Short title. This chapter may be cited as Uniform Commercial Code—Documents of Title. [1961 c.762 §77.1010]

77.1020 Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in ORS 71.2010.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

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

(a) "Duly negotiate," as defined in ORS 77.5010.

(b) "Person entitled under the document," as defined in ORS 77.4030 (4).

(3) Definitions in other sections which apply to this chapter and the sections in which they appear are:

(a) "Contract for sale," as defined in ORS 72.1060.

(b) "Overseas," as defined in ORS 72.3230.

(c) "Receipt" of goods, as defined in ORS 72.1030.

(4) In addition, ORS chapter 71 contains general definitions and principles of construction and interpretation applicable throughout this chapter. [1961 c.726 §77.1020]

77.1030 Relation of chapter to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this chapter are subject thereto. [1961 c.726 §77.1030]

77.1040 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable:

(a) If by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) Where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is nonnegotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1961 c.726 §77.1040]

77.1050 Construction against negative implication. The omission from ORS 77.2010 to 77.2100 of a provision contained in ORS 77.3010 to 77.3090 or the omission from ORS 77.3010 to 77.3090 of a provision contained in ORS 77.2010 to 77.2100 does not imply that a corresponding rule of law is not applicable. [1961 c.726 §77.1050]

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

77.2010 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1961 c.726 §77.2010]

77.2020 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or the order of that person;

(e) The rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a nonnegotiable receipt;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by the authorized agent of the warehouseman;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest pursuant to ORS 77.2090. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to the agent of the warehouseman who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in a receipt any other terms which are not contrary to the provisions of the Uniform Commercial Code and do not impair the obligation of delivery as set forth in ORS 77.4030 or the duty of care as set forth in ORS 77.2040. Any contrary provisions shall be ineffective. [1961 c.726 §77.2020]

77.2030 Liability for nonreceipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown," "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1961 c.726 §77.2030]

77.2040 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by the failure of the warehouseman to exercise such care in regard to them as a reasonably careful person would exercise under like circumstances but unless otherwise agreed the warehouseman is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to the use of the warehouseman.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not repeal or change any existing law or rule of law which imposes a higher responsibility upon the warehouseman or invalidates contractual limitations which would be permissible under this chapter. [1961 c.726 §77.2040]

77.2050 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1961 c.726 §77.2050]

77.2060 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of ORS

77.2100 on enforcement of a warehouseman's lien.

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of the lien of the warehouseman within the time prescribed in subsection (1) of this section for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods the warehouseman may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this chapter upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy the lien of the warehouseman from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom the warehouseman would have been bound to deliver the goods. [1961 c.726 §77.2060]

77.2070 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1961 c.726 §77.2070]

77.2080 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1961 c.726 §77.2080]

77.2090 Lien or security interest of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in the possession of the warehouseman for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against the person for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1) of this section, such as for money advanced and interest. Such a security interest is governed by ORS chapter 79 on secured transactions.

(3) A warehouseman's lien for charges and expenses under subsection (1) of this section or a security interest under subsection (2) of this section is also effective against all persons if the bailor was the legal possessor of the goods at the time of deposit.

(4) A warehouseman loses the lien of the warehouseman on any goods which the warehouseman voluntarily delivers or which the warehouseman unjustifiably refuses to deliver. [1961 c.726 §77.2090; 1971 c.370 §1; 2001 c.445 §149]

77.2100 Enforcement of warehouseman's lien. (1) Except as provided in subsection (2) of this section, a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of

any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if the warehouseman sells at the price current in such market at the time of sale, or if the warehouseman has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, the warehouseman has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered letter to the last-known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy the lien of the warehouseman from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom the warehouseman would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against a debtor.

(8) Where a lien is on goods stored by a merchant in the course of business the lien may be enforced in accordance with either subsection (1) or (2) of this section.

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1961 c.726 §77.2100]

BILLS OF LADING: SPECIAL PROVISIONS

77.3010 Liability for nonreceipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a nonnegotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity

if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by the shipper; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit the responsibility and liability of the issuer under the contract of carriage to any person other than the shipper. [1961 c.726 §77.3010]

77.3020 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, the person is subject with respect to the performance of the person while the goods are in the possession of the person to the obligation of the issuer. The obligation of the person is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1961 c.726 §77.3020]

77.3030 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from:

(a) The holder of a negotiable bill; or

(b) The consignor on a nonnegotiable bill notwithstanding contrary instructions from the consignee; or

(c) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) The consignee on a nonnegotiable bill if the consignee is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [1961 c.726 §77.3030]

77.3040 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of the part of the later holder.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in

a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with ORS 77.4010 to 77.4040 against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1961 c.726 §77.3040]

77.3050 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1961 c.726 §77.3050]

77.3060 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1961 c.726 §77.3060]

77.3070 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) of this section on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) of this section is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses the lien of the carrier on any goods which the carrier voluntarily delivers or which the carrier unjustifiably refuses to deliver. [1961 c.726 §77.3070]

77.3080 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if the carrier sells at the price current in such market at the time of sale or if the carrier has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold the carrier has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this chapter.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy the lien of the carrier from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom the carrier would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against a debtor of the creditor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) of this section or the procedure set forth in ORS 77.2100 (2).

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1961 c.726 §77.3080]

77.3090 Duty of care; contractual limitation of carrier's liability. (1) A carrier who issues a bill of lading whether negotiable or nonnegotiable must exercise the degree of care in relation to the goods which a reasonably careful person would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed the consignor is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1961 c.726 §77.3090]

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

77.4010 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this chapter on an issuer apply to a document of title regardless of the fact that:

(1) The document may not comply with the requirements of this chapter or of any other law or regulation regarding its issue, form or content; or

(2) The issuer may have violated laws regulating the conduct of the business of the issuer; or

(3) The goods covered by the document were owned by the bailee at the time the document was issued; or

(4) The person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1961 c.726 §77.4010]

77.4020 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1961 c.726 §77.4020]

77.4030 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3) of this section unless and to the extent that the bailee establishes any of the following:

(a) Delivery of the goods to a person whose receipt was rightful as against the claimant.

(b) Damage to or delay, loss or destruction of the goods for which the bailee is not liable, but the burden of establishing negligence in such cases is on the person entitled under the document.

(c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage.

(d) The exercise by a seller of the right of the seller to stop delivery pursuant to the provisions of ORS 72.7050.

(e) A diversion, reconsignment or other disposition pursuant to the provisions of ORS 77.3030 or tariff regulating such right.

(f) Release, satisfaction or any other fact affording a personal defense against the claimant.

(g) Any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under ORS 77.5030 (1), the person must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document. [1961 c.726 §77.4030]

77.4040 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this chapter is not liable therefor. This rule applies even though the person from whom the bailee re-

ceived the goods had no authority to procure the document or to dispose of the goods and even though the person to whom the bailee delivered the goods had no authority to receive them. [1961 c.726 §77.4040]

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

77.5010 Form of negotiation and requirements of "due negotiation." (1) A negotiable document of title running to the order of a named person is negotiated by indorsement of the named person and delivery. After indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2)(a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer.

(b) When a document running to the order of a named person is delivered to the person the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a nonnegotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1961 c.726 §77.5010]

77.5020 Rights acquired by due negotiation. (1) Subject to ORS 77.5030 and to the provisions of ORS 77.2050 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to ORS 77.5030, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1961 c.726 §77.5020]

77.5030 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or the nominee of the bailor with actual or apparent authority to ship, store or sell or with power to obtain delivery under ORS 77.4030 or with power of disposition under ORS 72.4030 and 79.0320 or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or the nominee of the bailor of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under ORS 77.5040 to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with ORS 77.4010 to 77.4040 pursuant to its own bill of lading discharges the carrier's obligation to deliver. [1961 c.726 §77.5030; 2001 c.445 §150]

77.5040 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery. (1) A transferee of a document, whether negotiable or nonnegotiable, to whom the document has been delivered but not duly negotiated, ac-

quires the title and rights which the transferor had or had actual authority to convey.

(2) In the case of a nonnegotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated:

(a) By those creditors of the transferor who could treat the sale as void under ORS 72.4020; or

(b) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights; or

(c) As against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a nonnegotiable document may be stopped by a seller under ORS 72.7050, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1961 c.726 §77.5040]

77.5050 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1961 c.726 §77.5050]

77.5060 Delivery without indorsement; right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have the transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1961 c.726 §77.5060]

77.5070 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under ORS 77.5080, then unless otherwise agreed the person warrants to the immediate purchaser only in addition to any warranty made in selling the goods:

(1) That the document is genuine; and

(2) That the person has no knowledge of any fact which would impair its validity or worth; and

(3) That the negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1961 c.726 §77.5070]

77.5080 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1961 c.726 §77.5080]

77.5090 Receipt or bill; when adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by ORS 72.1010 to 72.7250 on sales and ORS chapter 75 on letters of credit. [1961 c.726 §77.5090]

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

77.6010 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1961 c.726 §77.6010]

77.6020 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods

pursuant to process until the document is surrendered to the bailee or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1961 c.726 §77.6020]

77.6030 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until the bailee has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate. [1961 c.726 §77.6030]

77.6040 Laws not repealed. ORS 77.1010 to 77.6030 on documents of title do not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title as defined in ORS 71.2010. [1961 c.726 §77.6040; 1995 c.79 §27]