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WEST VIRGINIA LEGISLATURE
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ENROLLED

SENATE BILL NO. 110

(By Mr. Moreland & Mr. Hinkle)



PASSED February 21 1979

In Effect minety days from Passage



No. 110

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Senate Bill No. 110

(By MR. MORELAND and MR. HINKLE)

[Passed February 21, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section two hundred one, article one; section one hundred fourteen, article five; sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, one hundred seven, two hundred one, two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one, three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eight of said chapter forty-six by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and to amend and reenact sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six, all relating to the uniform commercial code; adopting amendments thereto generally related to investment securities; relating to general definitions; issuer's duty and privilege to honor; right to reim-

bursement; index of definitions; issuer's lien; effect of overissue; "overissue"; certificated securities negotiable; statements and instructions not negotiable; presumptions; applicability; securities transferable; action for price; registration of pledge and release of uncertificated securities; "Issuer"; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defects or defenses; effect of issuer's restrictions on transfer; effect of unauthorized signature on certificated security or initial transaction statement; completion or alteration of certificated security or initial transaction statement; rights and duties of issuer with respect to registered owners and registered pledgees; effect of signature of authenticating trustee, registrar or transfer agent; rights acquired by purchaser; "bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser; "broker"; notice to purchaser of adverse claims; staleness as notice of adverse claims; warranties on presentment and transfer of certificated securities; warranties of originators of instructions; effect of delivery without indorsement; right to compel indorsement; indorsements; instructions; effect of indorsement without delivery; indorsement of certificated security in bearer form; effect of unauthorized indorsement or instruction; effect of guaranteeing signature, indorsement or instruction; when transfer to the purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary"; duty to transfer, when completed; action against transferee based upon wrongful transfer; purchaser's right to requisites for registration of transfer, pledge or release on books; creditors' rights; no conversion by good faith conduct; statute of frauds; transfer or pledge within a central depository system; enforceability, attachment, perfection and termination of security interests; duty of issuer to register transfer, pledge or release; assurance that indorsements and instructions are effective; issuer's duty as to adverse claims; liability and nonliability for registration; lost, destroyed and stolen certificated securities; duty of authenticating trustee, transfer agent or registrar; exchangeability of securities; statements of uncertificated securities; perfection of se-

curity interests in multiple state transactions and definitions and index of definitions relating thereto; attachment and enforceability of security interest; proceeds; formal requisites; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; protection of purchasers of instruments, documents and securities; priorities among conflicting security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

That section two hundred one, article one; that section one hundred fourteen, article five; that sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, one hundred seven, two hundred one, two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one, three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article eight be further amended by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and that sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

PART 2. GENERAL DEFINITIONS

AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 Subject to additional definitions contained in the sub-
2 sequent articles of this chapter which are applicable to
3 specific articles or parts thereof, and unless the context
4 otherwise requires, in this chapter:

5 (1) "Action" in the sense of a judicial proceeding
6 includes recoupment, counterclaim, setoff, suit in equity
7 and any other proceedings in which rights are deter-
8 mined.

9 (2) "Aggrieved party" means a party entitled to resort
10 to a remedy.

11 (3) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance as provided in this
15 chapter (sections 1-205 and 2-208). Whether an agree-
16 ment has legal consequences is determined by the pro-
17 visions of this chapter, if applicable; otherwise by the
18 law of contracts (section 1-103). (Compare "Contract.")

19 (4) "Bank" means any person engaged in the business
20 of banking.

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

24 (6) "Bill of lading" means a document evidencing the
25 receipt of goods for shipment issued by a person engaged
26 in the business of transporting or forwarding goods, and
27 includes an airbill. "Airbill" means a document serving
28 for air transportation as a bill of lading for marine or
29 rail transportation, and includes an air consignment note
30 or air waybill.

31 (7) "Branch" includes a separately incorporated
32 foreign branch of a bank.

33 (8) "Burden of establishing" a fact means the burden

34 of persuading the triers of fact that the existence of the
35 fact is more probable than its nonexistence.

36 (9) "Buyer in ordinary course of business" means a
37 person who in good faith and without knowledge that
38 the sale to him is in violation of the ownership rights
39 or security interest of a third party in the goods buys
40 in ordinary course from a person in the business of
41 selling goods of that kind but does not include a pawn-
42 broker. All persons who sell minerals or the like (in-
43 cluding oil and gas) at wellhead or minehead shall be
44 deemed to be persons in the business of selling goods
45 of that kind. "Buying" may be for cash or by exchange
46 of other property or on secured or unsecured credit and
47 includes receiving goods or documents of title under a
48 preexisting contract for sale but does not include a
49 transfer in bulk or as security for or in total or partial
50 satisfaction of a money debt.

51 (10) "Conspicuous": A term or clause is conspicuous
52 when it is so written that a reasonable person against
53 whom it is to operate ought to have noticed it. A printed
54 heading in capitals (as: NONNEGOTIABLE BILL OF LADING)
55 is conspicuous. Language in the body of a form is "con-
56 spicuous" if it is in larger or other contrasting type or
57 color. But in a telegram any stated term is "conspicu-
58 ous." Whether a term or clause is "conspicuous" or
59 not is for decision by the court.

60 (11) "Contract" means the total legal obligation which
61 results from the parties' agreement as affected by this
62 chapter and any other applicable rules of law. (Compare
63 "Agreement.")

64 (12) "Creditor" includes a general creditor, a secured
65 creditor, a lien creditor and any representative of
66 creditors, including an assignee for the benefit of credi-
67 tors, a trustee in bankruptcy, a receiver in equity and
68 an executor or administrator of an insolvent debtor's
69 or assignor's estate.

70 (13) "Defendant" includes a person in the position
71 of defendant in a cross action or counterclaim.

72 (14) "Delivery" with respect to instruments, docu-

73 ments of title, chattel paper or certificated securities
74 means voluntary transfer of possession.

75 (15) "Document of title" includes bill of lading, dock
76 warrant, dock receipt, warehouse receipt or order for
77 the delivery of goods, and also any other document which
78 in the regular course of business or financing is treated
79 as adequately evidencing that the person in possession
80 of it is entitled to receive, hold and dispose of the
81 document and the goods it covers. To be a document
82 of title a document must purport to be issued by or
83 addressed to a bailee and purport to cover goods in the
84 bailee's possession which are either identified or are
85 fungible portions of an identified mass.

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

87 (17) "Fungible" with respect to goods or securities
88 means goods or securities of which any unit is, by
89 nature or usage of trade, the equivalent of any other
90 like unit. Goods which are not fungible shall be deemed
91 fungible for the purposes of this chapter to the extent
92 that under a particular agreement or document unlike
93 units are treated as equivalents.

94 (18) "Genuine" means free of forgery or counter-
95 feiting.

96 (19) "Good faith" means honesty in fact in the con-
97 duct or transaction concerned.

98 (20) "Holder" means a person who is in possession of
99 a document of title or an instrument or a certificated
100 investment security drawn, issued or indorsed to him
101 or to his order or to bearer or in blank.

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

105 (22) "Insolvency proceedings" includes any assign-
106 ment for the benefit of creditors or other proceedings
107 intended to liquidate or rehabilitate the estate of the
108 person involved.

109 (23) A person is "insolvent" who either has ceased
110 to pay his debts in the ordinary course of business or

111 cannot pay his debts as they become due or is insolvent
112 within the meaning of the Federal Bankruptcy Law.

113 (24) "Money" means a medium of exchange author-
114 ized or adopted by a domestic or foreign government as
115 a part of its currency.

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

117 (a) he has actual knowledge of it; or

118 (b) he has received a notice or notification of it; or

119 (c) from all the facts and circumstances known to
120 him at the time in question he has reason to know that
121 it exists.

122 A person "knows" or has "knowledge" of a fact when
123 he has actual knowledge of it. "Discover" or "learn" or
124 a word or phrase of similar import refers to knowledge
125 rather than to reason to know. The time and circum-
126 stances under which a notice or notification may cease
127 to be effective are not determined by this chapter.

128 (26) A person "notifies" or "gives" a notice or notifica-
129 tion to another by taking such steps as may be reasonably
130 required to inform the other in ordinary course whether
131 or not such other actually comes to know of it. A person
132 "receives" a notice or notification when

133 (a) it comes to his attention; or

134 (b) it is duly delivered at the place of business
135 through which the contract was made or at any other
136 place held out by him as the place for receipt of such
137 communications.

138 (27) Notice, knowledge or a notice or notification re-
139 ceived by an organization is effective for a particular
140 transaction from the time when it is brought to the
141 attention of the individual conducting that transaction,
142 and in any event from the time when it would have
143 been brought to his attention if the organization had
144 exercised due diligence. An organization exercises due
145 diligence if it maintains reasonable routines for com-
146 municating significant information to the person conduct-
147 ing the transaction and there is reasonable compliance
148 with the routines. Due diligence does not require an

149 individual acting for the organization to communicate
150 information unless such communication is part of his
151 regular duties or unless he has reason to know of the
152 transaction and that the transaction would be materially
153 affected by the information.

154 (28) "Organization" includes a corporation, govern-
155 ment or governmental subdivision or agency, business
156 trust, estate, trust, partnership or association, two or
157 more persons having a joint or common interest, or any
158 other legal or commercial entity.

159 (29) "Party," as distinct from "third party," means a
160 person who has engaged in a transaction or made an
161 agreement within this chapter.

162 (30) "Person" includes an individual or an organiza-
163 tion (see section 1-102).

164 (31) "Presumption" or "presumed" means that the
165 trier of fact must find the existence of the fact presumed
166 unless and until evidence is introduced which would
167 support a finding of its nonexistence.

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

172 (33) "Purchaser" means a person who takes by pur-
173 chase.

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

177 (35) "Representative" includes an agent, an officer
178 of a corporation or association, and a trustee, executor
179 or administrator of an estate, or any other person em-
180 powered to act for another.

181 (36) "Rights" includes remedies.

182 (37) "Security interest" means an interest in personal
183 property or fixtures which secures payment or perform-
184 ance of an obligation. The retention or reservation of
185 title by a seller of goods notwithstanding shipment or
186 delivery to the buyer (section 2-401) is limited in effect
187 to a reservation of a "security interest." The term also

188 includes any interest of a buyer of accounts or chattel
189 paper, which is subject to article 9. The special property
190 interest of a buyer of goods on identification of such
191 goods to a contract for sale under section 2-401 is not a
192 "security interest," but a buyer may also acquire a
193 "security interest" by complying with article 9. Unless
194 a lease or consignment is intended as security, reserva-
195 tion of title thereunder is not a "security interest" but
196 a consignment is in any event subject to the provisions
197 on consignment sales (section 2-326). Whether a lease
198 is intended as security is to be determined by the facts
199 of each case; however, (a) the inclusion of an option to
200 purchase does not of itself make the lease one intended
201 for security, and (b) an agreement that upon compliance
202 with the terms of the lease the lessee shall become or
203 has the option to become the owner of the property for
204 no additional consideration or for a nominal considera-
205 tion does make the lease one intended for security.

206 (38) "Send" in connection with any writing or notice
207 means to deposit in the mail or deliver for transmission
208 by any other usual means of communication with postage
209 or cost of transmission provided for and properly ad-
210 dressed and in the case of an instrument to an address
211 specified thereon or otherwise agreed, or if there be
212 none to any address reasonable under the circumstances.
213 The receipt of any writing or notice within the time
214 at which it would have arrived if properly sent has the
215 effect of a proper sending.

216 (39) "Signed" includes any symbol executed or
217 adopted by a party with present intention to authenti-
218 cate a writing.

219 (40) "Surety" includes guarantor.

220 (41) "Telegram" includes a message transmitted by
221 radio, teletype, cable, any mechanical method of trans-
222 mission, or the like.

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

225 (43) "Unauthorized" signature or indorsement means
226 one made without actual, implied or apparent authority
227 and includes a forgery.

228 (44) "Value". Except as otherwise provided with
229 respect to negotiable instruments and bank collections
230 (sections 3-303, 4-208 and 4-209) a person gives "value"
231 for rights if he acquires them

232 (a) in return for a binding commitment to extend
233 credit or for the extension of immediately available
234 credit whether or not drawn upon and whether or not
235 a charge-back is provided for in the event of difficulties
236 in collection; or

237 (b) as security for or in total or partial satisfaction
238 of a preexisting claim; or

239 (c) by accepting delivery pursuant to a preexisting
240 contract for purchase; or

241 (d) generally, in return for any consideration suf-
242 ficient to support a simple contract.

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

246 (46) "Written" or "writing" includes printing, type-
247 writing or any other intentional reduction to tangible
248 form.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-114. Issuer's duty and privilege to honor; right to re- imbursement.

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

11 (2) Unless otherwise agreed when documents appear
12 on their face to comply with the terms of a credit but a
13 required document does not in fact conform to the war-
14 ranties made on negotiation or transfer of a document

15 of title (section 7-507) or of a certificated security (section
16 8-306) or is forged or fraudulent or there is fraud in the
17 transaction:

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

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

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

39 (4) When a credit provides for payment by the is-
40 suer on receipt of notice that the required documents
41 are in the possession of a correspondent or other agent
42 of the issuer

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

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

48 (c) in the event of such rejection, the issuer is en-
49 titled by charge-back or otherwise to return of the pay-
50 ment made.

51 (5) In the case covered by subsection (4) failure to
52 reject documents within the time specified in subpara-
53 graph (b) constitutes acceptance of the documents and
54 makes the payment final in favor of the beneficiary.

ARTICLE 8. INVESTMENT SECURITIES.**§46-8-102. Definitions and index of definitions.**

1 (1) In this article, unless the context otherwise re-
2 quires:

3 (a) A "certificated security" is a share, participation,
4 or other interest in property of or an enterprise of the
5 issuer or an obligation of the issuer which is

6 (i) represented by an instrument issued in bearer
7 or registered form;

8 (ii) of a type commonly dealt in on securities ex-
9 changes or markets or commonly recognized in any
10 area in which it is issued or dealt in as a medium for
11 investment; and

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

15 (b) An "uncertificated security" is a share, partici-
16 pation, or other interest in property or an enterprise
17 of the issuer or an obligation of the issuer which
18 is

19 (i) not represented by an instrument and the trans-
20 fer of which is registered upon books maintained for
21 that purpose by or on behalf of the issuer;

22 (ii) of a type commonly dealt in on securities ex-
23 changes or markets; and

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

27 (c) A "security" is either a certificated or an un-
28 certificated security. If a security is certificated, the
29 terms "security" and "certificated security" may mean
30 either the intangible interest, the instrument represent-
31 ing that interest, or both, as the context requires. A
32 writing that is a certificated security is governed by this
33 article and not by article three of this chapter, even though
34 it also meets the requirements of that article. This article
35 does not apply to money. If a certificated security has been
36 retained by or surrendered to the issuer or its transfer
37 agent for reasons other than registration of transfer,

38 other temporary purpose, payment, exchange, or acqui-
39 sition by the issuer, that security shall be treated as an
40 uncertificated security for purposes of this article.

41 (d) A certificated security is in "registered form" if
42 it

43 (i) specifies a person entitled to the security or to
44 the rights it represents, and

45 (ii) its transfer may be registered upon books main-
46 tained for that purpose by or on behalf of the issuer,
47 or the security so states.

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

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

53 (3) A "clearing corporation" is a corporation regis-
54 tered as a "clearing agency" under the federal securities
55 laws or a corporation;

56 (a) at least ninety percent of whose capital stock
57 is held by or for one or more organizations, none of
58 which, other than a national securities exchange or as-
59 sociation, holds in excess of twenty percent of the
60 capital stock of the corporation, and each of which
61 is

62 (i) subject to supervision or regulation pursuant to
63 the provisions of federal or state banking laws or state
64 insurance laws,

65 (ii) a broker or dealer or investment company reg-
66 istered under the federal securities laws, or

67 (iii) a national securities exchange or association
68 registered under the federal securities laws; and

69 (b) any remaining capital stock of which is held by
70 individuals who have purchased it at or prior to the
71 time of their taking office as directors of the corpora-
72 tion and who have purchased only so much of the capital
73 stock as is necessary to permit them to qualify as
74 directors.

75 (4) A "custodian bank" is a bank or trust company
76 which is supervised and examined by state or federal

77 authority having supervision over banks and is acting
78 as custodian for a clearing corporation.

79 (5) Other definitions applying to this article or to
80 specified parts thereof and the sections in which they
81 appear are:

82 "Adverse claim." Section 8-302.

83 "Bona fide purchaser." Section 8-302.

84 "Broker." Section 8-303.

85 "Debtor." Section 9-105.

86 "Financial intermediary." Section 8-313.

87 "Guarantee of the signature." Section 8-402.

88 "Initial transaction statement." Section 8-408.

89 "Instruction." Section 8-308.

90 "Intermediary bank." Section 4-105.

91 "Issuer." Section 8-201.

92 "Overissue." Section 8-104.

93 "Secured Party." Section 9-105.

94 "Security Agreement." Section 9-105.

95 (6) In addition article 1 of this chapter contains gen-
96 eral definitions and principles of construction and inter-
97 pretation applicable throughout this article.

§46-8-103. Issuer's lien.

1 A lien upon a security in favor of an issuer thereof is
2 valid against a purchaser only if:

3 (a) the security is certificated and the right of the
4 issuer to the lien is noted conspicuously thereon; or

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

§46-8-104. Effect of overissue; "overissue."

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

5 (a) an identical security which does not constitute an

6 overissue is reasonably available for purchase, the person
7 entitled to issue or validation may compel the issuer to
8 purchase the security for him and either to deliver a
9 certificated security or to register the transfer of an
10 uncertificated security to him, against surrender of any
11 certificated security he holds; or

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

16 (2) "Overissue" means the issue of securities in excess
17 of the amount the issuer has corporate power to issue.

**§46-8-105. Certificated securities negotiable; statements and
instructions not negotiable; presumptions.**

1 (1) Certificated securities governed by this article are
2 negotiable instruments.

3 (2) Statements (section 8-408), notices, or the like,
4 sent by the issuer of uncertificated securities and in-
5 structions (section 8-308) are neither negotiable instru-
6 ments nor certificated securities.

7 (3) In any action on a security:

8 (a) unless specifically denied in the pleadings, each
9 signature on a certificated security, in a necessary in-
10 dorsement, on an initial transaction statement or on an
11 instruction, is admitted;

12 (b) if the effectiveness of a signature is put in issue
13 the burden of establishing it is on the party claiming
14 under the signature but the signature is presumed to be
15 genuine or authorized;

16 (c) if signatures on a certificated security are admitted
17 or established production of the security entitles a holder
18 to recover on it unless the defendant establishes a de-
19 fense or a defect going to the validity of the security;

20 (d) if signatures on an initial transaction statement
21 are admitted or established, the facts stated in the state-
22 ment are presumed to be true as of the time of its
23 issuance; and

24 (e) after it is shown that a defense or defect exists

25 the plaintiff has the burden of establishing that he or
26 some person under whom he claims is a person against
27 whom the defense or defect is ineffective (section 8-202).

§46-8-106. Applicability.

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

- 6 (a) registration of transfer of a certificated security;
- 7 (b) registration of transfer, pledge, or release of an
8 uncertificated security; and
- 9 (c) sending of statements of uncertificated securities.

§46-8-107. Securities transferable; action for price.

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

9 (2) If the buyer fails to pay the price as it comes
10 due under a contract of sale the seller may recover the
11 price of:

- 12 (a) certificated securities accepted by the buyer;
- 13 (b) uncertificated securities that have been trans-
14 ferred to the buyer or a person designated by the buyer;
15 and
- 16 (c) other securities if efforts at their resale would
17 be unduly burdensome or if there is no readily available
18 market for their resale.

§46-8-108. Registration of pledge and release of uncertificated securities.

1 A security interest in an uncertificated security may
2 be evidenced by the registration of pledge to the secured
3 party or a person designated by him. There may be no
4 more than one registered pledge of an uncertificated

5 security at any time. The registered owner of an un-
 6 certificated security is the person in whose name the
 7 security is registered, even if the security is subject to a
 8 registered pledge. The rights of a registered pledgee of
 9 an uncertificated security under this article are ter-
 10 minated by the registration of release.

PART 2. ISSUE—ISSUER.

§46-8-201. "Issuer."

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

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

10 (b) creates shares, participations or other interests
 11 in his property or in an enterprise or undertakes obliga-
 12 tions, which shares, participations, interests, or obliga-
 13 tions are uncertificated securities;

14 (c) directly or indirectly creates fractional interests
 15 in his rights or property which fractional interests are
 16 represented by certificated securities; or

17 (d) becomes responsible for or in place of any other
 18 person described as an issuer in this section.

19 (2) With respect to obligations on or defenses to a
 20 security, a guarantor is an issuer to the extent of his
 21 guaranty, whether or not his obligation is noted on a
 22 certificated security or on statements of uncertificated
 23 securities sent pursuant to section 8-408.

24 (3) With respect to registration of transfer, pledge
 25 or release (part 4 of this article) "issuer" means a person
 26 on whose behalf transfer books are maintained.

§46-8-202. Issuer's responsibility and defenses; notice of defect or defense.

1 (1) Even against a purchaser for value and without
 2 notice, the terms of a security include:

3 (a) if the security is certificated, those stated on the
4 security;

5 (b) if the security is uncertificated, those contained
6 in the initial transaction statement sent to such pur-
7 chaser, or if his interest is transferred to him other
8 than by registration of transfer, pledge, or release, the
9 initial transaction statement sent to the registered owner
10 or registered pledgee; and

11 (c) those made part of the security by reference, on
12 the certificated security or in the initial transaction
13 statement, to another instrument, indenture, or docu-
14 ment or to a constitution, statute, ordinance, rule, reg-
15 ulation, order or the like, to the extent that the terms
16 referred to do not conflict with the terms stated on the
17 certificated security or contained in the statement. A
18 reference under this paragraph does not of itself charge
19 a purchaser for value with notice of a defect going to
20 the validity of the security, even though the certificated
21 security or statement expressly states that a person ac-
22 cepting it admits notice.

23 (2) A certificated security in the hands of a pur-
24 chaser for value or an uncertificated security as to which
25 an initial transaction statement has been sent to a pur-
26 chaser for value, other than a security issued by a
27 government or governmental agency or unit, even
28 though issued with a defect going to its validity, is valid
29 with respect to the purchaser if he is without notice
30 of the particular defect unless the defect involves a
31 violation of constitutional provisions, in which case the
32 security is valid with respect to a subsequent purchaser
33 for value and without notice of the defect. This sub-
34 section applies to an issuer that is a government or
35 governmental agency or unit only if either there has
36 been substantial compliance with the legal requirements
37 governing the issue or the issuer has received a sub-
38 stantial consideration for the issue as a whole or for
39 the particular security and a stated purpose of the issue
40 is one for which the issuer has power to borrow money
41 or issue the security.

42 (3) Except as provided in the case of certain unau-

43 thorized signatures (section 8-205), lack of genuineness
 44 of a certificated security or an initial transaction state-
 45 ment is a complete defense, even against a purchaser
 46 for value and without notice.

47 (4) All other defenses of the issuer of a certificated
 48 or uncertificated security, including nondelivery and
 49 conditional delivery of a certificated security, are in-
 50 effective against a purchaser for value who has taken
 51 without notice of the particular defense.

52 (5) Nothing in this section shall be construed to affect
 53 the right of a party to a "when, as and if issued" or
 54 "when distributed" contract to cancel the contract in
 55 the event of a material change in the character of the
 56 security that is the subject of the contract or in the
 57 plan or arrangement pursuant to which the security is
 58 to be issued or distributed.

§46-8-203. Staleness as notice of defects or defenses.

1 (1) After an act or event creating a right to imme-
 2 diate performance of the principal obligation repre-
 3 sented by a certificated security or that sets a date on or
 4 after which the security is to be presented or surrendered
 5 for redemption or exchange, a purchaser is charged with
 6 notice of any defect in its issue or defense of the issuer
 7 if:

8 (a) the act or event is one requiring the payment
 9 of money, the delivery of certificated securities, the
 10 registration or transfer of uncertificated securities or
 11 any of these on presentation or surrender of the cer-
 12 tificated security, the funds or securities are available
 13 on the date set for payment or exchange, and he takes
 14 the security more than one year after that date; and

15 (b) the act or event is not covered by paragraph
 16 (a) and he takes the security more than two years after
 17 the date set for surrender or presentation or the date
 18 on which performance became due.

19 (2) A call that has been revoked is not within sub-
 20 section (1).

§46-8-204. Effect of issuer's restrictions on transfer.

1 A restriction on transfer of a security imposed by the

2 issuer, even though otherwise lawful, is ineffective against
3 any person without actual knowledge of it unless:

4 (a) the security is certificated and the restriction is
5 noted conspicuously thereon; or

6 (b) the security is uncertificated and a notation of
7 the restriction is contained in the initial transaction
8 statement sent to the person or, if his interest is trans-
9 ferred to him other than by registration of transfer,
10 pledge, or release, the initial transaction statement sent
11 to the registered owner or the registered pledgee.

§46-8-205. Effect of unauthorized signature on certificated security or initial transaction statement.

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

10 (a) an authenticating trustee, registrar, transfer agent,
11 or other person entrusted by the issuer with the signing
12 of the security, of similar securities, or of initial trans-
13 action statements or the immediate preparation for sign-
14 ing of any of them; or

15 (b) an employee of the issuer, or of any of the fore-
16 going, entrusted with responsible handling of the security
17 or initial transaction statement.

§46-8-206. Completion or alteration of certificated security or initial transaction statement.

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

4 (a) any person may complete it by filling in the blanks
5 as authorized; and

6 (b) even though the blanks are incorrectly filled in,
7 the security as completed is enforceable by a purchaser

8 who took it for value and without notice of the incor-
9 rectness.

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

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

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

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

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

**§46-8-207. Rights and duties of issuer with respect to regis-
tered owners and registered pledgees.**

1 (1) Prior to due presentment for registration of trans-
2 fer of a certificated security in registered form, the issuer
3 or indenture trustee may treat the registered owner
4 as the person exclusively entitled to vote, to receive
5 notifications, and otherwise to exercise all the rights and
6 powers of an owner.

7 (2) Subject to the provisions of subsections (3), (4),
8 and (6), the issuer or indenture trustee may treat the
9 registered owner of an uncertificated security as the per-
10 son exclusively entitled to vote, to receive notifications,
11 and otherwise to exercise all the rights and powers of an
12 owner.

13 (3) The registered owner of an uncertificated security
14 that is subject to a registered pledge is not entitled to
15 registration of transfer prior to the due presentment to
16 the issuer of a release instruction. The exercise of con-
17 version rights with respect to a convertible uncertificated
18 security is a transfer within the meaning of this section.

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

22 (a) register the transfer of the security to the new
23 owner free of pledge, if the instruction specifies a new
24 owner (who may be the registered pledgee) and does not
25 specify a pledgee;

26 (b) register the transfer of the security to the new
27 owner subject to the interest of the existing pledgee, if
28 the instruction specifies a new owner and the existing
29 pledgee; or

30 (c) register the release of the security from the exist-
31 ing pledge and register the pledge of the security to
32 the other pledgee, if the instruction specifies the existing
33 owner and another pledgee.

34 (5) Continuity of perfection of a security interest is
35 not broken by registration of transfer under subsection
36 (4) (b) or by registration of release and pledge under
37 subsection (4) (c), if the security interest is assigned.

38 (6) If an uncertificated security is subject to a regis-
39 tered pledge:

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

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

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

49 (7) Nothing in this article shall be construed to affect
50 the liability of the registered owner of a security for
51 calls, assessments or the like.

**§46-8-208. Effect of signature of authenticating trustee, regis-
trar or transfer agent.**

1 (1) A person placing his signature upon a certificated
2 security or an initial transaction statement as authenti-
3 cating trustee, registrar, transfer agent or the like,

4 warrants to a purchaser for value of the certificated
 5 security or a purchaser for value of an uncertificated
 6 security to whom the initial transaction statement has
 7 been sent, if the purchaser is without notice of the
 8 particular defect that:

9 (a) the certificated security or initial transaction
 10 statement is genuine;

11 (b) his own participation in the issue or registration
 12 of the transfer, pledge or release of the security is within
 13 his capacity and within the scope of the authority re-
 14 ceived by him from the issuer; and

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

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

PART 3. TRANSFER.

§46-8-301. Rights acquired by purchaser.

1 (1) Upon transfer of a security to a purchaser (section
 2 8-313), the purchaser acquires the rights in the security
 3 which his transferor had or had actual authority to con-
 4 vey unless the purchaser's rights are limited by section
 5 8-302 (4).

6 (2) A transferee of a limited interest acquires rights
 7 only to the extent of the interest transferred. The crea-
 8 tion or release of a security interest in a security is the
 9 transfer of a limited interest in that security.

§46-8-302. "Bona fide purchaser"; "adverse claim"; title ac- quired by bona fide purchaser.

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

3 (a) who takes delivery of a certificated security in
 4 bearer form or in registered form, issued or indorsed to
 5 him or in blank;

6 (b) to whom the transfer, pledge or release of an
 7 uncertificated security is registered on the books of the
 8 issuer; or

9 (c) to whom a security is transferred under the pro-
10 visions of paragraph (c), (d), (i), or (g) of section
11 8-313(1).

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

15 (3) A bona fide purchaser in addition to acquiring the
16 rights of a purchaser (section 8-301) also acquires his
17 interest in the security free of any adverse claim.

18 (4) Notwithstanding section 8-301(1), the transferee
19 of a particular certificated security who has been a party
20 to any fraud or illegality affecting the security, or who
21 as a prior holder of that certificated security had notice
22 of an adverse claim, cannot improve his position by
23 taking from a bona fide purchaser.

§46-8-303. "Broker."

1 "Broker" means a person engaged for all or part of
2 his time in the business of buying and selling securities,
3 who in the transaction concerned acts for, buys a
4 security from, or sells a security to a customer. Nothing
5 in this article determines the capacity in which a person
6 acts for purposes of any other statute or rule to which
7 the person is subject.

§46-8-304. Notice to purchaser of adverse claims.

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

5 (a) the security, whether in bearer or registered
6 form, has been indorsed "for collection" or "for sur-
7 render" or for some other purpose not involving trans-
8 fer; or

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

13 (2) A purchaser (including a broker for the seller or
14 buyer, but excluding an intermediary bank) to whom

15 the transfer, pledge, or release of an uncertificated se-
16 curity is registered is charged with notice of adverse
17 claims as to which the issuer has a duty under section
18 8-403 (4) at the time of registration and which are noted
19 in the initial transaction statement sent to the pur-
20 chaser or, if his interest is transferred to him other
21 than by registration of transfer, pledge, or release, the
22 initial transaction statement sent to the registered
23 owner or the registered pledgee.

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

§46-8-305. Staleness as notice of adverse claims.

1 An act or event that creates a right to immediate
2 performance of the principal obligation represented by
3 a certificated security or sets a date on or after which
4 a certificated security is to be presented or surrendered
5 for redemption or exchange does not itself consti-
6 tute any notice of adverse claims except in the case
7 of a transfer:

8 (a) after one year from any date set for presentment
9 or surrender for redemption or exchange; or

10 (b) after six months from any date set for payment
11 of money against presentation or surrender of the
12 security if funds are available for payment on that
13 date.

**§46-8-306. Warranties on presentment and transfer of certifi-
cated securities; warranties of originators of in-
structions.**

1 (1) A person who presents a certificated security for
2 registration of transfer or for payment or exchange

3 warrants to the issuer that he is entitled to the regis-
4 tration, payment or exchange. But a purchaser for
5 value and without notice of adverse claims who re-
6 ceives a new, reissued or reregistered certificated se-
7 curity on registration of transfer or receives an initial
8 transaction statement confirming the registration of
9 transfer of an equivalent uncertificated security to him
10 warrants only that he has no knowledge of any unau-
11 thorized signature (section 8-311) in a necessary in-
12 dorsement.

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

15 (a) his transfer is effective and rightful;

16 (b) the security is genuine and has not been materi-
17 ally altered; and

18 (c) he knows of no fact which might impair the
19 validity of the security.

20 (3) If a certificated security is delivered by an in-
21 termediary known to be entrusted with delivery of the
22 security on behalf of another or with collection of a
23 draft or other claim against delivery, the intermediary
24 by delivery warrants only his own good faith and
25 authority, even though he has purchased or made ad-
26 vances against the claim to be collected against the
27 delivery.

28 (4) A pledgee or other holder for security who rede-
29 livers a certificated security received, or after payment
30 and on order of the debtor delivers that security to
31 a third person, makes only the warranties of an inter-
32 mediary under subsection (3).

33 (5) A person who originates an instruction warrants
34 to the issuer that:

35 (a) he is an appropriate person to originate the in-
36 struction; and

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

40 (6) A person who originates an instruction warrants

41 to any person specially guaranteeing his signature (sub-
42 section 8-312 (3)) that:

43 (a) he is an appropriate person to originate the in-
44 struction; and

45 (b) at the time the instruction is presented to the
46 issuer

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

49 (ii) the transfer, pledge, or release requested in the
50 instruction will be registered by the issuer free from
51 all liens, security interests, restrictions, and claims other
52 than those specified in the instruction.

53 (7) A person who originates an instruction warrants
54 to a purchaser for value and to any person guaranteeing
55 the instruction (section 8-312 (6)) that:

56 (a) he is an appropriate person to originate the in-
57 struction;

58 (b) the uncertificated security referred to therein is
59 valid; and

60 (c) at the time the instruction is presented to the
61 issuer

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

64 (ii) the transfer, pledge, or release requested in the
65 instruction will be registered by the issuer free from
66 all liens, security interests, restrictions, and claims other
67 than those specified in the instruction; and

68 (iii) the requested transfer, pledge, or release will
69 be rightful.

70 (8) If a secured party is the registered pledgee or
71 the registered owner of an uncertificated security, a
72 person who originates an instruction of release or
73 transfer to the debtor or, after payment and on order
74 of the debtor, a transfer instruction to a third person,
75 warrants to the debtor or the third person only that
76 he is an appropriate person to originate the instruction
77 and at the time the instruction is presented to the
78 issuer, the transferor will be entitled to the registration
79 of release or transfer. If a transfer instruction to a third

80 person who is a purchaser for value is originated on
81 order of the debtor, the debtor makes to the purchaser
82 the warranties of paragraphs (b), (c) (ii) and (c) (iii)
83 of subsection (7).

84 (9) A person who transfers an uncertificated security
85 to a purchaser for value and does not originate an in-
86 struction in connection with the transfer warrants only
87 that:

88 (a) his transfer is effective and rightful; and

89 (b) the uncertificated security is valid.

90 (10) A broker gives to his customer and to the issuer
91 and a purchaser the applicable warranties provided in
92 this section and has the rights and privileges of a pur-
93 chaser under this section. The warranties of and in
94 favor of the broker acting as an agent are in addition
95 to applicable warranties given by and in favor of his
96 customer.

**§46-8-307. Effect of delivery without indorsement; right to
compel indorsement.**

1 If a certificated security in registered form has been
2 delivered to a purchaser without a necessary indorse-
3 ment he may become a bona fide purchaser only as of
4 the time the indorsement is supplied; but against the
5 transferor, the transfer is complete upon delivery and
6 the purchaser has a specifically enforceable right to have
7 any necessary indorsement supplied.

§46-8-308. Indorsements; instructions.

1 (1) An indorsement of a certificated security in
2 registered form is made when an appropriate person
3 signs on it or on a separate document an assignment or
4 transfer of the security or a power to assign or transfer
5 it or his signature is written without more upon the
6 back of the security.

7 (2) An indorsement may be in blank or special. An
8 indorsement in blank includes an indorsement to bearer.
9 A special indorsement specifies to whom the security
10 is to be transferred, or who has power to transfer it.
11 A holder may convert a blank indorsement into a special
12 indorsement.

13 (3) An indorsement purporting to be only of part of a
14 certificated security representing units intended by the
15 issuer to be separately transferable is effective to the
16 extent of the indorsement.

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

21 (5) An instruction originated by an appropriate per-
22 son is:

23 (a) a writing signed by an appropriate person; or

24 (b) a communication to the issuer in any form agreed
25 upon in a writing signed by the issuer and an appropriate
26 person.

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

32 (6) "An appropriate person" in subsection (1) means
33 the person specified by the certificated security or by
34 special indorsement to be entitled to the security.

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

36 (a) for an instruction to transfer or pledge an un-
37 certificated security which is then not subject to a
38 registered pledge, the registered owner; or

39 (b) for an instruction to transfer or release an un-
40 certificated security which is then subject to a registered
41 pledge, the registered pledgee.

42 (8) In addition to the persons designated in subsec-
43 tions (6) and (7), "an appropriate person" in subsections
44 (1) and (5) includes:

45 (a) if the person designated is described as a fiduciary
46 but is no longer serving in the described capacity, either
47 that person or his successor;

48 (b) if the persons designated are described as more
49 than one person as fiduciaries and one or more are no
50 longer serving in the described capacity, the remaining

51 fiduciary or fiduciaries, whether or not a successor has
52 been appointed or qualified;

53 (c) if the person designated is an individual and is
54 without capacity to act by virtue of death, incompetence,
55 infancy, or otherwise, his executor, administrator, guard-
56 ian or like fiduciary;

57 (d) if the persons designated are described as more
58 than one person as tenants by the entirety or with right
59 of survivorship and by reason of death all cannot sign,
60 the survivor or survivors;

61 (e) a person having power to sign under applicable
62 law or controlling instrument; and

63 (f) to the extent that the person designated or any
64 of the foregoing persons may act through an agent, his
65 authorized agent.

66 (9) Unless otherwise agreed, the indorser of a certi-
67 ficated security by his indorsement or the originator of
68 an instruction by his origination assumes no obligation
69 that the security will be honored by the issuer but only
70 the obligations provided in section 8-306.

71 (10) Whether the person signing is appropriate is
72 determined as of the date of signing and an indorsement
73 made by or an instruction originated by him does not
74 become unauthorized for the purposes of this article by
75 virtue of any subsequent change of circumstances.

76 (11) Failure of a fiduciary to comply with a controlling
77 instrument or with the law of the state having jurisdic-
78 tion of the fiduciary relationship, including any law
79 requiring the fiduciary to obtain court approval of the
80 transfer, pledge or release, does not render his indorse-
81 ment or an instruction originated by him unauthorized
82 for the purposes of this article.

§46-8-309. Effect of indorsement without delivery.

1 An indorsement of a certificated security, whether
2 special or in blank, does not constitute a transfer until
3 delivery of the certificated security on which it appears
4 or, if the indorsement is on a separate document, until
5 delivery of both the documents and the certificated
6 security.

§46-8-310. Indorsement of certificated security in bearer form.

1 An indorsement of a certificated security in bearer
 2 form may give notice of adverse claims (section 8-304)
 3 but does not otherwise affect any right to registration the
 4 holder possesses.

§46-8-311. Effect of unauthorized indorsement or instruction.

1 Unless the owner or pledgee has ratified an unauthor-
 2 rized indorsement or instruction or is otherwise pre-
 3 cluded from asserting its ineffectiveness:

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

12 (b) an issuer who registers the transfer of a certifi-
 13 cated security upon the unauthorized indorsement or
 14 who registers the transfer, pledge, or release of an un-
 15 certificated security upon the unauthorized instruction
 16 is subject to liability for improper registration (section
 17 8-404).

§46-8-312. Effect of guaranteeing signature, indorsement or instruction.

1 (1) Any person guaranteeing a signature of an indor-
 2 ser of a certificated security warrants that at the time of
 3 signing:

4 (a) the signature was genuine;

5 (b) the signer was an appropriate person to indorse
 6 (section 8-308); and

7 (c) the signer had legal capacity to sign.

8 (2) Any person guaranteeing a signature of the origi-
 9 nator of an instruction warrants that at the time of
 10 signing:

11 (a) the signature was genuine;

12 (b) the signer was an appropriate person to originate
 13 the instruction (section 8-308) if the person specified in

14 the instruction as the registered owner or registered
15 pledgee of the uncertificated security was, in fact, the
16 registered owner or registered pledgee of such security,
17 as to which fact the signature guarantor makes no war-
18 ranty;

19 (c) the signer had legal capacity to sign; and

20 (d) the taxpayer identification number, if any, appear-
21 ing on the instruction as that of the registered owner or
22 registered pledgee was the taxpayer identification number
23 of the signer or of the owner or pledgee for whom the
24 signer was acting.

25 (3) Any person specially guaranteeing the signature of
26 the originator of an instruction makes not only the war-
27 ranties of a signature guarantor (subsection (2)) but also
28 warrants that at the time the instruction is presented to
29 the issuer:

30 (a) the person specified in the instruction as the regis-
31 tered owner or registered pledgee of the uncertificated
32 security will be the registered owner or registered pledg-
33 ee; and

34 (b) the transfer, pledge, or release of the uncertificated
35 security requested in the instruction will be registered by
36 the issuer free from all liens, security interests, restric-
37 tions, and claims other than those specified in the in-
38 struction.

39 (4) The guarantor under subsections (1) and (2) or
40 the special guarantor under subsection (3) does not
41 otherwise warrant the rightfulness of the particular
42 transfer, pledge, or release.

43 (5) Any person guaranteeing an indorsement of a
44 certificated security makes not only the warranties of a
45 signature guarantor under subsection (1) but also war-
46 rants the rightfulness of the particular transfer in all
47 respects.

48 (6) Any person guaranteeing an instruction requesting
49 the transfer, pledge, or release of an uncertificated secur-
50 ity makes not only the warranties of a special signature
51 guarantor under subsection (3) but also warrants the

52 rightfulness of the particular transfer, pledge, or release
53 in all respects.

54 (7) No issuer may require a special guarantee of sig-
55 nature (subsection (3)), a guarantee of indorsement
56 (subsection (5)), or a guarantee of instruction (subsection
57 (6)) as a condition to registration of transfer, pledge, or
58 release.

59 (8) The foregoing warranties are made to any person
60 taking or dealing with the security in reliance on the
61 guarantee, and the guarantor is liable to the person for
62 any loss resulting from breach of the warranties.

**§46-8-313. When transfer to purchaser occurs; financial inter-
mediary as bona fide purchaser; "financial inter-
mediary."**

1 (1) Transfer of a security or a limited interest (in-
2 cluding a security interest) therein to a purchaser occurs
3 only:

4 (a) at the time he or a person designated by him
5 acquires possession of a certificated security;

6 (b) at the time the transfer, pledge, or release of an
7 uncertificated security is registered to him or a person
8 designated by him;

9 (c) at the time his financial intermediary acquires
10 possession of a certificated security specially indorsed
11 to or issued in the name of the purchaser;

12 (d) at the time a financial intermediary, not a clearing
13 corporation, sends him confirmation of the purchase and
14 also by book entry or otherwise identifies as belonging
15 to the purchaser

16 (i) a specific certificated security in the financial
17 intermediary's possession;

18 (ii) a quantity of securities that constitute or are
19 part of a fungible bulk of certificated securities in the
20 financial intermediary's possession or of uncertificated
21 securities registered in the name of the financial inter-
22 mediary; or

23 (iii) a quantity of securities that constitute or are
24 part of a fungible bulk of securities shown on the ac-

25 count of the financial intermediary on the books of an-
26 other financial intermediary;

27 (e) with respect to an identified certificated security
28 to be delivered while still in the possession of a third
29 person, not a financial intermediary, at the time that
30 person acknowledges that he holds for the pur-
31 chaser;

32 (f) with respect to a specific uncertificated security
33 the pledge or transfer of which has been registered to
34 a third person, not a financial intermediary, at the time
35 that person acknowledges that he holds for the pur-
36 chaser;

37 (g) at the time appropriate entries to the account of
38 the purchaser or a person designated by him on the books
39 of a clearing corporation are made under section 8-320;

40 (h) with respect to the transfer of a security interest
41 where the debtor has signed a security agreement con-
42 taining a description of the security, at the time a written
43 notification, which, in the case of the creation of the
44 security interest, is signed by the debtor (which may be
45 a copy of the security agreement) or which, in the case
46 of the release or assignment of the security interest
47 created pursuant to this paragraph, is signed by the
48 secured party, is received by

49 (i) a financial intermediary on whose books the in-
50 terest of the transferor in the security appears;

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

53 (iii) a third person, not a financial intermediary, who
54 is the registered owner of the security, if it is uncertifi-
55 cated and not subject to a registered pledge; or

56 (iv) a third person, not a financial intermediary, who
57 is the registered pledgee of the security, if it is un-
58 certificated and subject to a registered pledge;

59 (i) with respect to the transfer of a security interest
60 where the transferor has signed a security agreement
61 containing a description of the security, at the time new
62 value is given by the secured party; or

63 (j) with respect to the transfer of a security interest
64 where the secured party is a financial intermediary and
65 the security has already been transferred to the financial
66 intermediary under paragraphs (a), (b), (c), (d), or
67 (g), at the time the transferor has signed a security
68 agreement containing a description of the security and
69 value is given by the secured party.

70 (2) The purchaser is the owner of a security held for
71 him by a financial intermediary, but cannot be a bona
72 fide purchaser of a security so held except in the circum-
73 stances specified in paragraphs (c), (d), (i) and (g) of
74 subsection (1). If a security so held is part of a fungible
75 bulk, as in the circumstances specified in paragraphs
76 (d) (ii) and (d) (iii) of subsection (1), the purchaser
77 is the owner of a proportionate property interest in the
78 fungible bulk.

79 (3) Notice of an adverse claim received by the finan-
80 cial intermediary or by the purchaser after the financial
81 intermediary takes delivery of a certificated security as
82 a holder for value or after the transfer, pledge, or release
83 of an uncertificated security has been registered free
84 of the claim to a financial intermediary who has given
85 value is not effective either as to the financial intermedi-
86 ary or as to the purchaser. However, as between the
87 financial intermediary and the purchaser, the purchaser
88 may demand transfer of an equivalent security as to
89 which no notice of adverse claim has been received.

90 (4) A "financial intermediary" is a bank, broker,
91 clearing corporation or other person (or the nominee of
92 any of them) which in the ordinary course of its business
93 maintains security accounts for its customers and is
94 acting in that capacity. A financial intermediary may
95 have a security interest in securities held in account for
96 its customer.

§46-8-314. Duty to transfer, when completed.

- 1 (1) Unless otherwise agreed, if a sale of a security is
- 2 made on an exchange or otherwise through brokers:
- 3 (a) the selling customer fulfills his duty to transfer
- 4 at the time he:

5 (i) places a certificated security in the possession of
6 the selling broker or of a person designated by the
7 broker;

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

11 (iii) if requested, causes an acknowledgment to be
12 made to the selling broker that a certificated or uncerti-
13 ficated security is held for the broker; or

14 (iv) places in the possession of the selling broker or
15 of a person designated by the broker a transfer instruc-
16 tion for an uncertificated security, providing the issuer
17 does not refuse to register the requested transfer if the
18 instruction is presented to the issuer for registration
19 within thirty days thereafter; and

20 (b) the selling broker, including a correspondent
21 broker acting for a selling customer, fulfills his duty to
22 transfer at the time he:

23 (i) places a certificated security in the possession of
24 the buying broker or a person designated by the buying
25 broker;

26 (ii) causes an uncertificated security to be registered
27 in the name of the buying broker or a person designated
28 by the buying broker;

29 (iii) places in the possession of the buying broker or
30 of a person designated by the buying broker a transfer
31 instruction for an uncertificated security, providing the
32 issuer does not refuse to register the requested transfer
33 if the instruction is presented to the issuer for registra-
34 tion within thirty days thereafter; or

35 (iv) effects clearance of the sale in accordance with
36 the rules of the exchange on which the transaction took
37 place.

38 (2) Except as provided in this section and unless other-
39 wise agreed, a transferor's duty to transfer a security
40 under a contract of purchase is not fulfilled until he:

41 (a) places a certificated security in form to be
42 negotiated by the purchaser in the possession of the
43 purchaser or of a person designated by the purchaser;

44 (b) causes an uncertificated security to be registered
45 in the name of the purchaser or a person designated by
46 the purchaser; or

47 (c) if the purchaser requests, causes an acknowledg-
48 ment to be made to the purchaser that a certificated or
49 uncertificated security is held for the purchaser.

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

§46-8-315. Action against transferee based upon wrongful transfer.

1 (1) Any person against whom the transfer of a
2 security is wrongful for any reason, including his in-
3 capacity, as against anyone except a bona fide pur-
4 chaser may:

5 (a) reclaim possession of the certificated security
6 wrongfully transferred;

7 (b) obtain possession of any new certificated security
8 representing all or part of the same rights;

9 (c) compel the origination of an instruction to trans-
10 fer to him or a person designated by him an uncertifi-
11 cated security constituting all or part of the same rights;
12 or

13 (d) have damages.

14 (2) If the transfer is wrongful because of an unau-
15 thorized indorsement of a certificated security, the owner
16 may also reclaim or obtain possession of the security
17 or a new certificated security even from a bona fide
18 purchaser, if the ineffectiveness of the purported in-
19 dorsement can be asserted against him under the pro-
20 visions of this article on unauthorized indorsements
21 (section 8-311).

22 (3) The right to obtain or reclaim possession of a
23 certificated security or to compel the origination of a
24 transfer instruction may be specifically enforced and
25 the transfer of a certificated or uncertificated security
26 enjoined and a certificated security impounded pending
27 the litigation.

§46-8-316. Purchaser's right to requisites for registration of transfer, pledge or release on books.

1 Unless otherwise agreed, the transferor of a certificated
2 security or the transferor, pledgor, or pledgee of an
3 uncertificated security on due demand must supply his
4 purchaser with any proof of his authority to transfer,
5 pledge or release or with any other requisite necessary
6 to obtain registration of the transfer, pledge or release
7 of the security; but if the transfer, pledge or release is
8 not for value, a transferor, pledgor or pledgee need not
9 do so unless the purchaser furnishes the necessary
10 expenses. Failure within a reasonable time to comply
11 with a demand made gives the purchaser the right to
12 reject or rescind the transfer, pledge or release.

§46-8-317. Creditors' rights.

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

10 (2) An uncertificated security registered in the name
11 of the debtor may not be reached by a creditor except
12 by legal process at the issuer's chief executive office
13 in the United States.

14 (3) The interest of a debtor in a certificated security
15 that is in the possession of a secured party not a finan-
16 cial intermediary or in an uncertificated security reg-
17 istered in the name of a secured party not a financial
18 intermediary (or in the name of a nominee of the se-
19 cured party) may be reached by a creditor by legal
20 process upon the secured party.

21 (4) The interest of a debtor in a certificated security
22 that is in the possession of or registered in the name
23 of a financial intermediary or in an uncertificated se-
24 curity registered in the name of a financial intermediary
25 may be reached by a creditor by legal process upon the

26 financial intermediary on whose books the interest of
27 the debtor appears.

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

36 (6) A creditor whose debtor is the owner of a security
37 is entitled to aid from courts of appropriate jurisdiction,
38 by injunction or otherwise, in reaching the security or
39 in satisfying the claim by means allowed at law or in
40 equity in regard to property that cannot readily be
41 reached by ordinary legal process.

§46-8-318. No conversion by good faith conduct.

1 An agent or bailee who in good faith (including ob-
2 servance of reasonable commercial standards if he is in
3 the business of buying, selling or otherwise dealing with
4 securities) has received certificated securities and sold,
5 pledged or delivered them or has sold or caused the
6 transfer or pledge of uncertificated securities over which
7 he had control according to the instructions of his prin-
8 cipal, is not liable for conversion or for participation in
9 breach of fiduciary duty although the principal had no
10 right so to deal with the securities.

§46-8-319. Statute of frauds.

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

3 (a) there is some writing signed by the party against
4 whom enforcement is sought or by his authorized agent
5 or broker sufficient to indicate that a contract has been
6 made for sale of a stated quantity of described securities
7 at a defined or stated price;

8 (b) delivery of a certificated security or transfer in-
9 struction has been accepted, or transfer of an uncertifi-
10 cated security has been registered and the transferee has
11 failed to send written objection to the issuer within ten

12 days after receipt of the initial transaction statement
13 confirming the registration, or payment has been made,
14 but the contract is enforceable under this provision only
15 to the extent of the delivery, registration or payment;

16 (c) within a reasonable time a writing in confirma-
17 tion of the sale or purchase and sufficient against the
18 sender under paragraph (a) has been received by the
19 party against whom enforcement is sought and he has
20 failed to send written objection to its contents within
21 ten days after its receipt; or

22 (d) the party against whom enforcement is sought
23 admits in his pleading, testimony or otherwise in court
24 that a contract was made for ^{the} sale of a stated quantity of
25 described securities at a defined or stated price.

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§46-8-320. Transfer or pledge within central depository system.

1 (1) In addition to other methods, a transfer, pledge
2 or release of a security or any interest therein may be
3 effected by the making of appropriate entries on the
4 books of a clearing corporation reducing the account of
5 the transferor, pledgor or pledgee and increasing the
6 account of the transferee, pledgee or pledgor by the
7 amount of the obligation, or the number of shares or
8 rights transferred, pledged or released, if the security is
9 shown on the account of a transferor, pledgor or pledgee
10 on the books of the clearing corporation; is subject to
11 the control of the clearing corporation; and

12 (a) if certificated,

13 (i) is in the custody of the clearing corporation, an-
14 other clearing corporation, a custodian bank or a nominee
15 of any of them; and

16 (ii) is in bearer form or indorsed in blank by an
17 appropriate person or registered in the name of the
18 clearing corporation, a custodian bank, or a nominee of
19 any of them; or

20 (b) if uncertificated, is registered in the name of the
21 clearing corporation, another clearing corporation, a
22 custodian bank, or a nominee of any of them.

23 (2) Under this section entries may be made with re-
24 spect to like securities or interests therein as a part of a
25 fungible bulk and may refer merely to a quantity of a
26 particular security without reference to the name of the
27 registered owner, certificate or bond number or the like
28 and, in appropriate cases, may be on a net basis taking
29 into account other transfers, pledges or releases of the
30 same security.

31 (3) A transfer under this section is effective (sec-
32 tion 8-313) and the purchaser acquires the rights of
33 the transferor (section 8-301). A pledge or release
34 under this section is the transfer of a limited interest. If
35 a pledge or the creation of a security interest is intended,
36 the security interest is perfected at the time when both
37 value is given by the pledgee and the appropriate entries
38 are made (section 8-321). A transferee or pledgee under
39 this section may be a bona fide purchaser (section 8-302).

40 (4) A transfer or pledge under this section is not a
41 registration of transfer under part 4.

42 (5) That entries made on the books of the clearing
43 corporation as provided in subsection (1) are not appro-
44 priate does not affect the validity or effect of the entries
45 or the liabilities or obligations of the clearing corpora-
46 tion to any person adversely affected thereby.

**§46-8-321. Enforceability, attachment, perfection and termina-
tion of security interests.**

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

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

13 (3) A security interest in a security is subject to the
14 provisions of article nine of this chapter, but:

15 (a) no filing is required to perfect the security in-
16 terest; and

17 (b) no written security agreement signed by the debtor
18 is necessary to make the security interest enforceable,
19 except as otherwise provided in paragraph (h), (i), or
20 (j) of section 8-313(1).

21 The secured party has the rights and duties provided
22 under section 9-207, to the extent they are applicable,
23 whether or not the security is certificated, and, if cer-
24 tificated, whether or not it is in his possession.

25 (4) Unless otherwise agreed, a security interest in a
26 security is terminated by transfer to the debtor or a per-
27 son designated by him pursuant to a provision of section
28 8-313(1). If a security is thus transferred, the security
29 interest, if not terminated, becomes unperfected unless
30 the security is certificated and is delivered to the debtor
31 for the purpose of ultimate sale or exchange or presen-
32 tation, collection, renewal, or registration of transfer. In
33 that case, the security interest becomes unperfected after
34 twenty-one days unless, within that time, the security
35 (or securities for which it has been exchanged) is trans-
36 ferred to the secured party or a person designated by him
37 pursuant to a provision of section 8-313(1).

PART 4. REGISTRATION.

§46-8-401. Duty of issuer to register transfer, pledge or re- lease.

1 If a certificated security in registered form is presented
2 to the issuer with a request to register transfer or an
3 instruction is presented to the issuer with a request to
4 register transfer, pledge, or release, the issuer shall regis-
5 ter the transfer, pledge or release as requested if:

6 (a) the security is indorsed or the instruction was
7 originated by the appropriate person or persons (section
8 8-308);

9 (b) reasonable assurance is given that those indorse-
10 ments or instructions are genuine and effective (section
11 8-402);

12 (c) the issuer has no duty as to adverse claims or has
13 discharged the duty (section 8-403);

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

16 (e) the transfer, pledge or release is in fact rightful
17 or is to a bona fide purchaser.

18 (2) If an issuer is under a duty to register a transfer,
19 pledge or release of a security, the issuer is also liable to
20 the person presenting a certificated security or an instruc-
21 tion for registration or his principal for loss resulting from
22 any unreasonable delay in registration or from failure or
23 refusal to register the transfer, pledge or release.

§46-8-402. Assurance that indorsements and instructions are effective.

1 (1) The issuer may require the following assurance
2 that each necessary indorsement of a certificated se-
3 curity or each instruction (section 8-308) is genuine
4 and effective:

5 (a) in all cases, a guarantee of the signature (section
6 8-312 (1) or (2)) of the person indorsing a certificated
7 security or originating an instruction including, in the
8 case of an instruction, a warranty of the taxpayer iden-
9 tification number or, in the absence thereof, other rea-
10 sonable assurance of identity;

11 (b) if the indorsement is made or the instruction is
12 originated by an agent, appropriate assurance of autho-
13 rity to sign;

14 (c) if the indorsement is made or the instruction is
15 originated by a fiduciary, appropriate evidence of ap-
16 pointment or incumbency;

17 (d) if there is more than one fiduciary, reasonable
18 assurance that all who are required to sign have done
19 so; and

20 (e) if the indorsement is made or the instruction
21 is originated by a person not covered by any of the
22 foregoing, assurance appropriate to the case corres-
23 ponding as nearly as may be to the foregoing.

24 (2) A "guarantee of the signature" in subsection (1)
25 means a guarantee signed by or on behalf of a person

26 reasonably believed by the issuer to be responsible.
27 The issuer may adopt standards with respect to respon-
28 sibility if they are not manifestly unreasonable.

29 (3) "Appropriate evidence of appointment or incum-
30 bency" in subsection (1) means:

31 (a) in the case of a fiduciary appointed or qualified
32 by a court, a certificate issued by or under the direction
33 or supervision of that court or an officer thereof and
34 dated within sixty days before the date of presentation
35 for transfer, pledge or release; or

36 (b) in any other case, a copy of a document showing
37 the appointment or a certificate issued by or on behalf
38 of a person reasonably believed by the issuer to be
39 responsible or, in the absence of that document or cer-
40 tificate, other evidence reasonably deemed by the issuer
41 to be appropriate. The issuer may adopt standards with
42 respect to the evidence if they are not manifestly un-
43 reasonable. The issuer is not charged with notice of
44 the contents of any document obtained pursuant to this
45 paragraph (b) except to the extent that the contents
46 relate directly to the appointment or incumbency.

47 (4) The issuer may elect to require reasonable as-
48 surance beyond that specified in this section, but if it
49 does so and, for a purpose other than that specified in
50 subsection 3 (b), both requires and obtains a copy of a
51 will, trust, indenture, articles of copartnership, bylaws
52 or other controlling instrument, it is charged with notice
53 of all matters contained therein affecting the transfer,
54 pledge or release.

§46-8-403. Issuer's duty as to adverse claims.

1 (1) An issuer to whom a certificated security is
2 presented for registration shall inquire into adverse
3 claims if:

4 (a) a written notification of an adverse claim is
5 received at a time and in a manner affording the issuer
6 a reasonable opportunity to act on it prior to the issu-
7 ance of a new, reissued or reregistered certificated
8 security, and the notification identifies the claimant, the
9 registered owner, and the issue of which the security

10 is a part, and provides an address for communications
11 directed to the claimant; or

12 (b) the issuer is charged with notice of an adverse
13 claim from a controlling instrument which it has elected
14 to require under section 8-402 (4).

15 (2) The issuer may discharge any duty of inquiry
16 by any reasonable means, including notifying an ad-
17 verse claimant by registered or certified mail at the
18 address furnished by him or if there be no such address
19 at his residence or regular place of business that the
20 certificated security has been presented for registration
21 of transfer by a named person, and that the transfer
22 will be registered unless within thirty days from the
23 date of mailing the notification, either:

24 (a) an appropriate restraining order, injunction or
25 other process issues from a court of competent juris-
26 diction; or

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

32 (3) Unless an issuer is charged with notice of an
33 adverse claim from a controlling instrument which it
34 has elected to require under section 8-402 (4) or receives
35 notification of an adverse claim under subsection (1),
36 if a certificated security presented for registration is
37 indorsed by the appropriate person or persons the is-
38 suer is under no duty to inquire into adverse claims.
39 In particular:

40 (a) an issuer registering a certificated security in
41 the name of a person who is a fiduciary or who is
42 described as a fiduciary is not bound to inquire into
43 the existence, extent, or correct description of the fidu-
44 ciary relationship; and thereafter the issuer may assume
45 without inquiry that the newly registered owner
46 continues to be the fiduciary until the issuer receives
47 written notice that the fiduciary is no longer acting as
48 such with respect to the particular security;

49 (b) an issuer registering transfer on an indorsement

50 by a fiduciary is not bound to inquire whether the
51 transfer is made in compliance with a controlling in-
52 strument or with the law of the state having jurisdiction
53 of the fiduciary relationship, including any law requiring
54 the fiduciary to obtain court approval of the transfer;
55 and

56 (c) the issuer is not charged with notice of the con-
57 tents of any court record or file or other recorded or
58 unrecorded document even though the document is in
59 its possession and even though the transfer is made on
60 the indorsement of a fiduciary to the fiduciary himself
61 or to his nominee.

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

64 (a) claims embodied in a restraining order, injunc-
65 tion, or other legal process served upon the issuer if
66 the process was served at a time and in a manner afford-
67 ing the issuer a reasonable opportunity to act on it
68 in accordance with the requirements of subsection (5);

69 (b) claims of which the issuer has received a written
70 notification from the registered owner or the registered
71 pledgee if the notification was received at a time and
72 in a manner affording the issuer a reasonable oppor-
73 tunity to act on it in accordance with the requirements
74 of subsection (5);

75 (c) claims (including restrictions on transfer not im-
76 posed by the issuer) to which the registration of transfer
77 to the present registered owner was subject and
78 were so noted in the initial transaction statement
79 sent to him; and

80 (d) claims as to which an issuer is charged with
81 notice from a controlling instrument it has elected to
82 require under section 8-402 (4).

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

86 (a) including a notation of the claim in any state-
87 ments sent with respect to the security under sections
88 8-408 (3), (6), and (7); and

89 (b) refusing to register the transfer or pledge of the
90 security unless the nature of the claim does not preclude
91 transfer or pledge subject thereto.

92 (6) If the transfer or pledge of the security is reg-
93 istered subject to an adverse claim, a notation of the
94 claim must be included in the initial transaction state-
95 ment and all subsequent statements sent to the trans-
96 feree and pledgee under section 8-408.

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

104 (a) the claim was embodied in legal process which
105 expressly provides otherwise;

106 (b) the claim was asserted in a written notification
107 from the registered pledgee;

108 (c) the claim was one as to which the issuer was
109 charged with notice from a controlling instrument it
110 required under section 8-402 (4) in connection with the
111 pledgee's request for transfer; or

112 (d) the transfer requested is to the registered owner.

§46-8-404. Liability and nonliability for registration.

1 (1) Except as provided in any law relating to the
2 collection of taxes, the issuer is not liable to the owner,
3 pledgee or any other person suffering loss as a result of
4 the registration of a transfer, pledge or release of a
5 security if:

6 (a) there were on or with a certificated security the
7 necessary indorsements or the issuer had received an
8 instruction originated by an appropriate person (section
9 8-308); and

10 (b) the issuer had no duty as to adverse claims or has
11 discharged the duty (section 8-403).

12 (2) If an issuer has registered a transfer of a certifi-
13 cated security to a person not entitled to it, the issuer on

14 demand shall deliver a like security to the true owner
15 unless:

16 (a) the registration was pursuant to subsection (1);

17 (b) the owner is precluded from asserting any claim
18 for registering the transfer under section 8-405 (1); or

19 (c) the delivery would result in overissue, in which
20 case the issuer's liability is governed by section 8-104.

21 (3) If an issuer has improperly registered a transfer,
22 pledge or release of an uncertificated security, the issuer
23 on demand from the injured party shall restore the
24 records as to the injured party to the condition that
25 would have obtained if the improper registration had
26 not been made unless:

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

28 (b) the registration would result in overissue, in which
29 case the issuer's liability is governed by section 8-104.

§46-8-405. Lost, destroyed and stolen certificated securities.

1 (1) If a certificated security has been lost, apparently
2 destroyed or wrongfully taken, and the owner fails to
3 notify the issuer of that fact within a reasonable time
4 after he has notice of it and the issuer registers a transfer
5 of the security before receiving notification, the owner
6 is precluded from asserting against the issuer any claim
7 for registering the transfer under section 8-404 or any
8 claim to a new security under this section.

9 (2) If the owner of a certificated security claims
10 that the security has been lost, destroyed or wrongfully
11 taken, the issuer shall issue a new certificated security
12 or, at the option of the issuer, an equivalent uncertificated
13 security in place of the original security if the owner:

14 (a) so requests before the issuer has notice that the
15 security has been acquired by a bona fide purchaser;

16 (b) files with the issuer a sufficient indemnity bond;
17 and

18 (c) satisfies any other reasonable requirements im-
19 posed by the issuer.

20 (3) If, after the issue of a new certificated or uncer-
21 tificated security, a bona fide purchaser of the original
22 certificated security presents it for registration of trans-

23 fer, the issuer shall register the transfer unless registra-
24 tion would result in overissue, in which event the issuer's
25 liability is governed by section 8-104. In addition to any
26 rights on the indemnity bond, the issuer may recover the
27 new certificated security from the person to whom it was
28 issued or any person taking under him except a bona
29 fide purchaser or may cancel the uncertificated security
30 unless a bona fide purchaser or any person taking under
31 a bona fide purchaser is then the registered owner or
32 registered pledgee thereof.

§46-8-406. Duty of authenticating trustee, transfer agent or registrar.

1 (1) If a person acts as authenticating trustee, transfer
2 agent, registrar, or other agent for an issuer in the
3 registration of transfers of its certificated securities or
4 in the registration of transfers, pledges and releases of its
5 uncertificated securities, in the issue of new securities
6 or in the cancellation of surrendered securities:

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

9 (b) with regard to the particular functions he per-
10 forms, he has the same obligations to the holder or owner
11 of a certificated security or to the owner or pledgee of
12 an uncertificated security and has the same rights and
13 privileges as the issuer has in regard to those functions.

14 (2) Notice to an authenticating trustee, transfer agent,
15 registrar or other agent is notice to the issuer with
16 respect to the functions performed by the agent.

§46-8-407. Exchangeability of securities.

1 (1) No issuer is subject to the requirements of this
2 section unless it regularly maintains a system for issuing
3 the class of securities involved under which both cer-
4 tificated and uncertificated securities are regularly issued
5 to the category of owners, which includes the person in
6 whose name the new security is to be registered.

7 (2) Upon surrender of a certificated security with all
8 necessary indorsements and presentation of a written
9 request by the person surrendering the security, the
10 issuer, if he has no duty as to adverse claims or has

11 discharged the duty (section 8-403), shall issue to the
12 person or a person designated by him an equivalent un-
13 certificated security subject to all liens, restrictions, and
14 claims that were noted on the certificated security.

15 (3) Upon receipt of a transfer instruction originated
16 by an appropriate person who so requests, the issuer of
17 an uncertificated security shall cancel the uncertificated
18 security and issue an equivalent certificated security on
19 which must be noted conspicuously any liens and restric-
20 tions of the issuer and any adverse claims (as to which
21 the issuer has a duty under section 8-403(4)) to which the
22 uncertificated security was subject. The certificated se-
23 curity shall be registered in the name of and delivered
24 to:

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

27 (b) the registered pledgee, if the uncertificated secur-
28 ity was subject to a registered pledge.

§46-8-408. Statements of uncertificated securities.

1 (1) Within two business days after the transfer of an
2 uncertificated security has been registered, the issuer
3 shall send to the new registered owner and, if the security
4 has been transferred subject to a registered pledge, to
5 the registered pledgee a written statement containing:

6 (a) a description of the issue of which the uncertifi-
7 cated security is a part;

8 (b) the number of shares or units transferred;

9 (c) the name and address and any taxpayer identifi-
10 cation number of the new registered owner and, if the
11 security has been transferred subject to a registered
12 pledge, the name and address and any taxpayer identifica-
13 tion number of the registered pledgee;

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

20 (e) the date the transfer was registered.

21 (2) Within two business days after the pledge of an
22 uncertificated security has been registered, the issuer
23 shall send to the registered owner and the registered
24 pledgee a written statement containing:

25 (a) a description of the issue of which the uncertifi-
26 cated security is a part;

27 (b) the number of shares or units pledged;

28 (c) the name and address and any taxpayer identifi-
29 cation number of the registered owner and the regis-
30 tered pledgee;

31 (d) a notation of any liens and restrictions of the
32 issuer and any adverse claims (as to which the issuer has
33 a duty under section 8-403 (4)) to which the uncertificated
34 security is or may be subject at the time of registration or
35 a statement that there are none of those liens, restrictions,
36 or adverse claims; and

37 (e) the date the pledge was registered.

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

43 (a) a description of the issue of which the uncertifi-
44 cated security is a part;

45 (b) the number of shares or units released from pledge;

46 (c) the name and address and any taxpayer identifi-
47 cation number of the registered owner and the pledgee
48 whose interest was released;

49 (d) a notation of any liens and restrictions of the
50 issuer and any adverse claims (as to which the issuer has
51 a duty under section 8-403 (4)) to which the uncertificated
52 security is or may be subject at the time of registration or
53 a statement that there are none of those liens, restrictions
54 or adverse claims; and

55 (e) the date the release was registered.

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

58 (a) the new registered owner and, if applicable, to the
59 registered pledgee pursuant to subsection (1);

60 (b) the registered pledgee pursuant to subsection (2);
61 or

62 (c) the registered owner pursuant to subsection (3).

63 Each initial transaction statement shall be signed by
64 or on behalf of the issuer and shall be identified as "ini-
65 tial transaction statement".

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

70 (a) a description of the issue of which the uncertifi-
71 cated security is a part;

72 (b) the number of shares or units transferred;

73 (c) the name and address and any taxpayer identifi-
74 cation number of the former registered owner and of
75 any former registered pledgee; and

76 (d) the date the transfer was registered.

77 (6) At periodic intervals no less frequent than annually
78 and at any time upon the reasonable written request of
79 the registered owner, the issuer shall send to the regis-
80 tered owner of each uncertificated security a dated
81 written statement containing:

82 (a) a description of the issue of which the uncertificated
83 security is a part;

84 (b) the name and address and any taxpayer identifi-
85 cation number of the registered owner;

86 (c) the number of shares or units of the uncertificated
87 security registered in the name of the registered owner on
88 the date of the statement;

89 (d) the name and address and any taxpayer identifi-
90 cation number of any registered pledgee and the num-
91 ber of shares or units subject to the pledge; and

92 (e) a notation of any liens and restrictions of the
93 issuer and any adverse claims (as to which the issuer has
94 a duty under section 8-403(4)) to which the uncertificated

95 security is or may be subject or a statement that there are
96 none of those liens, restrictions, or adverse claims.

97 (7) At periodic intervals no less frequent than annually
98 and at any time upon the reasonable written request of
99 the registered pledgee, the issuer shall send to the regis-
100 tered pledgee of each uncertificated security a dated
101 written statement containing:

102 (a) a description of the issue of which the uncertifi-
103 cated security is a part;

104 (b) the name and address and any taxpayer identifi-
105 cation number of the registered owner;

106 (c) the name and address and any taxpayer identifi-
107 cation number of the registered pledgee;

108 (d) the number of shares or units subject to the pledge;
109 and

110 (e) a notation of any liens and restrictions of the
111 issuer and any adverse claims (as to which the issuer has
112 a duty under section 8-403(4)) to which the uncertificated
113 security is or may be subject or a statement that there are
114 none of those liens, restrictions, or adverse claims.

115 (8) If the issuer sends the statements described in
116 subsections (6) and (7) at periodic intervals no less fre-
117 quent than quarterly, the issuer is not obliged to send
118 additional statements upon request unless the owner or
119 pledgee requesting them pays to the issuer the reasonable
120 cost of furnishing them.

121 (9) Each statement sent pursuant to this section must
122 bear a conspicuous legend reading substantially as fol-
123 lows: "This statement is merely a record of the rights of
124 the addressee as of the time of its issuance. Delivery of
125 this statement, of itself, confers no rights on the recipient.
126 This statement is neither a negotiable instrument nor a
127 security."

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS
AND CHATTEL PAPER.**

**§46-9-103. Perfection of security interests in multiple state
transactions.**

- 1 (1) Documents, instruments and ordinary goods.
2 (a) This subsection applies to documents and instru-

3 ments and to goods other than those covered by a cer-
4 tificate of title described in subsection (2), mobile goods
5 described in subsection (3), and minerals described in
6 subsection (5).

7 (b) Except as otherwise provided in this subsection,
8 perfection and the effect of perfection or nonperfection
9 of a security interest in collateral are governed by the
10 law of the jurisdiction where the collateral is when the
11 last event occurs on which is based the assertion that
12 the security interest is perfected or unperfected.

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

23 (d) When collateral is brought into and kept in this
24 state while subject to a security interest perfected under
25 the law of the jurisdiction from which the collateral was
26 removed, the security interest remains perfected, but if
27 action is required by part 3 of this article to perfect the
28 security interest:

29 (i) if the action is not taken before the expiration of
30 the period of perfection in the other jurisdiction or the
31 end of four months after the collateral is brought into
32 this state, whichever period first expires, the security
33 interest becomes unperfected at the end of that period
34 and is thereafter deemed to have been unperfected as
35 against a person who became a purchaser after removal;

36 (ii) if the action is taken before the expiration of
37 the period specified in subparagraph (i), the security
38 interest continues perfected thereafter;

39 (iii) for the purpose of priority over a buyer of con-
40 sumer goods (subsection (2) of section 9-307), the period
41 of the effectiveness of a filing in the jurisdiction from

42 which the collateral is removed is governed by the rules
43 with respect to perfection in subparagraphs (i) and
44 (ii).

45 (2) Certificate of title.

46 (a) This subsection applies to goods covered by a
47 certificate of title issued under a statute of this state or
48 of another jurisdiction under the law of which indication
49 of a security interest on the certificate is required as a
50 condition of perfection.

51 (b) Except as otherwise provided in this subsection,
52 perfection and the effect of perfection or nonperfection
53 of the security interest are governed by the law (includ-
54 ing the conflict of laws rules) of the jurisdiction issuing
55 the certificate until four months after the goods are
56 removed from that jurisdiction and thereafter until the
57 goods are registered in another jurisdiction, but in any
58 event not beyond surrender of the certificate. After the
59 expiration of that period, the goods are not covered by
60 the certificate of title within the meaning of this section.

61 (c) Except with respect to the rights of a buyer de-
62 scribed in the next paragraph, a security interest, per-
63 fected in another jurisdiction otherwise than by notation
64 on a certificate of title, in goods brought into this state
65 and thereafter covered by a certificate of title issued by
66 this state is subject to the rules stated in paragraph (d)
67 of subsection (1).

68 (d) If goods are brought into this state while a
69 security interest therein is perfected in any manner
70 under the law of the jurisdiction from which the goods
71 are removed and a certificate of title is issued by this
72 state and the certificate does not show that the goods
73 are subject to the security interest or that they may be
74 subject to security interests not shown on the certificate,
75 the security interest is subordinate to the rights of a
76 buyer of the goods who is not in the business of selling
77 goods of that kind to the extent that he gives value and
78 receives delivery of the goods after issuance of the
79 certificate and without knowledge of the security
80 interest.

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

82 (a) This subsection applies to accounts (other than
83 an account described in subsection (5) on minerals)
84 and general intangibles (other than uncertificated se-
85 curities) and to goods which are mobile and which are
86 of a type normally used in more than one jurisdiction,
87 such as motor vehicles, trailers, rolling stock, airplanes,
88 shipping containers, road building and construction ma-
89 chinery and commercial harvesting machinery and the
90 like, if the goods are equipment or are inventory leased
91 or held for lease by the debtor to others, and are not
92 covered by a certificate of title described in subsection
93 (2).

94 (b) The law (including the conflict of laws rules) of
95 the jurisdiction in which the debtor is located governs
96 the perfection and the effect of perfection or nonperfec-
97 tion of the security interest.

98 (c) If, however, the debtor is located in a jurisdiction
99 which is not a part of the United States, and which does
100 not provide for perfection of the security interest by
101 filing or recording in that jurisdiction, the law of the
102 jurisdiction in the United States in which the debtor
103 has its major executive office in the United States
104 governs the perfection and the effect of perfection or
105 nonperfection of the security interest through filing. In
106 the alternative, if the debtor is located in a jurisdiction
107 which is not a part of the United States or Canada and
108 the collateral is accounts or general intangibles for
109 money due or to become due, the security interest may
110 be perfected by notification to the account debtor. As
111 used in this paragraph, "United States" includes its
112 territories and possessions and the Commonwealth of
113 Puerto Rico.

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

120 agent upon whom service of process may be made on
121 behalf of the foreign air carrier.

122 (e) A security interest perfected under the law of
123 the jurisdiction of the location of the debtor is perfected
124 until the expiration of four months after a change of the
125 debtor's location to another jurisdiction, or until perfec-
126 tion would have ceased by the law of the first jurisdic-
127 tion, whichever period first expires. Unless perfected
128 in the new jurisdiction before the end of that period, it
129 becomes unperfected thereafter and is deemed to have
130 been unperfected as against a person who became a
131 purchaser after the change.

132 (4) Chattel paper.

133 The rules stated for goods in subsection (1) apply to
134 a possessory security interest in chattel paper. The rules
135 stated for accounts in subsection (3) apply to a non-
136 possessory security interest in chattel paper, but the
137 security interest may not be perfected by notification to
138 the account debtor.

139 (5) Minerals.

140 Perfection and the effect of perfection or nonperfection
141 of a security interest which is created by a debtor who
142 has an interest in minerals or the like (including oil
143 and gas) before extraction and which attaches thereto
144 as extracted, or which attaches to an account resulting
145 from the sale thereof at the wellhead or minehead are
146 governed by the law (including the conflict of laws
147 rules) of the jurisdiction wherein the wellhead or mine-
148 head is located.

149 (6) Uncertificated securities.

150 The law (including the conflict of laws rules) of the
151 jurisdiction of organization of the issuer governs the
152 perfection and the effect of perfection or nonperfection
153 of a security interest in uncertificated securities.

§46-9-105. Definitions and index of definitions.

1 (1) In this article unless the context otherwise re-
2 quires:

3 (a) "Account debtor" means the person who is obligat-
4 ed on an account, chattel paper, or general intangible;

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

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

16 (d) "Debtor" means the person who owes payment or
17 other performance of the obligation secured, whether
18 or not he owns or has rights in the collateral, and in-
19 cludes the seller of accounts, or chattel paper. Where
20 the debtor and the owner of the collateral are not the
21 same person, the term "debtor" means the owner of the
22 collateral in any provision of the article dealing with the
23 collateral, the obligor in any provision dealing with the
24 obligation, and may include both where the context so
25 requires;

26 (e) "Deposit account" means a demand, time, savings,
27 passbook or like account maintained with a bank, savings
28 and loan association, credit union or like organization,
29 other than an account evidenced by a certificate of
30 deposit;

31 (f) "Document" means document of title as defined
32 in the general definitions of article 1 (section 1-201),
33 and a receipt of the kind described in subsection (2) of
34 section 7-201;

35 (g) "Encumbrance" includes real estate mortgages and
36 other liens on real estate and all other rights in real
37 estate that are not ownership interests;

38 (h) "Goods" includes all things which are moveable
39 at the time the security interest attaches or which are
40 fixtures (section 9-313), but does not include money,
41 documents, instruments, accounts, chattel paper, general
42 intangibles, or minerals or the like (including oil and gas)

43 before extraction. "Goods" also includes standing timber
44 which is to be cut and removed under a conveyance or
45 contract for sale, the unborn young of animals, and
46 growing crops;

47 (i) "Instrument" means a negotiable instrument (de-
48 fined in section 3-104), or a certificated security (defined
49 in section 8-102) or any other writing which evidences
50 a right to the payment of money and is not itself a
51 security agreement or lease and is of a type which is in
52 ordinary course of business transferred by delivery with
53 any necessary endorsement or assignment;

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

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

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

64 (m) "Secured party" means a lender, seller or other
65 person in whose favor there is a security interest, in-
66 cluding a person to whom accounts or chattel paper have
67 been sold. When the holders of obligations issued under
68 an indenture of trust, equipment trust agreement or the
69 like are represented by a trustee or other person, the
70 representative is the secured party;

71 (n) "Transmitting utility" means any person primarily
72 engaged in the railroad, street railway or trolley bus
73 business, the electric or electronics communications
74 transmission business, the transmission of goods by pipe-
75 line, or the transmission or the production and trans-
76 mission of electricity, steam, gas or water, or the provi-
77 sion of sewer service.

78 (2) Other definitions applying to this article and the
79 section in which they appear are:

80 "Account." Section 9-106.

81 "Attach." Section 9-203.

82 "Construction mortgage." Section 9-313(1).

- 83 "Consumer goods." Section 9-109 (1).
84 "Equipment." Section 9-109 (2).
85 "Farm products." Section 9-109 (3).
86 "Fixture." Section 9-313.
87 "Fixture filing." Section 9-313.
88 "General intangibles." Section 9-106.
89 "Inventory." Section 9-109 (4).
90 "Lien creditor." Section 9-301 (3).
91 "Proceeds." Section 9-306 (1).
92 "Purchase money security interest." Section 9-107.
93 "United States." Section 9-103.
94 (3) The following definitions in other articles apply
95 to this article:
96 "Check." Section 3-104.
97 "Contract for sale." Section 2-106.
98 "Holder in due course." Section 3-302.
99 "Note." Section 3-104.
100 "Sale." Section 2-106.
101 (4) In addition, article 1 contains general definitions
102 and principles of construction and interpretation ap-
103 plicable throughout this article.

**§46-9-203. Attachment and enforceability of security interest;
proceeds; formal requisites.**

- 1 (1) Subject to the provisions of section 4-208 on the
2 security interest of a collecting bank, section 8-321 on
3 security interests in securities and section 9-113 on a
4 security interest arising under the article on sales, a
5 security interest is not enforceable against the debtor
6 or third parties with respect to the collateral and does
7 not attach unless:
8 (a) the collateral is in the possession of the secured
9 party, pursuant to agreement, or the debtor has signed
10 a security agreement which contains a description of
11 the collateral and in addition, when the security in-
12 terest covers crops growing or to be grown or timber
13 to be cut, a description of the land concerned;
14 (b) value has been given; and
15 (c) the debtor has rights in the collateral.
16 (2) A security interest attaches when it becomes en-
17 forceable against the debtor with respect to the collat-

18 eral. Attachment occurs as soon as all of the events
19 specified in subsection (1) have taken place unless
20 explicit agreement postpones the time of attaching.

21 (3) Unless otherwise agreed a security agreement
22 gives the secured party the rights to proceeds provided
23 by section 9-306.

24 (4) A transaction may be subject to this article and
25 also to article 7A of chapter 47 relating to small loans
26 and in case of conflict between the provisions of this
27 article and said article 7A or any other such statute,
28 the provisions of said article 7A or such other statute
29 control. Failure to comply with any applicable statute
30 has only the effect which is specified therein.

**§46-9-302. When filing is required to perfect security interest;
security interests to which filing provisions of
this article do not apply.**

1 (1) A financing statement must be filed to perfect
2 all security interests except the following:

3 (a) a security interest in collateral in possession of
4 the secured party under section 9-305;

5 (b) a security interest temporarily perfected in in-
6 struments or documents without delivery under section
7 9-304 or in proceeds for a 10-day period under section
8 9-306;

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

11 (d) a purchase money security interest in consumer
12 goods; but filing is required for a motor vehicle required
13 to be registered; and fixture filing is required for prior-
14 ity over conflicting interests in fixtures to the extent
15 provided in section 9-313;

16 (e) an assignment of accounts which does not alone
17 or in conjunction with other assignments to the same
18 assignee transfer a significant part of the outstanding
19 accounts of the assignor;

20 (f) a security interest of a collecting bank (section
21 4-208) or in securities (section 8-321) or arising under

22 the article on sales (see section 9-113) or covered in
23 subsection (3) of this section;

24 (g) an assignment for the benefit of all the creditors
25 of the transferor, and subsequent transfers by the as-
26 signee thereunder.

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

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

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

40 (b) the following statute of this state: Chapter seven-
41 teen-a of this code; but during any period in which
42 collateral is inventory held for sale by a person who
43 is in the business of selling goods of that kind, the filing
44 provisions of this article (part 4) apply to a security
45 interest in that collateral created by him as debtor; or

46 (c) a certificate of title statute of another jurisdiction
47 under the law of which indication of a security interest
48 on the certificate is required as a condition of perfection
49 (subsection (2) of section 9-103).

50 (4) Compliance with a statute or treaty described in
51 subsection (3) is equivalent to the filing of a financing
52 statement under this article, and a security interest in
53 property subject to the statute or treaty can be per-
54 fected only by compliance therewith except as provided
55 in section 9-103 on multiple state transactions. Duration
56 and renewal of perfection of a security interest per-
57 fected by compliance with the statute or treaty are
58 governed by the provisions of the statute or treaty; in
59 other respects the security interest is subject to this
60 article.

§46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

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

9 (2) During the period that goods are in the possession
10 of the issuer of a negotiable document therefor, a se-
11 curity interest in the goods is perfected by perfecting a
12 security interest in the document, and any security
13 interest in the goods otherwise perfected during such
14 period is subject thereto.

15 (3) A security interest in goods in the possession of
16 a bailee other than one who has issued a negotiable
17 document therefor is perfected by issuance of a docu-
18 ment in the name of the secured party or by the bailee's
19 receipt of notification of the secured party's interest or
20 by filing as to the goods.

21 (4) A security interest in instruments (other than
22 certificated securities) or negotiable documents is per-
23 fected without filing or the taking of possession for a
24 period of 21 days from the time it attaches to the extent
25 that it arises for new value given under a written se-
26 curity agreement.

27 (5) A security interest remains perfected for a period
28 of 21 days without filing where a secured party having
29 a perfected security interest in an instrument (other
30 than a certificated security), a negotiable document or
31 goods in possession of a bailee other than one who has
32 issued a negotiable document therefor:

33 (a) makes available to the debtor the goods or docu-
34 ments representing the goods for the purpose of ultimate
35 sale or exchange or for the purpose of loading, unloading,
36 storing, shipping, transshipping, manufacturing, pro-

37 censing or otherwise dealing with them in a man-
38 ner preliminary to their sale or exchange, but priority
39 between conflicting security interests in the goods is
40 subject to subsection (3) of section 9-312; or

41 (b) delivers the instrument to the debtor for the
42 purpose of ultimate sale or exchange or of presentation,
43 collection, renewal or registration of transfer.

44 (6) After the 21-day period in subsections (4) and
45 (5) perfection depends upon compliance with applicable
46 provisions of this article.

**§46-9-305. When possession by secured party perfects security
interest without filing.**

1 A security interest in letters of credit and advices of
2 credit (subsection (2) (a) of section 5-116), goods, in-
3 struments (other than certificated securities), money,
4 negotiable documents or chattel paper may be perfected
5 by the secured party's taking possession of the collateral.
6 If such collateral other than goods covered by a nego-
7 tiable document is held by a bailee, the secured party is
8 deemed to have possession from the time the bailee
9 receives notification of the secured party's interest. A
10 security interest is perfected by possession from the
11 time possession is taken without relation back and con-
12 tinues only so long as possession is retained, unless other-
13 wise specified in this article. The security interest may
14 be otherwise perfected as provided in this article before
15 or after the period of possession by the secured party.

**§46-9-309. Protection of purchasers of instruments, documents
and securities.**

1 Nothing in this article limits the rights of a holder
2 in due course of a negotiable instrument (section 3-302) or
3 a holder to whom a negotiable document of title has been
4 duly negotiated (section 7-501) or a bona fide purchaser of
5 a security (section 8-302) and such holders or purchasers
6 take priority over an earlier security interest even
7 though perfected. Filing under this article does not con-
8 stitute notice of the security interest to such holders or
9 purchasers.

§46-9-312. Priorities among conflicting security interests in the same collateral.

1 (1) The rules of priority stated in other sections of
2 this part and in the following sections shall govern when
3 applicable: Section 4-208 with respect to the security in-
4 terests of collecting banks in items being collected,
5 accompanying documents and proceeds; section 9-103 on
6 security interests related to other jurisdictions; section
7 9-114 on consignments.

8 (2) A perfected security interest in crops for new
9 value given to enable the debtor to produce the crops
10 during the production season and given not more than
11 three months before the crops become growing crops by
12 planting or otherwise takes priority over an earlier per-
13 fected security interest to the extent that such earlier
14 interest secures obligations due more than six months
15 before the crops become growing crops by planting or
16 otherwise, even though the person giving new value had
17 knowledge of the earlier security interest.

18 (3) A perfected purchase money security interest in
19 inventory has priority over a conflicting security in-
20 terest in the same inventory and also has priority in iden-
21 tifiable cash proceeds received on or before the delivery
22 of the inventory to a buyer if:

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

26 (b) the purchase money secured party gives notifica-
27 tion in writing to the holder of the conflicting security
28 interest if the holder had filed a financing statement
29 covering the same types of inventory (i) before the date
30 of the filing made by the purchase money secured party,
31 or (ii) before the beginning of the 21-day period
32 where the purchase money security interest is temporarily
33 perfected without filing or possession (subsection (5) of
34 section 9-304); and

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

38 (d) the notification states that the person giving the
39 notice has or expects to acquire a purchase money secur-
40 ity interest in inventory of the debtor, describing such
41 inventory by item or type.

42 (4) A purchase money security interest in collateral
43 other than inventory has priority over a conflicting se-
44 curity interest in the same collateral or its proceeds if
45 the purchase money security interest is perfected at the
46 time the debtor receives possession of the collateral or
47 within ten days thereafter.

48 (5) In all cases not governed by other rules stated in
49 this section (including cases of purchase money security
50 interests which do not qualify for the special priorities
51 set forth in subsections (3) and (4) of this section),
52 priority between conflicting security interests in the same
53 collateral shall be determined according to the following
54 rules:

55 (a) Conflicting security interests rank according to
56 priority in time of filing or perfection. Priority dates
57 from the time a filing is first made covering the collateral
58 or the time the security interest is first perfected, which-
59 ever is earlier, provided that there is no period thereafter
60 when there is neither filing nor perfection.

61 (b) So long as conflicting security interests are un-
62 perfected, the first to attach has priority.

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

66 (7) If future advances are made while a security
67 possession, or under section 8-321 on securities, the se-
68 curity interest has the same priority for the purposes of
69 subsection (5) with respect to the future advances as it
70 does with respect to the first advance. If a commitment is
71 made before or while the security interest is so perfected,
72 the security interest has the same priority with respect to
73 advances made pursuant thereto. In other cases a per-
74 fected security interest has priority from the date the
75 advance is made.

Sec
interest is per-
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Sec

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence B. Christman
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. D. Shelton Jr
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

H. S. Rothman Jr
President of the Senate

W. H. DeLoach
Speaker House of Delegates

The within appeared this the 2

day of March, 1979.

John R. Ralston
Governor



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