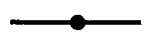


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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



## ENROLLED

SENATE BILL NO. 441

(By Senator GRUBB)



PASSED MARCH 11, 1995

In Effect 28 Days From Passage

**ENROLLED**  
**Senate Bill No. 441**

(BY SENATOR GRUBB)

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[Passed March 11, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one hundred five and two hundred six, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred four, article four of said chapter; to amend and reenact section one hundred fourteen, article five of said chapter; to amend and reenact article eight of said chapter; to amend and reenact sections one hundred three, one hundred five, one hundred six, two hundred three; three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred nine and three hundred twelve, article nine, of said chapter; and to further amend said article by adding thereto two new sections, designated sections one hundred fifteen and one hundred sixteen, all relating to the uniform commercial code (UCC); investment securities; territorial application of the UCC; parties' power to choose applicable law; statute of frauds for kinds of personal property not otherwise covered; bank deposits and collections; definitions; letters of credit; issuer's duty and privilege to honor; right to reimbursement; investment

securities; short title; definitions; rules for determining whether certain obligations and interests are securities or financial assets; acquisition of security or financial asset or interest therein; notice of adverse claim; control; whether indorsement, instruction or entitlement order is effective; warranties in direct holding; warranties in indirect holding; applicability; choice of law; clearing corporation rules; creditor's legal process; statute of frauds inapplicable; evidentiary rules concerning certificated securities; securities intermediary and others not liable to adverse claimant; securities intermediary as purchaser for value; issuer; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defect or defense; effect of issuer's restriction on transfer; effect of unauthorized signature on security certificate; completion or alteration of security certificate; rights and duties of issuer with respect to registered owners; effect of signature of authenticating trustee, registrar or transfer agent; issuer's lien; overissue; transfer of certificated and uncertificated securities; delivery; rights of purchaser; protected purchaser; indorsement; instruction; effect of guaranteeing signature, indorsement or instruction; purchaser's right to requisites for registration of transfer; registration; duty of issuer to register transfer; assurance that indorsement or instruction is effective; demand that issuer not register transfer; wrongful registration; replacement of lost, destroyed or wrongfully taken security certificate; obligation to notify issuer of lost, destroyed or wrongfully taken security certificate; authenticating trustee, transfer agent and registrar; security entitlements; securities account; acquisition of security entitlement from securities intermediary; assertion of adverse claim against entitlement holder; property interest of entitlement holder in financial asset held by securities intermediary; duty of securities intermediary to maintain financial asset; duty of securities intermediary with respect to payments and distributions; duty of securities intermediary to exercise rights as directed by entitlement holder; duty of securities intermediary to comply with entitlement order; duty of securities

intermediary to change entitlement holder's position to other form of security holding; specification of duties of securities intermediary by other statute or regulation; manner of performance of duties by securities intermediary and exercise of rights of entitlement holder; rights of purchaser of security entitlement from entitlement holder; priority among security interests and entitlement holders; savings clause; secured transactions and sales of accounts and chattel paper; perfection of security interests in multiple state transactions; definitions; account and general intangibles defined; investment property; security interest arising in purchase or delivery of financial asset; attachment and enforceability of security interest; proceeds; formal requisites; persons who take priority over unperfected security interests; rights of lien creditor; 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; proceeds; secured party's rights on disposition of collateral; protection of purchasers of instruments, documents and securities; and priorities among conflicting security interests in the same collateral.

*Be it enacted by the Legislature of West Virginia:*

That sections one hundred five and two hundred six, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred four, article four of said chapter be amended and reenacted; that section one hundred fourteen, article five of said chapter be amended and reenacted; that article eight of said chapter be amended and reenacted; that sections one hundred three, one hundred five, one hundred six, two hundred three, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred nine and three hundred twelve,

article nine of said chapter be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections one hundred fifteen and one hundred sixteen, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS.**

**§46-1-105. Territorial application of this chapter; parties' power to choose applicable law.**

1 (1) Except as provided hereafter in this section, when  
2 a transaction bears a reasonable relation to this state  
3 and also to another state or nation the parties may agree  
4 that the law either of this state or of such other state or  
5 nation shall govern their rights and duties. Failing such  
6 agreement this chapter applies to transactions bearing  
7 an appropriate relation to this state.

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

13 Rights of creditors against sold goods. Section 2-402.

14 Applicability of the article on bank deposits and  
15 collections. Section 4-102.

16 Applicability of the article on investment securities.  
17 Section 8-110.

18 Perfection provisions of the article on secured transac-  
19 tions. Section 9-103.

**§46-1-206. Statute of frauds for kinds of personal property not otherwise covered.**

1 (1) Except in the cases described in subsection (2) of  
2 this section a contract for the sale of personal property  
3 is not enforceable by way of action or defense beyond  
4 five thousand dollars in amount or value of remedy  
5 unless there is some writing which indicates that a  
6 contract for sale has been made between the parties at a

7 defined or stated price, reasonably identifies the subject  
8 matter, and is signed by the party against whom enforce-  
9 ment is sought or by his authorized agent.

10 (2) Subsection (1) of this section does not apply to  
11 contracts for the sale of goods (section 2-201) nor of  
12 securities (section 8-113) nor to security agreements  
13 (section 9-203).

**ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.**

**§46-4-104. Definitions and index of definitions.**

1 (a) In this article unless the context otherwise requires:

2 (1) "Account" means any deposit or credit account  
3 with a bank, including demand, time, savings, passbook,  
4 share draft, or like account, other than an account  
5 evidenced by a certificate of deposit;

6 (2) "Afternoon" means the period of a day between  
7 noon and midnight;

8 (3) "Banking day" means the part of a day on which a  
9 bank is open to the public for carrying on substantially  
10 all of its banking functions;

11 (4) "Clearing house" means an association of banks or  
12 other payors regularly clearing items;

13 (5) "Customer" means a person having an account with  
14 a bank or for whom a bank has agreed to collect items,  
15 including a bank that maintains an account at another  
16 bank;

17 (6) "Documentary draft" means a draft to be presented  
18 for acceptance or payment if specified documents,  
19 certificated securities (section 8-102) or instructions for  
20 uncertificated securities (section 8-102), or other certifi-  
21 cates, statements or the like are to be received by the  
22 drawee or other payor before acceptance or payment of  
23 the draft;

24 (7) "Draft" means a draft as defined in section 3-104 or  
25 an item, other than an instrument, that is an order;

26 (8) "Drawee" means a person ordered in a draft to  
27 make payment;

28 (9) "Item" means an instrument or a promise or order  
29 to pay money handled by a bank for collection or pay-  
30 ment. The term does not include a payment order  
31 governed by article four-a or a credit or debit card slip;

32 (10) "Midnight deadline" with respect to a bank is  
33 midnight on its next banking day following the banking  
34 day on which it receives the relevant item or notice or  
35 from which the time for taking action commences to run,  
36 whichever is later;

37 (11) "Settle" means to pay in cash, by clearing-house  
38 settlement, in a charge or credit or by remittance, or  
39 otherwise as agreed. A settlement may be either provi-  
40 sional or final;

41 (12) "Suspends payments" with respect to a bank  
42 means that it has been closed by order of the supervisory  
43 authorities, that a public officer has been appointed to  
44 take it over or that it ceases or refuses to make payments  
45 in the ordinary course of business.

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

48 "Agreement for electronic	
49 presentment"	Section 4-110.
50 "Bank"	Section 4-105.
51 "Collecting bank"	Section 4-105.
52 "Depository bank"	Section 4-105.
53 "Intermediary bank"	Section 4-105.
54 "Payor bank"	Section 4-105.
55 "Presenting bank"	Section 4-105.
56 "Presentment notice"	Section 4-110.

57 (c) The following definitions in other articles of this  
58 chapter apply to this article:

59	“Acceptance”	Section 3-409.
60	“Alteration”	Section 3-407.
61	“Cashier’s check”	Section 3-104.
62	“Certificate of deposit”	Section 3-104.
63	“Certified check”	Section 3-409.
64	“Check”	Section 3-104.
65	“Draft”	Section 3-104.
66	“Good faith”	Section 3-103.
67	“Holder in due course”	Section 3-302.
68	“Instrument”	Section 3-104.
69	“Notice of dishonor”	Section 3-503.
70	“Order”	Section 3-103.
71	“Ordinary care”	Section 3-103.
72	“Person entitled to enforce”	Section 3-301.
73	“Presentment”	Section 3-501.
74	“Promise”	Section 3-103.
75	“Prove”	Section 3-103.
76	“Teller’s check”	Section 3-104.
77	“Unauthorized signature”	Section 3-403.

78 (d) In addition article one contains general definitions  
79 and principles of construction and interpretation appli-  
80 cable throughout this article.

**ARTICLE 5. LETTERS OF CREDIT.**

**§46-5-114. Issuer’s duty and privilege to honor; right to reimbursement.**

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  
4 conform to the underlying contract for sale or other  
5 contract between the customer and the beneficiary. The  
6 issuer is not excused from honor of such a draft or  
7 demand by reason of an additional general term that all  
8 documents must be satisfactory to the issuer, but an  
9 issuer may require that specified documents must be  
10 satisfactory to it.

11 (2) Unless otherwise agreed when documents appear on  
12 their face to comply with the terms of a credit but a  
13 required document does not in fact conform to the  
14 warranties made on negotiation or transfer of a docu-  
15 ment of title (section 7-507) or of a certificated security  
16 (section 8-108) or is forged or fraudulent or there is  
17 fraud in the 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 circum-  
22 stances which would make it a holder in due course  
23 (section 3-302) and in an appropriate case would make it  
24 a person to whom a document of title has been duly  
25 negotiated (section 7-502) or a bona fide purchaser of a  
26 certificated security (section 8-302); and

27 (b) In all other cases as against its customer, an issuer  
28 acting in good faith may honor the draft or demand for  
29 payment despite notification from the customer of fraud,  
30 forgery or other defect not apparent on the face of the  
31 documents but a court of appropriate jurisdiction may  
32 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 not  
37 later than the day before maturity of any acceptance  
38 made under the credit.

39 (4) When a credit provides for payment by the issuer on  
40 receipt of notice that the required documents are in the  
41 possession of a correspondent or other agent of the  
42 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 entitled  
49 by charge-back or otherwise to return of the payment  
50 made.

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

#### ARTICLE 8. INVESTMENT SECURITIES.

##### PART 1. SHORT TITLE AND GENERAL MATTERS.

#### §46-8-101. Short title.

1 This article may be cited as uniform commercial  
2 code—investment securities.

#### §46-8-102. Definitions.

1 (a) In this article:

2 (1) “Adverse claim” means a claim that a claimant has  
3 a property interest in a financial asset and that it is a  
4 violation of the rights of the claimant for another person  
5 to hold, transfer, or deal with the financial asset.

6 (2) “Bearer form”, as applied to a certificated security,  
7 means a form in which the security is payable to the  
8 bearer of the security certificate according to its terms  
9 but not by reason of an indorsement.

10 (3) “Broker” means a person defined as a broker or

11 dealer under the federal securities laws, but without  
12 excluding a bank acting in that capacity.

13 (4) "Certificated security" means a security that is  
14 represented by a certificate.

15 (5) "Clearing corporation" means:

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

18 (ii) A federal reserve bank; or

19 (iii) Any other person that provides clearance or  
20 settlement services with respect to financial assets that  
21 would require it to register as a clearing agency under  
22 the federal securities laws but for an exclusion or  
23 exemption from the registration requirement, if its  
24 activities as a clearing corporation, including promulga-  
25 tion of rules, are subject to regulation by a federal or  
26 state governmental authority.

27 (6) "Communicate" means to:

28 (i) Send a signed writing; or

29 (ii) Transmit information by any mechanism agreed  
30 upon by the persons transmitting and receiving the  
31 information.

32 (7) "Entitlement holder" means a person identified in  
33 the records of a securities intermediary as the person  
34 having a security entitlement against the securities  
35 intermediary. If a person acquires a security entitlement  
36 by virtue of section 8-501(b)(2) or (3), that person is the  
37 entitlement holder.

38 (8) "Entitlement order" means a notification communi-  
39 cated to a securities intermediary directing transfer or  
40 redemption of a financial asset to which the entitlement  
41 holder has a security entitlement.

42 (9) "Financial asset", except as otherwise provided in  
43 section 8-103, means:

44 (i) A security;

45 (ii) An obligation of a person or a share, participation,  
46 or other interest in a person or in property or an enter-  
47 prise of a person, which is, or is of a type, dealt in or  
48 traded on financial markets or which is recognized in  
49 any area in which it is issued or dealt in as a medium for  
50 investment; or

51 (iii) Any property that is held by a securities interme-  
52 diary for another person in a securities account if the  
53 securities intermediary has expressly agreed with the  
54 other person that the property is to be treated as a  
55 financial asset under this article. As context requires,  
56 the term means either the interest itself or the means by  
57 which a person's claim to it is evidenced, including a  
58 certificated or uncertificated security, a security certifi-  
59 cate or a security entitlement.

60 (10) "Good faith", for purposes of the obligation of  
61 good faith in the performance or enforcement of con-  
62 tracts or duties within this article, means honesty in fact  
63 and the observance of reasonable commercial standards  
64 of fair dealing.

65 (11) "Indorsement" means a signature that alone or  
66 accompanied by other words is made on a security  
67 certificate in registered form or on a separate document  
68 for the purpose of assigning, transferring or redeeming  
69 the security or granting a power to assign, transfer or  
70 redeem it.

71 (12) "Instruction" means a notification communicated  
72 to the issuer of an uncertificated security which directs  
73 that the transfer of the security be registered or that the  
74 security be redeemed.

75 (13) "Registered form", as applied to a certificated  
76 security, means a form in which:

77 (i) The security certificate specifies a person entitled to  
78 the security; and

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

82 (14) "Securities intermediary" means:

83 (i) A clearing corporation; or

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

87 (15) "Security", except as otherwise provided in  
88 section 8-103, means an obligation of an issuer or a  
89 share, participation or other interest in an issuer or in  
90 property or an enterprise of an issuer:

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

95 (ii) Which is one of a class or series or by its terms is  
96 divisible into a class or series of shares, participations,  
97 interests or obligations; and

98 (iii) Which:

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

101 (B) Is a medium for investment and by its terms  
102 expressly provides that it is a security governed by this  
103 article.

104 (16) "Security certificate" means a certificate repre-  
105 senting a security.

106 (17) "Security entitlement" means the rights and  
107 property interest of an entitlement holder with respect  
108 to a financial asset specified in Part 5.

109 (18) "Uncertificated security" means a security that is  
110 not represented by a certificate.

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

113	“Appropriate person”	Section 8-107
114	“Control”	Section 8-106
115	“Delivery”	Section 8-301
116	“Investment company security”	Section 8-103
117	“Issuer”	Section 8-201
118	“Overissue”	Section 8-210
119	“Protected purchaser”	Section 8-303
120	“Securities account”	Section 8-501

121 (c) In addition, article one contains general definitions  
122 and principles of construction and interpretation appli-  
123 cable throughout this article.

124 (d) The characterization of a person, business, or  
125 transaction for purposes of this article does not deter-  
126 mine the characterization of the person, business or  
127 transaction for purposes of any other law, regulation or  
128 rule.

**§46-8-103. Rules for determining whether certain obligations  
and interests are securities or financial assets.**

1 (a) A share or similar equity interest issued by a  
2 corporation, business trust, joint stock company or  
3 similar entity is a security.

4 (b) An “investment company security” is a security.  
5 “Investment company security” means a share or similar  
6 equity interest issued by an entity that is registered as an  
7 investment company under the federal investment  
8 company laws, an interest in a unit investment trust that  
9 is so registered or a face-amount certificate issued by a  
10 face-amount certificate company that is so registered.  
11 Investment company security does not include an  
12 insurance policy or endowment policy or annuity con-

13 tract issued by an insurance company.

14 (c) An interest in a partnership or limited liability  
15 company is not a security unless it is dealt in or traded  
16 on securities exchanges or in securities markets, its  
17 terms expressly provide that it is a security governed by  
18 this article or it is an investment company security.  
19 However, an interest in a partnership or limited liability  
20 company is a financial asset if it is held in a securities  
21 account.

22 (d) A writing that is a security certificate is governed  
23 by this article and not by article three, even though it  
24 also meets the requirements of that article. However, a  
25 negotiable instrument governed by article three is a  
26 financial asset if it is held in a securities account.

27 (e) An option or similar obligation issued by a clearing  
28 corporation to its participants is not a security, but is a  
29 financial asset.

30 (f) A commodity contract, as defined in section 9-115,  
31 is not a security or a financial asset.

**§46-8-104. Acquisition of security or financial asset or  
interest therein.**

1 (a) A person acquires a security or an interest therein,  
2 under this article, if:

3 (1) The person is a purchaser to whom a security is  
4 delivered pursuant to section 8-301; or

5 (2) The person acquires a security entitlement to the  
6 security pursuant to section 8-501.

7 (b) A person acquires a financial asset, other than a  
8 security, or an interest therein, under this article, if the  
9 person acquires a security entitlement to the financial  
10 asset.

11 (c) A person who acquires a security entitlement to a  
12 security or other financial asset has the rights specified  
13 in Part 5, but is a purchaser of any security, security

14 entitlement, or other financial asset held by the securi-  
15 ties intermediary only to the extent provided in section  
16 8-503.

17 (d) Unless the context shows that a different meaning  
18 is intended, a person who is required by other law,  
19 regulation, rule, or agreement to transfer, deliver,  
20 present, surrender, exchange, or otherwise put in the  
21 possession of another person a security or financial asset  
22 satisfies that requirement by causing the other person to  
23 acquire an interest in the security or financial asset  
24 pursuant to subsection (a) or (b) of this section.

**§46-8-105. Notice of adverse claim.**

1 (a) A person has notice of an adverse claim if:

2 (1) The person knows of the adverse claim;

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

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

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

20 (c) An act or event that creates a right to immediate  
21 performance of the principal obligation represented by  
22 a security certificate or sets a date on or after which the  
23 certificate is to be presented or surrendered for redemp-



24 tion or exchange does not itself constitute notice of an  
25 adverse claim except in the case of a transfer more than:

26 (1) One year after a date set for presentment or surren-  
27 der for redemption or exchange; or

28 (2) Six months after a date set for payment of money  
29 against presentation or surrender of the certificate, if  
30 money was available for payment on that date.

31 (d) A purchaser of a certificated security has notice of  
32 an adverse claim if the security certificate:

33 (1) Whether in bearer or registered form, has been  
34 indorsed "for collection" or "for surrender" or for some  
35 other purpose not involving transfer; or

36 (2) Is in bearer form and has on it an unambiguous  
37 statement that it is the property of a person other than  
38 the transferor, but the mere writing of a name on the  
39 certificate is not such a statement.

40 (e) Filing of a financing statement under article nine is  
41 not notice of an adverse claim to a financial asset.

#### §46-8-106. Control.

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

4 (b) A purchaser has "control" of a certificated security  
5 in registered form if the certificated security is delivered  
6 to the purchaser and:

7 (1) The certificate is indorsed to the purchaser or in  
8 blank by an effective indorsement; or

9 (2) The certificate is registered in the name of the  
10 purchaser, upon original issue or registration of transfer  
11 by the issuer.

12 (c) A purchaser has "control" of an uncertificated  
13 security if:

14 (1) The uncertificated security is delivered to the  
15 purchaser; or

16 (2) The issuer has agreed that it will comply with  
17 instructions originated by the purchaser without further  
18 consent by the registered owner.

19 (d) A purchaser has "control" of a security entitlement  
20 if:

21 (1) The purchaser becomes the entitlement holder; or

22 (2) The securities intermediary has agreed that it will  
23 comply with entitlement orders originated by the pur-  
24 chaser without further consent by the entitlement  
25 holder.

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

30 (f) A purchaser who has satisfied the requirements of  
31 subdivision (2), subsection (c) of this section or subdivi-  
32 sion (2), subsection (d) of this section has control even if  
33 the registered owner in the case of subdivision (2),  
34 subsection (c) of this section, or the entitlement holder in  
35 the case of subdivision (2), subsection (d) of this section  
36 retains the right to make substitutions for the uncertifi-  
37 cated security or security entitlement, to originate  
38 instructions or entitlement orders to the issuer or  
39 securities intermediary, or otherwise to deal with the  
40 uncertificated security or security entitlement.

41 (g) An issuer or a securities intermediary may not enter  
42 into an agreement of the kind described in subdivision  
43 (2), subsection (c) of this section or subdivision (2),  
44 subsection(d) of this section without the consent of the  
45 registered owner or entitlement holder, but an issuer or  
46 a securities intermediary is not required to enter into  
47 such an agreement even though the registered owner or  
48 entitlement holder so directs. An issuer or securities

49 intermediary that has entered into such an agreement is  
50 not required to confirm the existence of the agreement to  
51 another party unless requested to do so by the registered  
52 owner or entitlement holder.

**§46-8-107. Whether indorsement, instruction, or entitlement  
order is effective.**

1 (a) "Appropriate person" means:

2 (1) With respect to an indorsement, the person speci-  
3 fied by a security certificate or by an effective special  
4 indorsement to be entitled to the security;

5 (2) With respect to an instruction, the registered owner  
6 of an uncertificated security;

7 (3) With respect to an entitlement order, the entitle-  
8 ment holder;

9 (4) If the person designated in subdivision (1), (2) or (3)  
10 of this subsection is deceased, the designated person's  
11 successor taking under other law or the designated  
12 person's personal representative acting for the estate of  
13 the decedent; or

14 (5) If the person designated in subdivision (1), (2) or (3)  
15 of this subsection lacks capacity, the designated person's  
16 guardian, conservator, or other similar representative  
17 who has power under other law to transfer the security  
18 or financial asset.

19 (b) An indorsement, instruction, or entitlement order  
20 is effective if:

21 (1) It is made by the appropriate person;

22 (2) It is made by a person who has power under the law  
23 of agency to transfer the security or financial asset on  
24 behalf of the appropriate person, including, in the case  
25 of an instruction or entitlement order, a person who has  
26 control under section 8-106(c)(2) or (d)(2); or

27 (3) The appropriate person has ratified it or is other-

28 wise precluded from asserting its ineffectiveness.

29 (c) An indorsement, instruction, or entitlement order  
30 made by a representative is effective even if:

31 (1) The representative has failed to comply with a  
32 controlling instrument or with the law of the state  
33 having jurisdiction of the representative relationship,  
34 including any law requiring the representative to obtain  
35 court approval of the transaction; or

36 (2) The representative's action in making the indorse-  
37 ment, instruction, or entitlement order or using the  
38 proceeds of the transaction is otherwise a breach of duty.

39 (d) If a security is registered in the name of or specially  
40 indorsed to a person described as a representative, or if  
41 a securities account is maintained in the name of a  
42 person described as a representative, an indorsement,  
43 instruction, or entitlement order made by the person is  
44 effective even though the person is no longer serving in  
45 the described capacity.

46 (e) Effectiveness of an indorsement, instruction, or  
47 entitlement order is determined as of the date the  
48 indorsement, instruction, or entitlement order is made,  
49 and an indorsement, instruction, or entitlement order  
50 does not become ineffective by reason of any later  
51 change of circumstances.

**§46-8-108. Warranties in direct holding.**

1 (a) A person who transfers a certificated security to a  
2 purchaser for value warrants to the purchaser, and an  
3 indorser, if the transfer is by indorsement, warrants to  
4 any subsequent purchaser, that:

5 (1) The certificate is genuine and has not been materi-  
6 ally altered;

7 (2) The transferor or indorser does not know of any fact  
8 that might impair the validity of the security;

9 (3) There is no adverse claim to the security;

10 (4) The transfer does not violate any restriction on  
11 transfer;

12 (5) If the transfer is by indorsement, the indorsement  
13 is made by an appropriate person or if the indorsement  
14 is by an agent, the agent has actual authority to act on  
15 behalf of the appropriate person; and

16 (6) The transfer is otherwise effective and rightful.

17 (b) A person who originates an instruction for registra-  
18 tion of transfer of an uncertificated security to a pur-  
19 chaser for value warrants to the purchaser that:

20 (1) The instruction is made by an appropriate person,  
21 or if the instruction is by an agent, the agent has actual  
22 authority to act on behalf of the appropriate person;

23 (2) The security is valid;

24 (3) There is no adverse claim to the security; and

25 (4) At the time the instruction is presented to the  
26 issuer:

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

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

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

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

36 (c) A person who transfers an uncertificated security to  
37 a purchaser for value and does not originate an instruc-  
38 tion in connection with the transfer warrants that:

39 (1) The uncertificated security is valid;

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

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

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

44 (d) A person who indorses a security certificate war-  
45 rants to the issuer that:

46 (1) There is no adverse claim to the security; and

47 (2) The indorsement is effective.

48 (e) A person who originates an instruction for registra-  
49 tion of transfer of an uncertificated security warrants to  
50 the issuer that:

51 (1) The instruction is effective; and

52 (2) At the time the instruction is presented to the issuer  
53 the purchaser will be entitled to the registration of  
54 transfer.

55 (f) A person who presents a certificated security for  
56 registration of transfer or for payment or exchange  
57 warrants to the issuer that the person is entitled to the  
58 registration, payment, or exchange, but a purchaser for  
59 value and without notice of adverse claims to whom  
60 transfer is registered warrants only that the person has  
61 no knowledge of any unauthorized signature in a neces-  
62 sary indorsement.

63 (g) If a person acts as agent of another in delivering a  
64 certificated security to a purchaser, the identity of the  
65 principal was known to the person to whom the certifi-  
66 cate was delivered, and the certificate delivered by the  
67 agent was received by the agent from the principal or  
68 received by the agent from another person at the direc-  
69 tion of the principal, the person delivering the security  
70 certificate warrants only that the delivering person has  
71 authority to act for the principal and does not know of  
72 any adverse claim to the certificated security.

73 (h) A secured party who redelivers a security certifi-  
74 cate received, or after payment and on order of the

75 debtor delivers the security certificate to another person,  
76 makes only the warranties of an agent under subsection  
77 (g) of this section.

78 (i) Except as otherwise provided in subsection (g) of  
79 this section, a broker acting for a customer makes to the  
80 issuer and a purchaser the warranties provided in  
81 subsections (a) through (f) of this section. A broker that  
82 delivers a security certificate to its customer, or causes  
83 its customer to be registered as the owner of an uncerti-  
84 ficated security, makes to the customer the warranties  
85 provided in subsection (a) or (b) of this section, and has  
86 the rights and privileges of a purchaser under this  
87 section. The warranties of and in favor of the broker  
88 acting as an agent are in addition to applicable warran-  
89 ties given by and in favor of the customer.

**§46-8-109. Warranties in indirect holding.**

1 (a) A person who originates an entitlement order to a  
2 securities intermediary warrants to the securities  
3 intermediary that:

4 (1) The entitlement order is made by an appropriate  
5 person, or if the entitlement order is by an agent, the  
6 agent has actual authority to act on behalf of the appro-  
7 priate person; and

8 (2) There is no adverse claim to the security entitle-  
9 ment.

10 (b) A person who delivers a security certificate to a  
11 securities intermediary for credit to a securities account  
12 or originates an instruction with respect to an uncertifi-  
13 cated security directing that the uncertificated security  
14 be credited to a securities account makes to the securi-  
15 ties intermediary the warranties specified in section 8-  
16 108(a) or (b).

17 (c) If a securities intermediary delivers a security  
18 certificate to its entitlement holder or causes its entitle-  
19 ment holder to be registered as the owner of an uncertifi-

20 cated security, the securities intermediary makes to the  
21 entitlement holder the warranties specified in section 8-  
22 108(a) or (b).

**§46-8-110. Applicability; choice of law.**

1 (a) The local law of the issuer's jurisdiction, as speci-  
2 fied in subsection (d) of this section governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect to  
5 registration of transfer;

6 (3) The effectiveness of registration of transfer by the  
7 issuer;

8 (4) Whether the issuer owes any duties to an adverse  
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against  
11 a person to whom transfer of a certificated or uncertifi-  
12 cated security is registered or a person who obtains  
13 control of an uncertificated security.

14 (b) The local law of the securities intermediary's  
15 jurisdiction, as specified in subsection (e) of this section,  
16 governs:

17 (1) Acquisition of a security entitlement from the  
18 securities intermediary;

19 (2) The rights and duties of the securities intermediary  
20 and entitlement holder arising out of a security entitle-  
21 ment;

22 (3) Whether the securities intermediary owes any  
23 duties to an adverse claimant to a security entitlement;  
24 and

25 (4) Whether an adverse claim can be asserted against  
26 a person who acquires a security entitlement from the  
27 securities intermediary or a person who purchases a  
28 security entitlement or interest therein from an entitle-  
29 ment holder.



30 (c) The local law of the jurisdiction in which a security  
31 certificate is located at the time of delivery governs  
32 whether an adverse claim can be asserted against a  
33 person to whom the security certificate is delivered.

34 (d) "Issuer's jurisdiction" means the jurisdiction under  
35 which the issuer of the security is organized or, if  
36 permitted by the law of that jurisdiction, the law of  
37 another jurisdiction specified by the issuer. An issuer  
38 organized under the law of this state may specify the law  
39 of another jurisdiction as the law governing the matters  
40 specified in subdivisions (2) through (5), subsection (a)  
41 of this section.

42 (e) The following rules determine a "securities interme-  
43 diary's jurisdiction" for purposes of this section:

44 (1) If an agreement between the securities intermediary  
45 and its entitlement holder specifies that it is governed by  
46 the law of a particular jurisdiction, that jurisdiction is  
47 the securities intermediary's jurisdiction.

48 (2) If an agreement between the securities intermediary  
49 and its entitlement holder does not specify the governing  
50 law as provided in subdivision (1) of this subsection, but  
51 expressly specifies that the securities account is main-  
52 tained at an office in a particular jurisdiction, that  
53 jurisdiction is the securities intermediary's jurisdiction.

54 (3) If an agreement between the securities intermediary  
55 and its entitlement holder does not specify a jurisdiction  
56 as provided in subdivision (1) or (2) of this subsection,  
57 the securities intermediary's jurisdiction is the jurisdic-  
58 tion in which is located the office identified in an  
59 account statement as the office serving the entitlement  
60 holder's account.

61 (4) If an agreement between the securities intermediary  
62 and its entitlement holder does not specify a jurisdiction  
63 as provided in subdivision (1) or (2) of this subsection  
64 and an account statement does not identify an office  
65 serving the entitlement holder's account as provided in

66 subdivision (3) of this subsection, the securities interme-  
67 diary's jurisdiction is the jurisdiction in which is located  
68 the chief executive office of the securities intermediary.

69 (f) A securities intermediary's jurisdiction is not  
70 determined by the physical location of certificates  
71 representing financial assets, or by the jurisdiction in  
72 which is organized the issuer of the financial asset with  
73 respect to which an entitlement holder has a security  
74 entitlement or by the location of facilities for data  
75 processing or other record keeping concerning the  
76 account.

**§46-8-111. Clearing corporation rules.**

1 A rule adopted by a clearing corporation governing  
2 rights and obligations among the clearing corporation  
3 and its participants in the clearing corporation is effec-  
4 tive even if the rule conflicts with this and affects  
5 another party who does not consent to the rule.

**§46-8-112. Creditor's legal process.**

1 (a) The interest of a debtor in a certificated security  
2 may be reached by a creditor only by actual seizure of  
3 the security certificate by the officer making the attach-  
4 ment or levy, except as otherwise provided in subsection  
5 (d) of this section. However, a certificated security for  
6 which the certificate has been surrendered to the issuer  
7 may be reached by a creditor by legal process upon the  
8 issuer.

9 (b) The interest of a debtor in an uncertificated secu-  
10 rity may be reached by a creditor only by legal process  
11 upon the issuer at its chief executive office in the United  
12 States, except as otherwise provided in subsection (d) of  
13 this section.

14 (c) The interest of a debtor in a security entitlement  
15 may be reached by a creditor only by legal process upon  
16 the securities intermediary with whom the debtor's  
17 securities account is maintained, except as otherwise

18 provided in subsection (d) of this section.

19 (d) The interest of a debtor in a certificated security for  
20 which the certificate is in the possession of a secured  
21 party, or in an uncertificated security registered in the  
22 name of a secured party, or a security entitlement  
23 maintained in the name of a secured party, may be  
24 reached by a creditor by legal process upon the secured  
25 party.

26 (e) A creditor whose debtor is the owner of a certifi-  
27 cated security, uncertificated security or security entitle-  
28 ment is entitled to aid from a court of competent juris-  
29 diction, by injunction or otherwise, in reaching the  
30 certificated security, uncertificated security or security  
31 entitlement or in satisfying the claim by means allowed  
32 at law or in equity in regard to property that cannot  
33 readily be reached by other legal process.

**§46-8-113. Statute of frauds inapplicable.**

1 A contract or modification of a contract for the sale or  
2 purchase of a security is enforceable whether or not  
3 there is a writing signed or record authenticated by a  
4 party against whom enforcement is sought, even if the  
5 contract or modification is not capable of performance  
6 within one year of its making.

**§46-8-114. Evidentiary rules concerning certificated securi-  
ties.**

1 The following rules apply in an action on a certificated  
2 security against the issuer:

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

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

10 (3) If signatures on a security certificate are admitted  
11 or established, production of the certificate entitles a  
12 holder to recover on it unless the defendant establishes  
13 a defense or a defect going to the validity of the security.

14 (4) If it is shown that a defense or defect exists, the  
15 plaintiff has the burden of establishing that the plaintiff  
16 or some person under whom the plaintiff claims is a  
17 person against whom the defense or defect cannot be  
18 asserted.

**§46-8-115. Securities intermediary and others not liable to  
adverse claimant.**

1 A securities intermediary that has transferred a  
2 financial asset pursuant to an effective entitlement  
3 order, or a broker or other agent or bailee that has dealt  
4 with a financial asset at the direction of its customer or  
5 principal, is not liable to a person having an adverse  
6 claim to the financial asset, unless the securities inter-  
7 mediary or broker or other agent or bailee:

8 (1) Took the action after it had been served with an  
9 injunction, restraining order or other legal process  
10 enjoining it from doing so, issued by a court of compe-  
11 tent jurisdiction, and had a reasonable opportunity to act  
12 on the injunction, restraining order or other legal  
13 process; or

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

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

**§46-8-116. Securities intermediary as purchaser for value.**

1 A securities intermediary that receives a financial asset  
2 and establishes a security entitlement to the financial  
3 asset in favor of an entitlement holder is a purchaser for  
4 value of the financial asset. A securities intermediary  
5 that acquires a security entitlement to a financial asset  
6 from another securities intermediary acquires the

7 security entitlement for value if the securities intermedi-  
8 ary acquiring the security entitlement establishes a  
9 security entitlement to the financial asset in favor of an  
10 entitlement holder.

## PART 2. ISSUE AND ISSUER.

### §46-8-201. Issuer.

1 (a) With respect to an obligation on or a defense to a  
2 security, an "issuer" includes a person that:

3 (1) Places or authorizes the placing of its name on a  
4 security certificate, other than as authenticating trustee,  
5 registrar, transfer agent or the like, to evidence a share,  
6 participation or other interest in its property or in an  
7 enterprise or to evidence its duty to perform an obliga-  
8 tion represented by the certificate;

9 (2) Creates a share, participation, or other interest in  
10 its property or in an enterprise, or undertakes an obliga-  
11 tion, that is an uncertificated security;

12 (3) Directly or indirectly creates a fractional interest in  
13 its rights or property, if the fractional interest is repre-  
14 sented by a security certificate; or

15 (4) Becomes responsible for, or in place of, another  
16 person described as an issuer in this section.

17 (b) With respect to an obligation on or defense to a  
18 security, a guarantor is an issuer to the extent of its  
19 guaranty, whether or not its obligation is noted on a  
20 security certificate.

21 (c) With respect to a registration of a transfer, issuer  
22 means a person on whose behalf transfer books are  
23 maintained.

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

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

3 stated on the certificate and terms made part of the  
4 security by reference on the certificate to another  
5 instrument, indenture, or document or to a Constitution,  
6 statute, ordinance, rule, regulation, order or the like, to  
7 the extent the terms referred to do not conflict with  
8 terms stated on the certificate. A reference under this  
9 subsection does not of itself charge a purchaser for value  
10 with notice of a defect going to the validity of the  
11 security, even if the certificate expressly states that a  
12 person accepting it admits notice. The terms of an  
13 uncertificated security include those stated in any  
14 instrument, indenture, or document or in a Constitution,  
15 statute, ordinance, rule, regulation, order or the like,  
16 pursuant to which the security is issued.

17 (b) The following rules apply if an issuer asserts that a  
18 security is not valid:

19 (1) A security other than one issued by a government or  
20 governmental subdivision, agency or instrumentality,  
21 even though issued with a defect going to its validity, is  
22 valid in the hands of a purchaser for value and without  
23 notice of the particular defect unless the defect involves  
24 a violation of a constitutional provision. In that case, the  
25 security is valid in the hands of a purchaser for value  
26 and without notice of the defect, other than one who  
27 takes by original issue.

28 (2) Subdivision (1) of this subsection applies to an  
29 issuer that is a government or governmental subdivision,  
30 agency, or instrumentality only if there has been sub-  
31 stantial compliance with the legal requirements govern-  
32 ing the issue or the issuer has received a substantial  
33 consideration for the issue as a whole or for the particu-  
34 lar security and a stated purpose of the issue is one for  
35 which the issuer has power to borrow money or issue the  
36 security.

37 (c) Except as otherwise provided in section 8-205, lack  
38 of genuineness of a certificated security is a complete  
39 defense, even against a purchaser for value and without

40 notice.

41 (d) All other defenses of the issuer of a security,  
42 including nondelivery and conditional delivery of a  
43 certificated security, are ineffective against a purchaser  
44 for value who has taken the certificated security without  
45 notice of the particular defense.

46 (e) This section does not affect the right of a party to  
47 cancel a contract for a security "when, as and if issued"  
48 or "when distributed" in the event of a material change  
49 in the character of the security that is the subject of the  
50 contract or in the plan or arrangement pursuant to which  
51 the security is to be issued or distributed.

52 (f) If a security is held by a securities intermediary  
53 against whom an entitlement holder has a security  
54 entitlement with respect to the security, the issuer may  
55 not assert any defense that the issuer could not assert if  
56 the entitlement holder held the security directly.

**§46-8-203. Staleness as notice of defect or defense.**

1 After an act or event, other than a call that has been  
2 revoked, creating a right to immediate performance of  
3 the principal obligation represented by a certificated  
4 security or setting a date on or after which the security  
5 is to be presented or surrendered for redemption or  
6 exchange, a purchaser is charged with notice of any  
7 defect in its issue or defense of the issuer, if the act or  
8 event:

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

16 (2) Is not covered by subdivision (1) of this section and  
17 the purchaser takes the security more than two years

18 after the date set for surrender or presentation or the  
19 date on which performance became due.

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

1 A restriction on transfer of a security imposed by the  
2 issuer, even if otherwise lawful, is ineffective against a  
3 person without knowledge of the restriction unless:

4 (1) The security is certificated and the restriction is  
5 noted conspicuously on the security certificate; or

6 (2) The security is uncertificated and the registered  
7 owner has been notified of the restriction.

**§46-8-205. Effect of unauthorized signature on security certificate.**

1 An unauthorized signature placed on a security  
2 certificate before or in the course of issue is ineffective,  
3 but the signature is effective in favor of a purchaser for  
4 value of the certificated security if the purchaser is  
5 without notice of the lack of authority and the signing  
6 has been done by:

7 (1) An authenticating trustee, registrar, transfer agent  
8 or other person entrusted by the issuer with the signing  
9 of the security certificate or of similar security certifi-  
10 cates, or the immediate preparation for signing of any of  
11 them; or

12 (2) An employee of the issuer, or of any of the persons  
13 listed in subdivision (1) of this section, entrusted with  
14 responsible handling of the security certificate.

**§46-8-206. Completion or alteration of security certificate.**

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

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

6 (2) Even if the blanks are incorrectly filled in, the



7 security certificate as completed is enforceable by a  
8 purchaser who took it for value and without notice of the  
9 incorrectness.

10 (b) A complete security certificate that has been  
11 improperly altered, even if fraudulently, remains en-  
12 forceable, but only according to its original terms.

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

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

8 (b) This article does not affect the liability of the  
9 registered owner of a security for a call, assessment or  
10 the like.

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

1 (a) A person signing a security certificate as authenti-  
2 cating trustee, registrar, transfer agent or the like,  
3 warrants to a purchaser for value of the certificated  
4 security, if the purchaser is without notice of a particu-  
5 lar defect, that:

6 (1) The certificate is genuine;

7 (2) The person's own participation in the issue of the  
8 security is within the person's capacity and within the  
9 scope of the authority received by the person from the  
10 issuer; and

11 (3) The person has reasonable grounds to believe that  
12 the certificated security is in the form and within the  
13 amount the issuer is authorized to issue.

14 (b) Unless otherwise agreed, a person signing under

15 subsection (a) of this section does not assume responsi-  
16 bility for the validity of the security in other respects.

**§46-8-209. Issuer's lien.**

1 A lien in favor of an issuer upon a certificated security  
2 is valid against a purchaser only if the right of the issuer  
3 to the lien is noted conspicuously on the security certifi-  
4 cate.

**§46-8-210. Overissue.**

1 (a) In this section, "overissue" means the issue of  
2 securities in excess of the amount the issuer has corpo-  
3 rate power to issue, but an overissue does not occur if  
4 appropriate action has cured the overissue.

5 (b) Except as otherwise provided in subsections (c) and  
6 (d) of this section, the provisions of this article which  
7 validate a security or compel its issue or reissue do not  
8 apply to the extent that validation, issue or reissue  
9 would result in overissue.

10 (c) If an identical security not constituting an overissue  
11 is reasonably available for purchase, a person entitled to  
12 issue or validation may compel the issuer to purchase the  
13 security and deliver it if certificated or register its  
14 transfer if uncertificated, against surrender of any  
15 security certificate the person holds.

16 (d) If a security is not reasonably available for pur-  
17 chase, a person entitled to issue or validation may  
18 recover from the issuer the price the person or the last  
19 purchaser for value paid for it with interest from the  
20 date of the person's demand.

**PART 3. TRANSFER OF CERTIFICATED  
AND UNCERTIFICATED SECURITIES.**

**§46-8-301. Delivery.**

1 (a) Delivery of a certificated security to a purchaser  
2 occurs when:

3 (1) The purchaser acquires possession of the security  
4 certificate;

5 (2) Another person, other than a securities intermedi-  
6 ary, either acquires possession of the security certificate  
7 on behalf of the purchaser or, having previously acquired  
8 possession of the certificate, acknowledges that it holds  
9 for the purchaser; or

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

15 (b) Delivery of an uncertificated security to a pur-  
16 chaser occurs when:

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

19 (2) Another person, other than a securities intermedi-  
20 ary, either becomes the registered owner of the uncertifi-  
21 cated security on behalf of the purchaser or, having  
22 previously become the registered owner, acknowledges  
23 that it holds for the purchaser.

**§46-8-302. Rights of purchaser.**

1 (a) Except as otherwise provided in subsections (b) and  
2 (c) of this section, upon delivery of a certificated or  
3 uncertificated security to a purchaser, the purchaser  
4 acquires all rights in the security that the transferor had  
5 or had power to transfer.

6 (b) A purchaser of a limited interest acquires rights  
7 only to the extent of the interest purchased.

8 (c) A purchaser of a certificated security who as a  
9 previous holder had notice of an adverse claim does not  
10 improve its position by taking from a protected pur-  
11 chaser.

**§46-8-303. Protected purchaser.**

1 (a) "Protected purchaser" means a purchaser of a  
2 certificated or uncertificated security, or of an interest  
3 therein, who:

4 (1) Gives value;

5 (2) Does not have notice of any adverse claim to the  
6 security; and

7 (3) Obtains control of the certificated or uncertificated  
8 security.

9 (b) In addition to acquiring the rights of a purchaser,  
10 a protected purchaser also acquires its interest in the  
11 security free of any adverse claim.

**§46-8-304. Indorsement.**

1 (a) An indorsement may be in blank or special. An  
2 indorsement in blank includes an indorsement to bearer.  
3 A special indorsement specifies to whom a security is to  
4 be transferred or who has power to transfer it. A holder  
5 may convert a blank indorsement to a special indorse-  
6 ment.

7 (b) An indorsement purporting to be only of part of a  
8 security certificate representing units intended by the  
9 issuer to be separately transferable is effective to the  
10 extent of the indorsement.

11 (c) An indorsement, whether special or in blank, does  
12 not constitute a transfer until delivery of the certificate  
13 on which it appears or, if the indorsement is on a sepa-  
14 rate document, until delivery of both the document and  
15 the certificate.

16 (d) If a security certificate in registered form has been  
17 delivered to a purchaser without a necessary indorse-  
18 ment, the purchaser may become a protected purchaser  
19 only when the indorsement is supplied. However,  
20 against a transferor, a transfer is complete upon delivery  
21 and the purchaser has a specifically enforceable right to  
22 have any necessary indorsement supplied.

23 (e) An indorsement of a security certificate in bearer  
24 form may give notice of an adverse claim to the certifi-  
25 cate, but it does not otherwise affect a right to registra-  
26 tion that the holder possesses.

27 (f) Unless otherwise agreed, a person making an  
28 indorsement assumes only the obligations provided in  
29 section 8-108 and not an obligation that the security will  
30 be honored by the issuer.

**§46-8-305. Instruction.**

1 (a) If an instruction has been originated by an appro-  
2 priate person but is incomplete in any other respect, any  
3 person may complete it as authorized and the issuer may  
4 rely on it as completed, even though it has been com-  
5 pleted incorrectly.

6 (b) Unless otherwise agreed, a person initiating an  
7 instruction assumes only the obligations imposed by  
8 section 8-108 and not an obligation that the security will  
9 be honored by the issuer.

**§46-8-306. Effect of guaranteeing signature, indorsement, or instruction.**

1 (a) A person who guarantees a signature of an indorser  
2 of a security certificate warrants that at the time of  
3 signing:

4 (1) The signature was genuine;

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

8 (3) The signer had legal capacity to sign.

9 (b) A person who guarantees a signature of the origina-  
10 tor of an instruction warrants that at the time of signing:

11 (1) The signature was genuine;

12 (2) The signer was an appropriate person to originate  
13 the instruction, or if the signature is by an agent, the

14 agent had actual authority to act on behalf of the appro-  
15 priate person, if the person specified in the instruction as  
16 the registered owner was, in fact, the registered owner,  
17 as to which fact the signature guarantor does not make  
18 a warranty; and

19 (3) The signer had legal capacity to sign.

20 (c) A person who specially guarantees the signature of  
21 an originator of an instruction makes the warranties of  
22 a signature guarantor under subsection (b) of this section  
23 and also warrants that at the time the instruction is  
24 presented to the issuer:

25 (1) The person specified in the instruction as the  
26 registered owner of the uncertificated security will be  
27 the registered owner; and

28 (2) The transfer of the uncertificated security requested  
29 in the instruction will be registered by the issuer free  
30 from all liens, security interests, restrictions, and claims  
31 other than those specified in the instruction.

32 (d) A guarantor under subsections (a) and (b) of this  
33 section or a special guarantor under subsection (c) of this  
34 section does not otherwise warrant the rightfulness of  
35 the transfer.

36 (e) A person who guarantees an indorsement of a  
37 security certificate makes the warranties of a signature  
38 guarantor under subsection (a) of this section and also  
39 warrants the rightfulness of the transfer in all respects.

40 (f) A person who guarantees an instruction requesting  
41 the transfer of an uncertificated security makes the  
42 warranties of a special signature guarantor under  
43 subsection (c) of this section and also warrants the  
44 rightfulness of the transfer in all respects.

45 (g) An issuer may not require a special guaranty of  
46 signature, a guaranty of indorsement, or a guaranty of  
47 instruction as a condition to registration of transfer.

48 (h) The warranties under this section are made to a  
49 person taking or dealing with the security in reliance on  
50 the guaranty, and the guarantor is liable to the person  
51 for loss resulting from their breach. An indorser or  
52 originator of an instruction whose signature, indorse-  
53 ment, or instruction has been guaranteed is liable to a  
54 guarantor for any loss suffered by the guarantor as a  
55 result of breach of the warranties of the guarantor.

**§46-8-307. Purchaser's right to requisites for registration of transfer.**

1 Unless otherwise agreed, the transferor of a security on  
2 due demand shall supply the purchaser with proof of  
3 authority to transfer or with any other requisite neces-  
4 sary to obtain registration of the transfer of the security,  
5 but if the transfer is not for value, a transferor need not  
6 comply unless the purchaser pays the necessary ex-  
7 penses. If the transferor fails within a reasonable time  
8 to comply with the demand, the purchaser may reject or  
9 rescind the transfer.

**PART 4. REGISTRATION.**

**§46-8-401. Duty of issuer to register transfer.**

1 (a) If a certificated security in registered form is  
2 presented to an issuer with a request to register transfer  
3 or an instruction is presented to an issuer with a request  
4 to register transfer of an uncertificated security, the  
5 issuer shall register the transfer as requested if:

6 (1) Under the terms of the security the person seeking  
7 registration of transfer is eligible to have the security  
8 registered in its name;

9 (2) The indorsement or instruction is made by the  
10 appropriate person or by an agent who has actual  
11 authority to act on behalf of the appropriate person;

12 (3) Reasonable assurance is given that the indorsement  
13 or instruction is genuine and authorized (section 8-402);

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

16 (5) The transfer does not violate any restriction on  
17 transfer imposed by the issuer in accordance with  
18 section 8-204;

19 (6) A demand that the issuer not register transfer has  
20 not become effective under section 8-403, or the issuer  
21 has complied with section 8-403(b) but no legal process  
22 or indemnity bond is obtained as provided in section 8-  
23 403(d); and

24 (7) The transfer is in fact rightful or is to a protected  
25 purchaser.

26 (b) If an issuer is under a duty to register a transfer of  
27 a security, the issuer is liable to a person presenting a  
28 certificated security or an instruction for registration or  
29 to the person's principal for loss resulting from unrea-  
30 sonable delay in registration or failure or refusal to  
31 register the transfer.

**§46-8-402. Assurance that indorsement or instruction is effective.**

1 (a) An issuer may require the following assurance that  
2 each necessary indorsement or each instruction is  
3 genuine and authorized:

4 (1) In all cases, a guaranty of the signature of the  
5 person making an indorsement or originating an instruc-  
6 tion including, in the case of an instruction, reasonable  
7 assurance of identity;

8 (2) If the indorsement is made or the instruction is  
9 originated by an agent, appropriate assurance of actual  
10 authority to sign;

11 (3) If the indorsement is made or the instruction is  
12 originated by a fiduciary pursuant to section 8-107(a)(4)  
13 or (a)(5), appropriate evidence of appointment or incum-  
14 bency;



15 (4) If there is more than one fiduciary, reasonable  
16 assurance that all who are required to sign have done so;  
17 and

18 (5) If the indorsement is made or the instruction is  
19 originated by a person not covered by another provision  
20 of this subsection, assurance appropriate to the case  
21 corresponding as nearly as may be to the provisions of  
22 this subsection.

23 (b) An issuer may elect to require reasonable assurance  
24 beyond that specified in this section.

25 (c) In this section:

26 (1) "Guaranty of the signature" means a guaranty  
27 signed by or on behalf of a person reasonably believed by  
28 the issuer to be responsible. An issuer may adopt  
29 standards with respect to responsibility if they are not  
30 manifestly unreasonable.

31 (2) "Appropriate evidence of appointment or incum-  
32 bency" means:

33 (i) In the case of a fiduciary appointed or qualified by  
34 a court, a certificate issued by or under the direction or  
35 supervision of the court or an officer thereof and dated  
36 within sixty days before the date of presentation for  
37 transfer; or

38 (ii) In any other case, a copy of a document showing the  
39 appointment or a certificate issued by or on behalf of a  
40 person reasonably believed by an issuer to be responsible  
41 or, in the absence of that document or certificate, other  
42 evidence the issuer reasonably considered appropriate.

**§46-8-403. Demand that issuer not register transfer.**

1 (a) A person who is an appropriate person to make an  
2 indorsement or originate an instruction may demand  
3 that the issuer not register transfer of a security by  
4 communicating to the issuer a notification that identifies  
5 the registered owner and the issue of which the security

6 is a part and provides an address for communications  
7 directed to the person making the demand. The demand  
8 is effective only if it is received by the issuer at a time  
9 and in a manner affording the issuer reasonable opportu-  
10 nity to act on it.

11 (b) If a certificated security in registered form is  
12 presented to an issuer with a request to register transfer  
13 or an instruction is presented to an issuer with a request  
14 to register transfer of an uncertificated security after a  
15 demand that the issuer not register transfer has become  
16 effective, the issuer shall promptly communicate to: (i)  
17 The person who initiated the demand at the address  
18 provided in the demand; and (ii) the person who pre-  
19 sented the security for registration of transfer or initi-  
20 ated the instruction requesting registration of transfer a  
21 notification stating that:

22 (1) The certificated security has been presented for  
23 registration of transfer or instruction for registration of  
24 transfer of uncertificated security has been received;

25 (2) A demand that the issuer not register transfer had  
26 previously been received; and

27 (3) The issuer will withhold registration of transfer for  
28 a period of time stated in the notification in order to  
29 provide the person who initiated the demand an oppor-  
30 tunity to obtain legal process or an indemnity bond.

31 (c) The period described in subdivision (3), subsection  
32 (b) of this section may not exceed thirty days after the  
33 date of communication of the notification. A shorter  
34 period may be specified by the issuer if it is not mani-  
35 festly unreasonable.

36 (d) An issuer is not liable to a person who initiated a  
37 demand that the issuer not register transfer for any loss  
38 the person suffers as a result of registration of a transfer  
39 pursuant to an effective indorsement or instruction if the  
40 person who initiated the demand does not, within the  
41 time stated in the issuer's communication, either:

42 (1) Obtain an appropriate restraining order, injunction  
43 or other process from a court of competent jurisdiction  
44 enjoining the issuer from registering the transfer; or

45 (2) File with the issuer an indemnity bond, sufficient in  
46 the issuer's judgment to protect the issuer and any  
47 transfer agent, registrar or other agent of the issuer  
48 involved from any loss it or they may suffer by refusing  
49 to register the transfer.

50 (e) This section does not relieve an issuer from liability  
51 for registering transfer pursuant to an indorsement or  
52 instruction that was not effective.

**§46-8-404. Wrongful registration.**

1 (a) Except as otherwise provided in section 8-406, an  
2 issuer is liable for wrongful registration of transfer if the  
3 issuer has registered a transfer of a security to a person  
4 not entitled to it, and the transfer was registered:

5 (1) Pursuant to an ineffective indorsement or instruc-  
6 tion;

7 (2) After a demand that the issuer not register transfer  
8 became effective under section 8-403(a) and the issuer  
9 did not comply with section 8-403(b);

10 (3) After the issuer had been served with an injunction,  
11 restraining order, or other legal process enjoining it from  
12 registering the transfer, issued by a court of competent  
13 jurisdiction, and the issuer had a reasonable opportunity  
14 to act on the injunction, restraining order, or other legal  
15 process; or

16 (4) By an issuer acting in collusion with the wrongdoer.

17 (b) An issuer that is liable for wrongful registration of  
18 transfer under subsection (a) of this section on demand  
19 shall provide the person entitled to the security with a  
20 like certificated or uncertificated security, and any  
21 payments or distributions that the person did not receive  
22 as a result of the wrongful registration. If an overissue

23 would result, the issuer's liability to provide the person  
24 with a like security is governed by section 8-210.

25 (c) Except as otherwise provided in subsection (a) of  
26 this section or in a law relating to the collection of taxes,  
27 an issuer is not liable to an owner or other person  
28 suffering loss as a result of the registration of a transfer  
29 of a security if registration was made pursuant to an  
30 effective indorsement or instruction.

**§46-8-405. Replacement of lost, destroyed, or wrongfully  
taken security certificate.**

1 (a) If an owner of a certificated security, whether in  
2 registered or bearer form, claims that the certificate has  
3 been lost, destroyed, or wrongfully taken, the issuer shall  
4 issue a new certificate if the owner:

5 (1) So requests before the issuer has notice that the  
6 certificate has been acquired by a protected purchaser;

7 (2) Files with the issuer a sufficient indemnity bond;  
8 and

9 (3) Satisfies other reasonable requirements imposed by  
10 the issuer.

11 (b) If, after the issue of a new security certificate, a  
12 protected purchaser of the original certificate presents  
13 it for registration of transfer, the issuer shall register the  
14 transfer unless an overissue would result. In that case,  
15 the issuer's liability is governed by section 8-210. In  
16 addition to any rights on the indemnity bond, an issuer  
17 may recover the new certificate from a person to whom  
18 it was issued or any person taking under that person,  
19 except a protected purchaser.

**§46-8-406. Obligation to notify issuer of lost, destroyed, or  
wrongfully taken security certificate.**

1 If a security certificate 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 the owner has notice of it and the issuer registers a  
5 transfer of the security before receiving notification, the  
6 owner may not assert against the issuer a claim for  
7 registering the transfer under section 8-404 or a claim to  
8 a new security certificate under section 8-405.

**§46-8-407. Authenticating trustee, transfer agent, and registrar.**

1 A person acting as authenticating trustee, transfer  
2 agent, registrar, or other agent for an issuer in the  
3 registration of a transfer of its securities, in the issue of  
4 new security certificates or uncertificated securities or  
5 in the cancellation of surrendered security certificates  
6 has the same obligation to the holder or owner of a  
7 certificated or uncertificated security with regard to the  
8 particular functions performed as the issuer has in  
9 regard to those functions.

**PART 5. SECURITY ENTITLEMENTS.**

**§46-8-501. Securities account; acquisition of security entitlement from securities intermediary.**

1 (a) "Securities account" means an account to which a  
2 financial asset is or may be credited in accordance with  
3 an agreement under which the person maintaining the  
4 account undertakes to treat the person for whom the  
5 account is maintained as entitled to exercise the rights  
6 that comprise the financial asset.

7 (b) Except as otherwise provided in subsections (d) and  
8 (e) of this section, a person acquires a security entitle-  
9 ment if a securities intermediary:

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

12 (2) Receives a financial asset from the person or  
13 acquires a financial asset for the person and, in either  
14 case, accepts it for credit to the person's securities  
15 account; or

16 (3) Becomes obligated under other law, regulation, or  
17 rule to credit a financial asset to the person's securities  
18 account.

19 (c) If a condition of subsection (b) of this section has  
20 been met, a person has a security entitlement even  
21 though the securities intermediary does not itself hold  
22 the financial asset.

23 (d) If a securities intermediary holds a financial asset  
24 for another person, and the financial asset is registered  
25 in the name of, payable to the order of, or specially  
26 indorsed to the other person, and has not been indorsed  
27 to the securities intermediary or in blank, the other  
28 person is treated as holding the financial asset directly  
29 rather than as having a security entitlement with respect  
30 to the financial asset.

31 (e) Issuance of a security is not establishment of a  
32 security entitlement.

**§46-8-502. Assertion of adverse claim against entitlement holder.**

1 An action based on an adverse claim to a financial  
2 asset, whether framed in conversion, replevin, construc-  
3 tive trust, equitable lien or other theory, may not be  
4 asserted against a person who acquires a security  
5 entitlement under section 8-501 for value and without  
6 notice of the adverse claim.

**§46-8-503. Property interest of entitlement holder in financial asset held by securities intermediary.**

1 (a) To the extent necessary for a securities intermedi-  
2 ary to satisfy all security entitlements with respect to a  
3 particular financial asset, all interests in that financial  
4 asset held by the securities intermediary are held by the  
5 securities intermediary for the entitlement holders, are  
6 not property of the securities intermediary, and are not  
7 subject to claims of creditors of the securities intermedi-  
8 ary, except as otherwise provided in section 8-511.

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

17 (c) An entitlement holder's property interest with  
18 respect to a particular financial asset under subsection  
19 (a) of this section may be enforced against the securities  
20 intermediary only by exercise of the entitlement holder's  
21 rights under sections 8-505 through 8-508.

22 (d) An entitlement holder's property interest with  
23 respect to a particular financial asset under subsection  
24 (a) of this section may be enforced against a purchaser of  
25 the financial asset or interest therein only if:

26 (1) Insolvency proceedings have been initiated by or  
27 against the securities intermediary;

28 (2) The securities intermediary does not have sufficient  
29 interests in the financial asset to satisfy the security  
30 entitlements of all of its entitlement holders to that  
31 financial asset;

32 (3) The securities intermediary violated its obligations  
33 under section 8-504 by transferring the financial asset or  
34 interest therein to the purchaser; and

35 (4) The purchaser is not protected under subsection (e)  
36 of this section. The trustee or other liquidator, acting on  
37 behalf of all entitlement holders having security en-  
38 titlements with respect to a particular financial asset,  
39 may recover the financial asset, or interest therein, from  
40 the purchaser. If the trustee or other liquidator elects  
41 not to pursue that right, an entitlement holder whose  
42 security entitlement remains unsatisfied has the right to  
43 recover its interest in the financial asset from the  
44 purchaser.

45 (e) An action based on the entitlement holder's prop-  
46 erty interest with respect to a particular financial asset  
47 under subsection (a) of this section, whether framed in  
48 conversion, replevin, constructive trust, equitable lien or  
49 other theory, may not be asserted against any purchaser  
50 of a financial asset or interest therein who gives value,  
51 obtains control and does not act in collusion with the  
52 securities intermediary in violating the securities inter-  
53 mediary's obligations under section 8-504.

**§46-8-504. Duty of securities intermediary to maintain finan-  
cial asset.**

1 (a) A securities intermediary shall promptly obtain and  
2 thereafter maintain a financial asset in a quantity  
3 corresponding to the aggregate of all security entitle-  
4 ments it has established in favor of its entitlement  
5 holders with respect to that financial asset. The securi-  
6 ties intermediary may maintain those financial assets  
7 directly or through one or more other securities interme-  
8 diaries.

9 (b) Except to the extent otherwise agreed by its entitle-  
10 ment holder, a securities intermediary may not grant any  
11 security interests in a financial asset it is obligated to  
12 maintain pursuant to subsection (a) of this section.

13 (c) A securities intermediary satisfies the duty in  
14 subsection (a) of this section if:

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

18 (2) In the absence of agreement, the securities interme-  
19 diary exercises due care in accordance with reasonable  
20 commercial standards to obtain and maintain the  
21 financial asset.

22 (d) This section does not apply to a clearing corpora-  
23 tion that is itself the obligor of an option or similar  
24 obligation to which its entitlement holders have security



25 entitlements.

**§46-8-505. Duty of securities intermediary with respect to payments and distributions.**

1 (a) A securities intermediary shall take action to obtain  
2 a payment or distribution made by the issuer of a  
3 financial asset. A securities intermediary satisfies the  
4 duty if:

5 (1) The securities intermediary acts with respect to the  
6 duty as agreed upon by the entitlement holder and the  
7 securities intermediary; or

8 (2) In the absence of agreement, the securities interme-  
9 diary exercises due care in accordance with reasonable  
10 commercial standards to attempt to obtain the payment  
11 or distribution.

12 (b) A securities intermediary is obligated to its entitle-  
13 ment holder for a payment or distribution made by the  
14 issuer of a financial asset if the payment or distribution  
15 is received by the securities intermediary.

**§46-8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.**

1 A securities intermediary shall exercise rights with  
2 respect to a financial asset if directed to do so by an  
3 entitlement holder. A securities intermediary satisfies  
4 the duty if:

5 (1) The securities intermediary acts with respect to the  
6 duty as agreed upon by the entitlement holder and the  
7 securities intermediary; or

8 (2) In the absence of agreement, the securities interme-  
9 diary either places the entitlement holder in a position to  
10 exercise the rights directly or exercises due care in  
11 accordance with reasonable commercial standards to  
12 follow the direction of the entitlement holder.

**§46-8-507. Duty of securities intermediary to comply with entitlement order.**

1 (a) A securities intermediary shall comply with an  
2 entitlement order if the entitlement order is originated  
3 by the appropriate person, the securities intermediary  
4 has had reasonable opportunity to assure itself that the  
5 entitlement order is genuine and authorized, and the  
6 securities intermediary has had reasonable opportunity  
7 to comply with the entitlement order. A securities  
8 intermediary satisfies the duty if:

9 (1) The securities intermediary acts with respect to the  
10 duty as agreed upon by the entitlement holder and the  
11 securities intermediary; or

12 (2) In the absence of agreement, the securities interme-  
13 diary exercises due care in accordance with reasonable  
14 commercial standards to comply with the entitlement  
15 order.

16 (b) If a securities intermediary transfers a financial  
17 asset pursuant to an ineffective entitlement order, the  
18 securities intermediary shall reestablish a security  
19 entitlement in favor of the person entitled to it, and pay  
20 or credit any payments or distributions that the person  
21 did not receive as a result of the wrongful transfer. If  
22 the securities intermediary does not reestablish a secu-  
23 rity entitlement, the securities intermediary is liable to  
24 the entitlement holder for damages.

**§46-8-508. Duty of securities intermediary to change entitle-  
ment holder's position to other form of security  
holding.**

1 A securities intermediary shall act at the direction of  
2 an entitlement holder to change a security entitlement  
3 into another available form of holding for which the  
4 entitlement holder is eligible, or to cause the financial  
5 asset to be transferred to a securities account of the  
6 entitlement holder with another securities intermediary.  
7 A securities intermediary satisfies the duty if:

8 (1) The securities intermediary acts as agreed upon by  
9 the entitlement holder and the securities intermediary;

10 or

11 (2) In the absence of agreement, the securities interme-  
12 diary exercises due care in accordance with reasonable  
13 commercial standards to follow the direction of the  
14 entitlement holder.

**§46-8-509. Specification of duties of securities intermediary  
by other statute or regulation; manner of per-  
formance of duties of securities intermediary  
and exercise of rights of entitlement holder.**

1 (a) If the substance of a duty imposed upon a securities  
2 intermediary by sections 8-504 through 8-508 is the  
3 subject of other statute, regulation or rule, compliance  
4 with that statute, regulation or rule satisfies the duty.

5 (b) To the extent that specific standards for the perfor-  
6 mance of the duties of a securities intermediary or the  
7 exercise of the rights of an entitlement holder are not  
8 specified by other statute, regulation or rule or by  
9 agreement between the securities intermediary and  
10 entitlement holder, the securities intermediary shall  
11 perform its duties and the entitlement holder shall  
12 exercise its rights in a commercially reasonable manner.

13 (c) The obligation of a securities intermediary to  
14 perform the duties imposed by sections 8-504 through 8-  
15 508 is subject to:

16 (1) Rights of the securities intermediary arising out of  
17 a security interest under a security agreement with the  
18 entitlement holder or otherwise; and

19 (2) Rights of the securities intermediary under other  
20 law, regulation, rule, or agreement to withhold perfor-  
21 mance of its duties as a result of unfulfilled obligations  
22 of the entitlement holder to the securities intermediary.

23 (d) Sections 8-504 through 8-508 do not require a  
24 securities intermediary to take any action that is prohib-  
25 ited by other statute, regulation or rule.

**§46-8-510. Rights of purchaser of security entitlement from entitlement holder.**

1 (a) An action based on an adverse claim to a financial  
2 asset or security entitlement, whether framed in conver-  
3 sion, replevin, constructive trust, equitable lien or other  
4 theory, may not be asserted against a person who pur-  
5 chases a security entitlement, or an interest therein, from  
6 an entitlement holder if the purchaser gives value, does  
7 not have notice of the adverse claim, and obtains control.

8 (b) If an adverse claim could not have been asserted  
9 against an entitlement holder under section 8-502, the  
10 adverse claim cannot be asserted against a person who  
11 purchases a security entitlement, or an interest therein,  
12 from the entitlement holder.

13 (c) In a case not covered by the priority rules in article  
14 nine, a purchaser for value of a security entitlement, or  
15 an interest therein, who obtains control has priority over  
16 a purchaser of a security entitlement, or an interest  
17 therein, who does not obtain control. Purchasers who  
18 have control rank equally, except that a securities  
19 intermediary as purchaser has priority over a conflicting  
20 purchaser who has control unless otherwise agreed by  
21 the securities intermediary.

**§46-8-511. Priority among security interests and entitlement holders.**

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

10 (b) A claim of a creditor of a securities intermediary  
11 who has a security interest in a financial asset held by a

12 securities intermediary has priority over claims of the  
13 securities intermediary's entitlement holders who have  
14 security entitlements with respect to that financial asset  
15 if the creditor has control over the financial asset.

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

PART 6. TRANSITION PROVISIONS FOR REVISED  
ARTICLE 8 AND CONFORMING AMENDMENTS TO  
ARTICLES 1, 5, 9 AND 10.

**§46-8-601. Savings clause.**

1 (a) This article does not affect an action or proceeding  
2 commenced before this article takes effect.

3 (b) If a security interest in a security is perfected at the  
4 date this article takes effect and the action by which the  
5 security interest was perfected would suffice to perfect  
6 a security interest under this article, no further action is  
7 required to continue perfection. If a security interest in  
8 a security is perfected at the date this article takes effect  
9 but the action by which the security interest was per-  
10 fected would not suffice to perfect a security interest  
11 under this article, the security interest remains perfected  
12 for a period of four months after the effective date and  
13 continues perfected thereafter if appropriate action to  
14 perfect under this article is taken within that period. If  
15 a security interest is perfected at the date this article  
16 takes effect and the security interest can be perfected by  
17 filing under this article, a financing statement signed by  
18 the secured party instead of the debtor may be filed  
19 within that period to continue perfection or thereafter to  
20 perfect.

**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  
4     certificate of title described in subsection (2) of this  
5     section, mobile goods described in subsection (3), and  
6     minerals described in subsection (5) of this section.

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 the  
12    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 the  
30    period of perfection in the other jurisdiction or the end  
31    of four months after the collateral is brought into this  
32    state, whichever period first expires, the security interest

33 becomes unperfected at the end of that period and is  
34 thereafter deemed to have been unperfected as against a  
35 person who became a purchaser after removal;

36 (ii) If the action is taken before the expiration of the  
37 period specified in paragraph (i) of this subdivision, the  
38 security 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 paragraphs (i) and (ii) of  
44 this subdivision.

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,  
63 perfected in another jurisdiction otherwise than by  
64 notation on a certificate of title, in goods brought into  
65 this state and thereafter covered by a certificate of title  
66 issued by this state is subject to the rules stated in  
67 subdivision (d) subsection (1) of this section.

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

80 (3) *Accounts, general intangibles and mobile goods.* —

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

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

97 (c) If, however, the debtor is located in a jurisdiction  
98 which is not a part of the United States, and which does  
99 not provide for perfection of the security interest by  
100 filing or recording in that jurisdiction, the law of the  
101 jurisdiction in the United States in which the debtor has  
102 its major executive office in the United States governs  
103 the perfection and the effect of perfection or non-  
104 perfection of the security interest through filing. In the



105 alternative, if the debtor is located in a jurisdiction  
106 which is not a part of the United States or Canada and  
107 the collateral is accounts or general intangibles for  
108 money due or to become due, the security interest may be  
109 perfected by notification to the account debtor. As used  
110 in this paragraph, "United States" includes its territories  
111 and possessions and the Commonwealth of Puerto Rico.

112 (d) A debtor shall be deemed located at his place of  
113 business if he has one, at his chief executive office if he  
114 has more than one place of business, otherwise at his  
115 residence. If, however, the debtor is a foreign air carrier  
116 under the federal Aviation Act of 1958, as amended, it  
117 shall be deemed located at the designated office of the  
118 agent upon whom service of process may be made on  
119 behalf of the foreign air carrier.

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

130 (4) *Chattel paper.* —

131 The rules stated for goods in subsection (1) of this  
132 section apply to a possessory security interest in chattel  
133 paper. The rules stated for accounts in subsection (3) of  
134 this section apply to a nonpossessory security interest in  
135 chattel paper, but the security interest may not be  
136 perfected by notification to the account debtor.

137 (5) *Minerals.* —

138 Perfection and the effect of perfection or nonperfection  
139 of a security interest which is created by a debtor who  
140 has an interest in minerals or the like (including oil and

141 gas) before extraction and which attaches thereto as  
142 extracted, or which attaches to an account resulting  
143 from the sale thereof at the wellhead or minehead are  
144 governed by the law (including the conflict of laws rules)  
145 of the jurisdiction wherein the wellhead or minehead is  
146 located.

147 (6) *Investment property.* —

148 (a) This subsection applies to investment property.

149 (b) Except as otherwise provided in subdivision (f) of  
150 this section, during the time that a security certificate is  
151 located in a jurisdiction, perfection of a security interest,  
152 the effect of perfection or nonperfection, and the priority  
153 of a security interest in the certificated security repre-  
154 sented thereby are governed by the local law of that  
155 jurisdiction.

156 (c) Except as otherwise provided in subdivision (f) of  
157 this section, perfection of a security interest, the effect of  
158 perfection or nonperfection, and the priority of a secu-  
159 rity interest in an uncertificated security are governed by  
160 the local law of the issuer's jurisdiction as specified in  
161 section 8-110(d).

162 (d) Except as otherwise provided in subdivision (f) of  
163 this section, perfection of a security interest, the effect of  
164 perfection or nonperfection, and the priority of a secu-  
165 rity interest in a security entitlement or securities  
166 account are governed by the local law of the securities  
167 intermediary's jurisdiction as specified in section 8-  
168 110(e).

169 (e) Except as otherwise provided in paragraph (f),  
170 perfection of a security interest, the effect of perfection  
171 or nonperfection, and the priority of a security interest  
172 in a commodity contract or commodity account are  
173 governed by the local law of the commodity intermedi-  
174 ary's jurisdiction. The following rules determine a  
175 "commodity intermediary's jurisdiction" for purposes of  
176 this paragraph:

177 (i) If an agreement between the commodity intermedi-  
178 ary and commodity customer specifies that it is governed  
179 by the law of a particular jurisdiction, that jurisdiction  
180 is the commodity intermediary's jurisdiction.

181 (ii) If an agreement between the commodity intermedi-  
182 ary and commodity customer does not specify the  
183 governing law as provided in paragraph (i) of this  
184 subdivision, but expressly specifies that the commodity  
185 account is maintained at an office in a particular juris-  
186 diction, that jurisdiction is the commodity intermedi-  
187 ary's jurisdiction.

188 (iii) If an agreement between the commodity intermedi-  
189 ary and commodity customer does not specify a jurisdic-  
190 tion as provided in paragraphs (i) or (ii) of this subdivi-  
191 sion, the commodity intermediary's jurisdiction is the  
192 jurisdiction in which is located the office identified in an  
193 account statement as the office serving the commodity  
194 customer's account.

195 (iv) If an agreement between the commodity intermedi-  
196 ary and commodity customer does not specify a jurisdic-  
197 tion as provided in subparagraph (i) or (ii) of this subdivi-  
198 sion and an account statement does not identify an  
199 office serving the commodity customer's account as  
200 provided in paragraph (iii) of this subdivision, the  
201 commodity intermediary's jurisdiction is the jurisdiction  
202 in which is located the chief executive office of the  
203 commodity intermediary.

204 (f) Perfection of a security interest by filing, automatic  
205 perfection of a security interest in investment property  
206 granted by a broker or securities intermediary, and  
207 automatic perfection of a security interest in a commod-  
208 ity contract or commodity account granted by a com-  
209 modity intermediary are governed by the local law of the  
210 jurisdiction in which the debtor is located.

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

1 (1) In this article unless the context otherwise requires:

- 2 (a) "Account debtor" means the person who is obli-  
3 gated on an account, chattel paper or general intangible;
- 4 (b) "Chattel paper" means a writing or writings which  
5 evidence both a monetary obligation and a security  
6 interest in or a lease of specific goods, but a charter or  
7 other contract involving the use or hire of a vessel is not  
8 chattel paper. When a transaction is evidenced both by  
9 such a security agreement or a lease and by an instru-  
10 ment or a series of instruments, the group of writings  
11 taken together constitutes chattel paper;
- 12 (c) "Collateral" means the property subject to a  
13 security interest, and includes accounts, and chattel  
14 paper which have been sold;
- 15 (d) "Debtor" means the person who owes payment or  
16 other performance of the obligation secured, whether or  
17 not he owns or has rights in the collateral, and includes  
18 the seller of accounts, or chattel paper. Where the  
19 debtor and the owner of the collateral are not the same  
20 person, the term "debtor" means the owner of the  
21 collateral in any provision of the article dealing with the  
22 collateral, the obligor in any provision dealing with the  
23 obligation, and may include both where the context so  
24 requires;
- 25 (e) "Deposit account" means a demand, time, savings,  
26 passbook or like account maintained with a bank,  
27 savings and loan association, credit union or like organi-  
28 zation, other than an account evidenced by a certificate  
29 of deposit;
- 30 (f) "Document" means document of title as defined in  
31 the general definitions of article 1 (section 1-201), and a  
32 receipt of the kind described in subsection (2) of section  
33 7- 201;
- 34 (g) "Encumbrance" includes real estate mortgages and  
35 other liens on real estate and all other rights in real  
36 estate that are not ownership interests;

37 (h) "Goods" includes all things which are moveable at  
38 the time the security interest attaches or which are  
39 fixtures (section 9-313), but does not include money,  
40 documents, instruments, investment property, commod-  
41 ity contracts, accounts, chattel paper, general intangi-  
42 bles, or minerals or the like (including oil and gas) before  
43 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  
48 (defined in section 3-104), or any other writing which  
49 evidences a right to the payment of money and is not  
50 itself a security agreement or lease and is of a type which  
51 is in ordinary course of business transferred by delivery  
52 with any necessary endorsement or assignment. The  
53 term does not include investment property;

54 (j) "Mortgage" means a consensual interest created by  
55 a real estate mortgage, a trust deed on real estate, or the  
56 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, includ-  
66 ing 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  
75 pipeline, or the transmission or the production and  
76 transmission of electricity, steam, gas or water, or the  
77 provision of sewer service.

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

80 "Account". Section 9-106.

81 "Attach". Section 9-203.

82 "Commodity contract". Section 9-115.

83 "Commodity customer". Section 9-115.

84 "Commodity intermediary". Section 9-115.

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

86 "Consumer goods". Section 9-109(1).

87 "Control". Section 9-115.

88 "Equipment". Section 9-109(2).

89 "Farm products". Section 9-109(3).

90 "Fixture". Section 9-313(1).

91 "Fixture filing". Section 9-313(1).

92 "General intangibles". Section 9-106.

93 "Inventory". Section 9-109(4).

94 "Investment property". Section 9-115.

95 "Lien creditor". Section 9-301(3).

96 "Proceeds". Section 9-306(1).

97 "Purchase money security  
98 interest". Section 9-107.

99 "United States". Section 9-103.

100 (3) The following definitions in other articles apply to

101 this article:

102	“Broker”.	Section 8-102.
103	“Certificated security”.	Section 8-102.
104	“Check”.	Section 3-104.
105	“Clearing corporation”.	Section 8-102.
106	“Contract for sale”.	Section 2-106.
107	“Control”.	Section 8-106.
108	“Delivery”.	Section 8-301.
109	“Entitlement holder”.	Section 8-102.
110	“Financial asset”.	Section 8-102.
111	“Holder in due course”.	Section 3-302.
112	“Note”.	Section 3-104.
113	“Sale”.	Section 2-106.
114	“Securities intermediary”.	Section 8-102.
115	“Security”.	Section 8-102.
116	“Security certificate”.	Section 8-102.
117	“Security entitlement”.	Section 8-102.
118	“Uncertificated security”.	Section 8-102.

119 (4) In addition, article 1 contains general definitions  
120 and principles of construction and interpretation  
121 applicable throughout this article.

**§46-9-106. Definitions: “Account”; “general intangibles.”**

1 “Account” means any right to payment for goods sold  
2 or leased or for services rendered which is not evidenced  
3 by an instrument or chattel paper, whether or not it has  
4 been earned by performance. “General intangibles”  
5 means any personal property (including things in action)  
6 other than goods, accounts, chattel paper, documents,  
7 instruments, investment property and money. All rights

8 to payment earned or unearned under a charter or other  
9 contract involving the use or hire of a vessel and all  
10 rights incident to the charter or contract are accounts.

**§46-9-115. Investment property.**

1 (1) In this article:

2 (a) "Commodity account" means an account  
3 maintained by a commodity intermediary in which a  
4 commodity contract is carried for a commodity  
5 customer.

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

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

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

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

19 (d) "Commodity intermediary" means:

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

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

26 (e) "Control" with respect to a certificated security,  
27 uncertificated security, or security entitlement has the  
28 meaning specified in section 8-106. A secured party has  
29 control over a commodity contract if by agreement



30 among the commodity customer, the commodity  
31 intermediary, and the secured party, the commodity  
32 intermediary has agreed that it will apply any value  
33 distributed on account of the commodity contract as  
34 directed by the secured party without further consent by  
35 the commodity customer. If a commodity customer  
36 grants a security interest in a commodity contract to its  
37 own commodity intermediary, the commodity  
38 intermediary as secured party has control. A secured  
39 party has control over a securities account or commodity  
40 account if the secured party has control over all security  
41 entitlements or commodity contracts carried in the  
42 securities account or commodity account.

43 (f) "Investment property" means:

44 (i) A security, whether certificated or uncertificated;

45 (ii) A security entitlement;

46 (iii) A securities account;

47 (iv) A commodity contract; or

48 (v) A commodity account.

49 (2) Attachment or perfection of a security interest in a  
50 securities account is also attachment or perfection of a  
51 security interest in all security entitlements carried in  
52 the securities account. Attachment or perfection of a  
53 security interest in a commodity account is also  
54 attachment or perfection of a security interest in all  
55 commodity contracts carried in the commodity account.

56 (3) A description of collateral in a security agreement  
57 or financing statement is sufficient to create or perfect  
58 a security interest in a certificated security,  
59 uncertificated security, security entitlement, securities  
60 account, commodity contract or commodity account  
61 whether it describes the collateral by those terms, or as  
62 investment property, or by description of the underlying  
63 security, financial asset or commodity contract. A  
64 description of investment property collateral in a

65 security agreement or financing statement is sufficient  
66 if it identifies the collateral by specific listing, by  
67 category, by quantity, by a computational or allocational  
68 formula or procedure or by any other method, if the  
69 identity of the collateral is objectively determinable.

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

72 (a) A security interest in investment property may be  
73 perfected by control.

74 (b) Except as otherwise provided in subdivision (c) and  
75 (d) of this subsection, a security interest in investment  
76 property may be perfected by filing.

77 (c) If the debtor is a broker or securities intermediary  
78 a security interest in investment property is perfected  
79 when it attaches. The filing of a financing statement  
80 with respect to a security interest in investment property  
81 granted by a broker or securities intermediary has no  
82 effect for purposes of perfection or priority with respect  
83 to that security interest.

84 (d) If a debtor is a commodity intermediary, a security  
85 interest in a commodity contract or a commodity account  
86 is perfected when it attaches. The filing of a financing  
87 statement with respect to a security interest in a  
88 commodity contract or a commodity account granted by  
89 a commodity intermediary has no effect for purposes of  
90 perfection or priority with respect to that security  
91 interest.

92 (5) Priority between conflicting security interests in the  
93 same investment property is governed by the following  
94 rules:

95 (a) A security interest of a secured party who has  
96 control over investment property has priority over a  
97 security interest of a secured party who does not have  
98 control over the investment property.

99 (b) Except as otherwise provided in subdivision (c) and

100 (d) of this subsection, conflicting security interests of  
101 secured parties each of whom has control rank equally.

102 (c) Except as otherwise agreed by the securities  
103 intermediary, a security interest in a security entitlement  
104 or a securities account granted to the debtor's own  
105 securities intermediary has priority over any security  
106 interest granted by the debtor to another secured party.

107 (d) Except as otherwise agreed by the commodity  
108 intermediary, a security interest in a commodity contract  
109 or a commodity account granted to the debtor's own  
110 commodity intermediary has priority over any security  
111 interest granted by the debtor to another secured party.

112 (e) Conflicting security interests granted by a broker,  
113 a securities intermediary, or a commodity intermediary  
114 which are perfected without control rank equally.

115 (f) In all other cases, priority between conflicting  
116 security interests in investment property is governed by  
117 section 9-312(5), (6) and (7). Section 9-312(4) does not  
118 apply to investment property.

119 (6) If a security certificate in registered form is  
120 delivered to a secured party pursuant to agreement, a  
121 written security agreement is not required for  
122 attachment or enforceability of the security interest,  
123 delivery suffices for perfection of the security interest,  
124 and the security interest has priority over a conflicting  
125 security interest perfected by means other than control,  
126 even if a necessary indorsement is lacking.

**§46-9-116. Security interest arising in purchase or delivery  
of financial asset.**

1 (1) If a person buys a financial asset through a  
2 securities intermediary in a transaction in which the  
3 buyer is obligated to pay the purchase price to the  
4 securities intermediary at the time of the purchase and  
5 the securities intermediary credits the financial asset to  
6 the buyer's securities account before the buyer pays the

7 securities intermediary, the securities intermediary has  
8 a security interest in the buyer's security entitlement  
9 securing the buyer's obligation to pay. A security  
10 agreement is not required for attachment or  
11 enforceability of the security interest and the security  
12 interest is automatically perfected.

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

**§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, sections 9-115 and  
3 9-116 on security interests in investment property, and  
4 section 9-113 on a security interest arising under the  
5 article on sales, a security interest is not enforceable  
6 against the debtor or third parties with respect to the  
7 collateral and does not attach unless:

8 (a) The collateral is in the possession of the secured  
9 party pursuant to agreement, the collateral is investment  
10 property and the secured party has control pursuant to  
11 agreement, or the debtor has signed a security agreement  
12 which contains a description of the collateral and in  
13 addition, when the security interest covers crops growing  
14 or to be grown or timber to be cut, a description of the  
15 land concerned;

16 (b) Value has been given; and

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

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

24 (3) Unless otherwise agreed a security agreement gives  
25 the secured party the rights to proceeds provided by  
26 section 9-306.

27 (4) A transaction may be subject to this article and also  
28 to article seven-a, chapter forty-seven of this code,  
29 relating to small loans and in case of conflict between  
30 the provisions of this article and article seven-a, chapter  
31 forty-seven of this code or any other such statute, the  
32 provisions of said article 7A or such other statute  
33 control. Failure to comply with any applicable statute  
34 has only the effect which is specified therein.

**§46-9-301. Persons who take priority over unperfected  
security interests; right of "lien creditor."**

1 (1) Except as otherwise provided in subsection (2) of  
2 this section), an unperfected security interest is  
3 subordinate to the rights of:

4 (a) Persons entitled to priority under section 9-312;

5 (b) A person who becomes a lien creditor before the  
6 security interest is perfected;

7 (c) In the case of goods, instruments, documents, and  
8 chattel paper, a person who is not a secured party and  
9 who is a transferee in bulk or other buyer not in ordinary  
10 course of business; or is a buyer of farm products in  
11 ordinary course of business, to the extent that he gives  
12 value and receives delivery of the collateral without  
13 knowledge of the security interest and before it is

14 perfected; and

15 (d) In the case of accounts, general intangibles and  
16 investment property, a person who is not a secured party  
17 and who is a transferee to the extent that he gives value  
18 without knowledge of the security interest and before it  
19 is perfected.

20 (2) If the secured party files with respect to a purchase  
21 money security interest before or within twenty days  
22 after the debtor receives possession of the collateral, he  
23 takes priority over the rights of a transferee in bulk or of  
24 a lien creditor which arise between the time the security  
25 interest attaches and the time of filing.

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

32 (4) A person who becomes a lien creditor while a  
33 security interest is perfected takes subject to the security  
34 interest only to the extent that it secures advances made  
35 before he becomes a lien creditor or within forty-five  
36 days thereafter or made without knowledge of the lien or  
37 pursuant to a commitment entered into without  
38 knowledge of the lien.

**§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 all  
2 security interests except the following:

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

5 (b) A security interest temporarily perfected in  
6 instruments, certificated securities or documents  
7 without delivery under section 9-304 or in proceeds for

8 a ten-day period under section 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 priority  
14 over conflicting interests in fixtures to the extent  
15 provided in section 9-313;

16 (e) An assignment of accounts which does not alone or  
17 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 4-  
21 208) or arising under the article on sales (see section 9-  
22 113) or covered in subsection (3) of this section;

23 (g) An assignment for the benefit of all the creditors of  
24 the transferor, and subsequent transfers by the assignee  
25 thereunder;

26 (h) A security interest in investment property which is  
27 perfected without filing under section 9-115 or section 9-  
28 116.

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

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

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

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

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

52 (4) Compliance with a statute or treaty described in  
53 subsection (3) of this section is equivalent to the filing of  
54 a financing statement under this article, and a security  
55 interest in property subject to the statute or treaty can  
56 be perfected only by compliance therewith except as  
57 provided in section 9-103 on multiple state transactions.  
58 Duration and renewal of perfection of a security interest  
59 perfected by compliance with the statute or treaty are  
60 governed by the provisions of the statute or treaty; in  
61 other respects the security interest is subject to this  
62 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  
3 interest in money or instruments (other than instruments  
4 which constitute part of chattel paper) can be perfected  
5 only by the secured party's taking possession, except as  
6 provided in subsections (4) and (5) of this section and  
7 subsections (2) and (3) of section 9-306 on proceeds.

8 (2) During the period that goods are in the possession  
9 of the issuer of a negotiable document therefor, a  
10 security interest in the goods is perfected by perfecting



11 a security interest in the document, and any security  
12 interest in the goods otherwise perfected during such  
13 period is subject thereto.

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

20 (4) A security interest in instruments, certificated  
21 securities or negotiable documents is perfected without  
22 filing or the taking of possession for a period of twenty-  
23 one days from the time it attaches to the extent that it  
24 arises for new value given under a written security  
25 agreement.

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

32 (a) Makes available to the debtor the goods or  
33 documents representing the goods for the purpose of  
34 ultimate sale or exchange or for the purpose of loading,  
35 unloading, storing, shipping, transshipping,  
36 manufacturing, processing or otherwise dealing with  
37 them in a manner preliminary to their sale or exchange,  
38 but priority between conflicting security interests in the  
39 goods is subject to subsection (3) of section 9-312; or

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

44 (6) After the twenty-one-day period in subsections (4)  
45 and (5) of this section perfection depends upon  
46 compliance with applicable 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,  
3 instruments, money, negotiable documents or chattel  
4 paper may be perfected by the secured party's taking  
5 possession of the collateral. If such collateral other than  
6 goods covered by a negotiable document is held by a  
7 bailee, the secured party is deemed to have possession  
8 from the time the bailee receives notification of the  
9 secured party's interest. A security interest is perfected  
10 by possession from the time possession is taken without  
11 relation back and continues only so long as possession is  
12 retained, unless otherwise specified in this article. The  
13 security interest may be otherwise perfected as provided  
14 in this article before or after the period of possession by  
15 the secured party.

**§46-9-306. "Proceeds"; secured party's rights on disposition of collateral.**

1 (1) "Proceeds" includes whatever is received upon the  
2 sale, exchange, collection or other disposition of  
3 collateral or proceeds. Insurance payable by reason of  
4 loss or damage to the collateral is proceeds, except to the  
5 extent that it is payable to a person other than a party to  
6 the security agreement. Any payments or distributions  
7 made with respect to investment property collateral are  
8 proceeds. Money, checks, deposit accounts and the like  
9 are "cash proceeds". All other proceeds are "noncash  
10 proceeds".

11 (2) Except where this article otherwise provides, a  
12 security interest continues in collateral notwithstanding  
13 sale, exchange or other disposition thereof unless the  
14 disposition was authorized by the secured party in the  
15 security agreement or otherwise, and also continues in  
16 any identifiable proceeds including collections received  
17 by the debtor.

18 (3) The security interest in proceeds is a continuously  
19 perfected security interest if the interest in the original  
20 collateral was perfected but it ceases to be a perfected  
21 security interest and becomes unperfected ten days after  
22 receipt of the proceeds by the debtor unless

23 (a) A filed financing statement covers the original  
24 collateral and the proceeds are collateral in which a  
25 security interest may be perfected by filing in the office  
26 or offices where the financing statement has been filed  
27 and, if the proceeds are acquired with cash proceeds, the  
28 description of collateral in the financing statement  
29 indicates the types of property constituting the proceeds;  
30 or

31 (b) A filed financing statement covers the original  
32 collateral and the proceeds are identifiable cash  
33 proceeds; or

34 (c) The original collateral was investment property and  
35 the proceeds are identifiable cash proceeds; or

36 (d) The security interest in the proceeds is perfected  
37 before the expiration of the ten-day period. Except as  
38 provided in this section, a security interest in proceeds  
39 can be perfected only by the methods or under the  
40 circumstances permitted in this article for original  
41 collateral of the same type.

42 (4) In the event of insolvency proceedings instituted by  
43 or against a debtor, a secured party with a perfected  
44 security interest in proceeds has a perfected security  
45 interest only in the following proceeds:

46 (a) In identifiable noncash proceeds and in separate  
47 deposit accounts containing only proceeds;

48 (b) In identifiable cash proceeds in the form of money  
49 which is neither commingled with other money nor  
50 deposited in a deposit account prior to the insolvency  
51 proceedings;

52 (c) In identifiable cash proceeds in the form of checks

53 and the like which are not deposited in a deposit account  
54 prior to the insolvency proceedings; and

55 (d) In all cash and deposit accounts of the debtor in  
56 which proceeds have been commingled with other funds,  
57 but the perfected security interest under this subdivision  
58 is

59 (i) Subject to any right of setoff; and

60 (ii) Limited to an amount not greater than the amount  
61 of any cash proceeds received by the debtor within ten  
62 days before the institution of the insolvency proceedings  
63 less the sum of: (I) The payments to the secured party on  
64 account of cash proceeds received by the debtor during  
65 such period; and (II) the cash proceeds received by the  
66 debtor during such period to which the secured party is  
67 entitled under subdivisions (a) through (c) of this  
68 subsection.

69 (5) If a sale of goods results in an account or chattel  
70 paper which is transferred by the seller to a secured  
71 party, and if the goods are returned to or are repossessed  
72 by the seller or the secured party, the following rules  
73 determine priorities:

74 (a) If the goods were collateral at the time of sale for an  
75 indebtedness of the seller which is still unpaid, the  
76 original security interest attaches again to the goods and  
77 continues as the perfected security interest if it was  
78 perfected at the time when the goods were sold. If the  
79 security interest was originally perfected by a filing  
80 which is still effective, nothing further is required to  
81 continue the perfected status; in any other case, the  
82 secured party must take possession of the returned or  
83 repossessed goods or must file.

84 (b) An unpaid transferee of the chattel paper has a  
85 security interest in the goods against the transferor.  
86 Such security interest is prior to a security interest  
87 asserted under paragraph (a) to the extent that the  
88 transferee of the chattel paper was entitled to priority

89 under section 9-308.

90 (c) An unpaid transferee of the account has a security  
91 interest in the goods against the transferor. Such  
92 security interest is subordinate to a security interest  
93 asserted under subdivision (a) of this subsection.

94 (d) A security interest of an unpaid transferee asserted  
95 under subdivision (b) or (c) of this subsection must be  
96 perfected for protection against creditors of the  
97 transferor and purchasers of the returned or repossessed  
98 goods.

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

1 Nothing in this article limits the rights of a holder in  
2 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 protected purchaser  
5 of a security (section 8-303) and such holders or purchas-  
6 ers take priority over an earlier security interest even  
7 though perfected. Filing under this article does not  
8 constitute notice of the security interest to such holders  
9 or purchasers.

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

1 (1) The rules of priority stated in other sections of this  
2 part and in the following sections shall govern when  
3 applicable: Section 4-210 with respect to the security  
4 interests 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; section 9-115 on security inter-  
8 ests in investment property.

9 (2) A perfected security interest in crops for new value  
10 given to enable the debtor to produce the crops during  
11 the production season and given not more than three  
12 months before the crops become growing crops by

13 planting or otherwise takes priority over an earlier  
14 perfected security interest to the extent that such earlier  
15 interest secures obligations due more than six months  
16 before the crops become growing crops by planting or  
17 otherwise, even though the person giving new value had  
18 knowledge of the earlier security interest.

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

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

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

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

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

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

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

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

62 (b) So long as conflicting security interests are unper-  
63 fected, the first to attach has priority.

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

67 (7) If future advances are made while a security  
68 interest is perfected by filing, the taking of possession, or  
69 under section 9-115 or section 9-116 on investment  
70 property, the security interest has the same priority for  
71 the purposes of subsection (5) or (8) of this section with  
72 respect to the future advances as it does with respect to  
73 the first advance. If a commitment is made before or  
74 while the security interest is so perfected, the security  
75 interest has the same priority with respect to advances  
76 made pursuant thereto. In other cases a perfected  
77 security interest has priority from the date the advance  
78 is made.

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

*Paul Schoorover*  
.....  
Chairman Senate Committee

*Ernest C. Moore*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Harrell E. Adams*  
.....  
Clerk of the Senate

*Donald L. Kapp*  
.....  
Clerk of the House of Delegates

*Carl By Imbilia*  
.....  
President of the Senate

*Paul Caber*  
.....  
Speaker House of Delegates

The within ..... this the.....  
day of ....., 1995.

.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 3:55 pm