

HD 1001

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



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HOUSE BILL No. 4669

(By Delegates Beane, Doyle, Walters  
and Jenkins)



Passed March 9, 1996

In Effect July 1, 1996 ~~Passage~~

**ENROLLED**

**H. B. 4669**

(BY DELEGATES BEANE, DOYLE, WALTERS AND JENKINS)

[Passed March 9, 1996; in effect July 1, 1996.]

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AN ACT to amend and reenact section one hundred five, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five hundred twelve, article two of said chapter; to amend and reenact article five of said chapter; and to amend and reenact sections one hundred three, one hundred four, one hundred five, one hundred six, three hundred four and three hundred five, article nine of said chapter, all relating to letters of credit generally; general provisions; applicable law; sales; payment by buyer before inspection; short title; definitions; scope of provisions; formal requirements; consideration; issuance, amendment, cancellation and duration of letters of credit; rights and obligations of confirmer, nominated person and adviser; rights and obligations of issuer; forged or fraudulent document; warranties; remedies; transfer of letter of credit; transfer by operation of law; assignment of proceeds; statute of limitations; choice of law and forum; subrogation rights of issuer, applicant and nominated person; effective date; applicability; savings provisions; secured transactions; perfection of security interests in multiple state transactions; excluded transactions; definitions and index of definitions; expanded definitions; perfecting security interest in written letter of credit; when possession of collateral perfects security interest; and conforming amendments.

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

That section one hundred five, 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 five hundred twelve, article two of said chapter be amended and reenacted; that article five of said chapter be amended and reenacted; that sections one hundred three, one hundred four, one hundred five, one hundred six, three hundred four and three hundred five, article nine of said chapter be amended and reenacted, 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 a  
2 transaction bears a reasonable relation to this state and also  
3 to another state or nation the parties may agree that the  
4 law either of this state or of such other state or nation shall  
5 govern their rights and duties. Failing such agreement this  
6 chapter applies to transactions bearing an appropriate  
7 relation to this state.

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

13 Sections 2A-105 and 2A-106, applicability of the  
14 article on leases.

15 Section 2-402, rights of creditors against sold goods.

16 Section 4-102, applicability of the article on bank  
17 deposits and collections.

18 Section 5-116, letters of credit.

19 Section 8-106, applicability of the article on invest-  
20 ment securities.

21 Section 9-103, perfection provisions of the article on  
22 secured transactions.

**ARTICLE 2. SALES.****§46-2-512. Payment by buyer before inspection.**

1 (1) Where the contract requires payment before in-  
2 spection nonconformity of the goods does not excuse the  
3 buyer from so making payment unless:

4 (a) The nonconformity appears without inspection; or

5 (b) Despite tender of the required documents the cir-  
6 cumstances would justify injunction against honor under  
7 this chapter (section 5-109(b)).

8 (2) Payment pursuant to subsection (1) does not con-  
9 stitute an acceptance of goods or impair the buyer's right  
10 to inspect or any of his remedies.

**ARTICLE 5. LETTERS OF CREDIT.****§46-5-101. Short title.**

1 This article may be cited as "Uniform Commercial  
2 Code-Letters of Credit".

**§46-5-102. Definitions.**

1 (a) In this article:

2 (1) "Adviser" means a person who, at the request of the  
3 issuer, a confirmer, or another adviser, notifies or requests  
4 another adviser to notify the beneficiary that a letter of  
5 credit has been issued, confirmed, or amended;

6 (2) "Applicant" means a person at whose request or for  
7 whose account a letter of credit is issued. The term in-  
8 cludes a person who requests an issuer to issue a letter of  
9 credit on behalf of another if the person making the re-  
10 quest undertakes an obligation to reimburse the issuer;

11 (3) "Beneficiary" means a person who under the terms  
12 of a letter of credit is entitled to have its complying pre-  
13 sentation honored. The term includes a person to whom  
14 drawing rights have been transferred under a transferable  
15 letter of credit;

16 (4) "Confirmer" means a nominated person who un-

17   dertakes, at the request or with the consent of the issuer, to  
18   honor a presentation under a letter of credit issued by  
19   another;

20       (5) "Dishonor" of a letter of credit means failure time-  
21   ly to honor or to take an interim action, such as accep-  
22   tance of a draft, that may be required by the letter of cred-  
23   it;

24       (6) "Document" means a draft or other demand, docu-  
25   ment of title, investment security, certificate, invoice, or  
26   other record, statement, or representation of fact, law, right,  
27   or opinion (i) which is presented in a written or other  
28   medium permitted by the letter of credit or, unless prohib-  
29   ited by the letter of credit, by the standard practice re-  
30   ferred to in section 5-108(e) and (ii) which is capable of  
31   being examined for compliance with the terms and condi-  
32   tions of the letter of credit. A document may not be oral;

33       (7) "Good faith" means honesty in fact in the conduct  
34   or transaction concerned;

35       (8) "Honor" of a letter of credit means performance of  
36   the issuer's undertaking in the letter of credit to pay or  
37   deliver an item of value. Unless the letter of credit other-  
38   wise provides, "honor" occurs

39       (i) Upon payment,

40       (ii) if the letter of credit provides for acceptance, upon  
41   acceptance of a draft and, at maturity, its payment, or

42       (iii) if the letter of credit provides for incurring a de-  
43   ferred obligation, upon incurring the obligation and, at  
44   maturity, its performance.

45       (9) "Issuer" means a bank or other person that issues a  
46   letter of credit, but does not include an individual who  
47   makes an engagement for personal, family, or household  
48   purposes.

49       (10) "Letter of credit" means a definite undertaking  
50   that satisfies the requirements of section-104 by an issuer  
51   to a beneficiary at the request or for the account of an

52 applicant or, in the case of a financial institution, to itself  
53 or for its own account, to honor a documentary presenta-  
54 tion by payment or delivery of an item of value;

55 (11) "Nominated person" means a person whom the  
56 issuer (i) designates or authorizes to pay, accept, negotiate,  
57 or otherwise give value under a letter of credit and (ii)  
58 undertakes by agreement or custom and practice to reim-  
59 burse;

60 (12) "Presentation" means delivery of a document to  
61 an issuer or nominated person for honor or giving of  
62 value under a letter of credit;

63 (13) "Presenter" means a person making a presentation  
64 as or on behalf of a beneficiary or nominated person;

65 (14) "Record" means information that is inscribed on a  
66 tangible medium, or that is stored in an electronic or other  
67 medium and is retrievable in perceivable form; and

68 (15) "Successor of a beneficiary" means a person who  
69 succeeds to substantially all of the rights of a beneficiary  
70 by operation of law, including a corporation with or into  
71 which the beneficiary has been merged or consolidated, an  
72 administrator, executor, personal representative, trustee in  
73 bankruptcy, debtor in possession, liquidator, and receiver.

74 (b) Definitions in other articles applying to this article  
75 and the sections in which they appear are:

76 "Accept" or "Acceptance" Section 3-409.

77 "Value" Sections 3-303, 4-211.

78 (c) Article 1 contains certain additional general defini-  
79 tions and principles of construction and interpretation  
80 applicable throughout this article.

**§46-5-103. Scope.**

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

4 (b) The statement of a rule in this article does not by

5 itself require, imply, or negate application of the same or a  
6 different rule to a situation not provided for, or to a per-  
7 son not specified, in this article.

8 (c) With the exception of this subsection, subsections  
9 (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and  
10 5-114(d), and except to the extent prohibited in sections  
11 1-102(3) and 5-117(d), the effect of this article may be  
12 varied by agreement or by a provision stated or incorpo-  
13 rated by reference in an undertaking. A term in an agree-  
14 ment or undertaking generally excusing liability or gener-  
15 ally limiting remedies for failure to perform obligations is  
16 not sufficient to vary obligations prescribed by this article.

17 (d) Rights and obligations of an issuer to a beneficiary  
18 or a nominated person under a letter of credit are inde-  
19 pendent of the existence, performance, or nonperfor-  
20 mance of a contract or arrangement out of which the letter  
21 of credit arises or which underlies it, including contracts or  
22 arrangements between the issuer and the applicant and  
23 between the applicant and the beneficiary.

**§46-5-104. Formal requirements.**

1 A letter of credit, confirmation, advice, transfer,  
2 amendment, or cancellation may be issued in any form  
3 that is a record and is authenticated (i) by a signature or  
4 (ii) in accordance with the agreement of the parties or the  
5 standard practice referred to in section 5-108(e).

**§46-5-105. Consideration.**

1 Consideration is not required to issue, amend, transfer,  
2 or cancel a letter of credit, advice, or confirmation.

**§46-5-106. Issuance, amendment, cancellation, and duration.**

1 (a) A letter of credit is issued and becomes enforce-  
2 able according to its terms against the issuer when the  
3 issuer sends or otherwise transmits it to the person request-  
4 ed to advise or to the beneficiary. A letter of credit is  
5 revocable only if it so provides.

6 (b) After a letter of credit is issued, rights and obliga-

7 tions of a beneficiary, applicant, confirmer, and issuer are  
8 not affected by an amendment or cancellation to which  
9 that person has not consented except to the extent the  
10 letter of credit provides that it is revocable or that the issu-  
11 er may amend or cancel the letter of credit without that  
12 consent.

13 (c) If there is no stated expiration date or other provi-  
14 sion that determines its duration, a letter of credit expires  
15 one year after its stated date of issuance or, if none is stat-  
16 ed, after the date on which it is issued.

17 (d) A letter of credit that states that it is perpetual ex-  
18 pires five years after its stated date of issuance, or if none  
19 is stated, after the date on which it is issued.

**§46-5-107. Confirmer, nominated person and adviser.**

1 (a) A confirmer is directly obligated on a letter of  
2 credit and has the rights and obligations of an issuer to the  
3 extent of its confirmation. The confirmer also has rights  
4 against and obligations to the issuer as if the issuer were an  
5 applicant and the confirmer had issued the letter of credit  
6 at the request and for the account of the issuer.

7 (b) A nominated person who is not a confirmer is not  
8 obligated to honor or otherwise give value for a presenta-  
9 tion.

10 (c) A person requested to advise may decline to act as  
11 an adviser. An adviser that is not a confirmer is not obli-  
12 gated to honor or give value for a presentation. An advis-  
13 er undertakes to the issuer and to the beneficiary accurate-  
14 ly to advise the terms of the letter of credit, confirmation,  
15 amendment, or advice received by that person and under-  
16 takes to the beneficiary to check the apparent authenticity  
17 of the request to advise. Even if the advice is inaccurate,  
18 the letter of credit, confirmation, or amendment is en-  
19 forceable as issued.

20 (d) A person who notifies a transferee beneficiary of  
21 the terms of a letter of credit, confirmation, amendment, or  
22 advice has the rights and obligations of an adviser under



23 subsection (c). The terms in the notice to the transferee  
24 beneficiary may differ from the terms in any notice to the  
25 transferor beneficiary to the extent permitted by the letter  
26 of credit, confirmation, amendment, or advice received by  
27 the person who so notifies.

**§46-5-108. Issuer's rights and obligations.**

1 (a) Except as otherwise provided in section 5-109, an  
2 issuer shall honor a presentation that, as determined by the  
3 standard practice referred to in subsection (e), appears on  
4 its face strictly to comply with the terms and conditions of  
5 the letter of credit. Except as otherwise provided in sec-  
6 tion 5-113 and unless otherwise agreed with the applicant,  
7 an issuer shall dishonor a presentation that does not ap-  
8 pear so to comply.

9 (b) An issuer has a reasonable time after presentation,  
10 but not beyond the end of the seventh business day of the  
11 issuer after the day of its receipt of documents:

12 (1) To honor,

13 (2) If the letter of credit provides for honor to be  
14 completed more than seven business days after presenta-  
15 tion, to accept a draft or incur a deferred obligation, or

16 (3) To give notice to the presenter of discrepancies in  
17 the presentation.

18 (c) Except as otherwise provided in subsection (d), an  
19 issuer is precluded from asserting as a basis for dishonor  
20 any discrepancy if timely notice is not given, or any dis-  
21 crepancy not stated in the notice if timely notice is given.

22 (d) Failure to give the notice specified in subsection  
23 (b) or to mention fraud, forgery, or expiration in the no-  
24 tice does not preclude the issuer from asserting as a basis  
25 for dishonor fraud or forgery as described in section  
26 5-109(a) or expiration of the letter of credit before pre-  
27 sentation.

28 (e) An issuer shall observe standard practice of finan-  
29 cial institutions that regularly issue letters of credit. Deter-

30 mination of the issuer's observance of the standard prac-  
31 tice is a matter of interpretation for the court. The court  
32 shall offer the parties a reasonable opportunity to present  
33 evidence of the standard practice.

34 (f) An issuer is not responsible for:

35 (1) The performance or nonperformance of the un-  
36 derlying contract, arrangement, or transaction;

37 (2) An act or omission of others; or

38 (3) Observance or knowledge of the usage of a partic-  
39 ular trade other than the standard practice referred to in  
40 subsection (e).

41 (g) If an undertaking constituting a letter of credit  
42 under section 5-102(a)(10) contains nondocumentary  
43 conditions, an issuer shall disregard the nondocumentary  
44 conditions and treat them as if they were not stated.

45 (h) An issuer that has dishonored a presentation shall  
46 return the documents or hold them at the disposal of, and  
47 send advice to that effect to, the presenter.

48 (i) An issuer that has honored a presentation as per-  
49 mitted or required by this article:

50 (1) Is entitled to be reimbursed by the applicant in  
51 immediately available funds not later than the date of its  
52 payment of funds;

53 (2) Takes the documents free of claims of the benefi-  
54 ciary or presenter;

55 (3) Is precluded from asserting a right of recourse on  
56 a draft under sections 3-414 and 3-415;

57 (4) Except as otherwise provided in sections 5-110  
58 and 5-117, is precluded from restitution of money paid or  
59 other value given by mistake to the extent the mistake  
60 concerns discrepancies in the documents or tender which  
61 are apparent on the face of the presentation; and

62 (5) Is discharged to the extent of its performance  
63 under the letter of credit unless the issuer honored a pre-

64 sentation in which a required signature of a beneficiary  
65 was forged.

**§46-5-109. Fraud and forgery.**

1 (a) If a presentation is made that appears on its face  
2 strictly to comply with the terms and conditions of the  
3 letter of credit, but a required document is forged or mate-  
4 rially fraudulent, or honor of the presentation would facil-  
5 itate a material fraud by the beneficiary on the issuer or  
6 applicant:

7 (1) The issuer shall honor the presentation, if honor is  
8 demanded by (i) A nominated person who has given value  
9 in good faith and without notice of forgery or material  
10 fraud, (ii) a confirmer who has honored its confirmation  
11 in good faith, (iii) a holder in due course of a draft drawn  
12 under the letter of credit which was taken after acceptance  
13 by the issuer or nominated person, or (iv) an assignee of  
14 the issuer's or nominated person's deferred obligation that  
15 was taken for value and without notice of forgery or mate-  
16 rial fraud after the obligation was incurred by the issuer or  
17 nominated person; and

18 (2) The issuer, acting in good faith, may honor or  
19 dishonor the presentation in any other case.

20 (b) If an applicant claims that a required document is  
21 forged or materially fraudulent or that honor of the pre-  
22 sentation would facilitate a material fraud by the benefi-  
23 ciary on the issuer or applicant, a court of competent juris-  
24 diction may temporarily or permanently enjoin the issuer  
25 from honoring a presentation or grant similar relief  
26 against the issuer or other persons only if the court finds  
27 that:

28 (1) The relief is not prohibited under the law applica-  
29 ble to an accepted draft or deferred obligation incurred by  
30 the issuer;

31 (2) A beneficiary, issuer, or nominated person who  
32 may be adversely affected is adequately protected against  
33 loss that it may suffer because the relief is granted;

34 (3) All of the conditions to entitle a person to the  
35 relief under the law of this state have been met; and

36 (4) On the basis of the information submitted to the  
37 court, the applicant is more likely than not to succeed  
38 under its claim of forgery or material fraud and the per-  
39 son demanding honor does not qualify for protection  
40 under subsection (a)(1).

**§46-5-110. Warranties.**

1 (a) If its presentation is honored, the beneficiary war-  
2 rants:

3 (1) To the issuer, any other person to whom presenta-  
4 tion is made, and the applicant that there is no fraud or  
5 forgery of the kind described in section 5-109(a); and

6 (2) To the applicant that the drawing does not violate  
7 any agreement between the applicant and beneficiary or  
8 any other agreement intended by them to be augmented  
9 by the letter of credit.

10 (b) The warranties in subsection (a) are in addition to  
11 warranties arising under articles 3, 4, 7, and 8 because of  
12 the presentation or transfer of documents covered by any  
13 of those articles.

**§46-5-111. Remedies.**

1 (a) If an issuer wrongfully dishonors or repudiates its  
2 obligation to pay money under a letter of credit before  
3 presentation, the beneficiary, successor, or nominated  
4 person presenting on its own behalf may recover from the  
5 issuer the amount that is the subject of the dishonor or  
6 repudiation. If the issuer's obligation under the letter of  
7 credit is not for the payment of money, the claimant may  
8 obtain specific performance or, at the claimant's election,  
9 recover an amount equal to the value of performance  
10 from the issuer. In either case, the claimant may also  
11 recover incidental but not consequential damages. The  
12 claimant is not obligated to take action to avoid damages  
13 that might be due from the issuer under this subsection.  
14 If, although not obligated to do so, the claimant avoids

15 damages, the claimant's recovery from the issuer must be  
16 reduced by the amount of damages avoided. The issuer  
17 has the burden of proving the amount of damages avoid-  
18 ed. In the case of repudiation the claimant need not pres-  
19 ent any document.

20 (b) If an issuer wrongfully dishonors a draft or de-  
21 mand presented under a letter of credit or honors a draft  
22 or demand in breach of its obligation to the applicant, the  
23 applicant may recover damages resulting from the breach,  
24 including incidental but not consequential damages, less  
25 any amount saved as a result of the breach.

26 (c) If an adviser or nominated person other than a  
27 confirmer breaches an obligation under this article or an  
28 issuer breaches an obligation not covered in subsection (a)  
29 or (b), a person to whom the obligation is owed may re-  
30 cover damages resulting from the breach, including inci-  
31 dental but not consequential damages, less any amount  
32 saved as a result of the breach. To the extent of the con-  
33 firmation, a confirmer has the liability of an issuer speci-  
34 fied in this subsection and subsections (a) and (b).

35 (d) An issuer, nominated person, or adviser who is  
36 found liable under subsections (a), (b), or (c) shall pay  
37 interest on the amount owed thereunder from the date of  
38 wrongful dishonor or other appropriate date.

39 (e) Reasonable attorney's fees and other expenses of  
40 litigation must be awarded to the prevailing party in an  
41 action in which a remedy is sought under this article.

42 (f) Damages that would otherwise be payable by a  
43 party for breach of an obligation under this article may be  
44 liquidated by agreement or undertaking, but only in an  
45 amount or by a formula that is reasonable in light of the  
46 harm anticipated.

**§46-5-112. Transfer of letter of credit.**

1 (a) Except as otherwise provided in section 5-113,  
2 unless a letter of credit provides that it is transferable, the  
3 right of a beneficiary to draw or otherwise demand perfor-  
4 mance under a letter of credit may not be transferred.

5 (b) Even if a letter of credit provides that it is transfer-  
6 able, the issuer may refuse to recognize or carry out a  
7 transfer if:

8 (1) The transfer would violate applicable law; or

9 (2) The transferor or transferee has failed to comply  
10 with any requirement stated in the letter of credit or any  
11 other requirement relating to transfer imposed by the  
12 issuer which is within the standard practice referred to in  
13 section 5-108(e) or is otherwise reasonable under the  
14 circumstances.

**§46-5-113. Transfer by operation of law.**

1 (a) A successor of a beneficiary may consent to  
2 amendments, sign and present documents, and receive  
3 payment or other items of value in the name of the benefi-  
4 ciary without disclosing its status as a successor.

5 (b) A successor of a beneficiary may consent to  
6 amendments, sign and present documents, and receive  
7 payment or other items of value in its own name as the  
8 disclosed successor of the beneficiary. Except as other-  
9 wise provided in subsection (e), an issuer shall recognize a  
10 disclosed successor of a beneficiary as beneficiary in full  
11 substitution for its predecessor upon compliance with the  
12 requirements for recognition by the issuer of a transfer of  
13 drawing rights by operation of law under the standard  
14 practice referred to in section 5-108(e) or, in the absence  
15 of such a practice, compliance with other reasonable pro-  
16 cedures sufficient to protect the issuer.

17 (c) An issuer is not obliged to determine whether a  
18 purported successor is a successor of a beneficiary or  
19 whether the signature of a purported successor is genuine  
20 or authorized.

21 (d) Honor of a purported successor's apparently com-  
22 plying presentation under subsections (a) or (b) has the  
23 consequences specified in section 5-108(i) even if the  
24 purported successor is not the successor of a beneficiary.  
25 Documents signed in the name of the beneficiary or of a

26 disclosed successor by a person who is neither the benefi-  
27 ciary nor the successor of the beneficiary are forged doc-  
28 uments for the purposes of section 5-109.

29 (e) An issuer whose rights of reimbursement are not  
30 covered by subsection (d) or substantially similar law and  
31 any confirmer or nominated person may decline to recog-  
32 nize a presentation under subsection (b).

33 (f) A beneficiary whose name is changed after the  
34 issuance of a letter of credit has the same rights and obli-  
35 gations as a successor of a beneficiary under this section.

**§46-5-114. Assignment of proceeds.**

1 (a) In this section, "proceeds of a letter of credit"  
2 means the cash, check, accepted draft, or other item of  
3 value paid or delivered upon honor or giving of value by  
4 the issuer or any nominated person under the letter of  
5 credit. The term does not include a beneficiary's drawing  
6 rights or documents presented by the beneficiary.

7 (b) A beneficiary may assign its right to part or all of  
8 the proceeds of a letter of credit. The beneficiary may do  
9 so before presentation as a present assignment of its right  
10 to receive proceeds contingent upon its compliance with  
11 the terms and conditions of the letter of credit.

12 (c) An issuer or nominated person need not recognize  
13 an assignment of proceeds of a letter of credit until it  
14 consents to the assignment.

15 (d) An issuer or nominated person has no obligation  
16 to give or withhold its consent to an assignment of pro-  
17 ceeds of a letter of credit, but consent may not be unrea-  
18 sonably withheld if the assignee possesses and exhibits the  
19 letter of credit and presentation of the letter of credit is a  
20 condition to honor.

21 (e) Rights of a transferee beneficiary or nominated  
22 person are independent of the beneficiary's assignment of  
23 the proceeds of a letter of credit and are superior to the  
24 assignee's right to the proceeds.

25 (f) Neither the rights recognized by this section be-  
26 tween an assignee and an issuer, transferee beneficiary, or  
27 nominated person nor the issuer's or nominated person's  
28 payment of proceeds to an assignee or a third person  
29 affect the rights between the assignee and any person  
30 other than the issuer, transferee beneficiary, or nominated  
31 person. The mode of creating and perfecting a security  
32 interest in or granting an assignment of a beneficiary's  
33 rights to proceeds is governed by Article 9 or other law.  
34 Against persons other than the issuer, transferee beneficia-  
35 ry, or nominated person, the rights and obligations arising  
36 upon the creation of a security interest or other assign-  
37 ment of a beneficiary's right to proceeds and its perfection  
38 are governed by Article 9 or other law.

**§46-5-115. Statute of limitations.**

1 An action to enforce a right or obligation arising un-  
2 der this article must be commenced within one year after  
3 the expiration date of the relevant letter of credit or one  
4 year after the cause of action accrues, whichever occurs  
5 later. A cause of action accrues when the breach occurs,  
6 regardless of the aggrieved party's lack of knowledge of  
7 the breach.

**§46-5-116. Choice of law and forum.**

1 (a) The liability of an issuer, nominated person, or  
2 adviser for action or omission is governed by the law of  
3 the jurisdiction chosen by an agreement in the form of a  
4 record signed or otherwise authenticated by the affected  
5 parties in the manner provided in section 5-104 or by a  
6 provision in the person's letter of credit, confirmation, or  
7 other undertaking. The jurisdiction whose law is chosen  
8 need not bear any relation to the transaction.

9 (b) Unless subsection (a) applies, the liability of an  
10 issuer, nominated person, or adviser for action or omission  
11 is governed by the law of the jurisdiction in which the  
12 person is located. The person is considered to be located  
13 at the address indicated in the person's undertaking. If  
14 more than one address is indicated, the person is consid-



15 ered to be located at the address from which the person's  
16 undertaking was issued. For the purpose of jurisdiction,  
17 choice of law, and recognition of interbranch letters of  
18 credit, but not enforcement of a judgment, all branches of  
19 a bank are considered separate juridical entities and a  
20 bank is considered to be located at the place where its  
21 relevant branch is considered to be located under this  
22 subsection.

23 (c) Except as otherwise provided in this subsection, the  
24 liability of an issuer, nominated person, or adviser is gov-  
25 erned by any rules of custom or practice, such as the uni-  
26 form customs and practice for documentary credits, to  
27 which the letter of credit, confirmation, or other undertak-  
28 ing is expressly made subject. If (i) this article would  
29 govern the liability of an issuer, nominated person, or  
30 adviser under subsection (a) or (b), (ii) the relevant under-  
31 taking incorporates rules of custom or practice, and (iii)  
32 there is conflict between this article and those rules as  
33 applied to that undertaking, those rules govern except to  
34 the extent of any conflict with the nonvariable provisions  
35 specified in section 5-103(c).

36 (d) If there is conflict between this article and articles  
37 3, 4, 4A, or 9, this article governs.

38 (e) The forum for settling disputes arising out of an  
39 undertaking within this article may be chosen in the man-  
40 ner and with the binding effect that governing law may be  
41 chosen in accordance with subsection (a).

**§46-5-117. Subrogation of issuer, applicant, and nominated person.**

1 (a) An issuer that honors a beneficiary's presentation is  
2 subrogated to the rights of the beneficiary to the same  
3 extent as if the issuer were a secondary obligor of the  
4 underlying obligation owed to the beneficiary and of the  
5 applicant to the same extent as if the issuer were the sec-  
6 ondary obligor of the underlying obligation owed to the  
7 applicant.

8 (b) An applicant that reimburses an issuer is subrogat-

9 ed to the rights of the issuer against any beneficiary, pre-  
10 senter, or nominated person to the same extent as if the  
11 applicant were the secondary obligor of the obligations  
12 owed to the issuer and has the rights of subrogation of the  
13 issuer to the rights of the beneficiary stated in subsection  
14 (a).

15 (c) A nominated person who pays or gives value  
16 against a draft or demand presented under a letter of cred-  
17 it is subrogated to the rights of:

18 (1) The issuer against the applicant to the same extent  
19 as if the nominated person were a secondary obligor of  
20 the obligation owed to the issuer by the applicant;

21 (2) The beneficiary to the same extent as if the nomi-  
22 nated person were a secondary obligor of the underlying  
23 obligation owed to the beneficiary; and

24 (3) The applicant to same extent as if the nominated  
25 person were a secondary obligor of the underlying obliga-  
26 tion owed to the applicant.

27 (d) Notwithstanding any agreement or term to the  
28 contrary, the rights of subrogation stated in subsections (a)  
29 and (b) do not arise until the issuer honors the letter of  
30 credit or otherwise pays and the rights in subsection (c) do  
31 not arise until the nominated person pays or otherwise  
32 gives value. Until then, the issuer, nominated person, and  
33 the applicant do not derive under this section present or  
34 prospective rights forming the basis of a claim, defense, or  
35 excuse.

**§46-5-118. Effective date.**

1 The reenactment of this article shall become effective  
2 on the first day of July, one thousand nine hundred  
3 ninety-six.

**§46-5-119. Applicability.**

1 This article applies to a letter of credit that is issued on  
2 or after the effective date of the reenactment of this article.  
3 This article does not apply to a transaction, event, obliga-

4 tion, or duty arising out of or associated with a letter of  
5 credit that was issued before the first day of July, one  
6 thousand nine hundred ninety-six.

**§46-5-120. Savings clause.**

1 A transaction arising out of or associated with a letter  
2 of credit that was issued before the effective date of the  
3 reenactment of this article in the year one thousand nine  
4 hundred ninety-six and the rights, obligations, and inter-  
5 ests flowing from that transaction are governed by any  
6 statute or other law amended by the reenactment of this  
7 article as if the amendment had not occurred and may be  
8 terminated, completed, consummated, or enforced under  
9 that statute or other law.

**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, letters of credit, and ordi-*  
2 *nary goods. —*

3 (a) This subsection applies to documents, instruments,  
4 rights to proceeds of written letters of credit, and goods  
5 other than those covered by a certificate of title described  
6 in subsection (2) of this section, mobile goods described  
7 in subsection (3), and minerals described in subsection (5)  
8 of this section.

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

15 (c) If the parties to a transaction creating a purchase  
16 money security interest in goods in one jurisdiction un-  
17 derstand at the time that the security interest attaches that  
18 the goods will be kept in another jurisdiction, then the law  
19 of the other jurisdiction governs the perfection and the

20 effect of perfection or nonperfection of the security inter-  
21 est from the time it attaches until thirty days after the debt-  
22 or receives possession of the goods and thereafter if the  
23 goods are taken to the other jurisdiction before the end of  
24 the thirty-day period.

25 (d) When collateral is brought into and kept in this  
26 state while subject to a security interest perfected under the  
27 law of the jurisdiction from which the collateral was re-  
28 moved, the security interest remains perfected, but if ac-  
29 tion is required by Part 3 of this article to perfect the secu-  
30 rity interest:

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

38 (ii) If the action is taken before the expiration of the  
39 period specified in paragraph (i) of this subdivision, the  
40 security interest continues perfected thereafter;

41 (iii) For the purpose of priority over a buyer of con-  
42 sumer goods (subsection (2) of section 9-307), the period  
43 of the effectiveness of a filing in the jurisdiction from  
44 which the collateral is removed is governed by the rules  
45 with respect to perfection in paragraphs (i) and (ii) of this  
46 subdivision.

47 (2) *Certificate of title.* —

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

53 (b) Except as otherwise provided in this subsection,  
54 perfection and the effect of perfection or nonperfection of  
55 the security interest are governed by the law (including the

56 conflict of laws rules) of the jurisdiction issuing the certifi-  
57 cate until four months after the goods are removed from  
58 that jurisdiction and thereafter until the goods are regis-  
59 tered in another jurisdiction, but in any event not beyond  
60 surrender of the certificate. After the expiration of that  
61 period, the goods are not covered by the certificate of title  
62 within the meaning of this section.

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

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

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

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

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

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

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

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

132 (4) *Chattel paper.* —

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

139       (5) *Minerals.* —

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

149       (6) *Investment property.* —

150       (a) This subsection applies to investment property.

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

158       (c) Except as otherwise provided in subdivision (f) of  
159 this section, perfection of a security interest, the effect of  
160 perfection or nonperfection, and the priority of a security  
161 interest in an uncertificated security are governed by the  
162 local law of the issuer's jurisdiction as specified in section  
163 8-110(d).

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

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

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

181 (ii) If an agreement between the commodity interme-  
182 diary and commodity customer does not specify the gov-  
183 erning law as provided in paragraph (i) of this subdivi-  
184 sion, but expressly specifies that the commodity account is  
185 maintained at an office in a particular jurisdiction, that  
186 jurisdiction is the commodity intermediary's jurisdiction.

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

194 (iv) If an agreement between the commodity interme-  
195 diary and commodity customer does not specify a jurisdic-  
196 tion as provided in subparagraph (i) or (ii) of this sub-  
197 division and an account statement does not identify an  
198 office serving the commodity customer's account as pro-  
199 vided in paragraph (iii) of this subdivision, the commodity  
200 intermediary's jurisdiction is the jurisdiction in which is  
201 located the chief executive office of the commodity inter-  
202 mediary.

203 (f) Perfection of a security interest by filing, automatic  
204 perfection of a security interest in investment property  
205 granted by a broker or securities intermediary, and auto-  
206 matic perfection of a security interest in a commodity



207 contract or commodity account granted by a commodity  
208 intermediary are governed by the local law of the jurisdic-  
209 tion in which the debtor is located.

**§46-9-104. Transactions excluded from article.**

1 This article does not apply

2 (a) to a security interest subject to any statute of the  
3 United States such as the Ship Mortgage Act, 1920, to the  
4 extent that such statute governs the rights of parties to and  
5 third parties affected by transactions in particular types of  
6 property; or

7 (b) to a landlord's lien; or

8 (c) to a lien given by statute or other rule of law for  
9 services or materials except as provided in section 9-310  
10 on priority of such liens; or

11 (d) to a transfer of a claim for wages, salary or other  
12 compensation of an employee; or

13 (e) to a transfer by a government or governmental  
14 subdivision or agency; or

15 (f) to a sale of accounts or chattel paper as part of a  
16 sale of the business out of which they arose, or an assign-  
17 ment of accounts or chattel paper which is for the purpose  
18 of collection only, or a transfer of a right to payment  
19 under a contract to an assignee who is also to do the per-  
20 formance under the contract or a transfer of a single ac-  
21 count to an assignee in whole or partial satisfaction of a  
22 preexisting indebtedness; or

23 (g) to a transfer of an interest in or claim in or under  
24 any policy of insurance, except as provided with respect to  
25 proceeds (section 9-306) and priorities in proceeds (sec-  
26 tion 9-312); or

27 (h) to a right represented by a judgment (other than a  
28 judgment taken on a right to payment which was collater-  
29 al); or

30 (i) to any right of setoff; or

31 (j) except to the extent that provision is made for fix-  
32 tures in section 9-313, to the creation or transfer of an  
33 interest in or lien on real estate, including a lease or rents  
34 thereunder; or

35 (k) to a transfer in whole or in part of any claim aris-  
36 ing out of tort; or

37 (l) to a transfer of an interest in any deposit account  
38 (subsection (1) of section 9-105), except as provided with  
39 respect to proceeds (section 9-306) and priorities in pro-  
40 ceeds (section 9-312); or

41 (m) to a transfer of an interest in a letter of credit  
42 other than the rights to proceeds of written letter of credit.

**§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 obligat-  
3 ed 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 inter-  
6 est in or a lease of specific goods, but a charter or other  
7 contract involving the use or hire of a vessel is not chattel  
8 paper. When a transaction is evidenced both by such a  
9 security agreement or a lease and by an instrument or a  
10 series of instruments, the group of writings taken together  
11 constitutes chattel paper;

12 (c) "Collateral" means the property subject to a securi-  
13 ty interest, and includes accounts, and chattel paper which  
14 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 the  
18 seller of accounts, or chattel paper. Where the debtor and  
19 the owner of the collateral are not the same person, the  
20 term "debtor" means the owner of the collateral in any  
21 provision of the article dealing with the collateral, the  
22 obligor in any provision dealing with the obligation, and  
23 may include both where the context so requires;

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

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

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

36 (h) "Goods" includes all things which are moveable at  
37 the time the security interest attaches or which are fix-  
38 tures (section 9-313), but does not include money, docu-  
39 ments, instruments, investment property, commodity con-  
40 tracts, accounts, chattel paper, general intangibles, or min-  
41 erals or the like (including oil and gas) before extraction.  
42 "Goods" also includes standing timber which is to be cut  
43 and removed under a conveyance or contract for sale, the  
44 unborn young of animals, and growing crops;

45 (i) "Instrument" means a negotiable instrument (de-  
46 fined in section 3-104), or any other writing which evi-  
47 dences a right to the payment of money and is not itself a  
48 security agreement or lease and is of a type which is in  
49 ordinary course of business transferred by delivery with  
50 any necessary endorsement or assignment including, but  
51 not limited to all certificated certificates of deposit. The  
52 term does not include investment property;

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

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

60 (1) "Security agreement" means an agreement which  
61 creates or provides for a security interest;

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

69 (n) "Transmitting utility" means any person primarily  
70 engaged in the railroad, street railway or trolley bus busi-  
71 ness, the electric or electronics communications transmis-  
72 sion business, the transmission of goods by pipeline, or the  
73 transmission or the production and transmission of elec-  
74 tricity, steam, gas or water, or the provision of sewer ser-  
75 vice.

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

78	"Account".	Section 9-106.
79	"Attach".	Section 9-203.
80	"Commodity contract".	Section 9-115.
81	"Commodity customer".	Section 9-115.
82	"Commodity intermediary".	Section 9-115.
83	"Construction mortgage".	Section 9-313(1).
84	"Consumer goods".	Section 9-109(1).
85	"Control".	Section 9-115.
86	"Equipment".	Section 9-109(2).
87	"Farm products".	Section 9-109(3).
88	"Fixture".	Section 9-313(1).
89	"Fixture filing".	Section 9-313(1).
90	"General intangibles".	Section 9-106.

91	"Inventory".	Section 9-109(4).
92	"Investment property".	Section 9-115.
93	"Lien creditor".	Section 9-301(3).
94	"Proceeds".	Section 9-306(1).
95	"Purchase money security interest".	Section 9-107.
96	"United States".	Section 9-103.
97	(3) The following definitions in other articles apply to	
98	this article:	
99	"Broker".	Section 8-102.
100	"Certificated security".	Section 8-102.
101	"Check".	Section 3-104.
102	"Clearing corporation".	Section 8-102.
103	"Contract for sale".	Section 2-106.
104	"Control".	Section 8-106.
105	"Delivery".	Section 8-301.
106	"Entitlement holder".	Section 8-102.
107	"Financial asset".	Section 8-102.
108	"Holder in due course".	Section 3-302.
109	"Letter of credit".	Section 5-102.
110	"Note".	Section 3-104.
111	"Proceeds of a letter of credit".	Section 5-114(a).
112	"Sale".	Section 2-106.
113	"Securities intermediary".	Section 8-102.
114	"Security".	Section 8-102.
115	"Security certificate".	Section 8-102.
116	"Security entitlement".	Section 8-102.
117	"Uncertificated security".	Section 8-102.

118 (4) In addition, article 1 contains general definitions and  
 119 principles of construction and interpretation applicable  
 120 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, rights to proceeds of  
 8 written letters of credit and money. All rights to payment  
 9 earned or unearned under a charter or other contract in-  
 10 volving the use or hire of a vessel and all rights incident to  
 11 the charter or contract are accounts.

**§46-9-304. Perfection of security interest in instruments, documents, proceeds of a written letter of credit, 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 interest  
 3 in the rights to proceeds of a written letter of credit can be  
 4 perfected only by the secured party's taking possession of  
 5 the letter of credit. A security interest in money or instru-  
 6 ments (other than instruments which constitute part of  
 7 chattel paper) can be perfected only by the secured party's  
 8 taking possession, except as provided in subsections (4)  
 9 and (5) of this section and subsections (2) and (3) of sec-  
 10 tion 9-306 on proceeds.

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

17 (3) A security interest in goods in the possession of a

18 bailee other than one who has issued a negotiable docu-  
19 ment therefor is perfected by issuance of a document in  
20 the name of the secured party or by the bailee's receipt of  
21 notification of the secured party's interest or by filing as to  
22 the goods.

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

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

34 (a) Makes available to the debtor the goods or docu-  
35 ments representing the goods for the purpose of ultimate  
36 sale or exchange or for the purpose of loading, unloading,  
37 storing, shipping, transshipping, manufacturing, process-  
38 ing or otherwise dealing with them in a manner prelimi-  
39 nary to their sale or exchange, but priority between con-  
40 flicting security interests in the goods is subject to subsec-  
41 tion (3) of section 9-312; or

42 (b) Delivers the instrument or certificated security to  
43 the debtor for the purpose of ultimate sale or exchange or  
44 of presentation, collection, renewal or registration of trans-  
45 fer.

46 (6) After the twenty-one-day period in subsections (4)  
47 and (5) of this section perfection depends upon compli-  
48 ance 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, instru-  
3 ments, (other than certificated securities), money, negotia-

4 ble documents or chattel paper may be perfected by the  
5 secured party's taking possession of the collateral. A secu-  
6 rity interest in the right to proceeds of a written letter of  
7 credit may be perfected by the secured party's proceeds of  
8 a written letter of credit may be perfected by the secured  
9 party's taking possession of the letter of credit. If such  
10 collateral other than goods covered by a negotiable docu-  
11 ment is held by a bailee, the secured party is deemed to  
12 have possession from the time the bailee receives notifica-  
13 tion of the secured party's interest. A security interest is  
14 perfected by possession from the time possession is taken  
15 without relation back and continues only so long as pos-  
16 session is retained, unless otherwise specified in this article.  
17 The security interest may be otherwise perfected as pro-  
18 vided in this article before or after the period of posses-  
19 sion by the secured party.



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

*Randy Schanove*  
Chairman Senate Committee

*Rudy Seacrest*  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1996.

*Russell B. Brown*  
Clerk of the Senate

*Burgess M. King*  
Clerk of the House of Delegates

*Carl B. Smith*  
President of the Senate

*Robert R. Anderson*  
Speaker of the House of Delegates

The within *is approved* this the *1st*  
day of *April*, 1996

*Caston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/96

Time 10:09am