

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1974



ENROLLED

SENATE BILL NO. 60

(By Mr. Mouton and Mr. Pfefferkorn)



PASSED March 9 1974

In Effect ninety days from Passage



60

FILED IN THE OFFICE
EDGAR F. HEISKELL III
SECRETARY OF STATE
THIS DATE 3-27-74

ENROLLED

Senate Bill No. 60

(By MR. MORELAND and MR. POFFENBARGER)

[Passed March 9, 1974; in effect ninety days from passage.]

AN ACT to amend and reenact sections one hundred five and two hundred one, article one, section one hundred seven, article two; section one hundred sixteen, article five; sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, two hundred three, two hundred four, two hundred five, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred twelve, three hundred thirteen, three hundred eighteen, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five, four hundred six, four hundred seven, five hundred one, five hundred two, five hundred four and five hundred five, article nine; all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article nine of said chapter forty-six by adding thereto two new sections, designated sections one hundred fourteen and four hundred eight; and to further amend chapter forty-six of said code by adding thereto a new article, designated article eleven, all relating to the uniform commercial code; adopting amendments to the uniform commercial code relating generally to secured transactions; relating to general provisions; parties' power to choose applicable law; definitions; sales; goods to be severed from realty; letters of credit; transfer and assignment; secured transactions; sales of accounts and chattel paper; policy and subject matter of said article nine; perfection of security interests

in multiple state transactions; transactions excluded from said article nine; index of definitions; consignment; attachment and enforceability of security interest; proceeds; formal requisites; after-acquired property; future advances; use or disposition of collateral without accounting permissible; 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 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 buyers of goods; purchase of chattel paper and instruments; priorities among conflicting security interests in the same collateral; priority of security interests in fixtures; accessions, defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment; place of filing; erroneous filing; removal of collateral; formal requisites of financing statement; amendments; mortgage as financing statement; what constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer; termination statement; assignment of security interest; release of collateral; duties of filing officer; fees; information from filing officer; financing statements covering consigned or leased goods; default; procedure when security agreement covers both real and personal property; collection rights of secured party; secured party's right to dispose of collateral after default; effect of disposition; compulsory disposition of collateral; acceptance of collateral as discharge of obligation; effective date; preservation of old transition provision; transition to new uniform commercial code—general rule; transition provision on change of requirement of filing; transition provision on change of place of filing; required refilings; transition provisions as to priorities; presumption that rule of law continues unchanged.

Be it enacted by the Legislature of West Virginia:

That sections one hundred five and two hundred one, article one; that section one hundred seven, article two; that section one hundred sixteen, article five; that sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, two hundred three, two hundred four, two hundred five, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred twelve, three hundred thirteen, three hundred eighteen, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five, four hundred six, four hundred seven, five hundred one, five hundred two, five hundred four and five hundred five, article nine; all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article nine be further amended by adding thereto two new sections, designated sections one hundred fourteen and four hundred eight; and that chapter forty-six of said code be further amended by adding thereto a new article, designated article eleven, 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 and
3 also to another state or nation the parties may agree that
4 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 an
7 appropriate relation to this state.

8 (2) Where one of the following provisions of this
9 chapter specifies the applicable law, that provision gov-
10 erns and a contrary agreement is effective only to the
11 the 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 col-
15 lections. Section 4-102.
16 Bulk transfers subject to the article on bulk transfers.
17 Section 6-102.
18 Applicability of the article on investment securities.
19 Section 8-106.
20 Perfection provisions of the article on secured trans-
21 actions. Section 9-103.

§46-1-201. General definitions.

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

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

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

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

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

20 (5) "Bearer" means the person in possession of an
21 instrument, document of title, or security payable to bear-
22 er or indorsed in blank.

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

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

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

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

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

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

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

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

70 (14) "Delivery" with respect to instruments, documents
71 of title, chattel paper or securities means voluntary trans-
72 fer of possession.

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

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

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

92 (18) "Genuine" means free of forgery or counterfeit-
93 ing.

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

96 (20) "Holder" means a person who is in possession of a
97 document of title or an instrument or an investment se-
98 curity drawn, issued or endorsed to him or to his order or
99 to bearer or in blank.

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

103 (22) "Insolvency proceedings" includes any assignment
104 for the benefit of creditors or other proceedings intended
105 to liquidate or rehabilitate the estate of the person in-
106 volved.

107 (23) A person is "insolvent" who either has ceased to
108 pay his debts in the ordinary course of business or cannot
109 pay his debts as they become due or is insolvent within
110 the meaning of the Federal Bankruptcy Law.

111 (24) "Money" means a medium of exchange authorized
112 or adopted by a domestic or foreign government as a part
113 of its currency.

114 (25) A person has "notice" of a fact when
115 (a) he has actual knowledge of it; or
116 (b) he has received a notice or notification of it; or
117 (c) from all the facts and circumstances known to him
118 at the time in question he has reason to know that it
119 exists.

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

126 (26) A person "notifies" or "gives" a notice or notifi-
127 cation to another by taking such steps as may be reason-
128 ably required to inform the other in ordinary course whet-
129 her or not such other actually comes to know of it. A
130 person "receives" a notice or notification when

131 (a) it comes to his attention; or
132 (b) it is duly delivered at the place of business through
133 which the contract was made or at any other place
134 held out by him as the place for receipt of such communi-
135 cations.

136 (27) Notice, knowledge or a notice or notification re-
137 ceived by an organization is effective for a particular
138 transaction from the time when it is brought to the at-
139 tention of the individual conducting that transaction, and
140 in any event from the time when it would have been
141 brought to his attention if the organization had exercised
142 due diligence. An organization exercises due diligence if it
143 maintains reasonable routines for communicating signifi-
144 cant information to the person conducting the transaction
145 and there is reasonable compliance with the routines. Due
146 diligence does not require an individual acting for the
147 organization to communicate information unless such
148 communication is part of his regular duties or unless he
149 has reason to know of the transaction and that the trans-
150 action would be materially affected by the information.

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

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

159 (30) "Person" includes an individual or an organization
160 (see section 1-102).

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

165 (32) "Purchase" includes taking by sale, discount, ne-
166 gotiation, mortgage, pledge, lien, issue or reissue, gift
167 or any other voluntary transaction creating an interest in
168 property.

169 (33) "Purchaser" means a person who takes by pur-
170 chase.

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

174 (35) "Representative" includes an agent, an officer of
175 a corporation or association, and a trustee, executor or
176 administrator of an estate, or any other person empowered
177 to act for another.

178 (36) "Rights" includes remedies.

179 (37) "Security interest" means an interest in personal
180 property or fixtures which secures payment or perfor-
181 mance of an obligation. The retention or reservation of
182 title by a seller of goods notwithstanding shipment or de-
183 livery to the buyer (section 2-401) is limited in effect to a
184 reservation of a "security interest." The term also includes
185 any interest of a buyer of accounts or chattel paper, which
186 is subject to article 9. The special property interest of a
187 buyer of goods on identification of such goods to a contract
188 for sale under section 2-401 is not a "security interest,"
189 but a buyer may also acquire a "security interest" by
190 complying with article 9. Unless a lease or consignment is
191 intended as security, reservation of title thereunder is not
192 a "security interest" but a consignment is in any event
193 subject to the provisions on consignment sales (section
194 2-326). Whether a lease is intended as security is to be
195 determined by the facts of each case; however, (a) the
196 inclusion of an option to purchase does not of itself make

197 the lease one intended for security, and (b) an agreement
198 that upon compliance with the terms of the lease the lessee
199 shall become or has the option to become the owner of the
200 property for no additional consideration or for a nominal
201 consideration does make the lease one intended for secur-
202 ity.

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

213 (39) "Signed" includes any symbol executed or adopt-
214 ed by a party with present intention to authenticate a
215 writing.

216 (40) "Surety" includes guarantor.

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

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

222 (43) "Unauthorized" signature or indorsement means
223 one made without actual, implied or apparent authority
224 and includes a forgery.

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

229 (a) in return for a binding commitment to extend
230 credit or for the extension of immediately available
231 credit whether or not drawn upon and whether or not a
232 chargeback is provided for in the event of difficulties in
233 collection; or

234 (b) as security for or in total or partial satisfaction
235 of a pre-existing claim; or

236 (c) by accepting delivery pursuant to a pre-existing
237 contract for purchase; or

238 (d) generally, in return for any consideration sufficient
239 to support a simple contract.
240 (45) "warehouse receipt" means a receipt issued by a
241 person engaged in the business of storing goods for hire.
242 (46) "written" or "writing" includes printing, type-
243 writing or any other intentional reduction to tangible
244 form.

ARTICLE 2. SALES.

§46-2-107. Goods to be severed from realty: Recording.

1 (1) A contract for the sale of minerals or the like in-
2 cluding oil and gas or a structure or its materials to be
3 removed from realty is a contract for the sale of goods
4 within this article if they are to be severed by the seller
5 but until severance a purported present sale thereof
6 which is not effective as a transfer of an interest in land
7 is effective only as a contract to sell.
8 (2) A contract for the sale apart from the land of
9 growing crops or other things attached to realty and
10 capable of severance without material harm thereto but
11 not described in subsection (1) or of timber to be cut
12 is a contract for the sale of goods within this article
13 whether the subject matter is to be severed by the buyer
14 or by the seller even though it forms part of the realty
15 at the time of contracting, and the parties can by identi-
16 fication effect a present sale before severance.
17 (3) The provisions of this section are subject to any
18 third party rights provided by the law relating to realty
19 records, and the contract for sale may be executed and
20 recorded as a document transferring an interest in land
21 and shall then constitute notice to third parties of the
22 buyer's rights under the contract for sale.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-116. Transfer and assignment.

1 (1) The right to draw under a credit can be trans-
2 ferred or assigned only when the credit is expressly
3 designated as transferable or assignable.
4 (2) Even though the credit specifically states that it
5 is nontransferable or nonassignable the beneficiary may
6 before performance of the conditions of the credit assign

7 his right to proceeds. Such an assignment is an assign-
 8 ment of an account under article 9 on secured trans-
 9 actions and is governed by that article except that

10 (a) the assignment is ineffective until the letter of
 11 credit or advice of credit is delivered to the assignee
 12 which delivery constitutes perfection of the security
 13 interest under article 9; and

14 (b) the issuer may honor drafts or demands for pay-
 15 ment drawn under the credit until it receives a notifica-
 16 tion of the assignment signed by the beneficiary which
 17 reasonably identifies the credit involved in the assign-
 18 ment and contains a request to pay the assignee; and

19 (c) after what reasonably appears to be such a noti-
 20 fication has been received the issuer may without dis-
 21 honor refuse to accept or pay even to a person otherwise
 22 entitled to honor until the letter of credit or advice of
 23 credit is exhibited to the issuer.

24 (3) Except where the beneficiary has effectively as-
 25 signed his right to draw or his right to proceeds, nothing
 26 in this section limits his right to transfer or negotiate
 27 drafts or demands drawn under the credit.

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

§46-9-102. Policy and subject matter of article.

1 (1) Except as otherwise provided in section 9-103 on
 2 multiple state transactions and in section 9-104 on ex-
 3 cluded transactions, this article applies

4 (a) to any transaction (regardless of its form) which
 5 is intended to create a security interest in personal prop-
 6 erty or fixtures including goods, documents, instruments,
 7 general intangibles, chattel paper or accounts; and also

8 (b) to any sale of accounts, or chattel paper.

9 (2) This article applies to security interests created
 10 by contract including pledge, assignment, chattel mort-
 11 gage, chattel trust, trust deed, factor's lien, equipment
 12 trust, conditional sale, trust receipt, other lien or title
 13 retention contract and lease or consignment intended as
 14 security. This article does not apply to statutory liens
 15 except as provided in section 9-310.

16 (3) The application of this article to a security inter-
17 est in a secured obligation is not affected by the fact
18 that the obligation is itself secured by a transaction or
19 interest to which this article does not apply.

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

1 (1) Documents, instruments and ordinary goods.

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

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

13 (c) If the parties to a transaction creating a purchase
14 money security interest in goods in one jurisdiction un-
15 derstand 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 non-perfection of the
19 security interest from the time it attaches until thirty
20 days after the debtor receives possession of the goods and
21 thereafter if the goods are taken to the other jurisdiction
22 before the end of the thirty-day period.

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

29 (i) if the action is not taken before the expiration of
30 the period of perfection in the other jurisdiction or the
31 end of four months after the collateral is brought into
32 this state, whichever period first expires, the security
33 interest becomes unperfected at the end of that period and

34 is thereafter deemed to have been unperfected as against
35 a person who became a purchaser after removal;

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

39 (iii) for the purpose of priority over a buyer of
40 consumer goods (subsection (2) of section 9-307), the
41 period of the effectiveness of a filing in the jurisdiction
42 from which the collateral is removed is governed by the
43 rules with respect to perfection in subparagraphs (i) and
44 (ii).

45 (2) Certificate of title.

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

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

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

68 (d) If goods are brought into this state while a se-
69 curity interest therein is perfected in any manner under
70 the law of the jurisdiction from which the goods are re-
71 moved and a certificate of title is issued by this state and
72 the certificate does not show that the goods are subject to
73 the security interest or that they may be subject to secur-

74 ity interests not shown on the certificate, the security
75 interest is subordinate to the rights of a buyer of the
76 goods who is not in the business of selling goods of that
77 kind to the extent that he gives value and receives de-
78 livery 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) on minerals) and gen-
83 eral intangibles and to goods which are mobile and which
84 are of a type normally used in more than one jurisdiction,
85 such as motor vehicles, trailers, rolling stock, airplanes,
86 shipping containers, road building and construction ma-
87 chinery and commercial harvesting machinery and the
88 like, if the goods are equipment or are inventory leased
89 or held for lease by the debtor to others, and are not
90 covered by a certificate of title described in subsection (2).

91 (b) The law (including the conflict of laws rules) of
92 the jurisdiction in which the debtor is located governs the
93 perfection and the effect of perfection or non-perfection
94 of the security interest.

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

110 (d) A debtor shall be deemed located at his place of
111 business if he has one, at his chief executive office if he
112 has more than one place of business, otherwise at his
113 residence. If, however, the debtor is a foreign air carrier

114 under the Federal Aviation Act of 1958, as amended, it
115 shall be deemed located at the designated office of the
116 agent upon whom service of process may be made on
117 behalf of the foreign air carrier.

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

128 (4) Chattel paper.

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

135 (5) Minerals.

136 Perfection and the effect of perfection or non-perfection
137 of a security interest which is created by a debtor who
138 has an interest in minerals or the like (including oil and
139 gas) before extraction and which attaches thereto as
140 extracted, or which attaches to an account resulting from
141 the sale thereof at the wellhead or minehead are governed
142 by the law (including the conflict of laws rules) of the
143 jurisdiction wherein the wellhead or minehead 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
3 the United States such as the Ship Mortgage Act, 1920,
4 to the extent that such statute governs the rights of
5 parties to and third parties affected by transactions in
6 particular types of 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
20 performance under the contract or a transfer of a single
21 account to an assignee in whole or partial satisfaction
22 of a 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
25 to proceeds (section 9-306) and priorities in proceeds
26 (section 9-312); or

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

30 (i) to any right of setoff; or

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

35 (k) to a transfer in whole or in part of any claim
36 arising 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
39 with respect to proceeds (section 9-306) and priorities in
40 proceeds (section 9-312).

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

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

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

5 (b) "Chattel paper" means a writing or writings which
6 evidence both a monetary obligation and a security in-

7 terest in or a lease of specific goods, but a charter or
8 other contract involving the use or hire of a vessel is
9 not chattel paper. When a transaction is evidenced both
10 by such a security agreement or a lease and by an instru-
11 ment or a series of instruments, the group of writings
12 taken together constitutes chattel paper;

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

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

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

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

34 (g) "Encumbrance" includes real estate mortgages
35 and 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
38 at the time the security interest attaches or which are
39 fixtures (section 9-313), but does not include money,
40 documents, instruments, accounts, chattel paper, general
41 intangibles, or minerals or the like (including oil and gas)
42 before extraction. "Goods" also includes standing timber
43 which is to be cut and removed under a conveyance or
44 contract for sale, the unborn young of animals, and grow-
45 ing crops.

46 (i) "Instrument" means a negotiable instrument (de-
47 fined in section 3-104), or a security (defined in section

48 8-102) or any other writing which evidences a right to
49 the payment of money and is not itself a security agree-
50 ment or lease and is of a type which is in ordinary course
51 of business transferred by delivery with any necessary
52 endorsement or assignment;

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

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

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

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

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

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

79 "Account". Section 9-106.

80 "Attach". Section 9-203.

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

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

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

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

85 "Fixture". Section 9-313.

86 "Fixture filing". Section 9-313.

87 "General intangibles". Section 9-106.

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

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

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

91 "Purchase money security interest". Section 9-107.

92 "United States". Section 9-103.

93 (3) The following definitions in other articles apply
94 to this article:

95 "Check". Section 3-104.

96 "Contract for sale". Section 2-106.

97 "Holder in due course". Section 3-302.

98 "Note". Section 3-104.

99 "Sale". Section 2-106.

100 (4) In addition, article 1 contains general definitions
101 and principles of construction and interpretation appli-
102 cable 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 and money. All rights to payment earned or
8 unearned under a charter or other contract involving the
9 use or hire of a vessel and all rights incident to the char-
10 ter or contract are accounts.

§46-9-114. Consignment.

1 (1) A person who delivers goods under a consignment
2 which is not a security interest and who would be re-
3 quired to file under this article by paragraph (3) (c) of
4 section 2-326 has priority over a secured party who is or
5 becomes a creditor of the consignee and who would have
6 a perfected security interest in the goods if they were
7 the property of the consignee, and also has priority with
8 respect to identifiable cash proceeds received on or be-
9 fore delivery of the goods to a buyer, if

10 (a) the consignor complies with the filing provision
11 of the article on sales with respect to consignments (para-
12 graph (3) (c) of section 2-326) before the consignee re-
13 ceives possession of the goods; and

14 (b) the consignor gives notification in writing to the
15 holder of the security interest if the holder has filed a
16 financing statement covering the same types of goods be-
17 fore the date of the filing made by the consignor; and

18 (c) the holder of the security interest receives the
19 notification within five years before the consignee receives
20 possession of the goods; and

21 (d) the notification states that the consignor expects
22 to deliver goods on consignment to the consignee, describ-
23 ing the goods by item or type.

24 (2) In the case of a consignment which is not a security
25 interest and in which the requirements of the preceding
26 subsection have not been met, a person who delivers
27 goods to another is subordinate to a person who would
28 have a perfected security interest in the goods if they
29 were the property of the debtor.

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

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

13 (b) value has been given; and

14 (c) the debtor has rights in the collateral.

15 (2) A security interest attaches when it becomes en-
16 forceable against the debtor with respect to the collateral.
17 Attachment occurs as soon as all of the events specified
18 in subsection (1) have taken place unless explicit agree-
19 ment postpones the time of attaching.

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

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

§46-9-204. After-acquired property; future advances.

1 (1) Except as provided in subsection (2), a security
2 agreement may provide that any or all obligations cov-
3 ered by the security agreement are to be secured by after-
4 acquired collateral.

5 (2) No security interest attaches under an after-ac-
6 quired property clause to consumer goods other than ac-
7 cessions (section 9-314) when given as additional security
8 unless the debtor acquires rights in them within ten days
9 after the secured party gives value.

10 (3) Obligations covered by a security agreement may
11 include future advances or other value whether or not
12 the advances or value are given pursuant to commitment
13 (subsection (1) of section 9-105).

§46-9-205. Use or disposition of collateral without accounting permissible.

1 A security interest is not invalid or fraudulent against
2 creditors by reason of liberty in the debtor to use, com-
3 mingle or dispose of all or part of the collateral (includ-
4 ing returned or repossessed goods) or to collect or com-
5 promise accounts, or chattel paper, or to accept the return
6 of goods or make repossessions, or to use, commingle or
7 dispose of proceeds, or by reason of the failure of the
8 secured party to require the debtor to account for pro-
9 ceeds or replace collateral. This section does not relax
10 the requirements of possession where perfection of a
11 security interest depends upon possession of the collateral
12 by the secured party or by a bailee.

PART 3. RIGHTS OF THIRD PARTIES; PERFECTED
AND UNPERFECTED SECURITY INTERESTS;
RULES OF PRIORITY.

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

1 (1) Except as otherwise provided in subsection (2), an
2 unperfected security interest is subordinate to the rights
3 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 per-
14 fected;

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

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

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

31 (4) A person who becomes a lien creditor while a
32 security interest is perfected takes subject to the security
33 interest only to the extent that it secures advances made
34 before he becomes a lien creditor or within 45 days there-

35 after or made without knowledge of the lien or pursuant
36 to a commitment entered into without knowledge of the
37 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
4 the secured party under section 9-305;

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

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

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

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

20 (f) a security interest of a collecting bank (section
21 4-208) or arising under the article on sales (see section
22 9-113) or covered in subsection (3) of this section;

23 (g) an assignment for the benefit of all the creditors
24 of the transferor, and subsequent transfers by the assign-
25 ee thereunder.

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

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

34 (a) a statute or treaty of the United States which pro-
35 vides for a national or international registration or a

36 national or international certificate of title or which
37 specifies a place of filing different from that specified in
38 this article for filing of the security interest; or

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

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

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

**§46-9-304. Perfection of security interest in instruments, docu-
ments, and goods covered by documents; per-
fection by permissive filing; temporary perfec-
tion 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 money or instruments (other than instruments which
4 constitute part of chattel paper) can be perfected only
5 by the secured party's taking possession, except as pro-
6 vided in subsections (4) and (5) of this section and sub-
7 sections (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 se-
10 curity 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
15 a bailee other than one who has issued a negotiable
16 document therefor is perfected by issuance of a document
17 in the name of the secured party or by the bailee's receipt
18 of notification of the secured party's interest or by filing
19 as to the goods.

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

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

30 (a) makes available to the debtor the goods or docu-
31 ments representing the goods for the purpose of ultimate
32 sale or exchange or for the purpose of loading, unloading,
33 storing, shipping, transshipping, manufacturing, process-
34 ing or otherwise dealing with them in a manner pre-
35 liminary to their sale or exchange, but priority between
36 conflicting security interests in the goods is subject to
37 subsection (3) of section 9-312; or

38 (b) delivers the instrument to the debtor for the
39 purpose of ultimate sale or exchange or of presentation,
40 collection, renewal or registration of transfer.

41 (6) After the 21-day period in subsections (4) and (5)
42 perfection depends upon compliance with applicable pro-
43 visions 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, money, negotiable documents or chattel paper
4 may be perfected by the secured party's taking possession
5 of the collateral. If such collateral other than goods
6 covered by a negotiable document is held by a bailee,
7 the secured party is deemed to have possession from the

8 time the bailee receives notification of the secured party's
9 interest. A security interest is perfected by possession
10 from the time possession is taken without relation back
11 and continues only so long as possession is retained,
12 unless otherwise specified in this article. The security
13 interest may be otherwise perfected as provided in this
14 article before or after the period of possession by the
15 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 collateral
3 or proceeds. Insurance payable by reason of loss or dam-
4 age to the collateral is proceeds, except to the extent
5 that it is payable to a person other than a party to the
6 security agreement. Money, checks, deposit accounts,
7 and the like are "cash proceeds". All other proceeds are
8 "non-cash proceeds".

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

16 (3) The security interest in proceeds is a continuously
17 perfected security interest if the interest in the original
18 collateral was perfected but it ceases to be a perfected
19 security interest and becomes unperfected 10 days after
20 receipt of the proceeds by the debtor unless

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

28 (b) a filed financing statement covers the original

29 collateral and the proceeds are identifiable cash pro-
30 ceeds; or

31 (c) the security interest in the proceeds is perfected
32 before the expiration of the 10 day period. Except as
33 provided in this section, a security interest in proceeds
34 can be perfected only by the methods or under the cir-
35 cumstances permitted in this article for original collateral
36 of the same type.

37 (4) In the event of insolvency proceedings instituted
38 by or against a debtor, a secured party with a perfected
39 security interest in proceeds has a perfected security
40 interest only in the following proceeds:

41 (a) in identifiable noncash proceeds and in separate
42 deposit accounts containing only proceeds;

43 (b) in identifiable cash proceeds in the form of money
44 which is neither commingled with other money nor de-
45 posited in a deposit account prior to the insolvency pro-
46 ceedings;

47 (c) in identifiable cash proceeds in the form of checks
48 and the like which are not deposited in a deposit account
49 prior to the insolvency proceedings; and

50 (d) in all cash and deposit accounts of the debtor in
51 which proceeds have been commingled with other funds,
52 but the perfected security interest under this paragraph
53 (d) is

54 (i) subject to any right of setoff; and

55 (ii) limited to an amount not greater than the amount
56 of any cash proceeds received by the debtor within 10
57 days before the institution of the insolvency proceedings
58 less the sum of (I) the payments to the secured party
59 on account of cash proceeds received by the debtor during
60 such period and (II) the cash proceeds received by the
61 debtor during such period to which the secured party is
62 entitled under paragraphs (a) through (c) of this sub-
63 section (4).

64 (5) If a sale of goods results in an account or chattel
65 paper which is transferred by the seller to a secured party,
66 and if the goods are returned to or are repossessed by the

67 seller or the secured party, the following rules deter-
68 mine priorities:

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

79 (b) An unpaid transferee of the chattel paper has a
80 security interest in the goods against the transferor. Such
81 security interest is prior to a security interest asserted
82 under paragraph (a) to the extent that the transferee
83 of the chattel paper was entitled to priority under sec-
84 tion 9-308.

85 (c) An unpaid transferee of the account has a security
86 interest in the goods against the transferor. Such security
87 interest is subordinate to a security interest asserted
88 under paragraph (a).

89 (d) A security interest of an unpaid transferee as-
90 serted under paragraph (b) or (c) must be perfected for
91 protection against creditors of the transferor and pur-
92 chasers of the returned or repossessed goods.

§46-9-307. Protection of buyers of goods.

1 (1) A buyer in ordinary course of business (subsection
2 (9) of section 1-201) other than a person buying farm
3 products from a person engaged in farming operations
4 takes free of a security interest created by his seller even
5 though the security interest is perfected and even though
6 the buyer knows of its existence.

7 (2) In the case of consumer goods, a buyer takes free
8 of a security interest even though perfected if he buys
9 without knowledge of the security interest, for value and
10 for his own personal, family or household purposes unless
11 prior to the purchase the secured party has filed a financ-
12 ing statement covering such goods.

13 (3) A buyer other than a buyer in ordinary course of
 14 business (subsection (1) of this section) takes free of a
 15 security interest to the extent that it secures future
 16 advances made after the secured party acquires knowledge
 17 of the purchase, or more than 45 days after the pur-
 18 chase, whichever first occurs, unless made pursuant to a
 19 commitment entered into without knowledge of the
 20 purchase and before the expiration of the 45 day
 21 period.

§46-9-308. Purchase of chattel paper and instruments.

1 A purchaser of chattel paper or an instrument who
 2 gives new value and takes possession of it in the ordinary
 3 course of his business has priority over a security interest
 4 in the chattel paper or instrument

5 (a) which is perfected under section 9-304 (permissive
 6 filing and temporary perfection) or under section 9-306
 7 (perfection as to proceeds) if he acts without knowledge
 8 that the specific paper or instrument is subject to a
 9 security interest; or

10 (b) which is claimed merely as proceeds of inventory
 11 subject to a security interest (section 9-306) even though
 12 he knows that the specific paper or instrument is subject
 13 to the security interest.

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

1 (1) The rules of priority stated in other sections of
 2 this part and in the following sections shall govern when
 3 applicable: section 4-208 with respect to the security
 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.

8 (2) A perfected security interest in crops for new
 9 value given to enable the debtor to produce the crops
 10 during the production season and given not more than
 11 three months before the crops become growing crops by
 12 planting or otherwise takes priority over an earlier per-

13 fected security interest to the extent that such earlier in-
14 terest secures obligations due more than six months before
15 the crops become growing crops by planting or otherwise,
16 even though the person giving new value had knowledge
17 of the earlier security interest.

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

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

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

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

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

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

48 (5) In all cases not governed by other rules stated in
49 this section (including cases of purchase money security
50 interests which do not qualify for the special priorities

51 set forth in subsections (3) and (4) of this section),
52 priority between conflicting security interests in the same
53 collateral shall be determined according to the following
54 rules:

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

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

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

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

§46-9-313. Priority of security interests in fixtures.

1 (1) In this section and in the provisions of part 4 of
2 this article referring to fixture filing, unless the context
3 otherwise requires

4 (a) goods are "fixtures" when they become so re-
5 lated to particular real estate that an interest in them
6 arises under real estate law

7 (b) a "fixture filing" is the filing in the office where
8 a mortgage on the real estate would be filed or recorded
9 of a financing statement covering goods which are or are
10 to become fixtures and conforming to the requirements of
11 subsection (5) of section 9-402

12 (c) a mortgage is a "construction mortgage" to the
13 extent that it secures an obligation incurred for the con-
14 struction of an improvement on land including the ac-
15 quisition cost of the land, if the recorded writing so in-
16 dicates.

17 (2) A security interest under this article may be
18 created in goods which are fixtures or may continue in
19 goods which become fixtures, but no security interest
20 exists under this article in ordinary building materials
21 incorporated into an improvement on land.

22 (3) This article does not prevent creation of an en-
23 cumbrance upon fixtures pursuant to real estate law.

24 (4) A perfected security interest in fixtures has
25 priority over the conflicting interest of an encumbrancer
26 or owner of the real estate where

27 (a) the security interest is a purchase money security
28 interest, the interest of the encumbrancer or owner arises
29 before the goods become fixtures, the security interest is
30 perfected by a fixture filing before the goods become fix-
31 tures or within ten days thereafter, and the debtor has an
32 interest of record in the real estate or is in possession of
33 the real estate; or

34 (b) the security interest is perfected by a fixture filing
35 before the interest of the encumbrancer or owner is of
36 record, the security interest has priority over any conflict-
37 ing interest of a predecessor in title of the encumbrancer
38 or owner, and the debtor has an interest of record in the
39 real estate or is in possession of the real estate; or

40 (c) the fixtures are readily removable factory or office
41 machines or readily removable replacements of domestic
42 appliances which are consumer goods, and before the
43 goods becomes fixtures the security interest is perfected
44 by any method permitted by this article; or

45 (d) the conflicting interest is a lien on the real estate
46 obtained by legal or equitable proceedings after the se-
47 curity interest was perfected by any method permitted by
48 this article.

49 (5) A security interest in fixtures, whether or not
50 perfected, has priority over the conflicting interest of an
51 encumbrancer or owner of the real estate where

52 (a) the encumbrancer or owner has consented in writ-
53 ing to the security interest or has disclaimed an interest
54 in the goods as fixtures; or

55 (b) the debtor has a right to remove the goods as
56 against the encumbrancer or owner. If the debtor's right
57 terminates, the priority of the security interest continues
58 for a reasonable time.

59 (6) Notwithstanding paragraph (a) of subsection (4)
60 but otherwise subject to subsections (4) and (5), a se-
61 curity interest in fixtures is subordinate to a construction
62 mortgage recorded before the goods become fixtures if the
63 goods become fixtures before the completion of the con-
64 struction. To the extent that it is given to refinance a con-
65 struction mortgage, a mortgage has this priority to the
66 same extent as the construction mortgage.

67 (7) In cases not within the preceding subsections, a
68 security interest in fixtures is subordinate to the con-
69 flicting interest of an encumbrancer or owner of the re-
70 lated real estate who is not the debtor.

71 (8) When the secured party has priority over all own-
72 ers and encumbrancers of the real estate, he may, on de-
73 fault, subject to the provisions of part 5, remove his col-
74 lateral from the real estate but he must reimburse any
75 encumbrancer or owner of the real estate who is not the
76 debtor and who has not otherwise agreed for the cost of
77 repair of any physical injury, but not for any diminution
78 in value of the real estate caused by the absence of the
79 goods removed or by any necessity of replacing them. A
80 person entitled to reimbursement may refuse permission
81 to remove until the secured party gives adequate security
82 for the performance of this obligation.

**§46-9-318. Defenses against assignee; modification of contract
after notification of assignment; term prohibit-
ing assignment ineffective; identification and
proof of assignment.**

1 (1) Unless an account debtor has made an enforceable
2 agreement not to assert defenses or claims arising out of a
3 sale as provided in section 9-206 the rights of an assignee
4 are subject to

5 (a) all the terms of the contract between the account
6 debtor and assignor and any defense or claim arising
7 therefrom; and

8 (b) any other defense or claim of the account debtor
9 against the assignor which accrues before the account
10 debtor receives notification of the assignment.

11 (2) So far as the right to payment or a part thereof
12 under an assigned contract has not been fully earned by
13 performance, and notwithstanding notification of the as-
14 signment, any modification of or substitution for the con-
15 tract made in good faith and in accordance with reason-
16 able commercial standards is effective against an assignee
17 unless the account debtor has otherwise agreed but the
18 assignee acquires corresponding rights under the modified
19 or substituted contract. The assignment may provide that
20 such modification or substitution is a breach by the as-
21 signor.

22 (3) The account debtor is authorized to pay the as-
23 signor until the account debtor receives notification that
24 the amount due or to become due has been assigned and
25 that payment is to be made to the assignee. A notification
26 which does not reasonably identify the rights assigned is
27 ineffective. If requested by the account debtor, the as-
28 signee must seasonably furnish reasonable proof that the
29 assignment has been made and unless he does so the ac-
30 count debtor may pay the assignor.

31 (4) A term in any contract between an account debtor
32 and an assignor is ineffective if it prohibits assignment of
33 an account or prohibits creation of a security interest in
34 a general intangible for money due or to become due or
35 requires the account debtor's consent to such assignment
36 or security interest.

PART 4. FILING.

§46-9-401. Place of filing; erroneous filing; removal of colla- teral.

1 (1) The proper place to file in order to perfect a
2 security interest is as follows:

3 (a) When the collateral is equipment used in farming
4 operations, or farm products, or accounts, or general

5 intangibles arising from or relating to the sale of farm
6 products by a farmer, or consumer goods, then in the office
7 of the county clerk in the county of the debtor's residence
8 or if the debtor is not a resident of this state then in the
9 office of county clerk in the county where the goods are
10 kept, and in addition when the collateral is crops growing
11 or to be grown, in the office of the county clerk in the
12 county where the land is located;

13 (b) When the collateral is timber to be cut or is
14 minerals or the like (including oil and gas) or accounts
15 subject to subsection (5) of section 9-103, or when the
16 financing statement is filed as a fixture filing (section
17 9-313) and the collateral is goods which are or are to
18 become fixtures, then in the office where a mortgage on
19 the real estate would be filed or recorded;

20 (c) In all other cases, in the office of the secretary of
21 state and in addition, if the debtor has a place of business
22 in only one county of this state, also in the office of the
23 county clerk of such county, or, if the debtor has no place
24 of business in this state, but resides in the state, also in
25 the office of the county clerk of the county in which he
26 resides.

27 (2) A filing which is made in good faith in an im-
28 proper place or not in all of the places required by this
29 section is nevertheless effective with regard to any col-
30 lateral as to which the filing complied with the require-
31 ments of this article and is also effective with regard to
32 collateral covered by the financing statement against any
33 person who has knowledge of the contents of such financ-
34 ing statement.

35 (3) A filing which is made in the proper county con-
36 tinues effective for four months after a change to another
37 county of the debtor's residence or place of business or
38 the location of the collateral, whichever controlled the
39 original filing. It becomes ineffective thereafter unless a
40 copy of the financing statement signed by the secured
41 party is filed in the new county within said period. The
42 security interest may also be perfected in the new county
43 after the expiration of the four-month period; in such
44 case perfection dates from the time of perfection in the

45 new county. A change in the use of the collateral does
46 not impair the effectiveness of the original filing.

47 (4) The rules stated in section 9-103 determine whether
48 filing is necessary in this state.

49 (5) Notwithstanding the preceding subsections, and
50 subject to subsection (3) of section 9-302, the proper place
51 to file in order to perfect a security interest in collateral,
52 including fixtures, of a transmitting utility is the office of
53 the secretary of state. This filing constitutes a fixture
54 filing (section 9-313) as to the collateral described therein
55 which is or is to become fixtures.

56 (6) For the purposes of this section, the residence of
57 an organization is its place of business if it has one or
58 its chief executive office if it has more than one place of
59 business.

**§46-9-402. Formal requisites of financing statement; amend-
ments; mortgage as financing statement.**

1 (1) A financing statement is sufficient if it gives the
2 names of the debtor and the secured party, is signed by
3 the debtor, gives an address of the secured party from
4 which information concerning the security interest may be
5 obtained, gives a mailing address of the debtor and con-
6 tains a statement indicating the types, or describing the
7 items, of collateral. A financing statement may be filed
8 before a security agreement is made or a security interest
9 otherwise attaches. When the financing statement covers
10 crops growing or to be grown, the statement must also
11 contain a description of the real estate concerned. When
12 the financing statements covers timber to be cut or covers
13 minerals or the like (including oil and gas) or accounts
14 subject to subsection (5) of section 9-103, or when the
15 financing statement is filed as a fixture filing (section
16 9-313) and the collateral is goods which are or are to
17 become fixtures, the statement must also comply with
18 subsection (5). A copy of the security agreement is
19 sufficient as a financing statement if it contains the above
20 information and is signed by the debtor. A carbon, photo-
21 graphic or other reproduction of a security agreement
22 or a financing statement is sufficient as a financing state-

23 ment if the security agreement so provides or if the
24 original has been filed in this state.

25 (2) A financing statement which otherwise complies
26 with subsection (1) is sufficient when it is signed by the
27 secured party instead of the debtor if it is filed to perfect
28 a security interest in

29 (a) collateral already subject to a security interest
30 in another jurisdiction when it is brought into this state,
31 or when the debtor's location is changed to this state.
32 Such a financing statement must state that the collateral
33 was brought into this state or that the debtor's location
34 was changed to this state under such circumstances; or

35 (b) proceeds under section 9-306 if the security in-
36 terest in the original collateral was perfected. Such a
37 financing statement must describe the original collateral;
38 or

39 (c) collateral as to which the filing has lapsed; or

40 (d) collateral acquired after a change of name, iden-
41 tity or corporate structure of the debtor (subsection (7)).

42 3. A form substantially as follows is sufficient to comply
43 with subsection (1):

44 Name of debtor
45 (or assignor)

46 Address

47 Name of secured party
48 (or assignee)

49 Address

50 1. This financing statement covers the following
51 types (or items) of property:

52 (Describe)

53 2. (If collateral is crops) The above described crops
54 are growing or are to be grown on:

55 (Describe Real Estate)

56 3. (If applicable) The above goods are to become
57 fixtures on (Describe Real Estate) and this financing
58 statement is to be filed for record in the real estate

59 records. (If the debtor does not have an interest
60 of record) The name of a record owner is

61

62 4. (If products of collateral are claimed) products of
63 the collateral are also covered.

64 (Use
65 whichever Signature of Debtor (or Assignor)
66 is
67 applicable) Signature of Secured party (or Assignee)

68 (4) A financing statement may be amended by filing a
69 writing signed by both the debtor and the secured party.
70 An amendment does not extend the period of effectiveness
71 of a financing statement. If any amendment adds collat-
72 eral, it is effective as to the added collateral only from the
73 filing date of the amendment. In this article, unless the
74 context otherwise requires, the term "financing state-
75 ment" means the original financing statement and any
76 amendments.

77 (5) A financing statement covering timber to be cut or
78 covering minerals or the like (including oil and gas) or
79 accounts subject to subsection (5) of section 9-103, or a
80 financing statement filed as a fixture filing (section 9-313)
81 where the debtor is not a transmitting utility, must
82 show that it covers this type of collateral, must recite
83 that it is to be filed for record in the real estate records,
84 and the financing statement must contain a description
85 of the real estate sufficient if it were contained in a mort-
86 gage of the real estate to give constructive notice of the
87 mortgage under the law of this state. If the debtor does
88 not have an interest of record in the real estate, the fi-
89 nancing statement must show the name of a record owner.

90 (6) A mortgage is effective as a financing statement
91 filed as a fixture filing from the date of its recording if
92 (a) the goods are described in the mortgage by item or
93 type, (b) the goods are or are to become fixtures related to

94 the real estate described in the mortgage, (c) the mortgage
95 complies with the requirements for a financing statement
96 in this section other than a recital that it is to be filed in
97 the real estate records, and (d) the mortgage is duly re-
98 corded. No fee with reference to the financing statement
99 is required other than the regular recording and satisfac-
100 tion fees with respect to the mortgage.

101 (7) A financing statement sufficiently shows the name
102 of the debtor if it gives the individual, partnership or
103 corporate name of the debtor, whether or not it adds other
104 trade names or the names of partners. Where the debtor
105 so changes his name or in the case of an organization its
106 name, identity or corporate structure that a filed financing
107 statement becomes seriously misleading, the filing is not
108 effective to perfect a security interest in collateral ac-
109 quired by the debtor more than four months after the
110 change, unless a new appropriate financing statement is
111 filed before the expiration of that time. A filed financing
112 statement remains effective with respect to collateral
113 transferred by the debtor even though the secured party
114 knows of or consents to the transfer.

115 (8) A financing statement substantially complying with
116 the requirements of this section is effective even though it
117 contains minor errors which are not seriously misleading.

**§46-9-403. What constitutes filing; duration of filing; effect of
lapsed filing; duties of filing officer.**

1 (1) Presentation for filing of a financing statement
2 and tender of the filing fee or acceptance of the statement
3 by the filing officer constitutes filing under this article.

4 (2) Except as provided in subsection (6) or in sub-
5 section (8), a filed financing statement is effective for
6 a period of five years from the date of filing. The effec-
7 tiveness of a filed financing statement lapses on the ex-
8 piration of the five-year period, unless a continuation
9 statement is filed prior to the lapse. If a security interest
10 perfected by filing exists at the time insolvency pro-
11 ceedings are commenced by or against the debtor, the
12 security interest remains perfected until termination of
13 the insolvency proceedings and thereafter for a period of
14 sixty days or until expiration of the five-year period,

15 whichever occurs later. Upon lapse the security interest
16 becomes unperfected, unless it is perfected without filing.
17 If the security interest becomes unperfected upon lapse, it
18 is deemed to have been unperfected as against a person
19 who became a purchaser or lien creditor before lapse.

20 (3) A continuation statement may be filed by the
21 secured party within six months prior to the expiration
22 of the five-year period specified in subsection (2). Any
23 such continuation statement must be signed by the se-
24 cured party, identify the original statement by file number
25 and state that the original statement is still effective. A
26 continuation statement signed by a person other than the
27 secured party of record must be accompanied by a sepa-
28 rate written statement of assignment signed by the se-
29 cured party of record and complying with subsection (2)
30 of section 9-405, including payment of the required fee.
31 Upon timely filing of the continuation statement, the effec-
32 tiveness of the original statement is continued for five
33 years after the last date to which the filing was effective
34 whereupon it lapses in the same manner as provided in
35 subsection (2) unless another continuation statement is
36 filed prior to such lapse. Succeeding continuation state-
37 ments may be filed in the same manner to continue the
38 effectiveness of the original statement. Unless a statute on
39 disposition of public records provides otherwise, the filing
40 officer may remove a lapsed statement from the files and
41 destroy it immediately if he has retained a microfilm or
42 other photographic record, or in other cases after one year
43 after the lapse. The filing officer shall so arrange matters
44 by physical annexation of financing statements to continu-
45 ation statements or other related filings, or by other
46 means, that if he physically destroys the financing state-
47 ments of a period more than five years past, those which
48 have been continued by a continuation statement or
49 which are still effective under subsection (6) shall be
50 retained.

51 (4) Except as provided in subsection (7), a filing
52 officer shall mark each statement with a file number and
53 with the date and hour of filing and shall hold the state-
54 ment or a microfilm or other photographic copy thereof

55 for public inspection. In addition the filing officer shall
56 index the statements according to the name of the debtor
57 and shall note in the index the file number and the ad-
58 dress of the debtor given in the statement.

59 (5) The uniform fee for filing and indexing and for
60 stamping a copy furnished by the secured party to show
61 the date and place of filing for an original financing state-
62 ment or for a continuation statement shall be \$1.00 if the
63 statement is in the standard form prescribed by the sec-
64 retary of state and otherwise shall be \$5.00, plus in each
65 case, if the financing statement is subject to subsection
66 (5) of section 9-402, \$1.00. The uniform fee for each name
67 more than one required to be indexed shall be \$1.00. The
68 secured party may at his option show a trade name for
69 any person and an extra uniform indexing fee of \$1.00
70 shall be paid with respect thereto.

71 (6) If the debtor is a transmitting utility (subsection
72 (5) of section 9-401) and a filed financing statement so
73 states, it is effective until a termination statement is
74 filed. A real estate mortgage which is effective as a
75 fixture filing under subsection (6) of section 9-402 remains
76 effective as a fixture filing until the mortgage is released
77 or satisfied of record or its effectiveness otherwise termi-
78 nates as to the real estate.

79 (7) When a financing statement covers timber to be
80 cut or covers minerals or the like (including oil and gas)
81 or accounts subject to subsection (5) of section 9-103, or
82 is filed as a fixture filing, it shall be filed for record and
83 the filing officer shall index it under the names of the
84 debtor and any owner of record shown on the financing
85 statement in the same fashion as if they were the mort-
86 gagers in a mortgage of the real estate described, and, to
87 the extent that the law of this state provides for indexing
88 of mortgages under the name of the mortgagee, under the
89 name of the secured party as if he were the mortgagee
90 thereunder, or where indexing is by description in the
91 same fashion as if the financing statement were a mort-
92 gage of the real estate described.

93 (8) Notwithstanding any provision of this code to the
94 contrary, a filed financing statement on public bond issues

95 of counties, municipalities or public service districts of
96 this state shall be effective for the life of such bond
97 issues without the need for filing continuation state-
98 ments.

§46-9-404. Termination statement.

1 (1) If a financing statement covering consumer goods
2 is filed on or after the first day of July, 1975, then within
3 one month or within ten days following written demand
4 by the debtor after there is no outstanding secured obliga-
5 tion and no commitment to make advances, incur obliga-
6 tions or otherwise give value, the secured party must file
7 with each filing officer with whom the financing statement
8 was filed, a termination statement to the effect that he no
9 longer claims a security interest under the financing state-
10 ment, which shall be identified by file number. In other
11 cases whenever there is no outstanding secured obligation
12 and no commitment to make advances, incur obligations
13 or otherwise give value, the secured party must on written
14 demand by the debtor send the debtor, for each filing
15 officer with whom the financing statement was filed, a
16 termination statement to the effect that he no longer
17 claims a security interest under the financing statement,
18 which shall be identified by file number. A termination
19 statement signed by a person other than the secured party
20 of record must be accompanied by a separate written state-
21 ment of assignment signed by the secured party of record
22 complying with subsection (2) of section 9-405, including
23 payment of the required fee. If the affected secured party
24 fails to file such a termination statement as required by
25 this subsection, or to send such a termination statement
26 within ten days after proper demand therefor he shall be
27 liable to the debtor for one hundred dollars, and in addi-
28 tion for any loss caused to the debtor by such failure.

29 (2) On presentation to the filing officer of such a termi-
30 nation statement he must note it in the index. If he has
31 received the termination statement in duplicate, he shall
32 return one copy of the termination statement to the se-
33 cured party stamped to show the time of receipt thereof.
34 If the filing officer has a microfilm or other photographic
35 record of the financing statement, and of any related con-

36 tination statement, statement of assignment and state-
37 ment of release, he may remove the originals from the files
38 at any time after receipt of the termination statement, or
39 if he has no such record, he may remove them from the
40 files at any time after one year after receipt of the termi-
41 nation statement.

42 (3) If the termination statement is in the standard
43 form prescribed by the secretary of state, the uniform fee
44 for filing and indexing the termination statement shall be
45 \$1.00, and otherwise shall be \$5.00, plus in each case an
46 additional fee of \$1.00 for each name more than one against
47 which the termination statement is required to be indexed.

§46-9-405. Assignment of security interest; duties of filing officer; fees.

1 (1) A financing statement may disclose an assignment
2 of a security interest in the collateral described in the
3 financing statement by indication in the financing state-
4 ment of the name and address of the assignee or by an
5 assignment itself or a copy thereof on the face or back of
6 the statement. On presentation to the filing officer of such
7 a financing statement the filing officer shall mark the
8 same as provided in section 9-403 (4). The uniform fee for
9 filing, indexing and furnishing filing data for a financing
10 statement so indicating an assignment shall be \$1.00 if the
11 statement is in the standard form prescribed by the secre-
12 tary of state and otherwise shall be \$5.00, plus in each case
13 an additional fee of \$1.00 for each name more than one
14 against which the financing statement is required to be
15 indexed.

16 (2) A secured party may assign of record all or a part
17 of his rights under a financing statement by the filing in
18 the place where the original financing statement was filed
19 of a separate written statement of assignment signed by
20 the secured party of record and setting forth the name of
21 the secured party of record and the debtor, the file number
22 and the date of filing of the financing statement and the
23 name and address of the assignee and containing a descrip-
24 tion of the collateral assigned. A copy of the assignment is
25 sufficient as a separate statement if it complies with the
26 preceding sentence. On presentation to the filing officer

27 of such a separate statement, the filing officer shall mark
28 such separate statement with the date and hour of the
29 filing. He shall note the assignment on the index of the
30 financing statement, or in the case of a fixture filing, or
31 a filing covering timber to be cut, or covering minerals or
32 the like (including oil and gas) or accounts subject to sub-
33 section (5) of section 9-103, he shall index the assignment
34 under the name of the assignor as grantor and, to the ex-
35 tent that the law of this state provides for indexing the
36 assignment of a mortgage under the name of the assignee,
37 he shall index the assignment of the financing statement
38 under the name of the assignee. The uniform fee for
39 filing, indexing and furnishing filing data about such a
40 separate statement of assignment shall be \$1.00 if the
41 statement is in the standard form prescribed by the secre-
42 tary of state and otherwise shall be \$5.00, plus in each case
43 an additional fee of \$1.00 for each name more than one
44 against which the statement of assignment is required to
45 be indexed. Notwithstanding the provisions of this sub-
46 section, an assignment of record of a security interest in a
47 fixture contained in a mortgage effective as a fixture filing
48 (subsection (6) of section 9-402) may be made only by an
49 assignment of the mortgage in the manner provided by
50 the law of this state other than this chapter.

51 (3) After the disclosure or filing of an assignment un-
52 der this section, the assignee is the secured party of record.

§46-9-406. Release of collateral; duties of filing officer; fees.

1 A secured party of record may by his signed statement
2 release all or a part of any collateral described in a filed
3 financing statement. The statement of release is sufficient
4 if it contains a description of the collateral being re-
5 leased, the name and address of the debtor, the name and
6 address of the secured party, and the file number of the
7 financing statement. A statement of release signed by a
8 person other than the secured party of record must be
9 accompanied by a separate written statement of assign-
10 ment signed by the secured party of record and com-
11 plying with subsection (2) of section 9-405, including
12 payment of the required fee. Upon presentation of such
13 a statement of release to the filing officer he shall mark

14 the statement with the hour and date of filing and shall
15 note the same upon the margin of the index of the filing
16 of the financing statement. The uniform fee for filing and
17 noting such a statement of release shall be \$1.00 if the
18 statement is in the standard form prescribed by the
19 secretary of state and otherwise shall be \$5.00, plus in
20 each case an additional fee of \$1.00 for each name more
21 than one against which the statement of release is re-
22 quired to be indexed.

§46-9-407. Information from filing officer.

1 (1) If the person filing any financing statement, termi-
2 nation statement, statement of assignment, or statement
3 of release, furnishes the filing officer a copy thereof, the
4 filing officer shall upon request note upon the copy the
5 file number and date and hour of the filing of the original
6 and deliver or send the copy to such person.

7 (2) Upon request of any person, the secretary of state
8 shall issue his certificate showing whether there is on
9 file in his office on the date and hour stated therein, any
10 presently effective financing statement naming a particu-
11 lar debtor and any statement of assignment thereof and
12 if there is, giving the date and hour of filing of each such
13 statement and the names and addresses of each secured
14 party therein. The uniform fee for such a certificate shall
15 be \$2.00 if the request for the certificate is in the standard
16 form prescribed by the secretary of state and otherwise
17 shall be \$5.00 plus fifty cents for each financing statement
18 and for each statement of assignment reported therein.
19 Upon request the filing officer shall furnish a copy of any
20 filed financing statement or statement of assignment for
21 a uniform fee of fifty cents per page.

§46-9-408. Financing statements covering consigned or leased goods.

1 A consignor or lessor of goods may file a financing
2 statement using the terms "consignor," "consignee,"
3 "lessor," "lessee" or the like instead of the terms specified
4 in section 9-402. The provisions of this part shall apply
5 as appropriate to such a financing statement but its filing
6 shall not of itself be a factor in determining whether or

7 not the consignment or lease is intended as security
8 (section 1-201(37)). However, if it is determined for
9 other reasons that the consignment or lease is so intended,
10 a security interest of the consignor or lessor which at-
11 taches to the consigned or leased goods is perfected by
12 such filing.

PART 5. DEFAULT.

§46-9-501. Default; procedure when security agreement covers both real and personal property.

1 (1) When a debtor is in default under a security
2 agreement, a secured party has the rights and remedies
3 provided in this part and except as limited by subsection
4 (3) those provided in the security agreement. He may
5 reduce his claim to judgment, foreclose or otherwise
6 enforce the security interest by any available judicial
7 procedure. If the collateral is documents the secured
8 party may proceed either as to the documents or as to
9 the goods covered thereby. A secured party in possession
10 has the rights, remedies and duties provided in section
11 9-207. The rights and remedies referred to in this sub-
12 section are cumulative.

13 (2) After default, the debtor has the rights and
14 remedies provided in this part, those provided in the
15 security agreement and those provided in section 9-207.

16 (3) To the extent that they give rights to the debtor
17 and impose duties on the secured party, the rules stated
18 in the subsections referred to below may not be waived
19 or varied except as provided with respect to compulsory
20 disposition of collateral (subsection (3) of section 9-504
21 and section 9-505) and with respect to redemption of
22 collateral (section 9-506) but the parties may by agree-
23 ment determine the standards by which the fulfillment
24 of these rights and duties is to be measured if such
25 standards are not manifestly unreasonable:

26 (a) Subsection (2) of section 9-502 and subsection (2)
27 of section 9-504 insofar as they require accounting for
28 surplus proceeds of collateral;

29 (b) subsection (3) of section 9-504 and subsection (1)
30 of section 9-505 which deal with disposition of collateral;

31 (c) subsection (2) of section 9-505 which deals with
32 acceptance of collateral as discharge of obligation;

33 (d) section 9-506 which deals with redemption of col-
34 lateral; and

35 (e) subsection (1) of section 9-507 which deals with
36 the secured party's liability for failure to comply with
37 this part.

38 (4) If the security agreement covers both real and
39 personal property, the secured party may proceed under
40 this part as to the personal property or he may proceed
41 as to both the real and the personal property in accord-
42 ance with his rights and remedies in respect of the real
43 property in which case the provisions of this part do not
44 apply.

45 (5) When a secured party has reduced his claim to
46 judgment the lien of any levy which may be made upon
47 his collateral by virtue of any execution based upon the
48 judgment shall relate back to the date of the perfection of
49 the security interest in such collateral. A judicial sale,
50 pursuant to such execution, is a foreclosure of the security
51 interest by judicial procedure within the meaning of this
52 section, and the secured party may purchase at the sale
53 and thereafter hold the collateral free of any other re-
54 quirements of this article.

§46-9-502. Collection rights of secured party.

1 (1) When so agreed and in any event on default the
2 secured party is entitled to notify an account debtor or
3 the obligor on an instrument to make payment to him
4 whether or not the assignor was theretofore making col-
5 lections on the collateral, and also to take control of any
6 proceeds to which he is entitled under section 9-306.

7 (2) A secured party who by agreement is entitled to
8 charge back uncollected collateral or otherwise to full or
9 limited recourse against the debtor and who undertakes to
10 collect from the account debtors or obligors must proceed
11 in a commercially reasonable manner and may deduct his
12 reasonable expenses of realization from the collections. If
13 the security agreement secures an indebtedness, the se-
14 cured party must account to the debtor for any surplus,
15 and unless otherwise agreed, the debtor is liable for any

16 deficiency. But, if the underlying transaction was a sale of
17 accounts or chattel paper, the debtor is entitled to any
18 surplus or is liable for any deficiency only if the security
19 agreement so provides.

**§46-9-504. Secured party's right to dispose of collateral after
default; effect of disposition.**

1 (1) A secured party after default may sell, lease or
2 otherwise dispose of any or all of the collateral in its
3 then condition or following any commercially reasonable
4 preparation or processing. Any sale of goods is subject to
5 the article on sales (article 2). The proceeds of disposi-
6 tion shall be applied in the order following to

7 (a) the reasonable expenses of retaking, holding, pre-
8 paring for sale or lease, selling, leasing and the like and,
9 to the extent provided for in the agreement and not
10 prohibited by law, the reasonable attorneys' fees and legal
11 expenses incurred by the secured party;

12 (b) the satisfaction of indebtedness secured by the
13 security interest under which the disposition is made;

14 (c) the satisfaction of indebtedness secured by any
15 subordinated security interest in the collateral if written
16 notification of demand therefor is received before distri-
17 bution of the proceeds is completed. If requested by the
18 secured party, the holder of a subordinate security in-
19 terest must seasonably furnish reasonable proof of his
20 interest, and unless he does so, the secured party need not
21 comply with his demand.

22 (2) If the security interest secures an indebtedness,
23 the secured party must account to the debtor for any
24 surplus, and, unless otherwise agreed, the debtor is liable
25 for any deficiency. But if the underlying transaction was a
26 sale of accounts or chattel paper, the debtor is entitled to
27 any surplus or is liable for any deficiency only if the
28 security agreement so provides.

29 (3) Disposition of the collateral may be by public or
30 private proceedings and may be made by way of one or
31 more contracts. Sale or other disposition may be as a unit
32 or in parcels and at any time and place and on any terms
33 but every aspect of the disposition including the method,
34 manner, time, place and terms must be commercially rea-
35 sonable. Unless collateral is perishable or threatens to

36 decline speedily in value or is of a type customarily sold
37 on a recognized market, reasonable notification of the time
38 and place of any public sale or reasonable notification of
39 the time after which any private sale or other intended
40 disposition is to be made shall be sent by the secured
41 party to the debtor, if he has not signed after default a
42 statement renouncing or modifying his right to notifica-
43 tion of sale. In the case of consumer goods no other noti-
44 fication need be sent. In other cases notification shall be
45 sent to any other secured party from whom the secured
46 party has received (before sending his notification to the
47 debtor or before the debtor's renunciation of his rights)
48 written notice of a claim of an interest in the collateral.
49 The secured party may buy at any public sale and if the
50 collateral is of a type customarily sold in a recognized
51 market or is of a type which is the subject of widely
52 distributed standard price quotations he may buy at pri-
53 vate sale.

54 (4) When collateral is disposed of by a secured party
55 after default the disposition transfers to a purchaser for
56 value all of the debtor's rights therein, discharges the
57 security interest under which it is made and any security
58 interest or lien subordinate thereto. The purchaser takes
59 free of all such rights and interests even though the se-
60 cured party fails to comply with the requirements of this
61 part or of any judicial proceedings

62 (a) in the case of a public sale, if the purchaser has
63 no knowledge of any defects in the sale and if he does not
64 buy in collusion with the secured party, other bidders or
65 the person conducting the sale; or

66 (b) in any other case, if the purchaser acts in good
67 faith.

68 (5) A person who is liable to a secured party under a
69 guaranty, endorsement, repurchase agreement or the like
70 and who receives a transfer of collateral from the secured
71 party or is subrogated to his rights has thereafter the
72 rights and duties of the secured party. Such a transfer of
73 collateral is not a sale or disposition of the collateral under
74 this article.

§46-9-505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

1 (1) If the debtor has paid sixty percent of the cash
2 price in the case of a purchase money security interest in
3 consumer goods or sixty percent of the loan in the case of
4 another security interest in consumer goods, and has not
5 signed after default a statement renouncing or modifying
6 his rights under this part a secured party who has taken
7 possession of collateral must dispose of it under section
8 9-504 and if he fails to do so within ninety days after he
9 takes possession the debtor at his option may recover in
10 conversion or under section 9-507 (1) on secured party's
11 liability.

12 (2) In any other case involving consumer goods or any
13 other collateral a secured party in possession may, after
14 default, propose to retain the collateral in satisfaction of
15 the obligation. Written notice of such proposal shall be
16 sent to the debtor if he has not signed after default a
17 statement renouncing or modifying his rights under this
18 subsection. In the case of consumer goods no other notice
19 need be given. In other cases notice shall be sent to any
20 other secured party from whom the secured party has re-
21 ceived (before sending his notice to the debtor or before
22 the debtor's renunciation of his rights) written notice of
23 a claim of an interest in the collateral. If the secured
24 party receives objection in writing from a person entitled
25 to receive notification within twenty-one days after the
26 notice was sent, the secured party must dispose of the
27 collateral under section 9-504. In the absence of such
28 written objection the secured party may retain the col-
29 lateral in satisfaction of the debtor's obligation.

ARTICLE 11. EFFECTIVE DATE AND TRANSITION PROVISIONS.

§46-11-101. Effective date.

1 This act shall become effective at 12:01 A. M. on the
2 first day of July, one thousand nine hundred seventy-five.

§46-11-102. Preservation of old transition provision.

1 The provisions of section 102, article 10 of this chapter
2 shall continue to apply to the new Uniform Commercial
3 Code and for this purpose the old Uniform Commercial

4 Code and new Uniform Commercial Code shall be con-
5 sidered one continuous statute.

§46-11-103. Transition to new code—general rule.

1 Transactions validly entered into after the first day
2 of July, one thousand nine hundred sixty-four, and be-
3 fore the first day of July, one thousand nine hundred
4 seventy-five, and which were subject to the provisions of
5 the old Uniform Commercial Code and which would be
6 subject to this chapter as amended if they had been en-
7 tered into after the effective date of the new Uniform
8 Commercial Code and the rights, duties and interests
9 flowing from such transactions remain valid after the
10 latter date and may be terminated, completed, consum-
11 mated or enforced as required or permitted by the new
12 Uniform Commercial Code. Security interests arising
13 out of such transactions which are perfected when the
14 new Uniform Commercial Code becomes effective shall
15 remain perfected until they lapse as provided in the new
16 Uniform Commercial Code, and may be continued as
17 permitted by the new Uniform Commercial Code, except
18 as stated in section 11-105. In any instance in which a
19 person who under the new uniform commercial code
20 would be a transmitting utility has perfected a security
21 interest under the provisions of subsection (5) of the
22 former provisions of section 9-302 of this chapter, such
23 security interest shall remain perfected with the same
24 priority rights as if the new uniform commercial code
25 had been in effect at the time such security interest was
26 perfected and such person had at such time filed a finan-
27 cing statement thereunder as a transmitting utility.

**§46-11-104. Transition provision on change of requirement of
filing.**

1 A security interest for the perfection of which filing
2 or the taking of possession was required under the old
3 Uniform Commercial Code and which attached prior to
4 the effective date of the new Uniform Commercial Code but
5 was not perfected shall be deemed perfected on the effec-
6 tive date of the new Uniform Commercial Code if the new
7 Uniform Commercial Code permits perfection without

8 filing or authorizes filing in the office or offices where a
9 prior ineffective filing was made.

§46-11-105. Transition provision on change of place of filing.

1 (1) A financing statement or continuation statement
2 filed prior to the first day of July, one thousand nine hun-
3 dred seventy-five, which shall not have lapsed prior to the
4 first day of July, one thousand nine hundred seventy-five,
5 shall remain effective for the period provided in the old
6 Code, but not less than five years after the filing.

7 (2) With respect to any collateral acquired by the
8 debtor subsequent to the effective date of the new Uni-
9 form Commercial Code, any effective financing statement
10 or continuation statement described in this section shall
11 apply only if the filing or filings are in the office or offices
12 that would be appropriate to perfect the security interests
13 in the new collateral under the new Uniform Commercial
14 Code.

15 (3) The effectiveness of any financing statement or
16 continuation statement filed prior to the first day of July,
17 one thousand nine hundred seventy-five, may be con-
18 tinued by a continuation statement as permitted by the
19 new Uniform Commercial Code, except that if the new
20 Uniform Commercial Code requires a filing in an office
21 where there was no previous financing statement, a new
22 financing statement conforming to section 11-106 shall be
23 filed in that office.

24 (4) If the record of a mortgage of real estate would
25 have been effective as a fixture filing of goods described
26 therein if the new Uniform Commercial Code had been in
27 effect on the date of recording the mortgage, the mortgage
28 shall be deemed effective as a fixture filing as to such goods
29 under subsection (6) of section 9-402 of the new Uniform
30 Commercial Code on the effective date of the new Uniform
31 Commercial Code.

§46-11-106. Required refilings.

1 (1) If a security interest is perfected or has priority
2 when this act takes effect as to all persons or as to certain
3 persons without any filing or recording, and if the filing
4 of a financing statement would be required for the per-

5 fection or priority of the security interest against those
6 persons under the new Uniform Commercial Code, the
7 perfection and priority rights of the security interest con-
8 tinue until three years after the effective date of the new
9 Uniform Commercial Code. The perfection will then lapse
10 unless a financing statement is filed as provided in sub-
11 section (4) or unless the security interest is perfected
12 otherwise than by filing.

13 (2) If a security interest is perfected when the new
14 Uniform Commercial Code takes effect under a law other
15 than the Uniform Commercial Code which requires no
16 further filing, refiling or recording to continue its per-
17 fection, perfection continues until and will lapse three
18 years after the new Uniform Commercial Code takes
19 effect, unless a financing statement is filed as provided in
20 subsection (4) or unless the security interest is perfected
21 otherwise than by filing, or unless under subsection (3)
22 of section 9-302 the other law continues to govern filing.

23 (3) If a security interest is perfected by a filing, re-
24 filing or recording under a law repealed by this act which
25 required further filing, refiling or recording to continue
26 its perfection, perfection continues and will lapse on the
27 date provided by the law so repealed for such further
28 filing, refiling or recording unless a financing statement
29 is filed as provided in subsection (4) or unless the security
30 interest is perfected otherwise than by filing.

31 (4) A financing statement may be filed within six
32 months before the perfection of a security interest would
33 otherwise lapse. Any such financing statement may be
34 signed by either the debtor or the secured party. It must
35 identify the security agreement, statement or notice (how-
36 ever denominated in any statute or other law repealed or
37 modified by this act), state the office where and the date
38 when the last filing, refiling or recording, if any, was made
39 with respect thereto, and the filing number, if any, or book
40 and page, if any, of recording and further state that the
41 security agreement, statement or notice, however de-
42 nominated, in another filing office under the Uniform
43 Commercial Code or under any statute or other law re-
44 pealed or modified by this act is still effective. Section
45 9-401 and section 9-103 determine the proper place to file

46 such a financing statement. Except as specified in this sub-
47 section, the provisions of section 9-403 (3) for continuation
48 statements apply to such a financing statement.

§46-11-107. Transition provisions as to priorities.

1 Except as otherwise provided in this article, the old
2 Uniform Commercial Code shall apply to any questions of
3 priority if the positions of the parties were fixed prior to
4 the effective date of the new Uniform Commercial Code.
5 In other cases questions of priority shall be determined
6 by the new Uniform Commercial Code.

§46-11-108. Presumption that rule of law continues unchanged.

1 Unless a change in law has clearly been made, the pro-
2 visions of the new Uniform Commercial Code shall be
3 deemed declaratory of the meaning of the old Uniform
4 Commercial Code.

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

H. Laurel Darby
 Chairman Senate Committee

Edmund L. Chirton, Jr.
 Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Hawaii Carson
 Clerk of the Senate

C. Blankenship
 Clerk of the House of Delegates

W. P. Brotherton, Jr.
 President of the Senate

Lewis J. Mahane
 Speaker House of Delegates

The within *approved* this the *26th*
March
 day of _____, 1974.

Paul A. Haun, Jr.
 Governor

PRESENTED TO THE
GOVERNOR

Date 3/15/74

Time 2:50 p.m.