WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

SENATE BILL NO. 40

(By Mr. Martian and Mr. Peppers)

PASSED March 9, 1974

In Effect thirty days from Passage

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

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

Rights of creditors against sold goods. Section 2-402.
Applicability of the article on bank deposits and collections. Section 4-102.

Bulk transfers subject to the article on bulk transfers. Section 6-102.

Applicability of the article on investment securities. Section 8-106.

Perfection provisions of the article on secured transactions. Section 9-103.

§46-1-201. General definitions.

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

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

(2) “Aggrieved party” means a party entitled to resort to a remedy.

(3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter (sections 1-205 and 2-208). Whether an agreement has legal consequences is determined by the provisions of this chapter, if applicable; otherwise by the law of contracts (section 1-103). (Compare “Contract.”)

(4) “Bank” means any person engaged in the business of banking.

(5) “Bearer” means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

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

(7) “Branch” includes a separately incorporated foreign branch of a bank.
(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

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

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

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

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

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

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.
(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

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

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

(18) "Genuine" means free of forgery or counterfeiting.

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

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

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

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

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

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.
(25) A person has "notice" of a fact when
(a) he has actual knowledge of it; or
(b) he has received a notice or notification of it; or
(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

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

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when
(a) it comes to his attention; or
(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.
"Parity," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this chapter.

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

"Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

"Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

"Purchaser" means a person who takes by purchase.

"Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

"Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

"Rights" includes remedies.

"Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest." The term also includes any interest of a buyer of accounts or chattel paper, which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make
the lease one intended for security, and (b) an agreement
that upon compliance with the terms of the lease the lessee
shall become or has the option to become the owner of the
property for no additional consideration or for a nominal
consideration does make the lease one intended for secur-
ity.

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

(39) “Signed” includes any symbol executed or adopt-
ed by a party with present intention to authenticate a
writing.

(40) “Surety” includes guarantor.

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

(42) “Term” means that portion of an agreement which
relates to a particular matter.

(43) “Unauthorized” signature or indorsement means
one made without actual, implied or apparent authority
and includes a forgery.

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

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

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

(c) by accepting delivery pursuant to a pre-existing
contract for purchase; or
(d) generally, in return for any consideration sufficient to support a simple contract.

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

(46) "written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

ARTICLE 2. SALES.

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

(1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

ARTICLE 5. LETTERS OF CREDIT.

§ 46-5-116. Transfer and assignment.

(1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign
his right to proceeds. Such an assignment is an assign-
ment of an account under article 9 on secured trans-
actions and is governed by that article except that
(a) the assignment is ineffective until the letter of
credit or advice of credit is delivered to the assignee
which delivery constitutes perfection of the security
interest under article 9; and
(b) the issuer may honor drafts or demands for pay-
ment drawn under the credit until it receives a notifica-
tion of the assignment signed by the beneficiary which
reasonably identifies the credit involved in the assign-
ment and contains a request to pay the assignee; and
(c) after what reasonably appears to be such a noti-
fication has been received the issuer may without dis-
honor refuse to accept or pay even to a person otherwise
entitled to honor until the letter of credit or advice of
credit is exhibited to the issuer.
(3) Except where the beneficiary has effectively as-
signed his right to draw or his right to proceeds, nothing
in this section limits his right to transfer or negotiate
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) Except as otherwise provided in section 9-103 on
multiple state transactions and in section 9-104 on ex-
cluded transactions, this article applies
(a) to any transaction (regardless of its form) which
is intended to create a security interest in personal prop-
erty or fixtures including goods, documents, instruments,
general intangibles, chattel paper or accounts; and also
(b) to any sale of accounts, or chattel paper.
(2) This article applies to security interests created
by contract including pledge, assignment, chattel mort-
gage, chattel trust, trust deed, factor's lien, equipment
trust, conditional sale, trust receipt, other lien or title
retention contract and lease or consignment intended as
security. This article does not apply to statutory liens
except as provided in section 9-310.
The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.


(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

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

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

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

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and
is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;
(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;
(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of section 9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.
(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.
(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or non-perfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.
(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).
(d) If goods are brought into this state while a security interest therein is perfected in any manner under the law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to secur-
ity interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

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

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or non-perfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

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

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor’s location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

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

(5) Minerals. Perfection and the effect of perfection or non-perfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the 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 the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or
3 (b) to a landlord's lien; or
(c) to a lien given by statute or other rule of law for services or materials except as provided in section 9-310 on priority of such liens; or
(d) to a transfer of a claim for wages, salary or other compensation of an employee; or
(e) to a transfer by a government or governmental subdivision or agency; or
(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
(g) to a transfer of an interest in or claim in or under any policy of insurance, except as provided with respect to proceeds (section 9-306) and priorities in proceeds (section 9-312); or
(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
(i) to any right of setoff; or
(j) except to the extent that provision is made for fixtures in section 9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or
(k) to a transfer in whole or in part of any claim arising out of tort; or
(l) to a transfer of an interest in any deposit account (subsection (1) of section 9-105), except as provided with respect to proceeds (section 9-306) and priorities in proceeds (section 9-312).

§46-9-105. Definitions and index of definitions.
(1) In this article unless the context otherwise requires:
(a) “Account debtor” means the person who is obligated on an account, chattel paper, or general intangible;
(b) “Chattel paper” means a writing or writings which evidence both a monetary obligation and a security in-
terest in or a lease of specific goods, but a charter or
other contract involving the use or hire of a vessel is
not chattel paper. When a transaction is evidenced both
by such a security agreement or a lease and by an instru-
ment or a series of instruments, the group of writings
taken together constitutes chattel paper;
(c) “Collateral” means the property subject to a se-
curity interest, and includes accounts, and chattel paper
which have been sold;
(d) “Debtor” means the person who owes payment
or other performance of the obligation secured, whether
or not he owns or has rights in the collateral, and includes
the seller of accounts, or chattel paper. Where the debtor
and the owner of the collateral are not the same person,
the term “debtor” means the owner of the collateral in
any provision of the article dealing with the collateral,
the obligor in any provision dealing with the obligation,
and may include both where the context so requires;
(e) “Deposit account” means a demand, time, savings,
passbook or like account maintained with a bank, savings
and loan association, credit union or like organization,
other than an account evidenced by a certificate of
deposit;
(f) “Document” means document of title as defined
in the general definitions of article 1 (section 1-201),
and a receipt of the kind described in subsection (2) of
section 7-201;
(g) “Encumbrance” includes real estate mortgages
and other liens on real estate and all other rights in real
estate that are not ownership interests.
(h) “Goods” includes all things which are moveable
at the time the security interest attaches or which are
fixtures (section 9-313), but does not include money,
documents, instruments, accounts, chattel paper, general
intangibles, or minerals or the like (including oil and gas)
before extraction. “Goods” also includes standing timber
which is to be cut and removed under a conveyance or
contract for sale, the unborn young of animals, and grow-
ing crops.
(i) “Instrument” means a negotiable instrument (de-
defined in section 3-104), or a security (defined in section
8-102) or any other writing which evidences a right to
the payment of money and is not itself a security agree-
ment or lease and is of a type which is in ordinary course
of business transferred by delivery with any necessary
endorsement or assignment;

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

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

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

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

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

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

"Account". Section 9-106.
"Attach". Section 9-203.
"Construction mortgage". Section 9-313 (1).
"Consumer goods". Section 9-109 (1).
"Equipment". Section 9-109 (2).
"Farm products". Section 9-109 (3).
"Fixture". Section 9-313.
"Fixture filing". Section 9-313.
"General intangibles". Section 9-106.

1 “Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. “General intangibles” means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.

§46-9-114. Consignment.

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

(a) the consignor complies with the filing provision of the article on sales with respect to consignments (paragraph (3) (c) of section 2-326) before the consignee receives possession of the goods; and
(b) the consignor gives notification in writing to the
holder of the security interest if the holder has filed a
financing statement covering the same types of goods be-
fore the date of the filing made by the consignor; and
(c) the holder of the security interest receives the
notification within five years before the consignee receives
possession of the goods; and
(d) the notification states that the consignor expects
to deliver goods on consignment to the consignee, describ-
ing the goods by item or type.

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

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

(1) Subject to the provisions of section 4-208 on the
security interest of a collecting bank and section 9-113
on a security interest arising under the article on sales, a
security interest is not enforceable against the debtor or
third parties with respect to the collateral and does not
attach unless
(a) the collateral is in the possession of the secured
party; pursuant to agreement, or the debtor has signed a
security agreement which contains a description of the
collateral and in addition, when the security interest
covers crops growing or to be grown or timber to be cut,
a description of the land concerned; and
(b) value has been given; and
(c) the debtor has rights in the collateral.

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

(3) Unless otherwise agreed a security agreement
gives the secured party the rights to proceeds provided
by section 9-306.
(4) A transaction may be subject to this article and also to article 7A of chapter 47 relating to small loans and in case of conflict between the provisions of this article and said article 7A or any other such statute, the provisions of said article 7A or such other statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

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

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

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

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

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

A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral 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 unperfected security interest is subordinate to the rights of
2 (a) persons entitled to priority under section 9-312;
3 (b) a person who becomes a lien creditor before the security interest is perfected;
4 (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and
5 who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in
6 ordinary course of business, to the extent that he gives value and receives delivery of the collateral without
7 knowledge of the security interest and before it is perfected;
8 (d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee
9 to the extent that he gives value without knowledge of the security interest and before it is perfected.

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

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

16 (4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security
17 interest only to the extent that it secures advances made before he becomes a lien creditor or within 45 days there-
§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 security interests except the following:
   a. a security interest in collateral in possession of the secured party under section 9-305;
   b. a security interest temporarily perfected in instruments or documents without delivery under section 9-304 or in proceeds for a 10-day period under section 9-306;
   c. a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;
   d. a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in section 9-313;
   e. an assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
   f. a security interest of a collecting bank (section 4-208) or arising under the article on sales (see section 9-113) or covered in subsection (3) of this section;
   g. an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

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

3. (3) The filing of a financing statement otherwise required by this article is not necessary or effective to perfect a security interest in property subject to
   a. a statute or treaty of the United States which provides for a national or international registration or a
national or international certificate of title or which
specifies a place of filing different from that specified in
this article for filing of the security interest; or
(b) the following statute of this state: Chapter seven-
teen-a of this code; but during any period in which
collateral is inventory held for sale by a person who is in
the business of selling goods of that kind, the filing pro-
visions of this article (part 4) apply to a security interest
in that collateral created by him as debtor; or
(c) a certificate of title statute of another jurisdiction
under the law of which indication of a security interest
on the certificate is required as a condition of perfection
(subsection (2) of section 9-103).
(4) Compliance with a statute or treaty described in
subsection (3) is equivalent to the filing of a financing
statement under this article, and a security interest in
property subject to the statute or treaty can be perfected
only by compliance therewith except as provided in sec-
tion 9-103 on multiple state transactions. Duration and
renewal of perfection of a security interest perfected by
compliance with the statute or treaty are governed by the
provisions of the statute or treaty; in other respects the
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
documents may be perfected by filing. A security interest
in money or instruments (other than instruments which
constitute part of chattel paper) can be perfected only
by the secured party's taking possession, except as pro-
vided in subsections (4) and (5) of this section and sub-
sections (2) and (3) of section 9-306 on proceeds.
2 (2) During the period that goods are in the possession
of the issuer of a negotiable document therefor, a se-
curity interest in the goods is perfected by perfecting
a security interest in the document, and any security
interest in the goods otherwise perfected during such
period is subject thereto.
(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

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

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor (a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to subsection (3) of section 9-312; or (b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

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

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

A security interest in letters of credit and advices of credit (subsection (2) (a) of section 5-116), goods, instruments, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the
time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.


(1) “Proceeds” includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are “cash proceeds”. All other proceeds are “non-cash proceeds”.

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

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

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

(b) a filed financing statement covers the original
collateral and the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected before the expiration of the 10 day period. Except as provided in this section, a security interest in proceeds can be perfected only by the methods or under the circumstances permitted in this article for original collateral of the same type.

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

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

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

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

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

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

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

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

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9-308.

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

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.


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

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.
§46-9-308. Purchase of chattel paper and instruments.

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

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

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

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

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

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

(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
24 (a) the purchase money security interest is perfected
25 at the time the debtor receives possession of the inven-
26 tory; and
27
28 (b) the purchase money secured party gives notification
29 in writing to the holder of the conflicting security
30 interest if the holder had filed a financing statement cover-
31 ing the same types of inventory (i) before the date of
32 the filing made by the purchase money secured party, or
33 (ii) before the beginning of the 21 day period where
34 the purchase money security interest is temporarily per-
35 fected without filing or possession (subsection (5) of
36 section 9-304); and
37
38 (c) the holder of the conflicting security interest re-
39 ceives the notification within five years before the debtor
40 receives possession of the inventory; and
41
42 (d) the notification states that the person giving the
43 notice has or expects to acquire a purchase money secur-
44 ity interest in inventory of the debtor, describing such
45 inventory by item or type.

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

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

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

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

(7) If future advances are made while a security interest is perfected by filing or the taking of possession, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made.

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

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

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of section 9-402
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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
(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

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

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

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

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9-206 the rights of an assignee are subject to
(a) all the terms of the contract between the account
debtor and assignor and any defense or claim arising
therefrom; and
(b) any other defense or claim of the account debtor
against the assignor which accrues before the account
debtor receives notification of the assignment.

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

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

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

PART 4. FILING.

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

(1) The proper place to file in order to perfect a
security interest is as follows:
(a) When the collateral is equipment used in farming
operations, or farm products, or accounts, or general
intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of county clerk in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown, in the office of the county clerk in the county where the land is located;

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

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

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper county continues effective for four months after a change to another county of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing. It becomes ineffective thereafter unless a copy of the financing statement signed by the secured party is filed in the new county within said period. The security interest may also be perfected in the new county after the expiration of the four-month period; in such case perfection dates from the time of perfection in the
new county. A change in the use of the collateral does
not impair the effectiveness of the original filing.

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

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

(6) For the purposes of this section, the residence of
an organization is its place of business if it has one or
its chief executive office if it has more than one place of
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
crops growing or to be grown, the statement must also
contain a description of the real estate concerned. When
the financing statements covers timber to be cut or covers
minerals or the like (including oil and gas) or accounts
subject to subsection (5) of section 9-103, or when the
financing statement is filed as a fixture filing (section 9-313) and the collateral is goods which are or are to
become fixtures, the statement must also comply with
subsection (5). A copy of the security agreement is
sufficient as a financing statement if it contains the above
information and is signed by the debtor. A carbon, photo-
graphic or other reproduction of a security agreement
or a financing statement is sufficient as a financing state-
ment if the security agreement so provides or if the
original has been filed in this state.

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

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

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

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

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

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

Name of debtor
(or assignor) ______________________________________

Address ____________________________________________

Name of secured party
(or assignee) _______________________________________

Address ____________________________________________

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

(Describe) _______________________________________

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

(Describe Real Estate) ______________________________

3. (If applicable) The above goods are to become
fixtures on (Describe Real Estate) and this financing
statement is to be filed for record in the real estate
records. (If the debtor does not have an interest of record) The name of a record owner is

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

(Use whichever is applicable) Signature of Debtor (or Assignor)

Signature of Secured party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this article, unless the context otherwise requires, the term “financing statement” means the original financing statement and any amendments.

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

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to
the real estate described in the mortgage, (c) the mortgage
complies with the requirements for a financing statement
in this section other than a recital that it is to be filed in
the real estate records, and (d) the mortgage is duly re-
corded. No fee with reference to the financing statement
is required other than the regular recording and satisfac-
tion fees with respect to the mortgage.

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

(8) A financing statement substantially complying with
the requirements of this section is effective even though it
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) Presentation for filing of a financing statement
and tender of the filing fee or acceptance of the statement
by the filing officer constitutes filing under this article.

(2) Except as provided in subsection (6) or in sub-
section (8), a filed financing statement is effective for
a period of five years from the date of filing. The effec-
tiveness of a filed financing statement lapses on the ex-
piration of the five-year period, unless a continuation
statement is filed prior to the lapse. If a security interest
perfected by filing exists at the time insolvency pro-
ceedings are commenced by or against the debtor, the
security interest remains perfected until termination of
the insolvency proceedings and thereafter for a period of
sixty days or until expiration of the five-year period,
whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of section 9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if he has retained a microfilm or other photographic record, or in other cases after one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the financing statements of a period more than five years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof
for public inspection. In addition the filing officer shall
index the statements according to the name of the debtor
and shall note in the index the file number and the ad-
dress of the debtor given in the statement.

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

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

(7) When a financing statement covers timber to be
cut or covers minerals or the like (including oil and gas)
or accounts subject to subsection (5) of section 8-103, or
is filed as a fixture filing, it shall be filed for record and
the filing officer shall index it under the names of the
debtor and any owner of record shown on the financing
statement in the same fashion as if they were the mort-
gagors in a mortgage of the real estate described, and, to
the extent that the law of this state provides for indexing
of mortgages under the name of the mortgagee, under the
name of the secured party as if he were the mortgagee
thereunder, or where indexing is by description in the
same fashion as if the financing statement were a mort-
gage of the real estate described.

(8) Notwithstanding any provision of this code to the
contrary, a filed financing statement on public bond issues
of counties, municipalities or public service districts of this state shall be effective for the life of such bond issues without the need for filing continuation statements.


1 (1) If a financing statement covering consumer goods is filed on or after the first day of July, 1975, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record complying with subsection (2) of section 9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

2 (2) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has a microfilm or other photographic record of the financing statement, and of any related con-
tinuation statement, statement of assignment and state-
ment of release, he may remove the originals from the files
at any time after receipt of the termination statement, or
if he has no such record, he may remove them from the
files at any time after one year after receipt of the termi-
nation statement.
(3) If the termination statement is in the standard
form prescribed by the secretary of state, the uniform fee
for filing and indexing the termination statement shall be
$1.00, and otherwise shall be $5.00, plus in each case an
additional fee of $1.00 for each name more than one against
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
of a security interest in the collateral described in the
financing statement by indication in the financing state-
ment of the name and address of the assignee or by an
assignment itself or a copy thereof on the face or back of
the statement. On presentation to the filing officer of such
a financing statement the filing officer shall mark the
same as provided in section 9-403 (4). The uniform fee for
filing, indexing and furnishing filing data for a financing
statement so indicating an assignment shall be $1.00 if the
statement is in the standard form prescribed by the secre-
tary of state and otherwise shall be $5.00, plus in each case an
additional fee of $1.00 for each name more than one against
which the financing statement is required to be indexed.

(2) A secured party may assign of record all or a part
of his rights under a financing statement by the filing in
the place where the original financing statement was filed
of a separate written statement of assignment signed by
the secured party of record and setting forth the name of
the secured party of record and the debtor, the file number
and the date of filing of the financing statement and the
name and address of the assignee and containing a descrip-
tion of the collateral assigned. A copy of the assignment is
sufficient as a separate statement if it complies with the
preceding sentence. On presentation to the filing officer
of such a separate statement, the filing officer shall mark
such separate statement with the date and hour of the
filing. He shall note the assignment on the index of the
financing statement, or in the case of a fixture filing, or
a filing covering timber to be cut, or covering minerals or
the like (including oil and gas) or accounts subject to sub-
section (5) of section 9-103, he shall index the assignment
under the name of the assignor as grantor and, to the ex-
tent that the law of this state provides for indexing the
assignment of a mortgage under the name of the assignee,
he shall index the assignment of the financing statement
under the name of the assignee. The uniform fee for
filing, indexing and furnishing filing data about such a
separate statement of assignment shall be $1.00 if the
statement is in the standard form prescribed by the secre-
tary of state and otherwise shall be $5.00, plus in each case
an additional fee of $1.00 for each name more than one
against which the statement of assignment is required to
be indexed. Notwithstanding the provisions of this sub-
section, an assignment of record of a security interest in a
fixture contained in a mortgage effective as a fixture filing
(subsection (6) of section 9-402) may be made only by an
assignment of the mortgage in the manner provided by
the law of this state other than this chapter.
(3) After the disclosure or filing of an assignment un-
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
release all or a part of any collateral described in a filed
financing statement. The statement of release is sufficient
if it contains a description of the collateral being re-
leased, the name and address of the debtor, the name and
address of the secured party, and the file number of the
financing statement. A statement of release signed by a
person other than the secured party of record must be
accompanied by a separate written statement of assign-
ment signed by the secured party of record and com-
plying with subsection (2) of section 9-405, including
payment of the required fee. Upon presentation of such
a statement of release to the filing officer he shall mark
the statement with the hour and date of filing and shall
note the same upon the margin of the index of the filing
of the financing statement. The uniform fee for filing and
noting such a statement of release shall be $1.00 if the
statement is in the standard form prescribed by the
secretary of state and otherwise shall be $5.00, plus in
each case an additional fee of $1.00 for each name more
than one against which the statement of release is re-
quired to be indexed.

§46-9-407. Information from filing officer.
(1) If the person filing any financing statement, term-
nation statement, statement of assignment, or statement
of release, furnishes the filing officer a copy thereof, the
filing officer shall upon request note upon the copy the
file number and date and hour of the filing of the original
and deliver or send the copy to such person.
(2) Upon request of any person, the secretary of state
shall issue his certificate showing whether there is on
file in his office on the date and hour stated therein, any
presently effective financing statement naming a particu-
lar debtor and any statement of assignment thereof and
if there is, giving the date and hour of filing of each such
statement and the names and addresses of each secured
party therein. The uniform fee for such a certificate shall
be $2.00 if the request for the certificate is in the standard
form prescribed by the secretary of state and otherwise
shall be $5.00 plus fifty cents for each financing statement
and for each statement of assignment reported therein.
Upon request the filing officer shall furnish a copy of any
filed financing statement or statement of assignment for
a uniform fee of fifty cents per page.

§46-9-408. Financing statements covering consigned or leased
goods.
A consignor or lessor of goods may file a financing
statement using the terms "consignor," "consignee,"
"lessor," "lessee" or the like instead of the terms specified
in section 9-402. The provisions of this part shall apply
as appropriate to such a financing statement but its filing
shall not of itself be a factor in determining whether or
not the consignment or lease is intended as security (section 1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing.

PART 5. DEFAULT.

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

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

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

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

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

(b) subsection (3) of section 9-504 and subsection (1) of section 9-505 which deal with disposition of collateral;
(c) subsection (2) of section 9-505 which deals with
acceptance of collateral as discharge of obligation;
(d) section 9-506 which deals with redemption of col-
lateral; and
(e) subsection (1) of section 9-507 which deals with
the secured party’s liability for failure to comply with
this part.

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

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


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

(2) A secured party who by agreement is entitled to
charge back uncollected collateral or otherwise to full or
limited recourse against the debtor and who undertakes to
collect from the account debtors or obligors must proceed
in a commercially reasonable manner and may deduct his
reasonable expenses of realization from the collections. If
the security agreement secures an indebtedness, the se-
cured party must account to the debtor for any surplus,
and unless otherwise agreed, the debtor is liable for any
deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

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

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

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

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

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

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

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to
decline speedily in value or is of a type customarily sold
on a recognized market, reasonable notification of the time
and place of any public sale or reasonable notification of
the time after which any private sale or other intended
disposition is to be made shall be sent by the secured
party to the debtor, if he has not signed after default a
statement renouncing or modifying his right to notifica-
tion of sale. In the case of consumer goods no other noti-
ification need be sent. In other cases notification shall be
sent to any other secured party from whom the secured
party has received (before sending his notification to the
debtor or before the debtor's renunciation of his rights)
written notice of a claim of an interest in the collateral.
The secured party may buy at any public sale and if the
collateral is of a type customarily sold in a recognized
market or is of a type which is the subject of widely
distributed standard price quotations he may buy at pri-

tate sale.

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

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

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

(5) A person who is liable to a secured party under a
guaranty, endorsement, repurchase agreement or the like
and who receives a transfer of collateral from the secured
party or is subrogated to his rights has thereafter the
rights and duties of the secured party. Such a transfer of
collateral is not a sale or disposition of the collateral under
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 price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under section 9-507 (1) on secured party's liability.

2 (2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be sent to any other secured party from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under section 9-504. In the absence of such written objection the secured party may retain the collateral 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 first day of July, one thousand nine hundred seventy-five.


1 The provisions of section 102, article 10 of this chapter shall continue to apply to the new Uniform Commercial Code and for this purpose the old Uniform Commercial
§46-11-103. Transition to new code—general rule.

1. Transactions validly entered into after the first day of July, one thousand nine hundred sixty-four, and before the first day of July, one thousand nine hundred seventy-five, and which were subject to the provisions of the old Uniform Commercial Code and which would be subject to this chapter as amended if they had been entered into after the effective date of the new Uniform Commercial Code and the rights, duties and interests flowing from such transactions remain valid after the latter date and may be terminated, completed, consummated or enforced as required or permitted by the new Uniform Commercial Code. Security interests arising out of such transactions which are perfected when the new Uniform Commercial Code becomes effective shall remain perfected until they lapse as provided in the new Uniform Commercial Code, and may be continued as permitted by the new Uniform Commercial Code, except as stated in section 11-105. In any instance in which a person who under the new uniform commercial code would be a transmitting utility has perfected a security interest under the provisions of subsection (5) of the former provisions of section 9-302 of this chapter, such security interest shall remain perfected with the same priority rights as if the new uniform commercial code had been in effect at the time such security interest was perfected and such person had at such time filed a financing 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 or the taking of possession was required under the old Uniform Commercial Code and which attached prior to the effective date of the new Uniform Commercial Code but was not perfected shall be deemed perfected on the effective date of the new Uniform Commercial Code if the new Uniform Commercial Code permits perfection without
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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-
fection or priority of the security interest against those persons under the new Uniform Commercial Code, the perfection and priority rights of the security interest continue until three years after the effective date of the new Uniform Commercial Code. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

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

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

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by this act), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by this act is still effective. Section 9-401 and section 9-103 determine the proper place to file
such a financing statement. Except as specified in this sub-
section, the provisions of section 9-403 (3) for continuation
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.

[Signature]

Chairman Senate Committee

[Signature]

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

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

[Signature]

Governor
PRESENTED TO THE
GOVERNOR

Date 3/15/74
Time 2:50 p.m.