WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
SENATE BILL NO. 110

(By Mr. Moreland & Mr. Hinkle)

PASSED February 21, 1979

In Effect ninety days from Passage
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Senate Bill No. 110
(By Mr. Moreland and Mr. Hinkle)
[Passed February 21, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section two hundred one, article one; section one hundred fourteen, article five; sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, one hundred seven, two hundred one, two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one, three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend article eight of said chapter forty-six by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and to amend and reenact sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six, all relating to the uniform commercial code; adopting amendments thereto generally related to investment securities; relating to general definitions; issuer's duty and privilege to honor; right to reim-
bursement; index of definitions; issuer's lien; effect of overissue; "overissue"; certificated securities negotiable; statements and instructions not negotiable; presumptions; applicability; securities transferable; action for price; registration of pledge and release of uncertificated securities; "Issuer"; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defects or defenses; effect of issuer's restrictions on transfer; effect of unauthorized signature on certificated security or initial transaction statement; completion or alteration of certificated security or initial transaction statement; rights and duties of issuer with respect to registered owners and registered pledgees; effect of signature of authenticating trustee, registrar or transfer agent; rights acquired by purchaser; "bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser; "broker"; notice to purchaser of adverse claims; staleness as notice of adverse claims; warranties on presentment and transfer of certificated securities; warranties of originators of instructions; effect of delivery without indorsement; right to compel indorsement; indorsements; instructions; effect of indorsement without delivery; indorsement of certificated security in bearer form; effect of unauthorized indorsement or instruction; effect of guaranteeing signature, indorsement or instruction; when transfer to the purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary"; duty to transfer, when completed; action against transferee based upon wrongful transfer; purchaser's right to requisites for registration of transfer, pledge or release on books; creditors' rights; no conversion by good faith conduct; statute of frauds; transfer or pledge within a central depository system; enforceability, attachment, perfection and termination of security interests; duty of issuer to register transfer, pledge or release; assurance that indorsements and instructions are effective; issuer's duty as to adverse claims; liability and nonliability for registration; lost, destroyed and stolen certificated securities; duty of authenticating trustee, transfer agent or registrar; exchangeability of securities; statements of uncertificated securities; perfection of se-
security interests in multiple state transactions and definitions and index of definitions relating thereto; attachment and enforceability of security interest; proceeds; formal requisites; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; protection of purchasers of instruments, documents and securities; priorities among conflicting security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

That section two hundred one, article one; that section one hundred fourteen, article five; that sections one hundred two, one hundred three, one hundred four, one hundred five, one hundred six, one hundred seven, two hundred one, two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, two hundred seven, two hundred eight, three hundred one. three hundred two, three hundred three, three hundred four, three hundred five, three hundred six, three hundred seven, three hundred eight, three hundred nine, three hundred ten, three hundred eleven, three hundred twelve, three hundred thirteen, three hundred fourteen, three hundred fifteen, three hundred sixteen, three hundred seventeen, three hundred eighteen, three hundred nineteen, three hundred twenty, four hundred one, four hundred two, four hundred three, four hundred four, four hundred five and four hundred six, article eight, all of chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article eight be further amended by adding thereto four new sections, designated sections one hundred eight, three hundred twenty-one, four hundred seven and four hundred eight; and that sections one hundred three, one hundred five, two hundred three, three hundred two, three hundred four, three hundred five, three hundred nine and three hundred twelve, article nine of said chapter forty-six be amended and reenacted, all to read as follows:
ARTICLE 1. GENERAL PROVISIONS.

PART 2. GENERAL DEFINITIONS

AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

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

5 (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.

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

11 (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.")

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

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

24 (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.

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

33 (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 preexisting 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, docu-
ments of title, chattel paper or certificated 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 a certificated investment security drawn, issued or indorsed 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 assign-ment 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.

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

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

(31) "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.

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

(33) "Purchaser" means a person who takes by purchase.

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

(35) "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.

(36) "Rights" includes remedies.

(37) "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 makes the lease one intended for security.

(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 adopted 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 transmission, 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 charge-back is provided for in the event of difficulties in collection; or

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

(c) by accepting delivery pursuant to a preexisting 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, type-writing or any other intentional reduction to tangible form.

ARTICLE 5. LETTERS OF CREDIT.

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

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document.
of title (section 7-507) or of a certificated security (section 8-306) or is forged or fraudulent or there is fraud in the transaction:

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

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

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

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

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

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

(c) in the event of such rejection, the issuer is entitled by charge-back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.
ARTICLE 8. INVESTMENT SECURITIES.

§46-8-102. Definitions and index of definitions.

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

(a) A “certificated security” is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

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

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

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

(b) An “uncertificated security” is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

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

(c) A “security” is either a certificated or an uncertificated security. If a security is certificated, the terms “security” and “certificated security” may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this article and not by article three of this chapter, even though it also meets the requirements of that article. This article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer,
other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this article.

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

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

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

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

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

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation;

(a) at least ninety percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of the corporation, and each of which is

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

(ii) a broker or dealer or investment company registered under the federal securities laws, or

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

(b) any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors.

(4) A "custodian bank" is a bank or trust company which is supervised and examined by state or federal
authority having supervision over banks and is acting
as custodian for a clearing corporation.

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

"Adverse claim." Section 8-302.
"Bona fide purchaser." Section 8-302.
"Broker." Section 8-303.
"Debtor." Section 9-105.
"Financial intermediary." Section 8-313.
"Guarantee of the signature." Section 8-402.
"Initial transaction statement." Section 8-408.
"Instruction." Section 8-308.
"Intermediary bank." Section 4-105.
"Issuer." Section 8-201.
"Overissue." Section 8-104.
"Secured Party." Section 9-105.
"Security Agreement." Section 9-105.

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

§46-8-103. Issuer's lien.

1 A lien upon a security in favor of an issuer thereof is
2 valid against a purchaser only if:
3 (a) the security is certificated and the right of the
4 issuer to the lien is noted conspicuously thereon; or
5 (b) the security is uncertificated and a notation of
6 the right of the issuer to the lien is contained in the
7 initial transaction statement sent to the purchaser or, if
8 his interest is transferred to him other than by regis-
9 tration of transfer, pledge, or release, the initial trans-
10 action statement sent to the registered owner or the
11 registered pledgee.

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

1 (1) The provisions of this article which validate a
2 security or compel its issue or reissue do not apply to the
3 extent that validation, issue or reissue would result in
4 overissue; but if:
5 (a) an identical security which does not constitute an
overissue is reasonably available for purchase, the person
entitled to issue or validation may compel the issuer to
purchase the security for him and either to deliver a
certificated security or to register the transfer of an
uncertificated security to him, against surrender of any
certificated security he holds; or
(b) a security is not so available for purchase, the
person entitled to issue or validation may recover from
the issuer the price he or the last purchaser for value
paid for it with interest from the date of his demand.
(2) "Overissue" means the issue of securities in excess
of the amount the issuer has corporate power to issue.
§46-8-105. Certificated securities negotiable; statements and
instructions not negotiable; presumptions.
(1) Certificated securities governed by this article are
negotiable instruments.
(2) Statements (section 8-408), notices, or the like,
sent by the issuer of uncertificated securities and in-
structions (section 8-308) are neither negotiable instru-
ments nor certificated securities.
(3) In any action on a security:
(a) unless specifically denied in the pleadings, each
signature on a certificated security, in a necessary in-
dorsement, on an initial transaction statement or on an
instruction, is admitted;
(b) if the effectiveness of a signature is put in issue
the burden of establishing it is on the party claiming
under the signature but the signature is presumed to be
genuine or authorized;
(c) if signatures on a certificated security are admitted
or established production of the security entitles a holder
to recover on it unless the defendant establishes a de-
fense or a defect going to the validity of the security;
(d) if signatures on an initial transaction statement
are admitted or established, the facts stated in the state-
ment are presumed to be true as of the time of its
issuance; and
(e) after it is shown that a defense or defect exists
the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 8-202).

§46-8-106. Applicability.
1 The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:
  (a) registration of transfer of a certificated security;
  (b) registration of transfer, pledge, or release of an uncertificated security; and
  (c) sending of statements of uncertificated securities.

§46-8-107. Securities transferable; action for price.
1 (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.
2 (2) If the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price of:
  (a) certificated securities accepted by the buyer;
  (b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and
  (c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

§46-8-108. Registration of pledge and release of uncertificated securities.
1 A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There may be no more than one registered pledge of an uncertificated security.
security at any time. The registered owner of an un-
certificated security is the person in whose name the
security is registered, even if the security is subject to a
registered pledge. The rights of a registered pledgee of
an uncertificated security under this article are ter-
minated by the registration of release.

PART 2. ISSUE—ISSUER.

§46-8-201. “Issuer.”

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

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

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

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

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

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

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

§46-8-202. Issuer’s responsibility and defenses; notice of de-
fect or defense.

(1) Even against a purchaser for value and without
notice, the terms of a security include:
(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect. This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unau-
authorized signatures (section 8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

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

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

(1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

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

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

(2) A call that has been revoked is not within subsection (1).

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

A restriction on transfer of a security imposed by the
issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

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

(b) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

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

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

(a) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

(b) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement.

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

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

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

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser
who took it for value and without notice of the incor-
rectness.

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

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

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

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

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

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

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

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

(3) The registered owner of an uncertificated security
that is subject to a registered pledge is not entitled to
registration of transfer prior to the due presentment to
the issuer of a release instruction. The exercise of con-
version rights with respect to a convertible uncertificated
security is a transfer within the meaning of this section.
Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

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

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

(c) register the release of the security from the existing pledge and register the pledge of the security to the other pledgee, if the instruction specifies the existing owner and another pledgee.

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

If an uncertificated security is subject to a registered pledge:

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

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

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

Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

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

(1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent or the like,
warrants to a purchaser for value of the certificated
security or a purchaser for value of an uncertificated
security to whom the initial transaction statement has
been sent, if the purchaser is without notice of the
particular defect that:
   (a) the certificated security or initial transaction
statement is genuine;
   (b) his own participation in the issue or registration
of the transfer, pledge or release of the security is within
his capacity and within the scope of the authority re-
ceived by him from the issuer; and
   (c) he has reasonable grounds to believe that the
security is in the form and within the amount the issuer
is authorized to issue.
(2) Unless otherwise agreed, a person by so placing
his signature does not assume responsibility for the
validity of the security in other respects.

PART 3. TRANSFER.
§46-8-301. Rights acquired by purchaser.
   (1) Upon transfer of a security to a purchaser (section
2 8-313), the purchaser acquires the rights in the security
which his transferor had or had actual authority to con-
vey unless the purchaser's rights are limited by section
5 8-302 (4).
   (2) A transferee of a limited interest acquires rights
only to the extent of the interest transferred. The cre-
ation or release of a security interest in a security is the
transfer of a limited interest in that security.

§46-8-302. “Bona fide purchaser”; “adverse claim”; title ac-
quired by bona fide purchaser.
   (1) A “bona fide purchaser” is a purchaser for value
in good faith and without notice of any adverse claim:
   (a) who takes delivery of a certificated security in
bearer form or in registered form, issued or indorsed to
him or in blank;
   (b) to whom the transfer, pledge or release of an
uncertificated security is registered on the books of the
issuer; or
9 (c) to whom a security is transferred under the provisions of paragraph (c), (d), (i), or (g) of section 8-313(1).
10 
11 (2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.
12 (3) A bona fide purchaser in addition to acquiring the rights of a purchaser (section 8-301) also acquires his interest in the security free of any adverse claim.
13 (4) Notwithstanding section 8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser.

§46-8-303. "Broker."
1 "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject.

§46-8-304. Notice to purchaser of adverse claims.
1 (1) A purchaser (including the broker for the seller or buyer but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:
2 (a) the security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
3 (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.
4 (2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom
the transfer, pledge, or release of an uncertificated se-
curity is registered is charged with notice of adverse
claims as to which the issuer has a duty under section
8-403 (4) at the time of registration and which are noted
in the initial transaction statement sent to the pur-
chaser or, if his interest is transferred to him other
than by registration of transfer, pledge, or release, the
initial transaction statement sent to the registered
owner or the registered pledgee.

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

§46-8-305. Staleness as notice of adverse claims.
1 An act or event that creates a right to immediate
performance of the principal obligation represented by
a certificated security or sets a date on or after which
a certificated security is to be presented or surrendered
for redemption or exchange does not itself consti-
tute any notice of adverse claims except in the case
of a transfer:
8 (a) after one year from any date set for presentment
or surrender for redemption or exchange; or
10 (b) after six months from any date set for payment
of money against presentation or surrender of the
security if funds are available for payment on that
date.

§46-8-306. Warranties on presentment and transfer of certifi-
cated securities; warranties of originators of in-
structions.
1 (1) A person who presents a certificated security for
2 registration of transfer or for payment or exchange
warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value and without notice of adverse claims who receives a new, reissued or reregistered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (section 8-311) in a necessary indorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:
(a) his transfer is effective and rightful;
(b) the security is genuine and has not been materially altered; and
(c) he knows of no fact which might impair the validity of the security.

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who rede­livers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:
(a) he is an appropriate person to originate the instruction; and
(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants
to any person specially guaranteeing his signature (subsection 8-312 (3)) that:
(a) he is an appropriate person to originate the instruction; and
(b) at the time the instruction is presented to the issuer
(i) he will be entitled to the registration of transfer, pledge, or release; and
(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.
(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (section 8-312 (6)) that:
(a) he is an appropriate person to originate the instruction;
(b) the uncertificated security referred to therein is valid; and
(c) at the time the instruction is presented to the issuer
(i) the transferor will be entitled to the registration of transfer, pledge, or release;
(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and
(iii) the requested transfer, pledge, or release will be rightful.
(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third
person who is a purchaser for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c) (ii) and (c) (iii) of subsection (7).

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

(a) his transfer is effective and rightful; and
(b) the uncertificated security is valid.

(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

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

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

§46-8-308. Indorsements; instructions.

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

2 (2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.
(3) An indorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

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

(5) An instruction originated by an appropriate person is:

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

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

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

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

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or
(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), "an appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;
(b) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining
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§46-8-309. Effect of indorsement without delivery.

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

fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;
(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian or like fiduciary;
(d) if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;
(e) a person having power to sign under applicable law or controlling instrument; and
(f) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

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

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

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge or release, does not render his indorsement or an instruction originated by him unauthorized for the purposes of this article.
§46-8-310. Indorsement of certificated security in bearer form.
An indorsement of a certificated security in bearer form may give notice of adverse claims (section 8-304) but does not otherwise affect any right to registration the holder possesses.

§46-8-311. Effect of unauthorized indorsement or instruction.
Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:
(a) he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued or reregistered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and
(b) an issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (section 8-404).

§46-8-312. Effect of guaranteeing signature, indorsement or instruction.
(1) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:
(a) the signature was genuine;
(b) the signer was an appropriate person to indorse (section 8-308); and
(c) the signer had legal capacity to sign.
(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:
(a) the signature was genuine;
(b) the signer was an appropriate person to originate the instruction (section 8-308) if the person specified in
the instruction as the registered owner or registered
pledgee of the uncertificated security was, in fact, the
registered owner or registered pledgee of such security,
as to which fact the signature guarantor makes no war-
ranty;
(c) the signer had legal capacity to sign; and
(d) the taxpayer identification number, if any, appear-
ing on the instruction as that of the registered owner or
registered pledgee was the taxpayer identification number
of the signer or of the owner or pledgee for whom the
signer was acting.
(3) Any person specially guaranteeing the signature of
the originator of an instruction makes not only the war-
ranties of a signature guarantor (subsection (2)) but also
warrants that at the time the instruction is presented to
the issuer:
(a) the person specified in the instruction as the regis-
tered owner or registered pledgee of the uncertificated
security will be the registered owner or registered pledg-
ee; and
(b) the transfer, pledge, or release of the uncertificated
security requested in the instruction will be registered by
the issuer free from all liens, security interests, restric-
tions, and claims other than those specified in the in-
struction.
(4) The guarantor under subsections (1) and (2) or
the special guarantor under subsection (3) does not
otherwise warrant the rightfulness of the particular
transfer, pledge, or release.
(5) Any person guaranteeing an indorsement of a
certificated security makes not only the warranties of a
signature guarantor under subsection (1) but also war-
rants the rightfulness of the particular transfer in all
respects.
(6) Any person guaranteeing an instruction requesting
the transfer, pledge, or release of an uncertificated secu-
ity makes not only the warranties of a special signature
guarantor under subsection (3) but also warrants the
rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of indorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

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

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

(1) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

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

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

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

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

(i) a specific certificated security in the financial intermediary’s possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary’s possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the a-
count of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

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

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

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

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

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

(2) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (c), (d), (i) and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (d) (ii) and (d) (iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser, the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

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

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

1 (1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to transfer at the time he:
(i) places a certificated security in the possession of the selling broker or of a person designated by the broker;

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

(iii) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

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

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

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

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

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within thirty days thereafter; or

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

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

(a) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;
(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or
(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

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

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

(1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser may:
(a) reclaim possession of the certificated security wrongfully transferred;
(b) obtain possession of any new certificated security representing all or part of the same rights;
(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or
(d) have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this article on unauthorized indorsements (section 8-311).

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation.
§46-8-316. Purchaser's right to requisites for registration of transfer, pledge or release on books.

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

§46-8-317. Creditors' rights.

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

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

3 (3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

4 (4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the
(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

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

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

An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received certificated securities and sold, pledged or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities.

§46-8-319. Statute of frauds.

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

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

(b) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within ten
days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration or payment;

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

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

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

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

(a) if certificated,

(i) is in the custody of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them; and

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

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.
(2) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers, pledges or releases of the same security.

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

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

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

§46-8-321. Enforceability, attachment, perfection and termination of security interests.

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

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under paragraph (i) of section 8-313(1) becomes unperfected after twenty-one days unless, within that time, the requirements for transfer under any other provision of section 8-313(1) are satisfied.
(3) A security interest in a security is subject to the provisions of article nine of this chapter, but:
(a) no filing is required to perfect the security interest; and
(b) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in paragraph (h), (i), or (j) of section 8-313(1).

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

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of section 8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after twenty-one days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of section 8-313(1).

PART 4. REGISTRATION.
§46-8-401. Duty of issuer to register transfer, pledge or release.

If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge or release as requested if:
(a) the security is indorsed or the instruction was originated by the appropriate person or persons (section 8-308);
(b) reasonable assurance is given that those indorsements or instructions are genuine and effective (section 8-402);
(c) the issuer has no duty as to adverse claims or has discharged the duty (section 8-403);
(d) any applicable law relating to the collection of taxes has been complied with; and
(e) the transfer, pledge or release is in fact rightful or is to a bona fide purchaser.

(2) If an issuer is under a duty to register a transfer, pledge or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge or release.

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

(1) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (section 8-308) is genuine and effective:
(a) in all cases, a guarantee of the signature (section 8-312 (1) or (2)) of the person indorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;
(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;
(c) if the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;
(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and
(e) if the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person
reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

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

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

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

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

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

(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or reregistered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security
is a part, and provides an address for communications
directed to the claimant; or

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

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

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

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

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

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

(b) an issuer registering transfer on an indorsement..
by a fiduciary is not bound to inquire whether the
transfer is made in compliance with a controlling in-
strument or with the law of the state having jurisdiction
of the fiduciary relationship, including any law requiring
the fiduciary to obtain court approval of the transfer;
and

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

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

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

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

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

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

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

(a) including a notation of the claim in any state-
ments sent with respect to the security under sections
8-408 (3), (6), and (7); and
(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under section 8-408.

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

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

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

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

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

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

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

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

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

(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on
demand shall deliver a like security to the true owner unless:
(a) the registration was pursuant to subsection (1);
(b) the owner is precluded from asserting any claim for registering the transfer under section 8-405 (1); or
(c) the delivery would result in overissue, in which case the issuer's liability is governed by section 8-104.

(3) If an issuer has improperly registered a transfer, pledge or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:
(a) the registration was pursuant to subsection (1); or
(b) the registration would result in overissue, in which case the issuer's liability is governed by section 8-104.

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

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

(2) If the owner of a certificated security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:
(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
(b) files with the issuer a sufficient indemnity bond; and
(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of trans-
fer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof.

§46-8-406. Duty of authenticating trustee, transfer agent or registrar.
1 (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges and releases of its uncertificated securities, in the issue of new securities or in the cancellation of surrendered securities:
(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
(b) with regard to the particular functions he performs, he has the same obligations to the holder or owner of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

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

§46-8-407. Exchangeability of securities.
1 (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has
discharged the duty (section 8-403), shall issue to the
person or a person designated by him an equivalent un-
certificated security subject to all liens, restrictions, and
claims that were noted on the certificated security.

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

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

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

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

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

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

(b) the number of shares or units transferred;

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

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

(e) the date the transfer was registered.
Within two business days after the pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;
(b) the number of shares or units pledged;
(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;
(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
(e) the date the pledge was registered.

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

(a) a description of the issue of which the uncertificated security is a part;
(b) the number of shares or units released from pledge;
(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;
(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
(e) the date the release was registered.

An "initial transaction statement" is the statement sent to:
(a) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1);
(b) the registered pledgee pursuant to subsection (2);
or
(c) the registered owner pursuant to subsection (3).

Each initial transaction statement shall be signed by or on behalf of the issuer and shall be identified as "initial transaction statement".

(5) Within two business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:
(a) a description of the issue of which the uncertificated security is a part;
(b) the number of shares or units transferred;
(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and
(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:
(a) a description of the issue of which the uncertificated security is a part;
(b) the name and address and any taxpayer identification number of the registered owner;
(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;
(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and
(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under section 8-403(4)) to which the uncertificated security is subject.
security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

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

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

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

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

and

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

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

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

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


(1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instru-
ments 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 nonperfection 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 nonperfection 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 nonperfection 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 security 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 (other than uncertificated securities) 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 nonperfection 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 nonperfection 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 nonperfection 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.

(6) Uncertificated securities.

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

§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 interest 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 instrument or a series of instruments, the group of writings taken together constitutes chattel paper;
(c) "Collateral" means the property subject to a security 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
growing crops;

(i) "Instrument" means a negotiable instrument (de-
finite in section 3-104), or a certificated 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 agreement 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, in-
cluding 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
representative 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
transmission business, the transmission of goods by pipe-
line, or the transmission or the production and trans-
mision of electricity, steam, gas or water, or the provi-
sion of sewer service.

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

"Account." Section 9-106.

"Attach." Section 9-203.

"Construction mortgage." Section 9-313 (1).
§46-9-203. Attachment and enforceability of security interest; proceeds; formal requisites.

1 (1) Subject to the provisions of section 4-208 on the security interest of a collecting bank, section 8-321 on security interests in securities 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:

2 (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;

3 (b) value has been given; and

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

5 (2) A security interest attaches when it becomes enforceable against the debtor with respect to the collat-
erally. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement 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.

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

(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 in securities (section 8-321) 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 as-
signee thereunder.

(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) The filing of a financing statement otherwise re-
quired 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-
ente-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
provisions 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 per-
fected only by compliance therewith except as provided
in section 9-103 on multiple state transactions. Duration
and renewal of perfection of a security interest per-
fected 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, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

1 (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (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 security 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 (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 (4) A security interest in instruments (other than certificated securities) 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 (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 (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

6 (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, pro-
cessing 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.

1 A security interest in letters of credit and advices of credit (subsection (2) (a) of section 5-116), goods, instruments (other than certificated securities), 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.

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

1 Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 7-501) or a bona fide purchaser of a security (section 8-302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.
§46-9-312. Priorities among conflicting security interests in the same collateral.

1. (1) The rules of priority stated in other sections of this 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. (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 perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

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

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

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

   (c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

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

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security 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, the taking of possession, or under section 8-321 on securities, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take 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 ___ appears ___ this the ___

day of ___ March ___ 1979.

[Signature]
Governor