WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

SENATE BILL NO. 441

(By Senator GRUBS)

PASSED MARCH 11, 1995
In Effect 30 Days After Passage
AN ACT to amend and reenact sections one hundred five and two hundred six, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one hundred four, article four of said chapter; to amend and reenact section one hundred fourteen, article five of said chapter; to amend and reenact article eight of said chapter; to amend and reenact sections one hundred three, one hundred five, one hundred six, two hundred three, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred nine and three hundred twelve, article nine, of said chapter; and to further amend said article by adding thereto two new sections, designated sections one hundred fifteen and one hundred sixteen, all relating to the uniform commercial code (UCC); investment securities; territorial application of the UCC; parties' power to choose applicable law; statute of frauds for kinds of personal property not otherwise covered; bank deposits and collections; definitions; letters of credit; issuer's duty and privilege to honor; right to reimbursement; investment
securities; short title; definitions; rules for determining whether certain obligations and interests are securities or financial assets; acquisition of security or financial asset or interest therein; notice of adverse claim; control; whether indorsement, instruction or entitlement order is effective; warranties in direct holding; warranties in indirect holding; applicability; choice of law; clearing corporation rules; creditor's legal process; statute of frauds inapplicable; evidentiary rules concerning certificated securities; securities intermediary and others not liable to adverse claimant; securities intermediary as purchaser for value; issuer; issuer's responsibility and defenses; notice of defect or defense; staleness as notice of defect or defense; effect of issuer's restriction on transfer; effect of unauthorized signature on security certificate; completion or alteration of security certificate; rights and duties of issuer with respect to registered owners; effect of signature of authenticating trustee, registrar or transfer agent; issuer's lien; overissue; transfer of certificated and uncertificated securities; delivery; rights of purchaser; protected purchaser; indorsement; instruction; effect of guaranteeing signature, indorsement or instruction; purchaser's right to requisites for registration of transfer; registration; duty of issuer to register transfer; assurance that indorsement or instruction is effective; demand that issuer not register transfer; wrongful registration; replacement of lost, destroyed or wrongfully taken security certificate; obligation to notify issuer of lost, destroyed or wrongfully taken security certificate; authenticating trustee, transfer agent and registrar; security entitlements; securities account; acquisition of security entitlement from securities intermediary; assertion of adverse claim against entitlement holder; property interest of entitlement holder in financial asset held by securities intermediary; duty of securities intermediary to maintain financial asset; duty of securities intermediary with respect to payments and distributions; duty of securities intermediary to exercise rights as directed by entitlement holder; duty of securities intermediary to comply with entitlement order; duty of securities
intermediary to change entitlement holder's position to another form of security holding; specification of duties of securities intermediary by other statute or regulation; manner of performance of duties by securities intermediary and exercise of rights of entitlement holder; rights of purchaser of security entitlement from entitlement holder; priority among security interests and entitlement holders; savings clause; secured transactions and sales of accounts and chattel paper; perfection of security interests in multiple state transactions; definitions; account and general intangibles defined; investment property; security interest arising in purchase or delivery of financial asset; attachment and enforceability of security interest; proceeds; formal requisites; persons who take priority over unperfected security interests; rights of lien creditor; when filing is required to perfect security interest; security interests to which filing provisions of this article do not apply; perfection of security interest in instruments, documents and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession; when possession by secured party perfects security interest without filing; proceeds; secured party's rights on disposition of collateral; protection of purchasers of instruments, documents and securities; and priorities among conflicting security interests in the same collateral.

Be it enacted by the Legislature of West Virginia:

That sections one hundred five and two hundred six, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one hundred four, article four of said chapter be amended and reenacted; that section one hundred fourteen, article five of said chapter be amended and reenacted; that article eight of said chapter be amended and reenacted; that sections one hundred three, one hundred five, one hundred six, two hundred three, three hundred one, three hundred two, three hundred four, three hundred five, three hundred six, three hundred nine and three hundred twelve,
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article nine of said chapter be amended and reenacted; and
that said article be further amended by adding thereto two
new sections, designated sections one hundred fifteen and one
hundred sixteen, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

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

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

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

3 Rights of creditors against sold goods. Section 2-402.
4 Applicability of the article on bank deposits and
collections. Section 4-102.
5 Applicability of the article on investment securities.
Section 8-110.
6 Perfection provisions of the article on secured transac-
tions. Section 9-103.

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

1 (1) Except in the cases described in subsection (2) of
this section a contract for the sale of personal property
is not enforceable by way of action or defense beyond
five thousand dollars in amount or value of remedy
unless there is some writing which indicates that a
contract for sale has been made between the parties at a
defined or stated price, reasonably identifies the subject
matter, and is signed by the party against whom enforce-
ment is sought or by his authorized agent.

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

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

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

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

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

(2) “Afternoon” means the period of a day between
noon and midnight;

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

(4) “Clearing house” means an association of banks or
other payors regularly clearing items;

(5) “Customer” means a person having an account with
a bank or for whom a bank has agreed to collect items,
including a bank that maintains an account at another
bank;

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

(7) “Draft” means a draft as defined in section 3-104 or
an item, other than an instrument, that is an order;
(8) "Drawee" means a person ordered in a draft to make payment;

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

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

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

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

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

"Agreement for electronic presentment" Section 4-110.

"Bank" Section 4-105.

"Collecting bank" Section 4-105.

"Depositary bank" Section 4-105.

"Intermediary bank" Section 4-105.

"Payor bank" Section 4-105.

"Presenting bank" Section 4-105.

"Presentment notice" Section 4-110.
(c) The following definitions in other articles of this chapter apply to this article:

- "Acceptance"  
- "Alteration"  
- "Cashier's check"  
- "Certificate of deposit"  
- "Certified check"  
- "Check"  
- "Draft"  
- "Good faith"  
- "Holder in due course"  
- "Instrument"  
- "Notice of dishonor"  
- "Order"  
- "Ordinary care"  
- "Person entitled to enforce"  
- "Presentment"  
- "Promise"  
- "Prove"  
- "Teller's check"  
- "Unauthorized signature"

(d) In addition article one contains general definitions and principles of construction and interpretation applicable throughout this article.

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 pay-
ment 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 8-108) 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) of this section failure to reject documents within the time specified in subdivision (b) of said subsection constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

ARTICLE 8. INVESTMENT SECURITIES.

PART 1. SHORT TITLE AND GENERAL MATTERS.

§46-8-101. Short title.

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

§46-8-102. Definitions.

(a) In this article:

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

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

(3) “Broker” means a person defined as a broker or
dealer under the federal securities laws, but without
excluding a bank acting in that capacity.

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

(5) "Clearing corporation" means:

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

(ii) A federal reserve bank; or

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

(6) "Communicate" means to:

(i) Send a signed writing; or

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

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

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

(9) "Financial asset", except as otherwise provided in
section 8-103, means:
(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate or a security entitlement.

(10) "Good faith", for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

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

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

(i) The security certificate specifies a person entitled to the security; and
(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

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

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

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

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

(iii) Which:

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

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

(16) "Security certificate" means a certificate representing a security.

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

(18) "Uncertificated security" means a security that is not represented by a certificate.
(b) Other definitions applying to this article and the sections in which they appear are:

- "Appropriate person" Section 8-107
- "Control" Section 8-106
- "Delivery" Section 8-301
- "Investment company security" Section 8-103
- "Issuer" Section 8-201
- "Overissue" Section 8-210
- "Protected purchaser" Section 8-303
- "Securities account" Section 8-501

(c) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule.

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

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

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity con-
tract issued by an insurance company.

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

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

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

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

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

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

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

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

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

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security
entitlement, or other financial asset held by the securities intermediary only to the extent provided in section 8-503.

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

§46-8-105. Notice of adverse claim.

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

(1) The person knows of the adverse claim;

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

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

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

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemp-
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24 tion or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:
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26 (1) One year after a date set for presentment or surrender for redemption or exchange; or
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28 (2) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.
29
30 (d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:
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32 (1) Whether in bearer or registered form, has been indorsed “for collection” or “for surrender” or for some other purpose not involving transfer; or
33
34 (2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.
35
36 (e) Filing of a financing statement under article nine is not notice of an adverse claim to a financial asset.

§46-8-106. Control.

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

2 (b) A purchaser has “control” of a certificated security in registered form if the certificated security is delivered to the purchaser and:

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

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

5 (c) A purchaser has “control” of an uncertificated security if:
(1) The uncertificated security is delivered to the purchaser; or
(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:
(1) The purchaser becomes the entitlement holder; or
(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

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

(f) A purchaser who has satisfied the requirements of subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section has control even if the registered owner in the case of subdivision (2), subsection (c) of this section, or the entitlement holder in the case of subdivision (2), subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (2), subsection (c) of this section or subdivision (2), subsection (d) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities
intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

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

(a) “Appropriate person” means:

(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

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

(3) With respect to an entitlement order, the entitlement holder;

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

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

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

(1) It is made by the appropriate person;

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

(3) The appropriate person has ratified it or is other-
wise precluded from asserting its ineffectiveness.

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

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

(2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

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

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

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

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

(1) The certificate is genuine and has not been materially altered;

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

(3) There is no adverse claim to the security;
(4) The transfer does not violate any restriction on transfer;

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

(6) The transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

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

(2) The security is valid;

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

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

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

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

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

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

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

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;
(3) The transfer does not violate any restriction on transfer; and
(4) The transfer is otherwise effective and rightful.
(d) A person who indorses a security certificate warrants to the issuer that:
(1) There is no adverse claim to the security; and
(2) The indorsement is effective.
(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:
(1) The instruction is effective; and
(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.
(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.
(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.
(h) A secured party who redelivers a security certificate received, or after payment and on order of the
debtor delivers the security certificate to another person,
makes only the warranties of an agent under subsection (g) of this section.
(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b) of 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 the customer.

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

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

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in section 8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertifi-
cated security, the securities intermediary makes to the
entitlement holder the warranties specified in section 8-
108(a) or (b).

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

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

(1) The validity of a security;
(2) The rights and duties of the issuer with respect to
registration of transfer;
(3) The effectiveness of registration of transfer by the
issuer;
(4) Whether the issuer owes any duties to an adverse
claimant to a security; and
(5) Whether an adverse claim can be asserted against
a person to whom transfer of a certificated or uncertifi-
cated security is registered or a person who obtains
control of an uncertificated security.

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

(1) Acquisition of a security entitlement from the
securities intermediary;
(2) The rights and duties of the securities intermediary
and entitlement holder arising out of a security entitle-
ment;
(3) Whether the securities intermediary owes any
duties to an adverse claimant to a security entitlement;
and
(4) Whether an adverse claim can be asserted against
a person who acquires a security entitlement from the
securities intermediary or a person who purchases a
security entitlement or interest therein from an entitle-
ment holder.
(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

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

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

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

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

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

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in
subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

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

§46-8-111. Clearing corporation rules.

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

§46-8-112. Creditor's legal process.

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

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

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise
(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

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

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

§46-8-114. Evidentiary rules concerning certificated securities.

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

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

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.
If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted.

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

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order or other legal process; or

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

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

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

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the
security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

PART 2. ISSUE AND ISSUER.

§46-8-201. Issuer.

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

(1) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent or the like, to evidence a share, participation or other interest in its property or in an enterprise or to evidence its duty to perform an obligation represented by the certificate;

(2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

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

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

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

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

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms
stated on the certificate and terms made part of the
security by reference on the certificate to another
instrument, indenture, or document or to a Constitution,
statute, ordinance, rule, regulation, order or the like, to
the extent the terms referred to do not conflict with
terms stated on the certificate. A reference under this
subsection does not of itself charge a purchaser for value
with notice of a defect going to the validity of the
security, even if the certificate expressly states that a
person accepting it admits notice. The terms of an
uncertificated security include those stated in any
instrument, indenture, or document or in a Constitution,
statute, ordinance, rule, regulation, order or the like,
pursuant to which the security is issued.

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

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

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

(c) Except as otherwise provided in section 8-205, lack
of genuineness of a certificated security is a complete
defense, even against a purchaser for value and without
(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security “when, as and if issued” or “when distributed” 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.

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

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

1 After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting 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 the act or event:

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

1 (2) Is not covered by subdivision (1) of this section and the purchaser takes the security more than two years
§46-8-204. Effect of issuer's restriction on transfer.

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

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

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

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

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

(1) An authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

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

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

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

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

(2) Even if the blanks are incorrectly filled in, the
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security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

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

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

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

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

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

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

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

(b) Unless otherwise agreed, a person signing under
subsection (a) of this section does not assume responsibility for the validity of the security in other respects.

§46-8-209. Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

§46-8-210. Overissue.

(a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

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

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

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

PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

§46-8-301. Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:
(1) The purchaser acquires possession of the security certificate;
(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or
(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

§46-8-302. Rights of purchaser.

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

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

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

§46-8-303. Protected purchaser.
(a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

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

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

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

§46-8-304. Indorsement.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

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

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.
(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

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

§46-8-305. Instruction.

(a) 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.

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

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

(a) A person who guarantees a signature of an indorsor of a security certificate warrants that at the time of signing:

(1) The signature was genuine;

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

(3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the
agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

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

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

(2) The transfer of the uncertificated security 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.

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

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

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

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.
(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

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

1 Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

PART 4. REGISTRATION.

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

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

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

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

12 (3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (section 8-402);
4 (4) Any applicable law relating to the collection of taxes has been complied with;

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

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

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

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

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

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

(1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

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

(3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to section 8-107(a)(4) or (a)(5), appropriate evidence of appointment or incumbency;
(4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

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

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

(c) In this section:

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

(2) "Appropriate evidence of appointment or incumbency" means:

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

(ii) 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 an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considered appropriate.

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

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security
is a part and provides an address for communications
directed to the person making the demand. The demand
is effective only if it is received by the issuer at a time
and in a manner affording the issuer reasonable opportu-
nity to act on it.

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

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

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

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

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

(d) An issuer is not liable to a person who initiated a
demand that the issuer not register transfer for any loss
the person suffers as a result of registration of a transfer
pursuant to an effective indorsement or instruction if the
person who initiated the demand does not, within the
time stated in the issuer's communication, either:
(1) Obtain an appropriate restraining order, injunction or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File 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 refusing to register the transfer.

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

§46-8-404. Wrongful registration.

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

(1) Pursuant to an ineffective indorsement or instruction;

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

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

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

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue
would result, the issuer's liability to provide the person
with a like security is governed by section 8-210.

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

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

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

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

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

and

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

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

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

If a security certificate has been lost, apparently
destroyed, or wrongfully taken, and the owner fails to
notify the issuer of that fact within a reasonable time
§46-8-407. Authenticating trustee, transfer agent, and registrar.

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

PART 5. SECURITY ENTITLEMENTS.

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

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

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

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

(2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person’s securities account; or
(3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

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

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

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

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

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

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

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in section 8-511.
(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

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

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

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

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

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

(4) The purchaser is not protected under subsection (e) of this section. The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.
(e) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 8-504.

§46-8-504. Duty of securities intermediary to maintain financial asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

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

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

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

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security
§46-8-505. Duty of securities intermediary with respect to payments and distributions.

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

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

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

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

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

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

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

§46-8-507. Duty of securities intermediary to comply with entitlement order.
(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

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

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

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

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

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

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

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

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

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

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

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

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

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8-504 through 8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation or rule.
§46-8-510. Rights of purchaser of security entitlement from entitlement holder.

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

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

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

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

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

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a
securities intermediary has priority over claims of the
securities intermediary's entitlement holders who have
security entitlements with respect to that financial asset
if the creditor has control over the financial asset.

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

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

§46-8-601. Savings clause.
(a) This article does not affect an action or proceeding
commenced before this article takes effect.

(b) If a security interest in a security is perfected at the
date this article takes effect and the action by which the
security interest was perfected would suffice to perfect
a security interest under this article, no further action is
required to continue perfection. If a security interest in
a security is perfected at the date this article takes effect
but the action by which the security interest was per­
fected would not suffice to perfect a security interest
under this article, the security interest remains perfected
for a period of four months after the effective date and
continues perfected thereafter if appropriate action to
perfect under this article is taken within that period. If
a security interest is perfected at the date this article
takes effect and the security interest can be perfected by
filing under this article, a financing statement signed by
the secured party instead of the debtor may be filed
within that period to continue perfection or thereafter to
perfect.
ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.


(1) Documents, instruments and ordinary goods. —

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

(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 paragraph (i) of this subdivision, 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 paragraphs (i) and (ii) of this subdivision.

(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 subdivision (d) subsection (1) of this section.
(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) of this section on
minerals) and general intangibles (other than uncertifi-
cated 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) of this section.

(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 non-
perfection of the security interest through filing. In the
alternative, if the debtor is located in a jurisdiction
which is not a part of the United States or Canada and
the collateral is accounts or general intangibles for
money due or to become due, the security interest may be
perfected by notification to the account debtor. As used
in this paragraph, "United States" includes its territories
and possessions and the Commonwealth of Puerto Rico.

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

(e) A security interest perfected under the law of the
jurisdiction of the location of the debtor is perfected
until the expiration of four months after a change of the
debtor's location to another jurisdiction, or until perfec-
tion would have ceased by the law of the first jurisdic-
tion, 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) of this
section apply to a possessory security interest in chattel
paper. The rules stated for accounts in subsection (3) of
this section apply to a nonpossessory 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) Investment property. —

(a) This subsection applies to investment property.

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

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

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

(e) Except as otherwise provided in paragraph (f),
perfection of a security interest, the effect of perfection
or nonperfection, and the priority of a security interest
in a commodity contract or commodity account are
governed by the local law of the commodity intermedi-
ary's jurisdiction. The following rules determine a
“commodity intermediary's jurisdiction” for purposes of
this paragraph:
(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in paragraph (i) of this subdivision, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in paragraphs (i) or (ii) of this subdivision, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraph (i) or (ii) of this subdivision and an account statement does not identify an office serving the commodity customer's account as provided in paragraph (iii) of this subdivision, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located.

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

1 (1) In this article unless the context otherwise requires:
(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\(^{1}\) 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, investment property, commodity contracts, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods\(^{2}\) 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\(^{3}\) means a negotiable instrument (defined in section 3-104), 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. The term does not include investment property;

(j) "Mortgage\(^{4}\) 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\(^{5}\) 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\(^{6}\) means an agreement which creates or provides for a security interest;

(m) "Secured party\(^{7}\) means a lender, seller or other person in whose favor there is a security interest, including 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\(^{8}\) 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
pipeline, or the transmission or the production and
transmission of electricity, steam, gas or water, or the
provision of sewer service.

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

- "Account". Section 9-106.
- "Attach". Section 9-203.
- "Commodity contract". Section 9-115.
- "Commodity customer". Section 9-115.
- "Commodity intermediary". Section 9-115.
- "Construction mortgage". Section 9-313(1).
- "Consumer goods". Section 9-109(1).
- "Control". Section 9-115.
- "Equipment". Section 9-109(2).
- "Farm products". Section 9-109(3).
- "Fixture". Section 9-313(1).
- "Fixture filing". Section 9-313(1).
- "General intangibles". Section 9-106.
- "Inventory". Section 9-109(4).
- "Investment property". Section 9-115.
- "Lien creditor". Section 9-301(3).
- "Proceeds". Section 9-306(1).
- "Purchase money security interest". Section 9-107.
- "United States". Section 9-103.

(3) The following definitions in other articles apply to
Section 8-102. Definitions: “Broker”.

Section 8-102. “Certificated security”.

Section 3-104. “Check”.

Section 8-102. “Clearing corporation”.

Section 2-106. “Contract for sale”.

Section 8-106. “Control”.

Section 8-301. “Delivery”.

Section 8-102. “Entitlement holder”.

Section 8-102. “Financial asset”.

Section 3-302. “Holder in due course”.

Section 3-104. “Note”.

Section 2-106. “Sale”.

Section 8-102. “Securities intermediary”.

Section 8-102. “Security”.

Section 8-102. “Security certificate”.

Section 8-102. “Security entitlement”.

Section 8-102. “Uncertificated security”.

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


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

§46-9-115. Investment property.

1 (1) In this article:
2 (a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
3 (b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:
4 (i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or
5 (ii) Traded on a foreign commodity board of trade, exchange or market, and is carried on the books of a commodity intermediary for a commodity customer.
6 (c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.
7 (d) "Commodity intermediary" means:
8 (i) A person who is registered as a futures commission merchant under the federal commodities laws; or
9 (ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.
10 (e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in section 8-106. A secured party has control over a commodity contract if by agreement
among the commodity customer, the commodity
intermediary, and the secured party, the commodity
intermediary has agreed that it will apply any value
distributed on account of the commodity contract as
directed by the secured party without further consent by
the commodity customer. If a commodity customer
grants a security interest in a commodity contract to its
own commodity intermediary, the commodity
intermediary as secured party has control. A secured
party has control over a securities account or commodity
account if the secured party has control over all security
entitlements or commodity contracts carried in the
securities account or commodity account.

(f) "Investment property" means:

(i) A security, whether certificated or uncertificated;
(ii) A security entitlement;
(iii) A securities account;
(iv) A commodity contract; or
(v) A commodity account.

(2) Attachment or perfection of a security interest in a
securities account is also attachment or perfection of a
security interest in all security entitlements carried in
the securities account. Attachment or perfection of a
security interest in a commodity account is also
attachment or perfection of a security interest in all
commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement
or financing statement is sufficient to create or perfect
a security interest in a certificated security,
uncertificated security, security entitlement, securities
account, commodity contract or commodity account
whether it describes the collateral by those terms, or as
investment property, or by description of the underlying
security, financial asset or commodity contract. A
description of investment property collateral in a
security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure or by any other method, if the identity of the collateral is objectively determinable.

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

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

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

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

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

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

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

(b) Except as otherwise provided in subdivision (c) and
(d) of this subsection, conflicting security interests of
secured parties each of whom has control rank equally.

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

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

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

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

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

(1) If a person buys a financial asset through a
securities intermediary in a transaction in which the
buyer is obligated to pay the purchase price to the
securities intermediary at the time of the purchase and
the securities intermediary credits the financial asset to
the buyer's securities account before the buyer pays the
securities intermediary, the securities intermediary has
a security interest in the buyer's security entitlement
securing the buyer's obligation to pay. A security
agreement is not required for attachment or
enforceability of the security interest and the security
interest is automatically perfected.

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

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

(1) Subject to the provisions of section 4-208 on the
security interest of a collecting bank, sections 9-115 and
9-116 on security interests in investment property, and
section 9-113 on a security interest arising under the
article on sales, a security interest is not enforceable
against the debtor or third parties with respect to the
collateral and does not attach unless:

(a) The collateral is in the possession of the secured
party pursuant to agreement, the collateral is investment
property and the secured party has control 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;
(b) Value has been given; and
(c) The debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) of this section 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 seven-a, chapter forty-seven of this code, relating to small loans and in case of conflict between the provisions of this article and article seven-a, chapter forty-seven of this code 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.

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

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

(a) Persons entitled to priority under section 9-312;
(b) A person who becomes a lien creditor before the security interest is perfected;
(c) In the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business; or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is
(d) In the case of accounts, general intangibles and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

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

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

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

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

(1) 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, certificated securities or documents without delivery under section 9-304 or in proceeds for
a ten-day period under section 9-306;

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

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

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;

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

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

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

(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 required by this article is not necessary or effective to perfect a security interest in property subject to:

(a) A statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this article for filing of the security interest; or
(b) The following statute of this state: Chapter seventeen-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) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this article.

§46-9-304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 9-306 on proceeds.

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

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

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

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

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

(6) After the twenty-one-day period in subsections (4)
and (5) of this section 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, money, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.


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

2. (2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.
(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

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

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

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

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

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

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

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

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

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

(i) Subject to any right of setoff; and

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

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

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

(b) An unpaid transferee of the chattel paper has a
security interest in the goods against the transferor.
Such security interest is prior to a security interest
asserted under paragraph (a) to the extent that the
transferee of the chattel paper was entitled to priority
(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under subdivision (a) of this subsection.

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

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

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 protected purchaser of a security (section 8-303) 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) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: Section 4-210 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; section 9-115 on security interests in investment property.

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

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

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

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

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

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

43 (4) A purchase money security interest in collateral
44 other than inventory has priority over a conflicting
45 security interest in the same collateral or its proceeds if
46 the purchase money security interest is perfected at the
47 time the debtor receives possession of the collateral or
48 within twenty days thereafter.
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) of this section 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 9-115 or section 9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) or (8) of this section 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee
Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ......................................... this the ........................................

day of .................................................., 1995.

Governor