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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



# ENROLLED

*COMMITTEE SUBSTITUTE FOR*

SENATE BILL NO. 469

(By Senator Minard, et al)



PASSED MARCH 3, 2000

In Effect NINETY DAYS FROM Passage

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SENATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 469

(BY SENATORS MINARD, REDD, ANDERSON, BOWMAN,  
DAWSON, UNGER AND MINEAR, *original sponsors*)

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[Passed March 3, 2000; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one hundred five and two hundred one, article one, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred three, two hundred ten, three hundred twenty-six, five hundred two and seven hundred sixteen, article two of said chapter; to amend and reenact sections one hundred three, three hundred three, three hundred seven and three hundred nine, article two-a of said chapter; to amend and reenact section two hundred ten, article four of said chapter; to amend and reenact section one hundred eighteen, article five of said chapter; to amend and reenact section five hundred three,

article seven of said chapter; to amend and reenact sections one hundred three, one hundred six, one hundred ten, three hundred one, three hundred two and five hundred ten, article eight of said chapter; to amend and reenact article nine of said chapter; and to amend article two, chapter forty-six-a of said code by adding thereto a new section, designated section one hundred nineteen-a, all relating generally to secured transactions; revising the secured transaction provisions of the uniform commercial code; revising conforming provisions of the uniform commercial code; establishing applicable law; redefining terms; providing for sales; establishing definitions by reference; providing for delegation of power and assignment of rights; clarifying certain types of sales; establishing buyer's rights when seller fails to perform; providing for the buyer's right of replevin; providing for leases; establishing definitions by reference; setting forth rights of parties; providing for lien priority; establishing rights of parties when goods become fixtures; revising code references for purposes of bank deposits; providing for letters of credit and establishing priorities of security interests therein; revising code references pertaining to warehouse receipts; revising code references pertaining to investment securities; updating provisions governing "control" of security entitlement; clarifying governing law; establishing requirements for transfer of certificated and uncertificated securities; providing for rights of purchasers; establishing new provisions for transactions secured by personal property; setting forth short title; defining terms; providing for purchase-money security interests; providing for a security interest in crops; setting forth requirements to control deposit accounts, electronic chattel paper, investment property and letter-of-credit rights; providing for the sufficiency of descriptions; establishing scope of article; providing for security interests and the effectiveness thereof; establishing that title to collateral is immaterial; providing for the attachment and enforceability of security interest proceeds; providing for a security interest in after-acquired collateral; authorizing use or disposition of collateral; providing for security interest in purchase or delivery of financial asset; setting forth rights and duties of secured party; authorizing certain requests for accounting; establishing perfection and priority of security interests generally and in agricultural liens, goods covered by

a certificate of title, deposit accounts, investment property and letter of credit rights; providing for the location of debtor; providing for the perfection of security interests and agricultural liens; establishing perfection upon attachment; requiring filing to perfect certain liens; providing for perfection when security interest subject to another law; providing for additional methods of perfection; providing for perfection by possession, by delivery to a third party or by control; establishing secured party's or by control; establishing secured party's rights on disposition of collateral; providing for continued perfection of security interest when governing law changes; establishing lien priority; providing that no interest retained in right to payment that is sold; establishing rights and title of consignees; providing for the buyer of goods and for licensees; establishing priorities among conflicting interests, future advances, purchase-money security interests, agricultural liens, transferred collateral, security interests created by a new debtor, deposit accounts, investment property, letter-of-credit rights, purchaser of chattel paper or instrument and priority of rights of purchasers; providing for the transfer of funds; establishing priority of liens arising by operation of law and security interests in fixtures and crops; authorizing creation of security interest by accession; providing for commingled goods; establishing priority of certain security interests; providing for subordination; establishing rights of bank; providing for rights of third parties; setting forth restrictions; providing for filing offices and financing statements; establishing duties and operation of filing office; providing uniform financing statement and amendment forms; setting forth procedures for default and enforcement of security interests; establishing contents and forms of notification of disposition of collateral; providing for the disposition of collateral and the rights and duties subsequent thereto; establishing remedies for noncompliance; limiting liability; establishing transition provisions including certain operative dates; establishing priority of certain security interests; and providing for the use of price guide value in calculating deficiency or surplus in secured transactions in which the collateral is primarily for personal, family, household or agricultural purposes.

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

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

**CHAPTER 46. UNIFORM COMMERCIAL CODE.**

**ARTICLE 1. GENERAL PROVISIONS.**

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

- 1 (1) Except as provided hereafter in this section, when a  
2 transaction bears a reasonable relation to this state and  
3 also to another state or nation the parties may agree that  
4 the law either of this state or of such other state or nation  
5 shall govern their rights and duties. Failing such agree-  
6 ment this chapter applies to transactions bearing an  
7 appropriate relation to this state.
- 8 (2) Where one of the following provisions of this chapter  
9 specifies the applicable law, that provision governs and a  
10 contrary agreement is effective only to the extent permit-  
11 ted by the law (including the conflict of laws rules) so  
12 specified:
  - 13 Sections 2A-105 and 2A-106, applicability of the article  
14 on leases.
  - 15 Section 2-402, rights of creditors against sold goods.

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

18 Section 5-116, letters of credit.

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

21 Sections 9-301 through 9-307. Law governing perfec-  
22 tion, the effect of perfection or nonperfection, and the  
23 priority of security interest and agricultural liens.

PART 2. GENERAL DEFINITIONS AND PRINCIPLES  
OF INTERPRETATION.

**§46-1-201. General definitions.**

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

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

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

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

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

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

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

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

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

35 (9) "Buyer in ordinary course of business" means a  
36 person that buys goods in good faith without knowledge  
37 that the sale violates the rights of another person in the  
38 goods, and in the ordinary course from a person, other  
39 than a pawnbroker, in the business of selling goods of that  
40 kind. A person buys goods in the ordinary course if the sale  
41 to the person comports with the usual or customary  
42 practices in the kind of business in which the seller is  
43 engaged or with the seller's own usual or customary  
44 practices. A person that sells oil, gas or other minerals at  
45 the wellhead or minehead is a person in the business of  
46 selling goods of that kind. A buyer in the ordinary course  
47 of business may buy for cash, by exchange of other prop-  
48 erty, or on secured or unsecured credit, and may acquire  
49 goods or documents of title under a preexisting contract  
50 for sale. Only a buyer that takes possession of the goods or  
51 has a right to recover the goods from the seller under  
52 article two may be a buyer in the ordinary course of  
53 business. A person that acquires goods in a transfer in  
54 bulk or as security for or in total or partial satisfaction of  
55 a money debt is not a buyer in ordinary course of business.

56 (10) "Conspicuous" means a term or clause is conspicu-  
57 ous when it is so written that a reasonable person against  
58 whom it is to operate ought to have noticed it. A printed  
59 heading in capitals (as: NONNEGOTIABLE BILL OF  
60 LADING) is conspicuous. Language in the body of a form  
61 is "conspicuous" if it is in larger or other contrasting type

62 or color. But in a telegram any stated term is "conspicu-  
63 ous". Whether a term or clause is "conspicuous" or not is  
64 for decision by the court.

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

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

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

77 (14) "Delivery" with respect to instruments, documents  
78 of title, chattel paper or certificated securities means  
79 voluntary transfer of possession.

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

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

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



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

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

102 (20) "Holder" with respect to a negotiable instrument  
103 means the person in possession if the instrument is payable  
104 to bearer or, in the case of an instrument payable to an  
105 identified person, if the identified person is in possession.  
106 "Holder" with respect to a document of title means the  
107 person in possession if the goods are deliverable to the  
108 bearer or to the order of the person in possession.

109 (21) To "honor" is to pay or to accept and pay, or where  
110 a credit so engages to purchase or discount a draft comply-  
111 ing with the terms of the credit.

112 (22) "Insolvency proceedings" includes any assignment  
113 for the benefit of creditors or other proceedings intended  
114 to liquidate or rehabilitate the estate of the person in-  
115 volved.

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

121 (24) "Money" means a medium of exchange authorized  
122 or adopted by a domestic or foreign government and  
123 includes a monetary unit of account established by an  
124 intergovernmental organization or by agreement between  
125 two or more nations.

126 (25) A person has "notice" of a fact when:

127 (a) He has actual knowledge of it; or

128 (b) He has received a notice or notification of it; or

129 (c) From all the facts and circumstances known to him or  
130 her at the time in question he or she has reason to know  
131 that it exists. A person "knows" or has "knowledge" of a  
132 fact when he or she has actual knowledge of it. "Discover"  
133 or "learn" or a word or phrase of similar import refers to  
134 knowledge rather than to reason to know. The time and

135 circumstances under which a notice or notification may  
136 cease to be effective are not determined by this chapter.

137 (26) A person "notifies" or "gives" a notice or notifica-  
138 tion to another by taking such steps as may be reasonably  
139 required to inform the other in ordinary course whether or  
140 not such other actually comes to know of it. A person  
141 "receives" a notice or notification when:

142 (a) It comes to his or her attention; or

143 (b) It is duly delivered at the place of business through  
144 which the contract was made or at any other place held  
145 out by him or her as the place for receipt of such commu-  
146 nications.

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

163 (28) "Organization" includes a corporation, government  
164 or governmental subdivision or agency, business trust,  
165 estate, trust, partnership or association, two or more  
166 persons having a joint or common interest, or any other  
167 legal or commercial entity.

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

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

173 (31) "Presumption" or "presumed" means that the trier  
174 of fact must find the existence of the fact presumed unless  
175 and until evidence is introduced which would support a  
176 finding of its nonexistence.

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

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

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

185 (35) "Representative" includes an agent, an officer of a  
186 corporation or association, and a trustee, executor or  
187 administrator of an estate, or any other person empowered  
188 to act for another.

189 (36) "Rights" includes remedies.

190 (37) "Security interest" means an interest in personal  
191 property or fixtures which secures payment or perfor-  
192 mance of an obligation. The term also includes any interest  
193 of consignor and a buyer of accounts, or chattel paper, a  
194 payment intangible or a promissory note in a transaction  
195 that is subject to article nine. The special property interest  
196 of a buyer of goods on identification of those goods to a  
197 contract for sale under section 2-401 is not a "security  
198 interest," but a buyer may also acquire a "security inter-  
199 est" by complying with article nine. Except as otherwise  
200 provided in section 2-505, the right of a seller or lessor of  
201 goods under article two or two-a of this chapter to retain  
202 or acquire possession of the goods is not a "security  
203 interest", but a seller or lessor may also acquire a "security  
204 interest" by complying with article nine of this chapter.  
205 The retention or reservation of title by a seller of goods  
206 notwithstanding shipment or delivery to the buyer (section  
207 2-401) is limited in effect to a reservation of a "security  
208 interest".

209 (a) Whether a transaction creates a lease or security  
210 interest is determined by the facts of each case; however,

211 a transaction creates a security interest if the consider-  
212 ation the lessee is to pay the lessor for the right to posses-  
213 sion and use of the goods is an obligation for the term of  
214 the lease not subject to termination by the lessee, and:

215 (i) The original term of the lease is equal to or greater  
216 than the remaining economic life of the goods;

217 (ii) The lessee is bound to renew the lease for the remain-  
218 ing economic life of the goods or is bound to become the  
219 owner of the goods;

220 (iii) The lessee has an option to renew the lease for the  
221 remaining economic life of the goods for no additional  
222 consideration or nominal additional consideration upon  
223 compliance with the lease agreement; or

224 (iv) The lessee has an option to become the owner of the  
225 goods for no additional consideration or nominal addi-  
226 tional consideration upon compliance with the lease  
227 agreement.

228 (b) A transaction does not create a security interest  
229 merely because it provides that:

230 (i) The present value of the consideration the lessee is  
231 obligated to pay the lessor for the right to possession and  
232 use of the goods is substantially equal to or is greater than  
233 the fair market value of the goods at the time the lease is  
234 entered into;

235 (ii) The lessee assumes risk of loss of the goods, or agrees  
236 to pay taxes, insurance, filing, recording or registration  
237 fees, or service or maintenance costs with respect to the  
238 goods;

239 (iii) The lessee has an option to renew the lease or to  
240 become the owner of the goods;

241 (iv) The lessee has an option to renew the lease for a  
242 fixed rent that is equal to or greater than the reasonably  
243 predictable fair market rent for the use of the goods for the  
244 term of the renewal at the time the option is to be per-  
245 formed; or

246 (v) The lessee has an option to become the owner of the  
247 goods for a fixed price that is equal to or greater than the  
248 reasonably predictable fair market value of the goods at  
249 the time the option is to be performed.

250 (c) For purposes of this subsection:

251 (i) Additional consideration is not nominal if: (i) When  
252 the option to renew the lease is granted to the lessee the  
253 rent is stated to be the fair market rent for the use of the  
254 goods for the term of the renewal determined at the time  
255 the option is to be performed; or (ii) when the option to  
256 become the owner of the goods is granted to the lessee the  
257 price is stated to be the fair market value of the goods  
258 determined at the time the option is to be performed.  
259 Additional consideration is nominal if it is less than the  
260 lessee's reasonably predictable cost of performing under  
261 the lease agreement if the option is not exercised;

262 (ii) "Reasonably predictable" and "remaining economic  
263 life of the goods" are to be determined with reference to  
264 the facts and circumstances at the time the transaction is  
265 entered into; and

266 (iii) "Present value" means the amount as of a date  
267 certain of one or more sums payable in the future, dis-  
268 counted to the date certain. The discount is determined by  
269 the interest rate specified by the parties if the rate is not  
270 manifestly unreasonable at the time the transaction is  
271 entered into; otherwise, the discount is determined by a  
272 commercially reasonable rate that takes into account the  
273 facts and circumstances of each case at the time the  
274 transaction was entered into.

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

285 (39) "Signed" includes any symbol executed or adopted  
286 by a party with present intention to authenticate a writing.

287 (40) "Surety" includes guarantor.

288 (41) "Telegram" includes a message transmitted by  
289 radio, teletype, cable, any mechanical method of transmis-  
290 sion or the like.

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

293 (43) "Unauthorized signature" means one made without  
294 actual, implied or apparent authority and includes a  
295 forgery.

296 (44) "Value". Except as otherwise provided with respect  
297 to negotiable instruments and bank collections (sections 3-  
298 303, 4-208 and 4-209), a person gives "value" for rights if  
299 he acquires them:

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

305 (b) As security for or in total or partial satisfaction of a  
306 preexisting claim; or

307 (c) By accepting delivery pursuant to a preexisting  
308 contract for purchase; or

309 (d) Generally, in return for any consideration sufficient  
310 to support a simple contract.

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

313 (46) "Written" or "writing" includes printing, typewrit-  
314 ing or any other intentional reduction to tangible form.

**ARTICLE 2. SALES.**

**§46-2-103. Definitions and index of definitions.**

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

2 (a) "Buyer" means a person who buys or contracts to buy  
3 goods.

4 (b) "Good faith" in the case of a merchant means  
5 honesty in fact and the observance of reasonable commer-  
6 cial standards of fair dealing in the trade.

7 (c) "Receipt" of goods means taking physical possession  
8 of them.

9 (d) "Seller" means a person who sells or contracts to sell  
10 goods.

11 (2) Other definitions applying to this article or to  
12 specified parts thereof, and the sections in which they  
13 appear are:

14 "Acceptance". Section 2-606.

15 "Banker's credit". Section 2-325.

16 "Between merchants". Section 2-104.

17 "Cancellation". Section 2-106 (4).

18 "Commercial unit". Section 2-105.

19 "Confirmed credit". Section 2-325.

20 "Conforming to contract". Section 2-106.

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

22 "Cover". Section 2-712.

23 "Entrusting". Section 2-403.

24 "Financing agency." Section 2-104.

25 "Future goods". Section 2-105.

26 "Goods". Section 2-105.

27 "Identification". Section 2-501.

28 "Installment contract". Section 2-612.

29 "Letter of credit". Section 2-325.

30 "Lot". Section 2-105.

31 "Merchant". Section 2-104.

32 "Overseas". Section 2-323.

33 "Person in position of seller". Section 2-707.

34 "Present sale". Section 2-106.

35 "Sale". Section 2-106.

36 "Sale on approval". Section 2-326.

37 "Sale or return". Section 2-326.

38 "Termination". Section 2-106.

39 (3) The following definitions in other articles of this  
40 chapter apply to this article:

41 "Check." Section 3-104.

42 "Consignee." Section 7-102.

43 "Consignor." Section 7-102.

44 "Consumer goods." Section 9-102.

45 "Dishonor." Section 3-502.

46 "Draft." Section 3-104.

47 (4) In addition article one of this chapter contains  
48 general definitions and principles of construction and  
49 interpretation applicable throughout this article.

**§46-2-210. Delegation of performance; assignment of rights.**

1 (1) A party may perform his duty through a delegate  
2 unless otherwise agreed or unless the other party has a  
3 substantial interest in having his original promisor  
4 perform or control the acts required by the contract. No  
5 delegation of performance relieves the party delegating of  
6 any duty to perform or any liability for breach.

7 (2) Unless otherwise agreed, all rights of either seller or  
8 buyer can be assigned except where the assignment would  
9 materially change the duty of the other party, or increase  
10 materially the burden or risk imposed on him by his



11 contract, or impair materially his chance of obtaining  
12 return performance. A right to damages for breach of the  
13 whole contract or a right arising out of the assignor's due  
14 performance of his entire obligation can be assigned  
15 despite agreement otherwise.

16 (3) The creation, attachment, perfection or enforcement  
17 of a security interest in the seller's interest under a con-  
18 tract is not a transfer that materially changes the duty of  
19 or increases materially the burden or risk imposed on the  
20 buyer or impairs materially the buyer's chance of obtain-  
21 ing return performance within the purview of subsection  
22 (2) of this article unless, and then only to the extent that,  
23 enforcement actually results in a delegation of material  
24 performance of the seller. Even in that event, the creation,  
25 attachment, perfection and enforcement of the security  
26 interest remains effective, but: (i) The seller is liable to the  
27 buyer for damages caused by the delegation to the extent  
28 that the damages could not reasonably be prevented by the  
29 buyer; and (ii) a court having jurisdiction may grant other  
30 appropriate relief, including cancellation of the contract  
31 for sale or an injunction against enforcement of the  
32 security interest or consummation of the enforcement.

33 (4) Unless the circumstances indicate the contrary a  
34 prohibition of assignment of "the contract" is to be  
35 construed as barring only the delegation to the assignee of  
36 the assignor's performance.

37 (5) An assignment of "the contract" or of "all my rights  
38 under the contract" or an assignment in similar general  
39 terms is an assignment of rights and unless the language or  
40 the circumstances (as in an assignment for security)  
41 indicate the contrary, it is a delegation of performance of  
42 the duties of the assignor and its acceptance by the  
43 assignee constitutes a promise by him to perform those  
44 duties. This promise is enforceable by either the assignor  
45 or the other party to the original contract.

46 (6) The other party may treat any assignment which  
47 delegates performance as creating reasonable grounds for  
48 insecurity and may without prejudice to his rights against

49 the assignor demand assurances from the assignee (section  
50 2-609).

**§46-2-326. Sale on approval and sale or return; rights of creditors.**

1 (1) Unless otherwise agreed, if delivered goods may be  
2 returned by the buyer even though they conform to the  
3 contract, the transaction is

4 (a) A "sale on approval" if the goods are delivered  
5 primarily for use, and

6 (b) A "sale or return" if the goods are delivered primarily  
7 for resale.

8 (2) Goods held on approval are not subject to the claims  
9 of the buyer's creditors until acceptance; goods held on  
10 sale or return are subject to such claims while in the  
11 buyer's possession.

12 (3) Any "or return" term of a contract for sale is to be  
13 treated as a separate contract for sale within the statute of  
14 frauds section of this article (section 2-201) and as contra-  
15 dicting the sale aspect of the contract within the provi-  
16 sions of this article on parol or extrinsic evidence (section  
17 2-202).

**§46-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

1 (1) Subject to subsections (2) and (3) of this section, and  
2 even though the goods have not been shipped, a buyer who  
3 has paid a part or all of the price of goods in which he has  
4 a special property under the provisions of the immediately  
5 preceding section may on making and keeping good a  
6 tender of any unpaid portion of their price recover them  
7 from the seller if:

8 (a) In the case of goods bought for personal, family, or  
9 household purposes, the seller repudiates or fails to deliver  
10 as required by the contract; or

11 (b) In all cases, the seller becomes insolvent within ten  
12 days after receipt of the first installment on their price.

13 (2) The buyer's right to recover the goods under subsec-  
14 tion (1)(a) vests upon acquisition of a special property,  
15 even if the seller had not then repudiated or failed to  
16 deliver.

17 (3) If the identification creating his special property has  
18 been made by the buyer he acquires the right to recover  
19 the goods only if they conform to the contract for sale.

**§46-2-716. Buyer's right to specific performance or replevin.**

1 (1) Specific performance may be decreed where the  
2 goods are unique or in other proper circumstances.

3 (2) The decree for specific performance may include such  
4 terms and conditions as to payment of the price, damages,  
5 or other relief as the court may deem just.

6 (3) The buyer has a right of replevin for goods identified  
7 to the contract if after reasonable effort he is unable to  
8 effect cover for such goods or the circumstances reason-  
9 ably indicate that such effort will be unavailing or if the  
10 goods have been shipped under reservation and satisfac-  
11 tion of the security interest in them has been made or  
12 tendered. In the case of goods bought for personal, family,  
13 or household purposes, the buyer's right of replevin vests  
14 upon acquisition of a special property, even if the seller  
15 had not then repudiated or failed to deliver.

**ARTICLE 2A. LEASES.**

**§46-2A-103. Definitions and index of definitions.**

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

2 (a) "Buyer in ordinary course of business" means a  
3 person who in good faith and without knowledge that the  
4 sale to him or her is in violation of the ownership rights or  
5 security interest or leasehold interest of a third party in  
6 the goods, buys in ordinary course from a person in the  
7 business of selling goods of that kind but does not include  
8 a pawnbroker. "Buying" may be for cash or by exchange  
9 of other property or on secured or unsecured credit and  
10 includes receiving goods or documents of title under a  
11 preexisting contract for sale but does not include a trans-

12 fer in bulk or as security for or in total or partial satisfac-  
13 tion of a money debt.

14 (b) "Cancellation" occurs when either party puts an end  
15 to the lease contract for default by the other party.

16 (c) "Commercial unit" means such a unit of goods as by  
17 commercial usage is a single whole for purposes of lease  
18 and division of which materially impairs its character or  
19 value on the market or in use. A commercial unit may be  
20 a single article, as a machine, or a set of articles, as a suite  
21 of furniture or a line of machinery, or a quantity, as a  
22 gross or carload, or any other unit treated in use or in the  
23 relevant market as a single whole.

24 (d) "Conforming" goods or performance under a lease  
25 contract means goods or performance that are in accor-  
26 dance with the obligations under the lease contract.

27 (e) "Consumer lease" shall have the same meaning as  
28 that ascribed to it in section one hundred two, article one,  
29 chapter forty-six-a of this code.

30 (f) "Fault" means wrongful act, omission, breach or  
31 default.

32 (g) "Finance lease" means a lease with respect to which:

33 (i) The lessor does not select, manufacture or supply the  
34 goods;

35 (ii) The lessor acquires the goods or the right to posses-  
36 sion and use of the goods in connection with the lease; and

37 (iii) One of the following occurs:

38 (A) The lessee receives a copy of the contract by which  
39 the lessor acquired the goods or the right to possession and  
40 use of the goods before signing the lease contract;

41 (B) The lessee's approval of the contract by which the  
42 lessor acquired the goods or the right to possession and use  
43 of the goods is a condition to effectiveness of the lease  
44 contract;

45 (C) The lessee, before signing the lease contract, receives  
46 an accurate and complete statement designating the

47 promises and warranties, and any disclaimers of warran-  
48 ties, limitations or modifications of remedies, or liquidated  
49 damages, including those of a third party, such as the  
50 manufacturer of the goods, provided to the lessor by the  
51 person supplying the goods in connection with or as part  
52 of the contract by which the lessor acquired the goods or  
53 the right to possession and use of the goods; or

54 (D) If the lease is not a consumer lease, the lessor, before  
55 the lessee signs the lease contract, informs the lessee in  
56 writing: (a) Of the identity of the person supplying the  
57 goods to the lessor, unless the lessee has selected that  
58 person and directed the lessor to acquire the goods or the  
59 right to possession and use of the goods from that person;  
60 (b) that the lessee is entitled under this article to the  
61 promises and warranties, including those of any third  
62 party, provided to the lessor by the person supplying the  
63 goods in connection with or as part of the contract by  
64 which the lessor acquired the goods or the right to posses-  
65 sion and use of the goods; and (c) that the lessee may  
66 communicate with the person supplying the goods to the  
67 lessor and receive an accurate and complete statement of  
68 those promises and warranties, including any disclaimers  
69 and limitations of them or of remedies.

70 (h) "Goods" means all things that are movable at the  
71 time of identification to the lease contract, or are fixtures  
72 (section 2A-309), but the term does not include money,  
73 documents, instruments, accounts, chattel paper, general  
74 intangibles or minerals or the like, including oil and gas,  
75 before extraction. The term also includes the unborn  
76 young of animals.

77 (i) "Installment lease contract" means a lease contract  
78 that authorizes or requires the delivery of goods in separ-  
79 ate lots to be separately accepted, even though the lease  
80 contract contains a clause "each delivery is a separate  
81 lease" or its equivalent.

82 (j) "Lease" means a transfer of the right to possession  
83 and use of goods for a term in return for consideration, but  
84 a sale, including a sale on approval or a sale or return, or  
85 retention or creation of a security interest is not a lease.

86 Unless the context clearly indicates otherwise, the term  
87 includes a sublease.

88 (k) "Lease agreement" means the bargain, with respect  
89 to the lease, of the lessor and the lessee in fact as found in  
90 their language or by implication from other circumstances  
91 including course of dealing or usage of trade or course of  
92 performance as provided in this article. Unless the context  
93 clearly indicates otherwise, the term includes a sublease  
94 agreement.

95 (l) "Lease contract" means the total legal obligation that  
96 results from the lease agreement as affected by this article  
97 and any other applicable rules of law. Unless the context  
98 clearly indicates otherwise, the term includes a sublease  
99 contract.

100 (m) "Leasehold interest" means the interest of the lessor  
101 or the lessee under a lease contract.

102 (n) "Lessee" means a person who acquires the right to  
103 possession and use of goods under a lease. Unless the  
104 context clearly indicates otherwise, the term includes a  
105 sublessee.

106 (o) "Lessee in ordinary course of business" means a  
107 person who in good faith and without knowledge that the  
108 lease to him or her is in violation of the ownership rights  
109 or security interest or leasehold interest of a third party in  
110 the goods leases in ordinary course from a person in the  
111 business of selling or leasing goods of that kind but does  
112 not include a pawnbroker. "Leasing" may be for cash or  
113 by exchange of other property or on secured or unsecured  
114 credit and includes receiving goods or documents of title  
115 under a preexisting lease contract but does not include a  
116 transfer in bulk or as security for or in total or partial  
117 satisfaction of a money debt.

118 (p) "Lessor" means a person who transfers the right to  
119 possession and use of goods under a lease. Unless the  
120 context clearly indicates otherwise, the term includes a  
121 sublessor.

122 (q) "Lessor's residual interest" means the lessor's  
123 interest in the goods after expiration, termination or  
124 cancellation of the lease contract.

125 (r) "Lien" means a charge against or interest in goods to  
126 secure payment of a debt or performance of an obligation,  
127 but the term does not include a security interest.

128 (s) "Lot" means a parcel or a single article that is the  
129 subject matter of a separate lease or delivery, whether or  
130 not it is sufficient to perform the lease contract.

131 (t) "Merchant lessee" means a lessee that is a merchant  
132 with respect to goods of the kind subject to the lease.

133 (u) "Present value" means the amount as of a date  
134 certain of one or more sums payable in the future, dis-  
135 counted to the date certain. The discount is determined by  
136 the interest rate specified by the parties if the rate was not  
137 manifestly unreasonable at the time the transaction was  
138 entered into; otherwise, the discount is determined by a  
139 commercially reasonable rate that takes into account the  
140 facts and circumstances of each case at the time the  
141 transaction was entered into.

142 (v) "Purchase" includes taking by sale, lease, mortgage,  
143 security interest, pledge, gift or any other voluntary  
144 transaction creating an interest in goods.

145 (w) "Sublease" means a lease of goods the right to  
146 possession and use of which was acquired by the lessor as  
147 a lessee under an existing lease.

148 (x) "Supplier" means a person from whom a lessor buys  
149 or leases goods to be leased under a finance lease.

150 (y) "Supply contract" means a contract under which a  
151 lessor buys or leases goods to be leased.

152 (z) "Termination" occurs when either party pursuant to  
153 a power created by agreement or law puts an end to the  
154 lease contract otherwise than for default.

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

- 157 "Accessions". Section 2A-310(1).
- 158 "Construction mortgage". Section 2A-309(1)(d).
- 159 "Encumbrance". Section 2A-309(1)(e).
- 160 "Fixtures". Section 2A-309(1)(a).
- 161 "Fixture filing". Section 2A-309(1)(b).
- 162 "Purchase money lease". Section 2A-309(1)(c).
- 163 (3) The following definitions in other articles apply to
- 164 this article:
- 165 "Account". Section 9-102(a)(2).
- 166 "Between merchants". Section 2-104(3).
- 167 "Buyer". Section 2-103(1)(a).
- 168 "Chattel paper". Section 9-102(a)(11).
- 169 "Consumer goods". Section 9-102(a)(23).
- 170 "Document". Section 9-102(a)(30).
- 171 "Entrusting". Section 2-403(3).
- 172 "General intangible". Section 9-102(a)(42).
- 173 "Good faith". Section 2-103(1)(b).
- 174 "Instrument". Section 9-102(a)(47).
- 175 "Merchant". Section 2-104(1).
- 176 "Mortgage". Section 9-102(a)(55).
- 177 "Pursuant to commitment". Section 9-102(a)(68).
- 178 "Receipt". Section 2-103(1)(c).
- 179 "Sale". Section 2-106(1).
- 180 "Sale on approval". Section 2-326.
- 181 "Sale or return". Section 2-326.
- 182 "Seller". Section 2-103(1)(d).



183 (4) In addition, article one contains general definitions  
184 and principles of construction and interpretation applica-  
185 ble throughout this article.

**§46-2A-303. Alienability of party's interest under lease contract  
or of lessor's residual interest in goods; delega-  
tion of performance; transfer of rights.**

1 (1) As used in this section, "creation of a security inter-  
2 est" includes the sale of a lease contract that is subject to  
3 article nine, secured transactions, by reason of section 9-  
4 109(a)(3).

5 (2) Except as provided in subsection (3) and section 9-  
6 407, a provision in a lease agreement which: (i) Prohibits  
7 the voluntary or involuntary transfer, including a transfer  
8 by sale, sublease, creation or enforcement of a security  
9 interest, or attachment, levy, or other judicial process, of  
10 an interest of a party under the lease contract or of the  
11 lessor's residual interest in the goods; or (ii) makes such a  
12 transfer an event of default, gives rise to the rights and  
13 remedies provided in subsection (5) of this section, but a  
14 transfer that is prohibited or is an event of default under  
15 the lease agreement is otherwise effective.

16 (3) A provision in a lease agreement which: (i) Prohibits  
17 a transfer of a right to damages for default with respect to  
18 the whole lease contract or of a right to payment arising  
19 out of the transferor's due performance of the transferor's  
20 entire obligation; or (ii) makes such a transfer an event of  
21 default, is not enforceable, and such a transfer is not a  
22 transfer that materially impairs the prospect of obtaining  
23 return performance by, materially changes the duty of, or  
24 materially increases the burden or risk imposed on, the  
25 other party to the lease contract within the purview of  
26 subsection (4).

27 (4) Subject to subsection (3) of this section and section 9-  
28 407:

29 (a) If a transfer is made which is made an event of  
30 default under a lease agreement, the party to the lease  
31 contract not making the transfer, unless that party waives

32 the default or otherwise agrees, has the rights and reme-  
33 dies described in section 2A-501(2);

34 (b) If paragraph (a) is not applicable and if a transfer is  
35 made that: (i) Is prohibited under a lease agreement; or (ii)  
36 materially impairs the prospect of obtaining return  
37 performance by, materially changes the duty of, or materi-  
38 ally increases the burden or risk imposed on, the other  
39 party to the lease contract, unless the party not making the  
40 transfer agrees at any time to the transfer in the lease  
41 contract or otherwise, then, except as limited by contract:  
42 (i) The transferor is liable to the party not making the  
43 transfer for damages caused by the transfer to the extent  
44 that the damages could not reasonably be prevented by the  
45 party not making the transfer; and (ii) a court having  
46 jurisdiction may grant other appropriate relief, including  
47 cancellation of the lease contract or an injunction against  
48 the transfer.

49 (5) A transfer of "the lease" or of "all my rights under  
50 the lease", or a transfer in similar general terms, is a  
51 transfer of rights and, unless the language or the circum-  
52 stances, as in a transfer for security, indicate the contrary,  
53 the transfer is a delegation of duties by the transferor to  
54 the transferee. Acceptance by the transferee constitutes a  
55 promise by the transferee to perform those duties. The  
56 promise is enforceable by either the transferor or the other  
57 party to the lease contract.

58 (6) Unless otherwise agreed by the lessor and the lessee,  
59 a delegation of performance does not relieve the transferor  
60 as against the other party of any duty to perform or of any  
61 liability for default.

62 (7) In a consumer lease, to prohibit the transfer of an  
63 interest of a party under the lease contract or to make a  
64 transfer an event of default, the language must be specific,  
65 by a writing, and conspicuous.

**§46-2A-307. Priority of liens arising by attachment or levy on,  
security interests in, and other claims to goods.**

1 (1) Except as otherwise provided in section 2A-306, a  
2 creditor of a lessee takes subject to the lease contract.

3 (2) Except as otherwise provided in subsection (3) of this  
4 section and in sections 2A-306 and 2A-308, a creditor of a  
5 lessor takes subject to the lease contract unless the credi-  
6 tor holds a lien that attached to the goods before the lease  
7 contract became enforceable.

8 (3) Except as otherwise provided in sections 9-317, 9-  
9 321, and 9-323, a lessee takes a leasehold interest subject  
10 to a security interest held by a creditor of the lessor.

**§46-2A-309. Lessor's and lessee's rights when goods become  
fixtures.**

1 (1) In this section:

2 (a) Goods are "fixtures" when they become so related to  
3 particular real estate that an interest in them arises under  
4 real estate law;

5 (b) A "fixture filing" is the filing, in the office where a  
6 mortgage on the real estate would be filed or recorded, of  
7 a financing statement covering goods that are or are to  
8 become fixtures and conforming to the requirements of  
9 section 9-502(a) and (b);

10 (c) A lease is a "purchase money lease" unless the lessee  
11 has possession or use of the goods or the right to posses-  
12 sion or use of the goods before the lease agreement is  
13 enforceable;

14 (d) A mortgage is a "construction mortgage" to the  
15 extent it secures an obligation incurred for the construc-  
16 tion of an improvement on land including the acquisition  
17 cost of the land, if the recorded writing so indicates; and

18 (e) "Encumbrance" includes real estate mortgages and  
19 other liens on real estate and all other rights in real estate  
20 that are not ownership interests.

21 (2) Under this article a lease may be of goods that are  
22 fixtures or may continue in goods that become fixtures,  
23 but no lease exists under this article of ordinary building  
24 materials incorporated into an improvement on land.

25 (3) This article does not prevent creation of a lease of  
26 fixtures pursuant to real estate law.

27 (4) The perfected interest of a lessor of fixtures has  
28 priority over a conflicting interest of an encumbrancer or  
29 owner of the real estate if:

30 (a) The lease is a purchase money lease, the conflicting  
31 interest of the encumbrancer or owner arises before the  
32 goods become fixtures, the interest of the lessor is per-  
33 fected by a fixture filing before the goods become fixtures  
34 or within ten days thereafter, and the lessee has an interest  
35 of record in the real estate or is in possession of the real  
36 estate; or

37 (b) The interest of the lessor is perfected by a fixture  
38 filing before the interest of the encumbrancer or owner is  
39 of record, the lessor's interest has priority over any  
40 conflicting interest of a predecessor in title of the encum-  
41 brancer or owner, and the lessee has an interest of record  
42 in the real estate or is in possession of the real estate.

43 (5) The interest of a lessor of fixtures, whether or not  
44 perfected, has priority over the conflicting interest of an  
45 encumbrancer or owner of the real estate if:

46 (a) The fixtures are readily removable factory or office  
47 machines, readily removable equipment that is not primar-  
48 ily used or leased for use in the operation of the real estate,  
49 or readily removable replacements of domestic appliances  
50 that are goods subject to a consumer lease and before the  
51 goods become fixtures the lease contract is enforceable; or

52 (b) The conflicting interest is a lien on the real estate  
53 obtained by legal or equitable proceedings after the lease  
54 contract is enforceable; or

55 (c) The encumbrancer or owner has consented in writing  
56 to the lease or has disclaimed an interest in the goods as  
57 fixtures; or

58 (d) The lessee has a right to remove the goods as against  
59 the encumbrancer or owner. If the lessee's right to remove  
60 terminates, the priority of the interest of the lessor contin-  
61 ues for a reasonable time.

62 (6) Notwithstanding subsection (4) <sup>(a) DEN</sup> of this section but  
63 otherwise subject to subsections (4) and (5) of this section,

64 the interest of a lessor of fixtures, including the lessor's  
65 residual interest, is subordinate to the conflicting interest  
66 of an encumbrancer of the real estate under a construction  
67 mortgage recorded before the goods become fixtures if the  
68 goods become fixtures before the completion of the  
69 construction. To the extent given to refinance a construc-  
70 tion mortgage, the conflicting interest of an encumbrancer  
71 of the real estate under a mortgage has this priority to the  
72 same extent as the encumbrancer of the real estate under  
73 the construction mortgage.

74 (7) In cases not within the preceding subsections, priority  
75 between the interest of a lessor of fixtures, including the  
76 lessor's residual interest, and the conflicting interest of an  
77 encumbrancer or owner of the real estate who is not the  
78 lessee is determined by the priority rules governing  
79 conflicting interests in real estate.

80 (8) If the interest of a lessor of fixtures, including the  
81 lessor's residual interest, has priority over all conflicting  
82 interests of all owners and encumbrancers of the real  
83 estate, the lessor or the lessee may: (i) On default, expira-  
84 tion, termination or cancellation of the lease agreement  
85 but subject to the lease agreement and this article; or (ii)  
86 if necessary to enforce other rights and remedies of the  
87 lessor or lessee under this article, remove the goods from  
88 the real estate, free and clear of all conflicting interests of  
89 all owners and encumbrancers of the real estate, but the  
90 lessor or lessee must reimburse any encumbrancer or  
91 owner of the real estate who is not the lessee and who has  
92 not otherwise agreed for the cost of repair of any physical  
93 injury, but not for any diminution in value of the real  
94 estate caused by the absence of the goods removed or by  
95 any necessity of replacing them. A person entitled to  
96 reimbursement may refuse permission to remove until the  
97 party seeking removal gives adequate security for the  
98 performance of this obligation.

99 (9) Even though the lease agreement does not create a  
100 security interest, the interest of a lessor of fixtures,  
101 including the lessor's residual interest, is perfected by  
102 filing a financing statement as a fixture filing for leased  
103 goods that are or are to become fixtures in accordance

104 with the relevant provisions of the article on secured  
105 transactions (article nine).

**ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.**

**§46-4-210. Security interest of collecting bank in items, accom-  
panying documents and proceeds.**

1 (a) A collecting bank has a security interest in an item  
2 and any accompanying documents or the proceeds of  
3 either:

4 (1) In case of an item deposited in an account, to the  
5 extent to which credit given for the item has been with-  
6 drawn or applied;

7 (2) In case of an item for which it has given credit  
8 available for withdrawal as of right, to the extent of the  
9 credit given, whether or not the credit is drawn upon or  
10 there is a right of charge-back; or

11 (3) If it makes an advance on or against the item.

12 (b) If credit given for several items received at one time  
13 or pursuant to a single agreement is withdrawn or applied  
14 in part, the security interest remains upon all the items,  
15 any accompanying documents or the proceeds of either.  
16 For the purpose of this section, credits first given are first  
17 withdrawn.

18 (c) Receipt by a collecting bank of a final settlement for  
19 an item is a realization on its security interest in the item,  
20 accompanying documents and proceeds. So long as the  
21 bank does not receive final settlement for the item or give  
22 up possession of the item or accompanying documents for  
23 purposes other than collection, the security interest  
24 continues to that extent and is subject to article nine but:

25 (1) No security agreement is necessary to make the  
26 security interest enforceable (section 9-203(b)(3)(A));

27 (2) No filing is required to perfect the security interest;  
28 and

29 (3) The security interest has priority over conflicting  
30 perfected security interests in the item, accompanying  
31 documents or proceeds.

**ARTICLE 5. LETTERS OF CREDIT.**

**§46-5-118. Security interest of issuer or nominated persons.**

1 (a) An issuer or nominated person has a security interest  
2 in a document presented under a letter of credit to the  
3 extent that the issuer or nominated person honors or gives  
4 value for the presentation.

5 (b) So long as and to the extent that an issuer or nomi-  
6 nated person has not been reimbursed or has not otherwise  
7 recovered the value given with respect to a security  
8 interest in a document under subsection (a), the security  
9 interest continues and is subject to article nine, but:

10 (1) A security agreement is not necessary to make the  
11 security interest enforceable under section 9-203(b)(3);

12 (2) If the document is presented in a medium other than  
13 a written or other tangible medium, the security interest is  
14 perfected; and

15 (3) If the document is presented in a written or other  
16 tangible medium and is not a certificated security, chattel  
17 paper, a document of title, an instrument, or a letter of  
18 credit, the security interest is perfected and has priority  
19 over a conflicting security interest in the document so long  
20 as the debtor does not have possession of the document.

**ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER  
DOCUMENTS OF TITLE.**

**§46-7-503. Document of title to goods defeated in certain cases.**

1 (1) A document of title confers no right in goods against  
2 a person who before issuance of the document had a legal  
3 interest or a perfected security interest in them and who  
4 neither

5 (a) delivered or entrusted them or any document of title  
6 covering them to the bailor or his nominee with actual or  
7 apparent authority to ship, store or sell or with power to  
8 obtain delivery under this article (section 7-403) or with  
9 power of disposition under this chapter (sections 2-403  
10 and 9-320) or other statute or rule of law; nor

11 (b) acquiesced in the procurement by the bailor or his  
12 nominee of any document of title.

13 (2) Title to goods based upon an unaccepted delivery  
14 order is subject to the rights of anyone to whom a negotia-  
15 ble warehouse receipt or bill of lading covering the goods  
16 has been duly negotiated. Such a title may be defeated  
17 under the next section to the same extent as the rights of  
18 the issuer or a transferee from the issuer.

19 (3) Title to goods based upon a bill of lading issued to a  
20 freight forwarder is subject to the rights of anyone to  
21 whom a bill issued by the freight forwarder is duly negoti-  
22 ated; but delivery by the carrier in accordance with part 4  
23 of this article pursuant to its own bill of lading discharges  
24 the carrier's obligation to deliver.

**ARTICLE 8. INVESTMENT SECURITIES.**

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

1 (a) A share or similar equity interest issued by a corpora-  
2 tion, business trust, joint stock company or similar entity  
3 is a security.

4 (b) An "investment company security" is a security.  
5 "Investment company security" means a share or similar  
6 equity interest issued by an entity that is registered as an  
7 investment company under the federal investment com-  
8 pany laws, an interest in a unit investment trust that is so  
9 registered or a face-amount certificate issued by a face-  
10 amount certificate company that is so registered. Invest-  
11 ment company security does not include an insurance  
12 policy or endowment policy or annuity contract issued by  
13 an insurance company.

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



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

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

29 (f) A commodity contract, as defined in section 9-  
30 102(a)(15), is not a security or a financial asset.

**§46-8-106. Control.**

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

4 (b) A purchaser has "control" of a certificated security  
5 in registered form if the certificated security is delivered  
6 to the purchaser and:

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

9 (2) The certificate is registered in the name of the  
10 purchaser, upon original issue or registration of transfer  
11 by the issuer; or

12 (3) Another person has control of the security entitle-  
13 ment on behalf of the purchaser or, having previously  
14 acquired control of the security entitlement, acknowledges  
15 that it has control on behalf of the purchaser.

16 (c) A purchaser has "control" of an uncertificated  
17 security if:

18 (1) The uncertificated security is delivered to the pur-  
19 chaser; or

20 (2) The issuer has agreed that it will comply with  
21 instructions originated by the purchaser without further  
22 consent by the registered owner.

23 (d) A purchaser has "control" of a security entitlement  
24 if:

25 (1) The purchaser becomes the entitlement holder; or

26 (2) The securities intermediary has agreed that it will  
27 comply with entitlement orders originated by the pur-  
28 chaser without further consent by the entitlement holder.

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

33 (f) A purchaser who has satisfied the requirements of  
34 subdivision (2), subsection (c) of this section or subdivision  
35 (2), subsection (d) of this section has control even if the  
36 registered owner in the case of subdivision (2), subsec-  
37 tion(c) of this section, subsection (c) of this section or the  
38 entitlement holder in the case of subdivision (2), subsec-  
39 tion (d) of this section retains the right to make substitu-  
40 tions for the uncertificated security or security entitle-  
41 ment, to originate instructions or entitlement orders to the  
42 issuer or securities intermediary, or otherwise to deal with  
43 the uncertificated security or security entitlement.

44 (g) An issuer or a securities intermediary may not enter  
45 into an agreement of the kind described in subdivision (2),  
46 subsection (c) of this section or subdivision (2), subsection  
47 (d) of this section without the consent of the registered  
48 owner or entitlement holder, but an issuer or a securities  
49 intermediary is not required to enter into such an agree-  
50 ment even though the registered owner or entitlement  
51 holder so directs. An issuer or securities intermediary that  
52 has entered into such an agreement is not required to  
53 confirm the existence of the agreement to another party  
54 unless requested to do so by the registered owner or  
55 entitlement holder.

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

1 (a) The local law of the issuer's jurisdiction, as specified  
2 in subsection (d) of this section governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect to  
5 registration of transfer;

6 (3) The effectiveness of registration of transfer by the  
7 issuer;

8 (4) Whether the issuer owes any duties to an adverse  
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a  
11 person to whom transfer of a certificated or uncertificated  
12 security is registered or a person who obtains control of an  
13 uncertificated security.

14 (b) The local law of the securities intermediary's juris-  
15 diction, as specified in subsection (e) of this section,  
16 governs:

17 (1) Acquisition of a security entitlement from the  
18 securities intermediary;

19 (2) The rights and duties of the securities intermediary  
20 and entitlement holder arising out of a security entitle-  
21 ment;

22 (3) Whether the securities intermediary owes any duties  
23 to an adverse claimant to a security entitlement; and

24 (4) Whether an adverse claim can be asserted against a  
25 person who acquires a security entitlement from the  
26 securities intermediary or a person who purchases a  
27 security entitlement or interest therein from an entitle-  
28 ment holder.

29 (c) The local law of the jurisdiction in which a security  
30 certificate is located at the time of delivery governs  
31 whether an adverse claim can be asserted against a person  
32 to whom the security certificate is delivered.

33 (d) "Issuer's jurisdiction" means the jurisdiction under  
34 which the issuer of the security is organized or, if permit-  
35 ted by the law of that jurisdiction, the law of another  
36 jurisdiction specified by the issuer. An issuer organized  
37 under the law of this state may specify the law of another  
38 jurisdiction as the law governing the matters specified in  
39 subdivisions (2) through (5), inclusive, subsection (a) of  
40 this section.

41 (e) The following rules determine a "securities intermedi-  
42 ary's jurisdiction" for purposes of this section:

43 (1) If an agreement between the securities intermediary  
44 and its entitlement holder governing the securities account  
45 expressly provides that a particular jurisdiction is the  
46 securities intermediary's jurisdiction for purposes of this  
47 part, this article, or this chapter, that jurisdiction is the  
48 securities intermediary's jurisdiction.

49 (2) If subdivision (1) does not apply and an agreement  
50 between the securities intermediary and its entitlement  
51 holder governing the securities account expressly provides  
52 that the agreement is governed by the law of a particular  
53 jurisdiction, the jurisdiction is the securities intermedi-  
54 ary's jurisdiction.

55 (3) If neither subdivision (1) nor subdivision (2) of this  
56 subsection applies and an agreement between the securi-  
57 ties intermediary and its entitlement holder governing the  
58 securities account expressly provides that the securities  
59 account is maintained at an office in a particular jurisdic-  
60 tion, that jurisdiction is the securities intermediary's  
61 jurisdiction.

62 (4) If none of the preceding subdivisions apply, the  
63 securities intermediary's jurisdiction is the jurisdiction in  
64 which the office identified in an account statement as the  
65 office serving the entitlement holder's account is located.

66 (5) If an agreement between the securities intermediary  
67 and its entitlement holder does not specify a jurisdiction  
68 as provided in subdivision (1) or (2) of this subsection and  
69 an account statement does not identify an office serving  
70 the entitlement holder's account as provided in subdivision  
71 (3) of this subsection, the securities intermediary's juris-  
72 diction is the jurisdiction in which is located the chief  
73 executive office of the securities intermediary.

74 (f) A securities intermediary's jurisdiction is not deter-  
75 mined by the physical location of certificates representing  
76 financial assets, or by the jurisdiction in which is orga-  
77 nized the issuer of the financial asset with respect to which  
78 an entitlement holder has a security entitlement or by the

79 location of facilities for data processing or other record  
80 keeping concerning the account.

PART 3. TRANSFER OF CERTIFICATED  
AND UNCERTIFICATED SECURITIES.

**§46-8-301. Delivery.**

1 (a) Delivery of a certificated security to a purchaser  
2 occurs when:

3 (1) The purchaser acquires possession of the security  
4 certificate;

5 (2) Another person, other than a securities intermediary,  
6 either acquires possession of the security certificate on  
7 behalf of the purchaser or, having previously acquired  
8 possession of the certificate, acknowledges that it holds for  
9 the purchaser; or

10 (3) A securities intermediary acting on behalf of the  
11 purchaser acquires possession of the security certificate,  
12 only if the certificate is in registered form and is: (i)  
13 Registered in the name of the purchaser; (ii) payable to the  
14 order of the purchaser; or (iii) specially indorsed to the  
15 purchaser by an effective indorsement and has not been  
16 indorsed to the securities intermediary or in blank.

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

19 (1) The issuer registers the purchaser as the registered  
20 owner, upon original issue or registration of transfer; or

21 (2) Another person, other than a securities intermediary,  
22 either becomes the registered owner of the uncertificated  
23 security on behalf of the purchaser or, having previously  
24 become the registered owner, acknowledges that it holds  
25 for the purchaser.

**§46-8-302. Rights of purchaser.**

1 (a) Except as otherwise provided in subsections (b) and  
2 (c) of this section, a purchaser of a certificated or uncerti-  
3 ficated security acquires all rights in the security that the  
4 transferor had or had power to transfer.

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

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

**§46-8-510. Rights of purchaser of security entitlement from  
entitlement holder.**

1 (a) In a case not covered by the priority rules in article  
2 nine or the rules stated in subsection (c) of this section, an  
3 action based on an adverse claim to a financial asset or  
4 security entitlement, whether framed in conversion,  
5 replevin, constructive trust, equitable lien or other theory,  
6 may not be asserted against a person who purchases a  
7 security entitlement, or an interest therein, from an  
8 entitlement holder if the purchaser gives value, does not  
9 have notice of the adverse claim, and obtains control.

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

15 (c) In a case not covered by the priority rules in article  
16 nine, a purchaser for value of a security entitlement, or an  
17 interest therein, who obtains control has priority over a  
18 purchaser of a security entitlement, or an interest therein,  
19 who does not obtain control. Except as otherwise pro-  
20 vided in subsection (d) of this section, purchasers who have  
21 control rank according to priority in time of:

22 (1) The purchaser's becoming the person for whom the  
23 securities account, in which the security entitlement is  
24 carried, is maintained, if the purchaser obtained control  
25 under section 8-106(d)(1);

26 (2) The securities intermediary's agreement to comply  
27 with the purchaser's entitlement orders with respect to  
28 security entitlements carried or to be carried in the  
29 securities account in which the security entitlement is  
30 carried, if the purchaser obtained control under section 8-  
31 106(d)(2); or

32 (3) If the purchaser obtained control through another  
33 person under section 8-106(d)(3), the time on which  
34 priority would be based under this subsection if the other  
35 person were the secured party.

36 (d) A securities intermediary as purchaser has priority  
37 over a conflicting purchaser who has control unless  
38 otherwise agreed by the securities intermediary.

**ARTICLE 9. SECURED TRANSACTIONS.**

**PART 1. GENERAL PROVISIONS.**  
**SUBPART 1. SHORT TITLE, DEFINITIONS,**  
**AND GENERAL CONCEPTS.**

**§46-9-101. Short title.**

1 This article may be cited as uniform commercial  
2 code-secured transactions.

**§46-9-102. Definitions and index of definitions.**

1 (a) **Article 9 definitions.** In this article:

2 (1) "Accession" means goods that are physically united  
3 with other goods in such a manner that the identity of the  
4 original goods is not lost.

5 (2) "Account", except as used in "account for", means a  
6 right to payment of a monetary obligation, whether or not  
7 earned by performance: (i) For property that has been or  
8 is to be sold, leased, licensed, assigned or otherwise  
9 disposed of; (ii) for services rendered or to be rendered;  
10 for a policy of insurance issued or to be issued; (iv) for a  
11 secondary obligation incurred or to be incurred; (v) for  
12 energy provided or to be provided; (vi) for the use or hire  
13 of a vessel under a charter or other contract; (vii) arising  
14 out of the use of a credit or charge card or information  
15 contained on or for use with the card; or (viii) as winnings  
16 in a lottery or other game of chance operated or sponsored  
17 by a state, governmental unit of a state or person licensed  
18 or authorized to operate the game by a state or govern-  
19 mental unit of a state. The term includes health-care-

20 insurance receivables. The term does not include: (1)  
21 Rights to payment evidenced by chattel paper or an  
22 instrument; (ii) commercial tort claims; (iii) deposit  
23 accounts; (iv) investment property; (v) letter-of-credit  
24 rights or letters of credit; or (vi) rights to payment for  
25 money or funds advanced or sold, other than rights arising  
26 out of the use of a credit or charge card or information  
27 contained on or for use with the card.

28 (3) "Account debtor" means a person obligated on an  
29 account, chattel paper or general intangible. The term  
30 does not include persons obligated to pay a negotiable  
31 instrument, even if the instrument constitutes part of  
32 chattel paper.

33 (4) "Accounting", except as used in "accounting for",  
34 means a record:

35 (A) Authenticated by a secured party;

36 (B) Indicating the aggregate unpaid secured obligations  
37 as of a date not more than thirty-five days earlier or  
38 thirty-five days later than the date of the record; and

39 (C) Identifying the components of the obligations in  
40 reasonable detail.

41 (5) "Agricultural lien" means an interest, other than a  
42 security interest, in farm products:

43 (A) Which secures payment or performance of an obliga-  
44 tion for:

45 (i) Goods or services furnished in connection with a  
46 debtor's farming operation; or

47 (ii) Rent on real property leased by a debtor in connec-  
48 tion with its farming operation;

49 (B) Which is created by statute in favor of a person that:

50 (i) In the ordinary course of its business furnished goods  
51 or services to a debtor in connection with a debtor's  
52 farming operation; or



53 (ii) Leased real property to a debtor in connection with  
54 the debtor's farming operation; and

55 (C) Whose effectiveness does not depend on the person's  
56 possession of the personal property.

57 (6) "As-extracted collateral" means:

58 (A) Oil, gas or other minerals that are subject to a  
59 security interest that:

60 (i) Is created by a debtor having an interest in the  
61 minerals before extraction; and

62 (ii) Attaches to the minerals as extracted; or

63 (B) Accounts arising out of the sale at the wellhead or  
64 minehead of oil, gas or other minerals in which the debtor  
65 had an interest before extraction.

66 (7) "Authenticate" means:

67 (A) To sign; or

68 (B) To execute or otherwise adopt a symbol, or encrypt  
69 or similarly process a record, in whole or in part, with the  
70 present intent of the authenticating person to identify the  
71 person and adopt or accept a record.

72 (8) "Bank" means an organization that is engaged in the  
73 business of banking. The term includes savings banks,  
74 savings and loan associations, credit unions and trust  
75 companies.

76 (9) "Cash proceeds" means proceeds that are money,  
77 checks, deposit accounts or the like.

78 (10) "Certificate of title" means a certificate of title with  
79 respect to which a statute provides for the security interest  
80 in question to be indicated on the certificate as a condition  
81 or result of the security interest's obtaining priority over  
82 the rights of a lien creditor with respect to the collateral.

83 (11) "Chattel paper" means a record or records that  
84 evidence both a monetary obligation and a security  
85 interest in specific goods, a security interest in specific  
86 goods and software used in the goods, a security interest in

87 specific goods and license of software used in the goods, a  
88 lease of specific goods or a lease of specific goods and  
89 license of software used in the goods. In this paragraph,  
90 "monetary obligation" means a monetary obligation  
91 secured by the goods or owed under a lease of the goods  
92 and includes a monetary obligation with respect to  
93 software used in the goods. The term does not include: (i)  
94 Charters or other contracts involving the use or hire of a  
95 vessel; or (ii) records that evidence a right to payment  
96 arising out of the use of a credit or charge card or informa-  
97 tion contained on or for use with the card. If a transaction  
98 is evidenced by records that include an instrument or  
99 series of instruments, the group of records taken together  
100 constitutes chattel paper.

101 (12) "Collateral" means the property subject to a secu-  
102 rity interest or agricultural lien. The term includes:

103 (A) Proceeds to which a security interest attaches;

104 (B) Accounts, chattel paper, payment intangibles and  
105 promissory notes that have been sold; and

106 (C) Goods that are the subject of a consignment.

107 (13) "Commercial tort claim" means a claim arising in  
108 tort with respect to which:

109 (A) The claimant is an organization; or

110 (B) The claimant is an individual and the claim:

111 (i) Arose in the course of the claimant's business or  
112 profession; and

113 (ii) Does not include damages arising out of personal  
114 injury to or the death of an individual.

115 (14) "Commodity account" means an account main-  
116 tained by a commodity intermediary in which a commod-  
117 ity contract is carried for a commodity customer.

118 (15) "Commodity contract" means a commodity futures  
119 contract, an option on a commodity futures contract, a  
120 commodity option or another contract if the contract or  
121 option is:

122 (A) Traded on or subject to the rules of a board of trade  
123 that has been designated as a contract market for such a  
124 contract pursuant to federal commodities laws; or

125 (B) Traded on a foreign commodity board of trade,  
126 exchange or market and is carried on the books of a  
127 commodity intermediary for a commodity customer.

128 (16) "Commodity customer" means a person for which a  
129 commodity intermediary carries a commodity contract on  
130 its books.

131 (17) "Commodity intermediary" means a person that:

132 (A) Is registered as a futures commission merchant under  
133 federal commodities law; or

134 (B) In the ordinary course of its business provides  
135 clearance or settlement services for a board of trade that  
136 has been designated as a contract market pursuant to  
137 federal commodities law.

138 (18) "Communicate" means:

139 (A) To send a written or other tangible record;

140 (B) To transmit a record by any means agreed upon by  
141 the persons sending and receiving the record; or

142 (C) In the case of transmission of a record to or by a  
143 filing office, to transmit a record by any means prescribed  
144 by filing-office rule.

145 (19) "Consignee" means a merchant to which goods are  
146 delivered in a consignment.

147 (20) "Consignment" means a transaction, regardless of  
148 its form, in which a person delivers goods to a merchant  
149 for the purpose of sale and:

150 (A) The merchant:

151 (i) Deals in goods of that kind under a name other than  
152 the name of the person making delivery;

153 (ii) Is not an auctioneer; and

154 (iii) Is not generally known by its creditors to be sub-  
155 stantially engaged in selling the goods of others;

156 (B) With respect to each delivery, the aggregate value of  
157 the goods is one thousand dollars or more at the time of  
158 delivery;

159 (C) The goods are not consumer goods immediately  
160 before delivery; and

161 (D) The transaction does not create a security interest  
162 that secures an obligation.

163 (21) "Consignor" means a person that delivers goods to  
164 a consignee in a consignment.

165 (22) "Consumer debtor" means a debtor in a consumer  
166 transaction.

167 (23) "Consumer goods" means goods that are used or  
168 bought for use primarily for personal, family or household  
169 purposes.

170 (24) "Consumer-goods transaction" means a consumer  
171 transaction in which:

172 (A) An individual incurs an obligation primarily for  
173 personal, family or household purposes; and

174 (B) A security interest in consumer goods secures the  
175 obligation.

176 (25) "Consumer obligor" means an obligor who is an  
177 individual and who incurred the obligation as part of a  
178 transaction entered into primarily for personal, family or  
179 household purposes.

180 (26) "Consumer transaction" means a transaction in  
181 which: (i) An individual incurs an obligation primarily for  
182 personal, family or household purposes; (ii) a security  
183 interest secures the obligation; and (iii) the collateral is  
184 held or acquired primarily for personal, family or house-  
185 hold purposes. The term includes consumer-goods trans-  
186 actions.

187 (27) "Continuation statement" means an amendment of  
188 a financing statement which:

189 (A) Identifies, by its file number, the initial financing  
190 statement to which it relates; and

191 (B) Indicates that it is a continuation statement for, or  
192 that it is filed to continue the effectiveness of, the identi-  
193 fied financing statement.

194 (28) “Debtor” means:

195 (A) A person having an interest, other than a security  
196 interest or other lien, in the collateral, whether or not the  
197 person is an obligor;

198 (B) A seller of accounts, chattel paper, payment intangi-  
199 bles or promissory notes; or

200 (C) A consignee.

201 (29) “Deposit account” means a demand, time, savings,  
202 passbook or similar account maintained with a bank. The  
203 term does not include investment property or accounts  
204 evidenced by an instrument.

205 (30) “Document” means a document of title or a receipt  
206 of the type described in section 7-201(2).

207 (31) “Electronic chattel paper” means chattel paper  
208 evidenced by a record or records consisting of information  
209 stored in an electronic medium.

210 (32) “Encumbrance” means a right, other than an  
211 ownership interest, in real property. The term includes  
212 mortgages and other liens on real property.

213 (33) “Equipment” means goods other than inventory,  
214 farm products or consumer goods.

215 (34) “Farm products” means goods, other than standing  
216 timber, with respect to which the debtor is engaged in a  
217 farming operation and which are:

218 (A) Crops grown, growing or to be grown, including:

219 (i) Crops produced on trees, vines and bushes; and

220 (ii) Aquatic goods produced in aquacultural operations;

221 (B) Livestock, born or unborn, including aquatic goods  
222 produced in aquacultural operations;

223 (C) Supplies used or produced in a farming operation; or

224 (D) Products of crops or livestock in their  
225 unmanufactured states.

226 (35) "Farming operation" means raising, cultivating,  
227 propagating, fattening, grazing or any other farming,  
228 livestock or aquacultural operation.

229 (36) "File number" means the number assigned to an  
230 initial financing statement pursuant to section 9-519(a).

231 (37) "Filing office" means an office designated in section  
232 9-501 as the place to file a financing statement.

233 (38) "Filing-office rule" means a rule adopted pursuant  
234 to section 9-526.

235 (39) "Financing statement" means a record or records  
236 composed of an initial financing statement and any filed  
237 record relating to the initial financing statement.

238 (40) "Fixture filing" means the filing of a financing  
239 statement covering goods that are or are to become  
240 fixtures and satisfying section 9-502(a) and (b). The term  
241 includes the filing of a financing statement covering goods  
242 of a transmitting utility which are or are to become  
243 fixtures.

244 (41) "Fixtures" means goods that have become so related  
245 to particular real property that an interest in them arises  
246 under real property law.

247 (42) "General intangible" means any personal property,  
248 including things in action, other than accounts, chattel  
249 paper, commercial tort claims, deposit accounts, docu-  
250 ments, goods, instruments, investment property, letter-of-  
251 credit rights, letters of credit, money and oil, gas or other  
252 minerals before extraction. The term includes payment  
253 intangibles and software.

254 (43) "Good faith" means honesty in fact and the obser-  
255 vance of reasonable commercial standards of fair dealing.

256 (44) "Goods" means all things that are movable when a  
257 security interest attaches. The term includes: (i) Fixtures;  
258 (ii) standing timber that is to be cut and removed under a  
259 conveyance or contract for sale; (iii) the unborn young of  
260 animals; (iv) crops grown, growing or to be grown, even if  
261 the crops are produced on trees, vines or bushes; and (v)  
262 manufactured homes. The term also includes a computer  
263 program embedded in goods and any supporting informa-  
264 tion provided in connection with a transaction relating to  
265 the program if: (i) The program is associated with the  
266 goods in such a manner that it customarily is considered  
267 part of the goods; or (ii) by becoming the owner of the  
268 goods, a person acquires a right to use the program in  
269 connection with the goods. The term does not include a  
270 computer program embedded in goods that consist solely  
271 of the medium in which the program is embedded. The  
272 term also does not include accounts, chattel paper, com-  
273 mercial tort claims, deposit accounts, documents, general  
274 intangibles, instruments, investment property, letter-of-  
275 credit rights, letters of credit, money or oil, gas, or other  
276 minerals before extraction.

277 (45) "Governmental unit" means a subdivision, agency,  
278 department, county, parish, municipality or other unit of  
279 the government of the United States, a state or a foreign  
280 country. The term includes an organization having a  
281 separate corporate existence if the organization is eligible  
282 to issue debt on which interest is exempt from income  
283 taxation under the laws of the United States.

284 (46) "Health-care-insurance receivable" means an  
285 interest in or claim under a policy of insurance which is a  
286 right to payment of a monetary obligation for health-care  
287 goods or services provided.

288 (47) "Instrument" means a negotiable instrument or any  
289 other writing that evidences a right to the payment of a  
290 monetary obligation, is not itself a security agreement or  
291 lease, and is of a type that in ordinary course of business  
292 is transferred by delivery with any necessary indorsement  
293 or assignment. The term does not include: (i) Investment  
294 property; (ii) letters of credit; or (iii) writings that evidence  
295 a right to payment arising out of the use of a credit or

296 charge card or information contained on or for use with  
297 the card.

298 (48) "Inventory" means goods, other than farm products,  
299 which:

300 (A) Are leased by a person as lessor;

301 (B) Are held by a person for sale or lease or to be fur-  
302 nished under a contract of service;

303 (C) Are furnished by a person under a contract of service;  
304 or

305 (D) Consist of raw materials, work in process or materi-  
306 als used or consumed in a business.

307 (49) "Investment property" means a security, whether  
308 certificated or uncertificated, security entitlement, securi-  
309 ties account, commodity contract or commodity account.

310 (50) "Jurisdiction of organization", with respect to a  
311 registered organization, means the jurisdiction under  
312 whose law the organization is organized.

313 (51) "Letter-of-credit right" means a right to payment or  
314 performance under a letter of credit, whether or not the  
315 beneficiary has demanded or is at the time entitled to  
316 demand payment or performance. The term does not  
317 include the right of a beneficiary to demand payment or  
318 performance under a letter of credit.

319 (52) "Lien creditor" means:

320 (A) A creditor that has acquired a lien on the property  
321 involved by attachment, levy or the like;

322 (B) An assignee for benefit of creditors from the time of  
323 assignment;

324 (C) A trustee in bankruptcy from the date of the filing of  
325 the petition; or

326 (D) A receiver in equity from the time of appointment.

327 (53) "Manufactured home" means a structure, transport-  
328 able in one or more sections, which, in the traveling mode,  
329 is eight body feet or more in width or forty body feet or



330 more in length, or, when erected on site, is three hundred  
331 twenty or more square feet, and which is built on a  
332 permanent chassis and designed to be used as a dwelling  
333 with or without a permanent foundation when connected  
334 to the required utilities, and includes the plumbing,  
335 heating, air-conditioning and electrical systems contained  
336 therein. The term includes any structure that meets all of  
337 the requirements of this paragraph except the size require-  
338 ments and with respect to which the manufacturer volun-  
339 tarily files a certification required by the United States  
340 secretary of housing and urban development and complies  
341 with the standards established under Title 42 of the United  
342 States Code.

343 (54) "Manufactured-home transaction" means a secured  
344 transaction:

345 (A) That creates a purchase-money security interest in a  
346 manufactured home, other than a manufactured home held  
347 as inventory; or

348 (B) In which a manufactured home, other than a manu-  
349 factured home held as inventory, is the primary collateral.

350 (55) "Mortgage" means a consensual interest in real  
351 property, including fixtures, which secures payment or  
352 performance of an obligation.

353 (56) "New debtor" means a person that becomes bound  
354 as debtor under section 9-203(d) by a security agreement  
355 previously entered into by another person.

356 (57) "New value" means: (i) Money; (ii) money's worth in  
357 property, services or new credit; or (iii) release by a  
358 transferee of an interest in property previously transferred  
359 to the transferee. The term does not include an obligation  
360 substituted for another obligation.

361 (58) "Noncash proceeds" means proceeds other than cash  
362 proceeds.

363 (59) "Obligor" means a person that, with respect to an  
364 obligation secured by a security interest in or an agricul-  
365 tural lien on the collateral: (i) Owes payment or other  
366 performance of the obligation; (ii) has provided property

367 other than the collateral to secure payment or other  
368 performance of the obligation; or (iii) is otherwise account-  
369 able, in whole or in part, for payment or other perfor-  
370 mance of the obligation. The term does not include issuers  
371 or nominated persons under a letter of credit.

372 (60) "Original debtor" except as used in section 9-310(c),  
373 means a person that, as debtor, entered into a security  
374 agreement to which a new debtor has become bound under  
375 section 9-203(d).

376 (61) "Payment intangible" means a general intangible  
377 under which the account debtor's principal obligation is a  
378 monetary obligation.

379 (62) "Person related to", with respect to an individual,  
380 means:

381 (A) The spouse of the individual;

382 (B) A brother, brother-in-law, sister or sister-in-law of  
383 the individual;

384 (C) An ancestor or lineal descendant of the individual or  
385 the individual's spouse; or

386 (D) Any other relative, by blood or marriage, of the  
387 individual or the individual's spouse who shares the same  
388 home with the individual.

389 (63) "Person related to", with respect to an organization,  
390 means:

391 (A) A person directly or indirectly controlling, controlled  
392 by or under common control with the organization;

393 (B) An officer or director of, or a person performing  
394 similar functions with respect to, the organization;

395 (C) An officer or director of, or a person performing  
396 similar functions with respect to, a person described in  
397 subparagraph (A);

398 (D) The spouse of an individual described in subpara-  
399 graph (A), (B) or (C); or

400 (E) An individual who is related by blood or marriage to  
401 an individual described in subparagraph (A), (B), (C) or (D)  
402 and shares the same home with the individual.

403 (64) "Proceeds", except as used in section 9-609(b),  
404 means the following property:

405 (A) Whatever is acquired upon the sale, lease, license,  
406 exchange or other disposition of collateral;

407 (B) Whatever is collected on, or distributed on account  
408 of, collateral;

409 (C) Rights arising out of collateral;

410 (D) To the extent of the value of collateral, claims arising  
411 out of the loss, nonconformity, or interference with the use  
412 of, defects or infringement of rights in, or damage to, the  
413 collateral; or

414 (E) To the extent of the value of collateral and to the  
415 extent payable to the debtor or the secured party, insur-  
416 ance payable by reason of the loss or nonconformity of,  
417 defects or infringement of rights in, or damage to, the  
418 collateral.

419 (65) "Production-money crops" means crops that secure  
420 a production-money obligation incurred with respect to  
421 the production of those crops.

422 (66) "Production-money obligation" means an obligation  
423 of an obligor incurred for new value given to enable the  
424 debtor to produce crops if the value is in fact used for the  
425 production of the crops.

426 (67) "Production of crops" includes tilling and otherwise  
427 preparing land for growing, planting, cultivating, fertiliz-  
428 ing, irrigating, harvesting and gathering crops and pro-  
429 tecting them from damage or disease.

430 (68) "Promissory note" means an instrument that  
431 evidences a promise to pay a monetary obligation, does not  
432 evidence an order to pay, and does not contain an ac-  
433 knowledgment by a bank that the bank has received for  
434 deposit a sum of money or funds.

435 (69) "Proposal" means a record authenticated by a  
436 secured party which includes the terms on which the  
437 secured party is willing to accept collateral in full or  
438 partial satisfaction of the obligation it secures pursuant to  
439 sections 9-620, 9-621 and 9-622.

440 (70) "Public-finance transaction" means a secured  
441 transaction in connection with which:

442 (A) Debt securities are issued;

443 (B) All or a portion of the securities issued have an initial  
444 stated maturity of at least twenty years; and

445 (C) The debtor, obligor, secured party, account debtor or  
446 other person obligated on collateral, assignor or assignee  
447 of a secured obligation, or assignor or assignee of a  
448 security interest is a state or a governmental unit of a  
449 state.

450 (71) "Pursuant to commitment", with respect to an  
451 advance made or other value given by a secured party,  
452 means pursuant to the secured party's obligation, whether  
453 or not a subsequent event of default or other event not  
454 within the secured party's control has relieved or may  
455 relieve the secured party from its obligation.

456 (72) "Record", except as used in "for record", "of  
457 record", "record or legal title" and "record owner", means  
458 information that is inscribed on a tangible medium or  
459 which is stored in an electronic or other medium and is  
460 retrievable in perceivable form.

461 (73) "Registered organization" means an organization  
462 organized solely under the law of a single state or the  
463 United States and as to which the state or the United  
464 States must maintain a public record showing the organi-  
465 zation to have been organized.

466 (74) "Secondary obligor" means an obligor to the extent  
467 that:

468 (A) The obligor's obligation is secondary; or

469 (B) The obligor has a right of recourse with respect to an  
470 obligation secured by collateral against the debtor,  
471 another obligor or property of either.

472 (75) "Secured party" means:

473 (A) A person in whose favor a security interest is created  
474 or provided for under a security agreement, whether or not  
475 any obligation to be secured is outstanding;

476 (B) A person that holds an agricultural lien;

477 (C) A consignor;

478 (D) A person to which accounts, chattel paper, payment  
479 intangibles or promissory notes have been sold;

480 (E) A trustee, indenture trustee, agent, collateral agent  
481 or other representative in whose favor a security interest  
482 or agricultural lien is created or provided for; or

483 (F) A person that holds a security interest arising under  
484 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

485 (76) "Security agreement" means an agreement that  
486 creates or provides for a security interest.

487 (77) "Send", in connection with a record or notification,  
488 means:

489 (A) To deposit in the mail, deliver for transmission, or  
490 transmit by any other usual means of communication, with  
491 postage or cost of transmission provided for, addressed to  
492 any address reasonable under the circumstances; or

493 (B) To cause the record or notification to be received  
494 within the time that it would have been received if prop-  
495 erly sent under paragraph (A).

496 (78) "Software" means a computer program and any  
497 supporting information provided in connection with a  
498 transaction relating to the program. The term does not  
499 include a computer program that is included in the  
500 definition of goods.

501 (79) "State" means a state of the United States, the  
502 District of Columbia, Puerto Rico, the United States

503 Virgin Islands or any territory or insular possession  
504 subject to the jurisdiction of the United States.

505 (80) "Supporting obligation" means a letter-of-credit  
506 right or secondary obligation that supports the payment or  
507 performance of an account, chattel paper, a document, a  
508 general intangible, an instrument or investment property.

509 (81) "Tangible chattel paper" means chattel paper  
510 evidenced by a record or records consisting of information  
511 that is inscribed on a tangible medium.

512 (82) "Termination statement" means an amendment of  
513 a financing statement which:

514 (A) Identifies, by its file number, the initial financing  
515 statement to which it relates; and

516 (B) Indicates either that it is a termination statement or  
517 that the identified financing statement is no longer  
518 effective.

519 (83) "Transmitting utility" means a person primarily  
520 engaged in the business of:

521 (A) Operating a railroad, subway, street railway or  
522 trolley bus;

523 (B) Transmitting communications electrically, electro-  
524 magnetically or by light;

525 (C) Transmitting goods by pipeline or sewer; or

526 (D) Transmitting or producing and transmitting electric-  
527 ity, steam, gas, or water.

528 (b) **Definitions in other articles.** The following defini-  
529 tions in other articles apply to this article:

530 "Applicant" Section 5-102.

531 "Beneficiary" Section 5-102.

532 "Broker" Section 8-102.

533 "Certificated security" Section 8-102.

534 "Check" Section 3-104.

535	“Clearing corporation”	Section 8-102.
536	“Contract for sale”	Section 2-106.
537	“Customer”	Section 4-104.
538	“Entitlement holder”	Section 8-102.
539	“Financial asset”	Section 8-102.
540	“Holder in due course”	Section 3-302.
541	“Issuer” (with respect to a letter of	
542	credit or letter-of-credit right)	Section 5-102.
543	“Issuer” (with respect to a security)	Section 8-201.
544	“Lease”	Section 2A-103.
545	“Lease agreement”	Section 2A-103.
546	“Lease contract”	Section 2A-103.
547	“Leasehold interest”	Section 2A-103.
548	“Lessee”	Section 2A-103.
549	“Lessee in ordinary course	
550	of business”	Section 2A-103.
551	“Lessor”	Section 2A-103.
552	“Lessor’s residual interest”	Section 2A-103.
553	“Letter of credit”	Section 5-102.
554	“Merchant”	Section 2-104.
555	“Negotiable instrument”	Section 3-104.
556	“Nominated person”	Section 5-102.
557	“Note”	Section 3-104.
558	“Proceeds of a letter of credit”	Section 5-114.
559	“Prove”	Section 3-103.
560	“Sale”	Section 2-106.

561	“Securities account”	Section 8-501.
562	“Securities intermediary”	Section 8-102.
563	“Security”	Section 8-102.
564	“Security certificate”	Section 8-102.
565	“Security entitlement”	Section 8-102.
566	“Uncertificated security”	Section 8-102.

567 (c) **Article 1 definitions and principles.** Article 1 con-  
 568 tains general definitions and principles of construction  
 569 and interpretation applicable throughout this article.

**§46-9-103. Purchase-money security interest; application of payments; burden of establishing.**

1 (a) **Definitions.** In this section:

2 (1) “Purchase-money collateral” means goods or soft-  
 3 ware that secures a purchase-money obligation incurred  
 4 with respect to that collateral; and

5 (2) “Purchase-money obligation” means an obligation of  
 6 an obligor incurred as all or part of the price of the  
 7 collateral or for value given to enable the debtor to acquire  
 8 rights in or the use of the collateral if the value is in fact so  
 9 used.

10 (b) **Purchase-money security interest in goods.** A  
 11 security interest in goods is a purchase-money security  
 12 interest:

13 (1) To the extent that the goods are purchase-money  
 14 collateral with respect to that security interest;

15 (2) If the security interest is in inventory that is or was  
 16 purchase-money collateral, also to the extent that the  
 17 security interest secures a purchase-money obligation  
 18 incurred with respect to other inventory in which the  
 19 secured party holds or held a purchase-money security  
 20 interest; and

21 (3) Also to the extent that the security interest secures a  
 22 purchase-money obligation incurred with respect to



23 software in which the secured party holds or held a  
24 purchase-money security interest.

25 (c) **Purchase-money security interest in software.** A  
26 security interest in software is a purchase-money security  
27 interest to the extent that the security interest also secures  
28 a purchase-money obligation incurred with respect to  
29 goods in which the secured party holds or held a purchase-  
30 money security interest if:

31 (1) The debtor acquired its interest in the software in an  
32 integrated transaction in which it acquired an interest in  
33 the goods; and

34 (2) The debtor acquired its interest in the software for  
35 the principal purpose of using the software in the goods.

36 (d) **Consignor's inventory purchase-money security**  
37 **interest.** The security interest of a consignor in goods that  
38 are the subject of a consignment is a purchase-money  
39 security interest in inventory.

40 (e) **Application of payment in non-consumer-goods**  
41 **transaction.** In a transaction other than a consumer-goods  
42 transaction, if the extent to which a security interest is a  
43 purchase-money security interest depends on the applica-  
44 tion of a payment to a particular obligation, the payment  
45 must be applied:

46 (1) In accordance with any reasonable method of appli-  
47 cation to which the parties agree;

48 (2) In the absence of the parties' agreement to a reason-  
49 able method, in accordance with any intention of the  
50 obligor manifested at or before the time of payment; or

51 (3) In the absence of an agreement to a reasonable  
52 method and a timely manifestation of the obligor's inten-  
53 tion, in the following order:

54 (A) To obligations that are not secured; and

55 (B) If more than one obligation is secured, to obligations  
56 secured by purchase-money security interests in the order  
57 in which those obligations were incurred.

58 (f) **No loss of status of purchase-money security interest**  
59 **in non-consumer-goods transaction.** In a transaction other  
60 than a consumer-goods transaction, a purchase-money  
61 security interest does not lose its status as such, even if:

62 (1) The purchase-money collateral also secures an  
63 obligation that is not a purchase-money obligation;

64 (2) Collateral that is not purchase-money collateral also  
65 secures the purchase-money obligation; or

66 (3) The purchase-money obligation has been renewed,  
67 refinanced, consolidated or restructured.

68 (g) **Burden of proof in non-consumer-goods transaction.**  
69 In a transaction other than a consumer-goods transaction,  
70 a secured party claiming a purchase-money security  
71 interest has the burden of establishing the extent to which  
72 the security interest is a purchase-money security interest.

73 (h) **Non-consumer-goods transactions; no inference.** The  
74 limitation of the rules in subsections (e), (f) and (g) of this  
75 section to transactions other than consumer-goods trans-  
76 actions is intended to leave to the court the determination  
77 of the proper rules in consumer-goods transactions. The  
78 court may not infer from that limitation the nature of the  
79 proper rule in consumer-goods transactions and may  
80 continue to apply established approaches.

**§46-9-103a. "Production-money crops"; "production-money  
obligation"; production-money security inter-  
est; burden of establishing.**

1 (a) A security interest in crops is a production-money  
2 security interest to the extent that the crops are  
3 production-money crops.

4 (b) If the extent to which a security interest is a  
5 production-money security interest depends on the  
6 application of a payment to a particular obligation, the  
7 payment must be applied:

8 (1) In accordance with any reasonable method of appli-  
9 cation to which the parties agree;

10 (2) In the absence of the parties' agreement to a reason-  
11 able method, in accordance with any intention of the  
12 obligor manifested at or before the time of payment; or

13 (3) In the absence of an agreement to a reasonable  
14 method and a timely manifestation of the obligor's inten-  
15 tion, in the following order:

16 (A) To obligations that are not secured; and

17 (B) If more than one obligation is secured, to obligations  
18 secured by production-money security interests in the  
19 order in which those obligations were incurred.

20 (c) A production-money security interest does not lose its  
21 status as such, even if:

22 (1) The production-money crops also secure an obliga-  
23 tion that is not a production-money obligation;

24 (2) Collateral that is not production-money crops also  
25 secures the production-money obligation; or

26 (3) The production-money obligation has been renewed,  
27 refinanced, or restructured.

28 (d) A secured party claiming a production-money  
29 security interest has the burden of establishing the extent  
30 to which the security interest is a production-money  
31 security interest.

**§46-9-104. Control of deposit account.**

1 (a) **Requirements for control.** A secured party has  
2 control of a deposit account if:

3 (1) The secured party is the bank with which the deposit  
4 account is maintained;

5 (2) The debtor, secured party and bank have agreed in an  
6 authenticated record that the bank will comply with  
7 instructions originated by the secured party directing  
8 disposition of the funds in the deposit account without  
9 further consent by the debtor; or

10 (3) The secured party becomes the bank's customer with  
11 respect to the deposit account.

12 (b) **Debtor's right to direct disposition.** A secured party  
13 that has satisfied subsection (a) has control, even if the  
14 debtor retains the right to direct the disposition of funds  
15 from the deposit account.

**§46-9-105. Control of electronic chattel paper.**

1 A secured party has control of electronic chattel paper if  
2 the record or records comprising the chattel paper are  
3 created, stored, and assigned in such a manner that:

4 (1) A single authoritative copy of the record or records  
5 exists which is unique, identifiable and, except as other-  
6 wise provided in paragraphs (4), (5) and (6) of this section,  
7 unalterable;

8 (2) The authoritative copy identifies the secured party as  
9 the assignee of the record or records;

10 (3) The authoritative copy is communicated to and  
11 maintained by the secured party or its designated custo-  
12 dian;

13 (4) Copies or revisions that add or change an identified  
14 assignee of the authoritative copy can be made only with  
15 the participation of the secured party;

16 (5) Each copy of the authoritative copy and any copy of  
17 a copy is readily identifiable as a copy that is not the  
18 authoritative copy; and

19 (6) Any revision of the authoritative copy is readily  
20 identifiable as an authorized or unauthorized revision.

**§46-9-106. Control of investment property.**

1 (a) **Control under section 8-106.** A person has control of  
2 a certificated security, uncertificated security, or security  
3 entitlement as provided in section 8-106.

4 (b) **Control of commodity contract.** A secured party has  
5 control of a commodity contract if:

6 (1) The secured party is the commodity intermediary  
7 with which the commodity contract is carried; or

8 (2) The commodity customer, secured party and com-  
9modity intermediary have agreed that the commodity  
10 intermediary will apply any value distributed on account  
11 of the commodity contract as directed by the secured party  
12 without further consent by the commodity customer.

13 (c) **Effect of control of securities account or commodity**  
14 **account.** A secured party having control of all security  
15 entitlements or commodity contracts carried in a securities  
16 account or commodity account has control over the  
17 securities account or commodity account.

**§46-9-107. Control of letter-of-credit right.**

1 A secured party has control of a letter-of-credit right to  
2 the extent of any right to payment or performance by the  
3 issuer or any nominated person if the issuer or nominated  
4 person has consented to an assignment of proceeds of the  
5 letter of credit under section 5-114(c) or otherwise applica-  
6 ble law or practice.

**§46-9-108. Sufficiency of description.**

1 (a) **Sufficiency of description.** Except as otherwise  
2 provided in subsections (c), (d) and (e) of this section, a  
3 description of personal or real property is sufficient,  
4 whether or not it is specific, if it reasonably identifies  
5 what is described.

6 (b) **Examples of reasonable identification.** Except as  
7 otherwise provided in subsection (d), a description of  
8 collateral reasonably identifies the collateral if it identifies  
9 the collateral by:

10 (1) Specific listing;

11 (2) Category;

12 (3) Except as otherwise provided in subsection (e) of this  
13 section, a type of collateral defined in the Uniform Com-  
14 mercial Code;

15 (4) Quantity;

16 (5) Computational or allocational formula or procedure;  
17 or

18 (6) Except as otherwise provided in subsection (c), any  
19 other method, if the identity of the collateral is objectively  
20 determinable.

21 (c) **Supergeneric description not sufficient.** A descrip-  
22 tion of collateral as “all the debtor’s assets” or “all the  
23 debtor’s personal property” or using words of similar  
24 import does not reasonably identify the collateral.

25 (d) **Investment property.** Except as otherwise provided  
26 in subsection (e), a description of a security entitlement,  
27 securities account or commodity account is sufficient if it  
28 describes:

29 (1) The collateral by those terms or as investment  
30 property; or

31 (2) The underlying financial asset or commodity con-  
32 tract.

33 (e) **When description by type insufficient.** A description  
34 only by type of collateral defined in the Uniform Commer-  
35 cial Code is an insufficient description of:

36 (1) A commercial tort claim; or

37 (2) In a consumer transaction, consumer goods, a security  
38 entitlement, a securities account or a commodity account.

#### SUBPART 2. APPLICABILITY OF ARTICLE.

##### §46-9-109. Scope.

1 (a) **General scope of article.** Except as otherwise pro-  
2 vided in subsections (c) and (d) of this section, this article  
3 applies to:

4 (1) A transaction, regardless of its form, that creates a  
5 security interest in personal property or fixtures by  
6 contract;

7 (2) An agricultural lien;

8 (3) A sale of accounts, chattel paper, payment intangi-  
9 bles or promissory notes;

10 (4) A consignment;

11 (5) A security interest arising under section 2-401, 2-505,  
12 2-711(3) or 2A-508(5) as provided in section 9-110; and

13 (6) A security interest arising under section 4-210 or  
14 5-118.

15 (b) **Security interest in secured obligation.** The applica-  
16 tion of this article to a security interest in a secured  
17 obligation is not affected by the fact that the obligation is  
18 itself secured by a transaction or interest to which this  
19 article does not apply.

20 (c) **Extent to which article does not apply.** This article  
21 does not apply to the extent that:

22 (1) A statute, regulation or treaty of the United States  
23 preempts this article;

24 (2) Another statute of this state expressly governs the  
25 creation, perfection, priority or enforcement of a security  
26 interest created by this state or a governmental unit of this  
27 state;

28 (3) A statute of another state, a foreign country or a  
29 governmental unit of another state or a foreign country,  
30 other than a statute generally applicable to security  
31 interests, expressly governs creation, perfection, priority  
32 or enforcement of a security interest created by the state,  
33 country or governmental unit; or

34 (4) The rights of a transferee beneficiary or nominated  
35 person under a letter of credit are independent and  
36 superior under section 5-114.

37 (d) **Inapplicability of article.** This article does not apply  
38 to:

39 (1) A landlord's lien, other than an agricultural lien;

40 (2) A lien, other than an agricultural lien, given by  
41 statute or other rule of law for services or materials, but  
42 section 9-333 applies with respect to priority of the lien;

43 (3) An assignment of a claim for wages, salary or other  
44 compensation of an employee;

45 (4) A sale of accounts, chattel paper, payment intangi-  
46 bles or promissory notes as part of a sale of the business  
47 out of which they arose;

48 (5) An assignment of accounts, chattel paper, payment  
49 intangibles or promissory notes which is for the purpose of  
50 collection only;

51 (6) An assignment of a right to payment under a contract  
52 to an assignee that is also obligated to perform under the  
53 contract;

54 (7) An assignment of a single account, payment intangi-  
55 ble or promissory note to an assignee in full or partial  
56 satisfaction of a preexisting indebtedness;

57 (8) A transfer of an interest in or an assignment of a  
58 claim under a policy of insurance, other than an assign-  
59 ment by or to a health-care provider of a health-care-  
60 insurance receivable and any subsequent assignment of the  
61 right to payment, but sections 9-315 and 9-322 apply with  
62 respect to proceeds and priorities in proceeds;

63 (9) An assignment of a right represented by a judgment,  
64 other than a judgment taken on a right to payment that  
65 was collateral;

66 (10) A right of recoupment or set-off, but:

67 (A) Section 9-340 applies with respect to the effective-  
68 ness of rights of recoupment or set-off against deposit  
69 accounts; and

70 (B) Section 9-404 applies with respect to defenses or  
71 claims of an account debtor;

72 (11) The creation or transfer of an interest in or lien on  
73 real property, including a lease or rents thereunder, except  
74 to the extent that provision is made for:

75 (A) Liens on real property in sections 9-203 and 9-308;

76 (B) Fixtures in section 9-334;

77 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,  
78 and 9-519; and



79 (D) Security agreements covering personal and real  
80 property in section 9-604;

81 (12) An assignment of a claim arising in tort, other than  
82 a commercial tort claim, but sections 9-315 and 9-322  
83 apply with respect to proceeds and priorities in proceeds;  
84 or

85 (13) An assignment of a deposit account in a consumer  
86 transaction, but sections 9-315 and 9-322 apply with  
87 respect to proceeds and priorities in proceeds.

**§46-9-110. Security interests arising under article two or two-a.**

1 A security interest arising under section 2-401, 2-505,  
2 2-711(3) or 2A-508(5) is subject to this article. However,  
3 until the debtor obtains possession of the goods:

4 (1) The security interest is enforceable, even if section  
5 9-203(b)(3) has not been satisfied;

6 (2) Filing is not required to perfect the security interest;

7 (3) The rights of the secured party after default by the  
8 debtor are governed by article two or two-a; and

9 (4) The security interest has priority over a conflicting  
10 security interest created by the debtor.

**PART 2. EFFECTIVENESS OF SECURITY AGREEMENT;  
ATTACHMENT OF SECURITY INTEREST;  
RIGHTS OF PARTIES TO SECURITY AGREEMENT.  
SUBPART 1. EFFECTIVENESS AND ATTACHMENT.**

**§46-9-201. General effectiveness of security agreement.**

1 (a) **General effectiveness.** Except as otherwise provided  
2 in the Uniform Commercial Code, a security agreement is  
3 effective according to its terms between the parties,  
4 against purchasers of the collateral, and against creditors.

5 (b) **Applicable consumer laws and other law.** A transac-  
6 tion subject to this article is subject to any applicable rule  
7 of law which establishes a different rule for consumers, to  
8 any other statute or regulation of this state that regulates  
9 the rates, charges, agreements, and practices for loans,

10 credit sales or other extensions of credit, and to any  
11 consumer-protection statute or regulation of this state.

12 (c) **Other applicable law controls.** In case of conflict  
13 between this article and a rule of law, statute or regulation  
14 described in subsection (b) of this section, the rule of law,  
15 statute or regulation controls. Failure to comply with a  
16 statute or regulation described in subsection (b) of this  
17 section has only the effect the statute or regulation  
18 specifies.

19 (d) **Further deference to other applicable law.** This  
20 article does not:

21 (1) Validate any rate, charge, agreement or practice that  
22 violates a rule of law, statute or regulation described in  
23 subsection (b) of this section; or

24 (2) Extend the application of the rule of law, statute, or  
25 regulation to a transaction not otherwise subject to it.

**§46-9-202. Title to collateral immaterial.**

1 Except as otherwise provided with respect to consign-  
2 ments or sales of accounts, chattel paper, payment intangi-  
3 bles or promissory notes, the provisions of this article with  
4 regard to rights and obligations apply whether title to  
5 collateral is in the secured party or the debtor.

**§46-9-203. Attachment and enforceability of security interest;  
proceeds; supporting obligations; formal requi-  
sites.**

1 (a) **Attachment.** A security interest attaches to collateral  
2 when it becomes enforceable against the debtor with  
3 respect to the collateral, unless an agreement expressly  
4 postpones the time of attachment.

5 (b) **Enforceability.** Except as otherwise provided in  
6 subsections (c) through (i), inclusive, of this section, a  
7 security interest is enforceable against the debtor and  
8 third parties with respect to the collateral only if:

9 (1) Value has been given;

10 (2) The debtor has rights in the collateral or the power to  
11 transfer rights in the collateral to a secured party; and

12 (3) One of the following conditions is met:

13 (A) The debtor has authenticated a security agreement  
14 that provides a description of the collateral and, if the  
15 security interest covers timber to be cut, a description of  
16 the land concerned;

17 (B) The collateral is not a certificated security and is in  
18 the possession of the secured party under section 9-313  
19 pursuant to the debtor's security agreement;

20 (C) The collateral is a certificated security in registered  
21 form and the security certificate has been delivered to the  
22 secured party under section 8-301 pursuant to the debtor's  
23 security agreement; or

24 (D) The collateral is deposit accounts, electronic chattel  
25 paper, investment property or letter-of-credit rights, and  
26 the secured party has control under section 9-104, 9-105,  
27 9-106 or 9-107 pursuant to the debtor's security agree-  
28 ment.

29 (c) **Other UCC provisions.** Subsection (b) of this section  
30 is subject to section 4-210 on the security interest of a  
31 collecting bank, section 5-118 on the security interest of a  
32 letter-of-credit issuer or nominated person, section 9-110  
33 on a security interest arising under article two or two-a of  
34 this chapter and section 9-206 on security interests in  
35 investment property.

36 (d) **When person becomes bound by another person's**  
37 **security.** A person becomes bound as debtor by a security  
38 agreement entered into by another person if, by operation  
39 of law other than this article or by contract:

40 (1) The security agreement becomes effective to create a  
41 security interest in the person's property; or

42 (2) The person becomes generally obligated for the  
43 obligations of the other person, including the obligation  
44 secured under the security agreement, and acquires or  
45 succeeds to all or substantially all of the assets of the other  
46 person.

47 (e) **Effect of new debtor becoming bound.** If a new  
48 debtor becomes bound as debtor by a security agreement  
49 entered into by another person:

50 (1) The agreement satisfies subsection (b) (3) of this  
51 section with respect to existing or after-acquired property  
52 of the new debtor to the extent the property is described in  
53 the agreement; and

54 (2) Another agreement is not necessary to make a  
55 security interest in the property enforceable.

56 (f) **Proceeds and supporting obligations.** The attachment  
57 of a security interest in collateral gives the secured party  
58 the rights to proceeds provided by section 9-315 and is also  
59 attachment of a security interest in a supporting obliga-  
60 tion for the collateral.

61 (g) **Lien securing right to payment.** The attachment of a  
62 security interest in a right to payment or performance  
63 secured by a security interest or other lien on personal or  
64 real property is also attachment of a security interest in  
65 the security interest, mortgage or other lien.

66 (h) **Security entitlement carried in securities account.**  
67 The attachment of a security interest in a securities  
68 account is also attachment of a security interest in the  
69 security entitlements carried in the securities account.

70 (i) **Commodity contracts carried in commodity account.**  
71 The attachment of a security interest in a commodity  
72 account is also attachment of a security interest in the  
73 commodity contracts carried in the commodity account.

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

1 (a) **After-acquired collateral.** Except as otherwise  
2 provided in subsection (b), a security agreement may  
3 create or provide for a security interest in after-acquired  
4 collateral.

5 (b) **When after-acquired property clause not effective.** A  
6 security interest does not attach under a term constituting  
7 an after-acquired property clause to:

8 (1) Consumer goods, other than an accession when given  
9 as additional security, unless the debtor acquires rights in  
10 them within ten days after the secured party gives value;  
11 or

12 (2) A commercial tort claim.

13 (c) **Future advances and other value.** A security agree-  
14 ment may provide that collateral secures, or that accounts,  
15 chattelpaper, payment intangibles or promissory notes are  
16 sold in connection with, future advances or other value,  
17 whether or not the advances or value are given pursuant to  
18 commitment.

**§46-9-205. Use or disposition of collateral permissible.**

1 (a) **When security interest not invalid or fraudulent.** A  
2 security interest is not invalid or fraudulent against  
3 creditors solely because:

4 (1) The debtor has the right or ability to:

5 (A) Use, commingle or dispose of all or part of the  
6 collateral, including returned or repossessed goods;

7 (B) Collect, compromise, enforce or otherwise deal with  
8 collateral;

9 (C) Accept the return of collateral or make repossessions;  
10 or

11 (D) Use, commingle or dispose of proceeds; or

12 (2) The secured party fails to require the debtor to  
13 account for proceeds or replace collateral.

14 (b) **Requirements of possession not relaxed.** This section  
15 does not relax the requirements of possession if attach-  
16 ment, perfection or enforcement of a security interest  
17 depends upon possession of the collateral by the secured  
18 party.

**§46-9-206. Security interest arising in purchase or delivery of  
financial asset.**

1 (a) **Security interest when person buys through securities**  
2 **intermediary.** A security interest in favor of a securities  
3 intermediary attaches to a person's security entitlement if:

4 (1) The person buys a financial asset through the securi-  
5 ties intermediary in a transaction in which the person is  
6 obligated to pay the purchase price to the securities  
7 intermediary at the time of the purchase; and

8 (2) The securities intermediary credits the financial asset  
9 to the buyer's securities account before the buyer pays the  
10 securities intermediary.

11 (b) **Security interest secures obligation to pay for**  
12 **financial asset.** The security interest described in subsec-  
13 tion (a) secures the person's obligation to pay for the  
14 financial asset.

15 (c) **Security interest in payment against delivery transac-**  
16 **tion.** A security interest in favor of a person that delivers  
17 a certificated security or other financial asset represented  
18 by a writing attaches to the security or other financial  
19 asset if:

20 (1) The security or other financial asset:

21 (A) In the ordinary course of business is transferred by  
22 delivery with any necessary indorsement or assignment;  
23 and

24 (B) Is delivered under an agreement between persons in  
25 the business of dealing with such securities or financial  
26 assets; and

27 (2) The agreement calls for delivery against payment.

28 (d) **Security interest secures obligation to pay for**  
29 **delivery.** The security interest described in subsection (c)  
30 of this section secures the obligation to make payment for  
31 the delivery.

## SUBPART 2. RIGHTS AND DUTIES.

### **§46-9-207. Rights and duties of secured party having possession or control of collateral.**

1     **(a) Duty of care when secured party in possession.**  
2     Except as otherwise provided in subsection (d), a secured  
3     party shall use reasonable care in the custody and preser-  
4     vation of collateral in the secured party's possession. In  
5     the case of chattel paper or an instrument, reasonable care  
6     includes taking necessary steps to preserve rights against  
7     prior parties unless otherwise agreed.

8     **(b) Expenses, risks, duties and rights when secured party**  
9     **in possession.** Except as otherwise provided in subsection  
10    (d), if a secured party has possession of collateral:

11    (1) Reasonable expenses, including the cost of insurance  
12    and payment of taxes or other charges, incurred in the  
13    custody, preservation, use or operation of the collateral are  
14    chargeable to the debtor and are secured by the collateral;

15    (2) The risk of accidental loss or damage is on the debtor  
16    to the extent of a deficiency in any effective insurance  
17    coverage;

18    (3) The secured party shall keep the collateral identifi-  
19    able, but fungible collateral may be commingled; and

20    (4) The secured party may use or operate the collateral:

21    (A) For the purpose of preserving the collateral or its  
22    value;

23    (B) As permitted by an order of a court having compe-  
24    tent jurisdiction; or

25    (C) Except in the case of consumer goods, in the manner  
26    and to the extent agreed by the debtor.

27    **(c) Duties and rights when secured party in possession or**  
28    **control.** Except as otherwise provided in subsection (d) of  
29    this section, a secured party having possession of collateral  
30    or control of collateral under section 9-104, 9-105, 9-106  
31    or 9-107:

32    (1) May hold as additional security any proceeds, except  
33    money or funds, received from the collateral;

34 (2) Shall apply money or funds received from the collat-  
35 eral to reduce the secured obligation, unless remitted to  
36 the debtor; and

37 (3) May create a security interest in the collateral.

38 (d) **Buyer of certain rights to payment.** If the secured  
39 party is a buyer of accounts, chattel paper, payment  
40 intangibles, or promissory notes or a consignor:

41 (1) Subsection (a) of this section does not apply unless  
42 the secured party is entitled under an agreement:

43 (A) To charge back uncollected collateral; or

44 (B) Otherwise to full or limited recourse against the  
45 debtor or a secondary obligor based on the nonpayment or  
46 other default of an account debtor or other obligor on the  
47 collateral; and

48 (2) Subsections (b) and (c) of this section do not apply.

**§46-9-208. Additional duties of secured party having control of collateral.**

1 (a) **Applicability of section.** This section applies to cases  
2 in which there is no outstanding secured obligation and  
3 the secured party is not committed to make advances,  
4 incur obligations, or otherwise give value.

5 (b) **Duties of secured party after receiving demand from**  
6 **debtor.** Within ten days after receiving an authenticated  
7 demand by the debtor:

8 (1) A secured party having control of a deposit account  
9 under section 9-104(a)(2) shall send to the bank with  
10 which the deposit account is maintained an authenticated  
11 statement that releases the bank from any further obliga-  
12 tion to comply with instructions originated by the secured  
13 party;

14 (2) A secured party having control of a deposit account  
15 under section 9-104(a)(3) shall:

16 (A) Pay the debtor the balance on deposit in the deposit  
17 account; or



18 (B) Transfer the balance on deposit into a deposit  
19 account in the debtor's name;

20 (3) A secured party, other than a buyer, having control of  
21 electronic chattel paper under section 9-105 shall:

22 (A) Communicate the authoritative copy of the electronic  
23 chattel paper to the debtor or its designated custodian;

24 (B) If the debtor designates a custodian that is the  
25 designated custodian with which the authoritative copy of  
26 the electronic chattel paper is maintained for the secured  
27 party, communicate to the custodian an authenticated  
28 record releasing the designated custodian from any further  
29 obligation to comply with instructions originated by the  
30 secured party and instructing the custodian to comply  
31 with instructions originated by the debtor; and

32 (C) Take appropriate action to enable the debtor or its  
33 designated custodian to make copies of or revisions to the  
34 authoritative copy which add or change an identified  
35 assignee of the authoritative copy without the consent of  
36 the secured party;

37 (4) A secured party having control of investment prop-  
38 erty under section 8-106(d)(2) or 9-106(b) shall send to the  
39 securities intermediary or commodity intermediary with  
40 which the security entitlement or commodity contract is  
41 maintained an authenticated record that releases the  
42 securities intermediary or commodity intermediary from  
43 any further obligation to comply with entitlement orders  
44 or directions originated by the secured party; and

45 (5) A secured party having control of a letter-of-credit  
46 right under section 9-107 shall send to each person having  
47 an unfulfilled obligation to pay or deliver proceeds of the  
48 letter of credit to the secured party an authenticated  
49 release from any further obligation to pay or deliver  
50 proceeds of the letter of credit to the secured party.

**§46-9-209. Duties of secured party if account debtor has been notified of assignment.**

1 (a) **Applicability of section.** Except as otherwise pro-  
2 vided in subsection (c), this section applies if:

3 (1) There is no outstanding secured obligation; and

4 (2) The secured party is not committed to make ad-  
5 vances, incur obligations or otherwise give value.

6 (b) **Duties of secured party after receiving demand from**  
7 **debtor.** Within ten days after receiving an authenticated  
8 demand by the debtor, a secured party shall send to an  
9 account debtor that has received notification of an assign-  
10 ment to the secured party as assignee under section  
11 9-406(a) an authenticated record that releases the account  
12 debtor from any further obligation to the secured party.

13 (c) **Inapplicability to sales.** This section does not apply  
14 to an assignment constituting the sale of an account,  
15 chattel paper or payment intangible.

**§46-9-210. Request for accounting; request regarding list of  
collateral or statement of account.**

1 (a) **Definitions.** In this section:

2 (1) "Request" means a record of a type described in  
3 paragraph (2), (3) or (4) of this subsection.

4 (2) "Request for an accounting" means a record authen-  
5 ticated by a debtor requesting that the recipient provide  
6 an accounting of the unpaid obligations secured by  
7 collateral and reasonably identifying the transaction or  
8 relationship that is the subject of the request.

9 (3) "Request regarding a list of collateral" means a  
10 record authenticated by a debtor requesting that the  
11 recipient approve or correct a list of what the debtor  
12 believes to be the collateral securing an obligation and  
13 reasonably identifying the transaction or relationship that  
14 is the subject of the request.

15 (4) "Request regarding a statement of account" means a  
16 record authenticated by a debtor requesting that the  
17 recipient approve or correct a statement indicating what  
18 the debtor believes to be the aggregate amount of unpaid  
19 obligations secured by collateral as of a specified date and  
20 reasonably identifying the transaction or relationship that  
21 is the subject of the request.

22 (b) **Duty to respond to requests.** Subject to subsections  
23 (c), (d), (e) and (f) of this section, a secured party, other  
24 than a buyer of accounts, chattel paper, payment in-  
25 tangibles, or promissory notes or a consignor, shall  
26 comply with a request within fourteen days after  
27 receipt:

28 (1) In the case of a request for an accounting, by authen-  
29 ticating and sending to the debtor an accounting; and

30 (2) In the case of a request regarding a list of collateral  
31 or a request regarding a statement of account, by authenti-  
32 cating and sending to the debtor an approval or correction.

33 (c) **Request regarding list of collateral; statement con-  
34 cerning type of collateral.** A secured party that claims a  
35 security interest in all of a particular type of collateral  
36 owned by the debtor may comply with a request regarding  
37 a list of collateral by sending to the debtor an authenti-  
38 cated record including a statement to that effect within  
39 fourteen days after receipt.

40 (d) **Request regarding list of collateral; no interest  
41 claimed.** A person that receives a request regarding a list  
42 of collateral, claims no interest in the collateral when it  
43 receives the request and claimed an interest in the collat-  
44 eral at an earlier time shall comply with the request within  
45 fourteen days after receipt by sending to the debtor an  
46 authenticated record:

47 (1) Disclaiming any interest in the collateral; and

48 (2) If known to the recipient, providing the name and  
49 mailing address of any assignee of or successor to the  
50 recipient's interest in the collateral.

51 (e) **Request for accounting or regarding statement of  
52 account; no interest in obligation claimed.** A person that  
53 receives a request for an accounting or a request regarding  
54 a statement of account, claims no interest in the obliga-  
55 tions when it receives the request and claimed an interest  
56 in the obligations at an earlier time shall comply with the  
57 request within fourteen days after receipt by sending to  
58 the debtor an authenticated record:

- 59 (1) Disclaiming any interest in the obligations; and  
60 (2) If known to the recipient, providing the name and  
61 mailing address of any assignee of or successor to the  
62 recipient's interest in the obligations.
- 63 (f) **Charges for responses.** A debtor is entitled without  
64 charge to one response to a request under this section  
65 during any six-month period. The secured party may  
66 require payment of a charge not exceeding twenty-five  
67 dollars for each additional response.

PART 3. PERFECTION AND PRIORITY.  
SUBPART 1. LAW GOVERNING PERFECTION  
AND PRIORITY.

**§46-9-301. Law governing perfection and priority of security interests.**

- 1 Except as otherwise provided in sections 9-303 through  
2 9-306, the following rules determine the law governing  
3 perfection, the effect of perfection or nonperfection and  
4 the priority of a security interest in collateral:
- 5 (1) Except as otherwise provided in this section, while a  
6 debtor is located in a jurisdiction, the local law of that  
7 jurisdiction governs perfection, the effect of perfection or  
8 nonperfection, and the priority of a security interest in  
9 collateral.
- 10 (2) While collateral is located in a jurisdiction, the local  
11 law of that jurisdiction governs perfection, the effect of  
12 perfection or nonperfection, and the priority of a  
13 possessory security interest in that collateral.
- 14 (3) Except as otherwise provided in paragraph (4) of this  
15 section, while negotiable documents, goods, instruments,  
16 money or tangible chattel paper is located in a jurisdiction,  
17 the local law of that jurisdiction governs:
- 18 (A) Perfection of a security interest in the goods by filing  
19 a fixture filing;
- 20 (B) Perfection of a security interest in timber to be cut;  
21 and

22 (C) The effect of perfection or nonperfection and the  
23 priority of a nonpossessory security interest in the collat-  
24 eral.

25 (4) The local law of the jurisdiction in which the well-  
26 head or minehead is located governs perfection, the effect  
27 of perfection or nonperfection, and the priority of a  
28 security interest in as-extracted collateral.

**§46-9-302. Law governing perfection and priority of agricul-  
tural liens.**

1 While farm products are located in a jurisdiction, the  
2 local law of that jurisdiction governs perfection, the effect  
3 of perfection or nonperfection, and the priority of an  
4 agricultural lien on the farm products.

**§46-9-303. Law governing perfection and priority of security  
interests in goods covered by a certificate of title.**

1 (a) **Applicability of section.** This section applies to goods  
2 covered by a certificate of title, even if there is no other  
3 relationship between the jurisdiction under whose certifi-  
4 cate of title the goods are covered and the goods or the  
5 debtor.

6 (b) **When goods covered by certificate of title.** Goods  
7 become covered by a certificate of title when a valid  
8 application for the certificate of title and the applicable  
9 fee are delivered to the appropriate authority. Goods  
10 cease to be covered by a certificate of title at the earlier of  
11 the time the certificate of title ceases to be effective under  
12 the law of the issuing jurisdiction or the time the goods  
13 become covered subsequently by a certificate of title  
14 issued by another jurisdiction.

15 (c) **Applicable law.** The local law of the jurisdiction  
16 under whose certificate of title the goods are covered  
17 governs perfection, the effect of perfection or  
18 nonperfection, and the priority of a security interest in  
19 goods covered by a certificate of title from the time the  
20 goods become covered by the certificate of title until the  
21 goods cease to be covered by the certificate of title.

**§46-9-304. Law governing perfection and priority of security interests in deposit accounts.**

1 (a) The local law of a bank's jurisdiction governs perfec-  
2 tion, the effect of perfection or nonperfection, and the  
3 priority of a security interest in a deposit account main-  
4 tained with that bank.

5 (b) **Bank's jurisdiction.** The following rules determine a  
6 bank's jurisdiction for purposes of this part:

7 (1) If an agreement between the bank and the debtor  
8 governing the deposit account expressly provides that a  
9 particular jurisdiction is the bank's jurisdiction for  
10 purposes of this part, this article, or the Uniform Commer-  
11 cial Code, that jurisdiction is the bank's jurisdiction.

12 (2) If paragraph (1) of this subsection does not apply and  
13 an agreement between the bank and its customer govern-  
14 ing the deposit account expressly provides that the agree-  
15 ment is governed by the law of a particular jurisdiction,  
16 that jurisdiction is the bank's jurisdiction.

17 (3) If neither paragraph (1) nor paragraph (2) of this  
18 subsection applies and an agreement between the bank  
19 and its customer governing the deposit account expressly  
20 provides that the deposit account is maintained at an  
21 office in a particular jurisdiction, that jurisdiction is the  
22 bank's jurisdiction.

23 (4) If none of the preceding paragraphs applies, the  
24 bank's jurisdiction is the jurisdiction in which the office  
25 identified in an account statement as the office serving the  
26 customer's account is located.

27 (5) If none of the preceding paragraphs applies, the  
28 bank's jurisdiction is the jurisdiction in which the chief  
29 executive office of the bank is located.

**§46-9-305. Law governing perfection and priority of security interests in investment property.**

1 (a) **Governing law: general rules.** Except as otherwise  
2 provided in subsection (c) of this section, the following  
3 rules apply:

4 (1) While a security certificate is located in a jurisdic-  
5 tion, the local law of that jurisdiction governs perfection,  
6 the effect of perfection or nonperfection, and the priority  
7 of a security interest in the certificated security repre-  
8 sented thereby.

9 (2) The local law of the issuer's jurisdiction as specified  
10 in section 8-110(d) governs perfection, the effect of  
11 perfection or nonperfection, and the priority of a security  
12 interest in an uncertificated security.

13 (3) The local law of the securities intermediary's jurisdic-  
14 tion as specified in section 8-110(e) governs perfection, the  
15 effect of perfection or nonperfection, and the priority of a  
16 security interest in a security entitlement or securities  
17 account.

18 (4) The local law of the commodity intermediary's  
19 jurisdiction governs perfection, the effect of perfection or  
20 nonperfection, and the priority of a security interest in a  
21 commodity contract or commodity account.

22 **(b) Commodity intermediary's jurisdiction.** The follow-  
23 ing rules determine a commodity intermediary's jurisdic-  
24 tion for purposes of this part:

25 (1) If an agreement between the commodity intermediary  
26 and commodity customer governing the commodity  
27 account expressly provides that a particular jurisdiction is  
28 the commodity intermediary's jurisdiction for purposes of  
29 this part, this article, or the Uniform Commercial Code,  
30 that jurisdiction is the commodity intermediary's jurisdic-  
31 tion.

32 (2) If paragraph (1) of this subsection does not apply and  
33 an agreement between the commodity intermediary and  
34 commodity customer governing the commodity account  
35 expressly provides that the agreement is governed by the  
36 law of a particular jurisdiction, that jurisdiction is the  
37 commodity intermediary's jurisdiction.

38 (3) If neither paragraph (1) nor paragraph (2) of this  
39 subsection applies and an agreement between the com-  
40modity intermediary and commodity customer governing  
41 the commodity account expressly provides that the

42 commodity account is maintained at an office in a particu-  
43 lar jurisdiction, that jurisdiction is the commodity interme-  
44 diary's jurisdiction.

45 (4) If none of the preceding paragraphs applies, the  
46 commodity intermediary's jurisdiction is the jurisdiction  
47 in which the office identified in an account statement as  
48 the office serving the commodity customer's account is  
49 located.

50 (5) If none of the preceding paragraphs applies, the  
51 commodity intermediary's jurisdiction is the jurisdiction  
52 in which the chief executive office of the commodity  
53 intermediary is located.

54 (c) **When perfection governed by law of jurisdiction**  
55 **when debtor located.** The local law of the jurisdiction in  
56 which the debtor is located governs:

57 (1) Perfection of a security interest in investment prop-  
58 erty by filing;

59 (2) Automatic perfection of a security interest in invest-  
60 ment property created by a broker or securities intermedi-  
61 ary; and

62 (3) Automatic perfection of a security interest in a  
63 commodity contract or commodity account created by a  
64 commodity intermediary.

**§46-9-306. Law governing perfection and priority of security  
interests in letter-of-credit rights.**

1 (a) **Governing law: issuer's or nominated person's**  
2 **jurisdiction.** Subject to subsection (c) of this section, the  
3 local law of the issuer's jurisdiction or a nominated per-  
4 son's jurisdiction governs perfection, the effect of perfec-  
5 tion or nonperfection, and the priority of a security  
6 interest in a letter-of-credit right if the issuer's jurisdic-  
7 tion or nominated person's jurisdiction is a state.

8 (b) **Issuer's or nominated person's jurisdiction.** For  
9 purposes of this part, an issuer's jurisdiction or nominated  
10 person's jurisdiction is the jurisdiction whose law governs  
11 the liability of the issuer or nominated person with respect  
12 to the letter-of-credit right as provided in section 5-116.



13     **(c) When section not applicable.** This section does not  
14 apply to a security interest that is perfected only under  
15 section 9-308(d).

**§46-9-307. Location of debtor.**

1     (a) **“Place of business.”** In this section, “place of busi-  
2 ness” means a place where a debtor conducts its affairs.

3     (b) **Debtor’s location: general rules.** Except as otherwise  
4 provided in this section, the following rules determine a  
5 debtor’s location:

6     (1) A debtor who is an individual is located at the indi-  
7 vidual’s principal residence.

8     (2) A debtor that is an organization and has only one  
9 place of business is located at its place of business.

10    (3) A debtor that is an organization and has more than  
11 one place of business is located at its chief executive office.

12    (c) **Limitation of applicability of subsection (b).** Subsec-  
13 tion (b) of this section applies only if a debtor’s residence,  
14 place of business or chief executive office, as applicable, is  
15 located in a jurisdiction whose law generally requires  
16 information concerning the existence of a nonpossessory  
17 security interest to be made generally available in a filing,  
18 recording or registration system as a condition or result of  
19 the security interest’s obtaining priority over the rights of  
20 a lien creditor with respect to the collateral. If subsection  
21 (b) does not apply, the debtor is located in the District of  
22 Columbia.

23    (d) **Continuation of location: cessation of existence, etc.**  
24 A person that ceases to exist, have a residence or have a  
25 place of business continues to be located in the jurisdiction  
26 specified by subsections (b) and (c) of this section.

27    (e) **Location of registered organization organized under**  
28 **state law.** A registered organization that is organized  
29 under the law of a state is located in that state.

30    (f) **Location of registered organization organized under**  
31 **federal law; bank branches and agencies.** Except as  
32 otherwise provided in subsection (i) of this section, a

33 registered organization that is organized under the law of  
34 the United States and a branch or agency of a bank that is  
35 not organized under the law of the United States or a state  
36 are located:

37 (1) In the state that the law of the United States desig-  
38 nates, if the law designates a state of location;

39 (2) In the state that the registered organization, branch  
40 or agency designates, if the law of the United States  
41 authorizes the registered organization, branch, or agency  
42 to designate its state of location; or

43 (3) In the District of Columbia, if neither paragraph (1)  
44 nor paragraph (2) of this subsection applies.

45 **(g) Continuation of location: changed in status of**  
46 **registered organization.** A registered organization contin-  
47 ues to be located in the jurisdiction specified by subsection  
48 (e) or (f) notwithstanding:

49 (1) The suspension, revocation, forfeiture or lapse of the  
50 registered organization's status as such in its jurisdiction  
51 of organization; or

52 (2) The dissolution, winding up or cancellation of the  
53 existence of the registered organization.

54 **(h) Location of United States.** The United States is  
55 located in the District of Columbia.

56 **(i) Location of foreign bank branch or agency if licensed**  
57 **in only one state.** A branch or agency of a bank that is not  
58 organized under the law of the United States or a state is  
59 located in the state in which the branch or agency is  
60 licensed, if all branches and agencies of the bank are  
61 licensed in only one state.

62 **(j) Location of foreign air carrier.** A foreign air carrier  
63 under the Federal Aviation Act of 1958, as amended, is  
64 located at the designated office of the agent upon which  
65 service of process may be made on behalf of the carrier.

66 **(k) Section applies only to this part.** This section applies  
67 only for purposes of this part.

SUBPART 2. PERFECTION.

**§46-9-308. When security interest or agricultural lien is perfected; continuity of perfection.**

- 1 (a) **Perfection of security interest.** Except as otherwise  
2 provided in this section and section 9-309, a security  
3 interest is perfected if it has attached and all of the  
4 applicable requirements for perfection in sections 9-310  
5 through 9-316 have been satisfied. A security interest is  
6 perfected when it attaches if the applicable requirements  
7 are satisfied before the security interest attaches.
- 8 (b) **Perfection of agricultural lien.** An agricultural lien  
9 is perfected if it has become effective and all of the  
10 applicable requirements for perfection in section 9-310  
11 have been satisfied. An agricultural lien is perfected when  
12 it becomes effective if the applicable requirements are  
13 satisfied before the agricultural lien becomes effective.
- 14 (c) **Continuous perfection; perfection by different**  
15 **methods.** A security interest or agricultural lien is per-  
16 fected continuously if it is originally perfected by one  
17 method under this article and is later perfected by another  
18 method under this article, without an intermediate period  
19 when it was unperfected.
- 20 (d) **Supporting obligation.** Perfection of a security  
21 interest in collateral also perfects a security interest in a  
22 supporting obligation for the collateral.
- 23 (e) **Lien securing right to payment.** Perfection of a  
24 security interest in a right to payment or performance also  
25 perfects a security interest in a security interest, mortgage  
26 or other lien on personal or real property securing the  
27 right.
- 28 (f) **Security entitlement carried in securities account.**  
29 Perfection of a security interest in a securities account also  
30 perfects a security interest in the security entitlements  
31 carried in the securities account.
- 32 (g) **Commodity contract carried in commodity account.**  
33 Perfection of a security interest in a commodity account

34 also perfects a security interest in the commodity contracts  
35 carried in the commodity account.

**§46-9-309. Security interest perfected upon attachment.**

1 The following security interests are perfected when they  
2 attach:

3 (1) A purchase-money security interest in consumer  
4 goods, except as otherwise provided in section 9-311(b)  
5 with respect to consumer goods that are subject to a  
6 statute or treaty described in section 9-311(a);

7 (2) An assignment of accounts or payment intangibles  
8 which does not by itself or in conjunction with other  
9 assignments to the same assignee transfer a significant  
10 part of the assignor's outstanding accounts or payment  
11 intangibles;

12 (3) A sale of a payment intangible;

13 (4) A sale of a promissory note;

14 (5) A security interest created by the assignment of a  
15 health-care-insurance receivable to the provider of the  
16 health-care goods or services;

17 (6) A security interest arising under section 2-401, 2-505,  
18 2-711(3) or 2A-508(5), until the debtor obtains possession  
19 of the collateral;

20 (7) A security interest of a collecting bank arising under  
21 section 4-210;

22 (8) A security interest of an issuer or nominated person  
23 arising under section 5-118;

24 (9) A security interest arising in the delivery of a finan-  
25 cial asset under section 9-206(c);

26 (10) A security interest in investment property created by  
27 a broker or securities intermediary;

28 (11) A security interest in a commodity contract or a  
29 commodity account created by a commodity intermediary;

30 (12) An assignment for the benefit of all creditors of the  
31 transferor and subsequent transfers by the assignee  
32 thereunder; and

33 (13) A security interest created by an assignment of a  
34 beneficial interest in a decedent's estate.

**§46-9-310. When filing required to perfect security interest or  
agricultural lien; security interests and agricul-  
tural liens to which filing provisions do not  
apply.**

1 (a) **General rule: perfection by filing.** Except as other-  
2 wise provided in subsection (b) of this section and section  
3 9-312(b), a financing statement must be filed to perfect all  
4 security interests and agricultural liens.

5 (b) **Exceptions: filing not necessary.** The filing of a  
6 financing statement is not necessary to perfect a security  
7 interest:

8 (1) That is perfected under section 9-308(d), (e), (f) or (g);

9 (2) That is perfected under section 9-309 when it atta-  
10 ches;

11 (3) In property subject to a statute, regulation or treaty  
12 described in section 9-311(a);

13 (4) In goods in possession of a bailee which is perfected  
14 under section 9-312(d)(1) or (2);

15 (5) In certificated securities, documents, goods or  
16 instruments which is perfected without filing or possession  
17 under section 9-312(e), (f) or (g);

18 (6) In collateral in the secured party's possession under  
19 section 9-313;

20 (7) In a certificated security which is perfected by  
21 delivery of the security certificate to the secured party  
22 under section 9-313;

23 (8) In deposit accounts, electronic chattel paper, invest-  
24 ment property or letter-of-credit rights which is perfected  
25 by control under section 9-314;

26 (9) In proceeds which is perfected under section 9-315; or

27 (10) That is perfected under section 9-316.

28 (c) **Assignment of perfected security interest.** If a  
29 secured party assigns a perfected security interest or  
30 agricultural lien, a filing under this article is not required  
31 to continue the perfected status of the security interest  
32 against creditors of and transferees from the original  
33 debtor.

**§46-9-311. Perfection of security interests in property subject to  
certain statutes, regulations and treaties.**

1 (a) **Security interest subject to other law.** Except as  
2 otherwise provided in subsection (d) of this section, the  
3 filing of a financing statement is not necessary or effective  
4 to perfect a security interest in property subject to:

5 (1) A statute, regulation or treaty of the United States  
6 whose requirements for a security interest's obtaining  
7 priority over the rights of a lien creditor with respect to  
8 the property preempt section 9-310(a);

9 (2) The following statute of this state: Chapter  
10 seventeen-a of this code: *Provided*, That during any  
11 period in which collateral is inventory: (i) Held for sale by  
12 a person who is in the business of selling goods of that  
13 kind; or (ii) held for lease by a vehicle rental agency or  
14 similar person engaged solely in the business of leasing  
15 vehicles, the filing provision of this article apply to a  
16 security interest in that collateral created by such person  
17 as a debtor or obligor, as appropriate; or

18 (3) A certificate-of-title statute of another jurisdiction  
19 which provides for a security interest to be indicated on  
20 the certificate as a condition or result of the security  
21 interest's obtaining priority over the rights of a lien  
22 creditor with respect to the property.

23 (b) **Compliance with other law.** Compliance with the  
24 requirements of a statute, regulation or treaty described in  
25 subsection (a) of this section for obtaining priority over the  
26 rights of a lien creditor is equivalent to the filing of a  
27 financing statement under this article. Except as other-

28 wise provided in subsection (d) of this section and sections  
29 9-313 and 9-316(d) and (e) for goods covered by a certifi-  
30 cate of title, a security interest in property subject to a  
31 statute, regulation or treaty described in subsection (a)  
32 may be perfected only by compliance with those require-  
33 ments, and a security interest so perfected remains per-  
34 fected notwithstanding a change in the use or transfer of  
35 possession of the collateral.

36 (c) **Duration and renewal of perfection.** Except as  
37 otherwise provided in subsection (d) of this section and  
38 section 9-316(d) and (e), duration and renewal of perfec-  
39 tion of a security interest perfected by compliance with the  
40 requirements prescribed by a statute, regulation or treaty  
41 described in subsection (a) are governed by the statute,  
42 regulation or treaty. In other respects, the security interest  
43 is subject to this article.

44 (d) **Inapplicability to certain inventory.** During any  
45 period in which collateral subject to a statute specified in  
46 subsection (a)(2) of this section is inventory held for sale or  
47 lease by a person or leased by that person as lessor and  
48 that person is in the business of selling goods of that kind,  
49 this section does not apply to a security interest in that  
50 collateral created by that person.

**§46-9-312. Perfection of security interests in chattel paper,  
deposit accounts, documents, goods covered by  
documents, instruments, investment property,  
letter-of-credit rights and money; perfection by  
permissive filing; temporary perfection without  
filing or transfer of possession.**

1 (a) **Perfection by filing permitted.** A security interest in  
2 chattel paper, negotiable documents, instruments or  
3 investment property may be perfected by filing.

4 (b) **Control or possession of certain collateral.** Except as  
5 otherwise provided in section 9-315(c) and (d) for pro-  
6 ceeds:

7 (1) A security interest in a deposit account may be  
8 perfected only by control under section 9-314; and

9 (2) Except as otherwise provided in section 9-308(d), a  
10 security interest in a letter-of-credit right may be per-  
11 fected only by control under section 9-314; and

12 (3) A security interest in money may be perfected only by  
13 the secured party's taking possession under section 9-313.

14 (c) **Goods covered by negotiable document.** While goods  
15 are in the possession of a bailee that has issued a negotia-  
16 ble document covering the goods:

17 (1) A security interest in the goods may be perfected by  
18 perfecting a security interest in the document; and

19 (2) A security interest perfected in the document has  
20 priority over any security interest that becomes perfected  
21 in the goods by another method during that time.

22 (d) **Goods covered by nonnegotiable document.** While  
23 goods are in the possession of a bailee that has issued a  
24 nonnegotiable document covering the goods, a security  
25 interest in the goods may be perfected by:

26 (1) Issuance of a document in the name of the secured  
27 party;

28 (2) The bailee's receipt of notification of the secured  
29 party's interest; or

30 (3) Filing as to the goods.

31 (e) **Temporary perfection: new value.** A security interest  
32 in certificated securities, negotiable documents or instru-  
33 ments is perfected without filing or the taking of posses-  
34 sion for a period of twenty days from the time it attaches  
35 to the extent that it arises for new value given under an  
36 authenticated security agreement.

37 (f) **Temporary perfection: goods or documents made**  
38 **available to debtor.** A perfected security interest in a  
39 negotiable document or goods in possession of a bailee,  
40 other than one that has issued a negotiable document for  
41 the goods, remains perfected for twenty days without  
42 filing if the secured party makes available to the debtor  
43 the goods or documents representing the goods for the  
44 purpose of:



45 (1) Ultimate sale or exchange; or

46 (2) Loading, unloading, storing, shipping, transshipping,  
47 manufacturing, processing or otherwise dealing with them  
48 in a manner preliminary to their sale or exchange.

49 **(g) Temporary perfection: delivery of security certificate**  
50 **or instrument to debtor.** A perfected security interest in a  
51 certificated security or instrument remains perfected for  
52 twenty days without filing if the secured party delivers the  
53 security certificate or instrument to the debtor for the  
54 purpose of:

55 (1) Ultimate sale or exchange; or

56 (2) Presentation, collection, enforcement, renewal or  
57 registration of transfer.

58 **(h) Expiration of temporary perfection.** After the  
59 twenty-day period specified in subsection (e), (f) or (g) of  
60 this section expires, perfection depends upon compliance  
61 with this article.

**§46-9-313. When possession by or delivery to secured party  
perfects security interest without filing.**

1 **(a) Perfection by possession or delivery.** Except as  
2 otherwise provided in subsection (b) of this section, a  
3 secured party may perfect a security interest in negotiable  
4 documents, goods, instruments, money or tangible chattel  
5 paper by taking possession of the collateral. A secured  
6 party may perfect a security interest in certificated  
7 securities by taking delivery of the certificated securities  
8 under section 8-301.

9 **(b) Goods covered by certificate of title.** With respect to  
10 goods covered by a certificate of title issued by this state,  
11 a secured party may perfect a security interest in the goods  
12 by taking possession of the goods only in the circum-  
13 stances described in section 9-316(d).

14 **(c) Collateral in possession of person other than debtor.**  
15 With respect to collateral other than certificated securities  
16 and goods covered by a document, a secured party takes  
17 possession of collateral in the possession of a person other  
18 than the debtor, the secured party or a lessee of the

19 collateral from the debtor in the ordinary course of the  
20 debtor's business, when:

21 (1) The person in possession authenticates a record  
22 acknowledging that it holds possession of the collateral for  
23 the secured party's benefit; or

24 (2) The person takes possession of the collateral after  
25 having authenticated a record acknowledging that it will  
26 hold possession of collateral for the secured party's  
27 benefit.

28 (d) **Time of perfection by possession; continuation of**  
29 **perfection.** If perfection of a security interest depends  
30 upon possession of the collateral by a secured party,  
31 perfection occurs no earlier than the time the secured  
32 party takes possession and continues only while the  
33 secured party retains possession.

34 (e) **Time of perfection by delivery; continuation of**  
35 **perfection.** A security interest in a certificated security in  
36 registered form is perfected by delivery when delivery of  
37 the certificated security occurs under section 8-301 and  
38 remains perfected by delivery until the debtor obtains  
39 possession of the security certificate.

40 (f) **Acknowledgment not required.** A person in posses-  
41 sion of collateral is not required to acknowledge that it  
42 holds possession for a secured party's benefit.

43 (g) **Effectiveness of acknowledgment; no duties or**  
44 **confirmation.** If a person acknowledges that it holds  
45 possession for the secured party's benefit:

46 (1) The acknowledgment is effective under subsection (c)  
47 of this section or section 8-301(a), even if the acknowledg-  
48 ment violates the rights of a debtor; and

49 (2) Unless the person otherwise agrees or law other than  
50 this article otherwise provides, the person does not owe  
51 any duty to the secured party and is not required to  
52 confirm the acknowledgment to another person.

53 (h) **Secured party's delivery to person other than debtor.**  
54 A secured party having possession of collateral does not  
55 relinquish possession by delivering the collateral to a

56 person other than the debtor or a lessee of the collateral  
57 from the debtor in the ordinary course of the debtor's  
58 business if the person was instructed before the delivery or  
59 is instructed contemporaneously with the delivery:

60 (1) **Effect of delivery under subsection (h); no duties or**  
61 **confirmation.** To hold possession of the collateral for the  
62 secured party's benefit; or

63 (2) To redeliver the collateral to the secured party.

64 (i) **A secured party does not relinquish possession, even**  
65 **if a delivery under subsection (h) of this section violates**  
66 **the rights of a debtor.** A person to which collateral is  
67 delivered under subsection (h) of this section does not owe  
68 any duty to the secured party and is not required to  
69 confirm the delivery to another person unless the person  
70 otherwise agrees or law other than this article otherwise  
71 provides.

**§46-9-314. Perfection by control.**

1 (a) **Perfection by control.** A security interest in invest-  
2 ment property, deposit accounts, letter-of-credit rights or  
3 electronic chattel paper may be perfected by control of the  
4 collateral under section 9-104, 9-105, 9-106 or 9-107.

5 (b) **Specified collateral: time of perfection by control;**  
6 **continuation of perfection.** A security interest in deposit  
7 accounts, electronic chattel paper or letter-of-credit rights  
8 is perfected by control under section 9-104, 9-105 or 9-107  
9 when the secured party obtains control and remains  
10 perfected by control only while the secured party retains  
11 control.

12 (c) **Investment property: time of perfection by control;**  
13 **continuation of perfection.** A security interest in invest-  
14 ment property is perfected by control under section 9-106  
15 from the time the secured party obtains control and  
16 remains perfected by control until:

17 (1) The secured party does not have control; and

18 (2) One of the following occurs:

19 (A) If the collateral is a certificated security, the debtor  
20 has or acquires possession of the security certificate;

21 (B) If the collateral is an uncertificated security, the  
22 issuer has registered or registers the debtor as the regis-  
23 tered owner; or

24 (C) If the collateral is a security entitlement, the debtor  
25 is or becomes the entitlement holder.

**§46-9-315. Secured party's rights on disposition of collateral  
and in proceeds.**

1 (a) **Disposition of collateral: continuation of security**  
2 **interest or agricultural lien; proceeds.** Except as otherwise  
3 provided in this article and in section 2-403(2):

4 (1) A security interest or agricultural lien continues in  
5 collateral notwithstanding sale, lease, license, exchange or  
6 other disposition thereof unless the secured party autho-  
7 rized the disposition free of the security interest or agri-  
8 cultural lien; and

9 (2) A security interest attaches to any identifiable  
10 proceeds of collateral.

11 (b) **When commingled proceeds identifiable.** Proceeds  
12 that are commingled with other property are identifiable  
13 proceeds:

14 (1) If the proceeds are goods, to the extent provided by  
15 section 9-336; and

16 (2) If the proceeds are not goods, to the extent that the  
17 secured party identifies the proceeds by a method of  
18 tracing, including application of equitable principles, that  
19 is permitted under law other than this article with respect  
20 to commingled property of the type involved.

21 (c) **Perfection of security interest in proceeds.** A security  
22 interest in proceeds is a perfected security interest if the  
23 security interest in the original collateral was perfected.

24 (d) **Continuation of perfection.** A perfected security  
25 interest in proceeds becomes unperfected on the twenty-

26 first day after the security interest attaches to the proceeds  
27 unless:

28 (1) The following conditions are satisfied:

29 (A) A filed financing statement covers the original  
30 collateral;

31 (B) The proceeds are collateral in which a security  
32 interest may be perfected by filing in the office in which  
33 the financing statement has been filed; and

34 (C) The proceeds are not acquired with cash proceeds;

35 (2) The proceeds are identifiable cash proceeds; or

36 (3) The security interest in the proceeds is perfected  
37 other than under subsection (c) of this section when the  
38 security interest attaches to the proceeds or within twenty  
39 days thereafter.

40 (e) **When perfected security interest in proceeds becomes**  
41 **unperfected.** If a filed financing statement covers the  
42 original collateral, a security interest in proceeds which  
43 remains perfected under subsection (d)(1) of this section  
44 becomes unperfected at the later of:

45 (1) When the effectiveness of the filed financing state-  
46 ment lapses under section 9-515 or is terminated under  
47 section 9-513; or

48 (2) The twenty-first day after the security interest  
49 attaches to the proceeds.

**§46-9-316. Continued perfection of security interest following  
change in governing law.**

1 (a) **General rule: effect on perfection of change in**  
2 **governing law.** A security interest perfected pursuant to  
3 the law of the jurisdiction designated in section 9-301(1) or  
4 9-305(c) remains perfected until the earliest of:

5 (1) The time perfection would have ceased under the law  
6 of that jurisdiction;

7 (2) The expiration of four months after a change of the  
8 debtor's location to another jurisdiction; or

9 (3) The expiration of one year after a transfer of collat-  
10 eral to a person that thereby becomes a debtor and is  
11 located in another jurisdiction.

12 (b) **Security interest perfected or unperfected under law**  
13 **of new jurisdiction.** If a security interest described in  
14 subsection (a) of this section becomes perfected under the  
15 law of the other jurisdiction before the earliest time or  
16 event described in said subsection, it remains perfected  
17 thereafter. If the security interest does not become  
18 perfected under the law of the other jurisdiction before the  
19 earliest time or event, it becomes unperfected and is  
20 deemed never to have been perfected as against a pur-  
21 chaser of the collateral for value.

22 (c) **Possessory security interest in collateral moved to**  
23 **new jurisdiction.** A possessory security interest in collat-  
24 eral, other than goods covered by a certificate of title and  
25 as-extracted collateral consisting of goods, remains  
26 continuously perfected if:

27 (1) The collateral is located in one jurisdiction and  
28 subject to a security interest perfected under the law of  
29 that jurisdiction;

30 (2) Thereafter the collateral is brought into another  
31 jurisdiction; and

32 (3) Upon entry into the other jurisdiction, the security  
33 interest is perfected under the law of the other jurisdic-  
34 tion.

35 (d) **Goods covered by certificate of title from this state.**  
36 Except as otherwise provided in subsection (e) of this  
37 section, a security interest in goods covered by a certificate  
38 of title which is perfected by any method under the law of  
39 another jurisdiction when the goods become covered by a  
40 certificate of title from this state remains perfected until  
41 the security interest would have become unperfected under  
42 the law of the other jurisdiction had the goods not become  
43 so covered.

44 (e) **When subsection (d) security interest becomes**  
45 **unperfected against purchasers.** A security interest  
46 described in subsection (d) of this section becomes

47 unperfected as against a purchaser of the goods for value  
48 and is deemed never to have been perfected as against a  
49 purchaser of the goods for value if the applicable require-  
50 ments for perfection under section 9-311(b) or 9-313 are  
51 not satisfied before the earlier of:

52 (1) The time the security interest would have become  
53 unperfected under the law of the other jurisdiction had the  
54 goods not become covered by a certificate of title from this  
55 state; or

56 (2) The expiration of four months after the goods had  
57 become so covered.

58 **(f) Change in jurisdiction of bank, issuer, nominated**  
59 **person, securities intermediary or commodity intermedi-**  
60 **ary.** A security interest in deposit accounts, letter-of-credit  
61 rights, or investment property which is perfected under the  
62 law of the bank's jurisdiction, the issuer's jurisdiction, a  
63 nominated person's jurisdiction, the securities intermedi-  
64 ary's jurisdiction or the commodity intermediary's juris-  
65 diction, as applicable, remains perfected until the earlier  
66 of:

67 (1) The time the security interest would have become  
68 unperfected under the law of that jurisdiction; or

69 (2) The expiration of four months after a change of the  
70 applicable jurisdiction to another jurisdiction.

71 **(g) Subsection (f) security interest perfected or**  
72 **unperfected under law of new jurisdiction.** If a security  
73 interest described in subsection (f) of this section becomes  
74 perfected under the law of the other jurisdiction before the  
75 earlier of the time or the end of the period described in  
76 that subsection, it remains perfected thereafter. If the  
77 security interest does not become perfected under the law  
78 of the other jurisdiction before the earlier of that time or  
79 the end of that period, it becomes unperfected and is  
80 deemed never to have been perfected as against a pur-  
81 chaser of the collateral for value.

SUBPART 3. PRIORITY.

**§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.**

1 (a) **Conflicting security interests and rights of lien**  
2 **creditors.** A security interest or agricultural lien is  
3 subordinate to the rights of:

4 (1) A person entitled to priority under section 9-322; and

5 (2) Except as otherwise provided in subsection (e) of this  
6 section, a person that becomes a lien creditor before the  
7 earlier of the time: (A) The security interest or agricultural  
8 lien is perfected; or (B) one of the conditions specified in  
9 section 9-203(b)(3) is met and a financing statement  
10 covering the collateral is filed.

11 (b) **Buyers that receive delivery.** Except as otherwise  
12 provided in subsection (e) of this section, a buyer, other  
13 than a secured party, of tangible chattel paper, documents,  
14 goods, instruments or a security certificate takes free of a  
15 security interest or agricultural lien if the buyer gives  
16 value and receives delivery of the collateral without  
17 knowledge of the security interest or agricultural lien and  
18 before it is perfected.

19 (c) **Lessees that receive delivery.** Except as otherwise  
20 provided in subsection (e) of this section, a lessee of goods  
21 takes free of a security interest or agricultural lien if the  
22 lessee gives value and receives delivery of the collateral  
23 without knowledge of the security interest or agricultural  
24 lien and before it is perfected.

25 (d) **Licensees and buyers of certain collateral.** A licensee  
26 of a general intangible or a buyer, other than a secured  
27 party, of accounts, electronic chattel paper, general  
28 intangibles or investment property other than a certifi-  
29 cated security takes free of a security interest if the  
30 licensee or buyer gives value without knowledge of the  
31 security interest and before it is perfected.

32 (e) **Purchase-money security interest.** Except as other-  
33 wise provided in sections 9-320 and 9-321, if a person files  
34 a financing statement with respect to a purchase-money



35 security interest before or within twenty days after the  
36 debtor receives delivery of the collateral, the security  
37 interest takes priority over the rights of a buyer, lessee or  
38 lien creditor which arise between the time the security  
39 interest attaches and the time of filing.

**§46-9-318. No interest retained in right to payment that is sold;  
rights and title of seller of account or chattel  
paper with respect to creditors and purchasers.**

1 (a) **Seller retains no interest.** A debtor that has sold an  
2 account, chattel paper, payment intangible, or promissory  
3 note does not retain a legal or equitable interest in the  
4 collateral sold.

5 (b) **Deemed rights of debtor if buyer's security interest**  
6 **unperfected.** For purposes of determining the rights of  
7 creditors of, and purchasers for, value of an account or  
8 chattel paper from, a debtor that has sold an account or  
9 chattel paper, while the buyer's security interest is  
10 unperfected, the debtor is deemed to have rights and title  
11 to the account or chattel paper identical to those the  
12 debtor sold.

**§46-9-319. Rights and title of consignee with respect to credi-  
tors and purchasers.**

1 (a) **Consignee has consignor's rights.** Except as other-  
2 wise provided in subsection (b) of this section, for purposes  
3 of determining the rights of creditors of, and purchasers  
4 for value of goods from, a consignee, while the goods are  
5 in the possession of the consignee, the consignee is deemed  
6 to have rights and title to the goods identical to those the  
7 consignor had or had power to transfer.

8 (b) **Applicability of other law.** For purposes of determin-  
9 ing the rights of a creditor of a consignee, law other than  
10 this article determines the rights and title of a consignee  
11 while goods are in the consignee's possession if, under this  
12 part, a perfected security interest held by the consignor  
13 would have priority over the rights of the creditor.

**§46-9-320. Buyer of goods.**

1 (a) **Buyer in ordinary course of business.** Except as  
 2 otherwise provided in subsection (e) of this section, a  
 3 buyer in ordinary course of business, other than a person  
 4 buying farm products from a person engaged in farming  
 5 operations, takes free of a security interest created by the  
 6 buyer's seller, even if the security interest is perfected and  
 7 the buyer knows of its existence.

8 (b) **Buyer of consumer goods.** Except as otherwise  
 9 provided in subsection (e) of this section, a buyer of goods  
 10 from a person who used or bought the goods for use  
 11 primarily for personal, family or household purposes takes  
 12 free of a security interest, even if perfected, if the buyer  
 13 buys:

14 (1) Without knowledge of the security interest;

15 (2) For value;

16 (3) Primarily for the buyer's personal, family or house-  
 17 hold purposes; and

18 (4) Before the filing of a financing statement covering  
 19 the goods.

20 (c) **Effectiveness of filing for subsection (b).** To the  
 21 extent that it affects the priority of a security interest over  
 22 a buyer of goods under subsection (b) of this section, the  
 23 period of effectiveness of a filing made in the jurisdiction  
 24 in which the seller is located is governed by section  
 25 9-316(a) and (b).

26 (d) **Buyer in ordinary course of business at wellhead or**  
 27 **minehead.** A buyer in ordinary course of business buying  
 28 oil, gas or other minerals at the wellhead or minehead or  
 29 after extraction takes free of an interest arising out of an  
 30 encumbrance.

31 (e) **Possessory security interest not affected.** Subsections  
 32 (a) and (b) do not affect a security interest in goods in the  
 33 possession of the secured party under section 9-313.

**§46-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.**

1 (a) **“Licensee in ordinary course of business.”** In this  
2 section, “licensee in ordinary course of business” means a  
3 person that becomes a licensee of a general intangible in  
4 good faith, without knowledge that the license violates the  
5 rights of another person in the general intangible, and in  
6 the ordinary course from a person in the business of  
7 licensing general intangibles of that kind. A person  
8 becomes a licensee in the ordinary course if the license to  
9 the person comports with the usual or customary practices  
10 in the kind of business in which the licensor is engaged or  
11 with the licensor’s own usual or customary practices.

12 (b) **Rights of licensee in ordinary course of business.** A  
13 licensee in ordinary course of business takes its rights  
14 under a nonexclusive license free of a security interest in  
15 the general intangible created by the licensor, even if the  
16 security interest is perfected and the licensee knows of its  
17 existence.

18 (c) **Rights of lessee in ordinary course of business.** A  
19 lessee in ordinary course of business takes its leasehold  
20 interest free of a security interest in the goods created by  
21 the lessor, even if the security interest is perfected and the  
22 lessee knows of its existence.

**§46-9-322. Priorities among conflicting security interests in and  
agricultural liens on same collateral.**

1 (a) **General priority rules.** Except as otherwise provided  
2 in this section, priority among conflicting security inter-  
3 ests and agricultural liens in the same collateral is deter-  
4 mined according to the following rules:

5 (1) Conflicting perfected security interests and agricul-  
6 tural liens rank according to priority in time of filing or  
7 perfection. Priority dates from the earlier of the time a  
8 filing covering the collateral is first made or the security  
9 interest or agricultural lien is first perfected, if there is no  
10 period thereafter when there is neither filing nor perfec-  
11 tion.

12 (2) A perfected security interest or agricultural lien has  
13 priority over a conflicting unperfected security interest or  
14 agricultural lien.

15 (3) The first security interest or agricultural lien to  
16 attach or become effective has priority if conflicting  
17 security interests and agricultural liens are unperfected.

18 (b) **Time of perfection: proceeds and supporting obliga-**  
19 **tions.** For the purposes of subsection (a)(1) of this section:

20 (1) The time of filing or perfection as to a security  
21 interest in collateral is also the time of filing or perfection  
22 as to a security interest in proceeds; and

23 (2) The time of filing or perfection as to a security  
24 interest in collateral supported by a supporting obligation  
25 is also the time of filing or perfection as to a security  
26 interest in the supporting obligation.

27 (c) **Special priority rules: proceeds and supporting**  
28 **obligations.** Except as otherwise provided in subsection (f)  
29 of this section, a security interest in collateral which  
30 qualifies for priority over a conflicting security interest  
31 under section 9-327, ~~9-328~~, 9-329, 9-330 or 9-331 also has  
32 priority over a conflicting security interest in:

33 (1) Any supporting obligation for the collateral; and

34 (2) Proceeds of the collateral if:

35 (A) The security interest in proceeds is perfected;

36 (B) The proceeds are cash proceeds or of the same type as  
37 the collateral; and

38 (C) In the case of proceeds that are proceeds of proceeds,  
39 all intervening proceeds are cash proceeds, proceeds of the  
40 same type as the collateral or an account relating to the  
41 collateral.

42 (d) **First-to-file priority rule for certain collateral.**  
43 Subject to subsection (e) of this section and except as  
44 otherwise provided in subsection (f) of this section, if a  
45 security interest in chattel paper, deposit accounts,  
46 negotiable documents, instruments, investment property

47 or letter-of-credit rights is perfected by a method other  
48 than filing, conflicting perfected security interests in  
49 proceeds of the collateral rank according to priority in  
50 time of filing.

51 (e) **Applicability of subsection (d).** Subsection (d) of this  
52 section applies only if the proceeds of the collateral are not  
53 cash proceeds, chattel paper, negotiable documents,  
54 instruments, investment property or letter-of-credit rights.

55 (f) **Limitations on subsections (a) through (e).** Subsec-  
56 tions (a) through (e), inclusive, of this section are subject  
57 to:

58 (1) Subsection (g) of this section and the other provisions  
59 of this part;

60 (2) Section 4-210 with respect to a security interest of a  
61 collecting bank;

62 (3) Section 5-118 with respect to a security interest of an  
63 issuer or nominated person; and

64 (4) Section 9-110 with respect to a security interest  
65 arising under article two or two-a.

66 (g) **Priority under agricultural lien statute.** A perfected  
67 agricultural lien on collateral has priority over a conflict-  
68 ing security interest in or agricultural lien on the same  
69 collateral if the statute creating the agricultural lien so  
70 provides.

**§46-9-323. Future advances.**

1 (a) **When priority based on time of advance.** Except as  
2 otherwise provided in subsection (c) of this section, for  
3 purposes of determining the priority of a perfected secu-  
4 rity interest under section 9-322(a)(1), perfection of the  
5 security interest dates from the time an advance is made to  
6 the extent that the security interest secures an advance  
7 that:

8 (1) Is made while the security interest is perfected only:

9 (A) Under section 9-309 when it attaches; or

10 (B) Temporarily under section 9-312(e), (f) or (g); and

11 (2) Is not made pursuant to a commitment entered into  
12 before or while the security interest is perfected by a  
13 method other than under section 9-309 or 9-312(e), (f) or  
14 (g).

15 (b) **Lien creditor.** Except as otherwise provided in  
16 subsection (c) of this section, a security interest is subordi-  
17 nate to the rights of a person that becomes a lien creditor  
18 to the extent that the security interest secures an advance  
19 made more than forty-five days after the person becomes  
20 a lien creditor unless the advance is made:

21 (1) Without knowledge of the lien; or

22 (2) Pursuant to a commitment entered into without  
23 knowledge of the lien.

24 (c) **Buyer of receivables.** Subsections (a) and (b) of this  
25 section do not apply to a security interest held by a  
26 secured party that is a buyer of accounts, chattel paper,  
27 payment intangibles or promissory notes or a consignor.

28 (d) **Buyer of goods.** Except as otherwise provided in  
29 subsection (e) of this section, a buyer of goods other than  
30 a buyer in ordinary course of business takes free of a  
31 security interest to the extent that it secures advances  
32 made after the earlier of:

33 (1) The time the secured party acquires knowledge of the  
34 buyer's purchase; or

35 (2) Forty-five days after the purchase.

36 (e) **Advances made pursuant to commitment: priority of**  
37 **buyer of goods.** Subsection (d) of this section does not  
38 apply if the advance is made pursuant to a commitment  
39 entered into without knowledge of the buyer's purchase  
40 and before the expiration of the forty-five-day period.

41 (f) **Lessee of goods.** Except as otherwise provided in  
42 subsection (g) of this section, a lessee of goods, other than  
43 a lessee in ordinary course of business, takes the leasehold  
44 interest free of a security interest to the extent that it  
45 secures advances made after the earlier of:

46 (1) The time the secured party acquires knowledge of the  
47 lease; or

48 (2) Forty-five days after the lease contract becomes  
49 enforceable.

50 (g) **Advances made pursuant to commitment: priority of**  
51 **lessee of goods.** Subsection (f) of this section does not  
52 apply if the advance is made pursuant to a commitment  
53 entered into without knowledge of the lease and before the  
54 expiration of the forty-five-day period.

**§46-9-324. Priority of purchase-money security interests.**

1 (a) **General rule: purchase-money priority.** Except as  
2 otherwise provided in subsection (g) of this section, a  
3 perfected purchase-money security interest in goods other  
4 than inventory or livestock has priority over a conflicting  
5 security interest in the same goods, and, except as other-  
6 wise provided in section 9-327, a perfected security  
7 interest in its identifiable proceeds also has priority, if the  
8 purchase-money security interest is perfected when the  
9 debtor receives possession of the collateral or within  
10 twenty days thereafter.

11 (b) **Inventory purchase-money priority.** Subject to  
12 subsection (c) and except as otherwise provided in subsec-  
13 tion (g) of this section, a perfected purchase-money  
14 security interest in inventory has priority over a conflict-  
15 ing security interest in the same inventory, has priority  
16 over a conflicting security interest in chattel paper or an  
17 instrument constituting proceeds of the inventory and in  
18 proceeds of the chattel paper, if so provided in section  
19 9-330, and, except as otherwise provided in section 9-327,  
20 also has priority in identifiable cash proceeds of the  
21 inventory to the extent the identifiable cash proceeds are  
22 received on or before the delivery of the inventory to a  
23 buyer, if:

24 (1) The purchase-money security interest is perfected  
25 when the debtor receives possession of the inventory;

26 (2) The purchase-money secured party sends an authen-  
27 ticated notification to the holder of the conflicting security  
28 interest;

29 (3) The holder of the conflicting security interest receives  
30 the notification within five years before the debtor re-  
31 ceives possession of the inventory; and

32 (4) The notification states that the person sending the  
33 notification has or expects to acquire a purchase-money  
34 security interest in inventory of the debtor and describes  
35 the inventory.

36 (c) **Holders of conflicting inventory security interests to**  
37 **be notified.** Subsection (b)(2) through (4), inclusive, of this  
38 section apply only if the holder of the conflicting security  
39 interest had filed a financing statement covering the same  
40 types of inventory:

41 (1) If the purchase-money security interest is perfected  
42 by filing, before the date of the filing; or

43 (2) If the purchase-money security interest is temporarily  
44 perfected without filing or possession under section  
45 9-312(f), before the beginning of the twenty-day period  
46 thereunder.

47 (d) **Livestock purchase-money priority.** Subject to  
48 subsection (e) of this section and except as otherwise  
49 provided in subsection (g) of this section, a perfected  
50 purchase-money security interest in livestock that are  
51 farm products has priority over a conflicting security  
52 interest in the same livestock, and, except as otherwise  
53 provided in section 9-327, a perfected security interest in  
54 their identifiable proceeds and identifiable products in  
55 their unmanufactured states also has priority, if:

56 (1) The purchase-money security interest is perfected  
57 when the debtor receives possession of the livestock;

58 (2) The purchase-money secured party sends an authen-  
59 ticated notification to the holder of the conflicting security  
60 interest;

61 (3) The holder of the conflicting security interest receives  
62 the notification within six months before the debtor  
63 receives possession of the livestock; and

64 (4) The notification states that the person sending the  
65 notification has or expects to acquire a purchase-money



66 security interest in livestock of the debtor and describes  
67 the livestock.

68 (e) **Holders of conflicting livestock security interests to**  
69 **be notified.** Subsection (d)(2) through (4), inclusive, of this  
70 section apply only if the holder of the conflicting security  
71 interest had filed a financing statement covering the same  
72 types of livestock:

73 (1) If the purchase-money security interest is perfected  
74 by filing, before the date of the filing; or

75 (2) If the purchase-money security interest is temporarily  
76 perfected without filing or possession under section  
77 9-312(f), before the beginning of the twenty-day period  
78 thereunder.

79 (f) **Software purchase-money priority.** Except as  
80 otherwise provided in subsection (g) of this section, a  
81 perfected purchase-money security interest in software has  
82 priority over a conflicting security interest in the same  
83 collateral, and, except as otherwise provided in section  
84 9-327, a perfected security interest in its identifiable  
85 proceeds also has priority, to the extent that the purchase-  
86 money security interest in the goods in which the software  
87 was acquired for use has priority in the goods and pro-  
88 ceeds of the goods under this section.

89 (g) **Conflicting purchase-money security interests.** If  
90 more than one security interest qualifies for priority in the  
91 same collateral under subsection (a), (b), (d) or (f) of this  
92 section:

93 (1) A security interest securing an obligation incurred as  
94 all or part of the price of the collateral has priority over a  
95 security interest securing an obligation incurred for value  
96 given to enable the debtor to acquire rights in or the use of  
97 collateral; and

98 (2) In all other cases, section 9-322(a) applies to the  
99 qualifying security interests.

**§46-9-324a. Priority of production-money security interests and  
agricultural liens.**

1 (a) Except as otherwise provided in subsections (c), (d),  
2 and (e) of this section, if the requirements of subsection (b)  
3 of this section are satisfied, a perfected production-  
4 money security interest in production-money  
5 crops has priority over a conflicting security interest  
6 in the same crops and, except as otherwise provided in  
7 section 9-327, also has priority in their identifiable  
8 proceeds.

9 (b) A production-money security interest has priority  
10 under subsection (a) of this section if:

11 (1) The production-money security interest is perfected  
12 by filing when the production-money secured party first  
13 gives new value to enable the debtor to produce the crops;

14 (2) The production-money secured party sends an  
15 authenticated notification to the holder of the conflicting  
16 security interest not less than ten or more than thirty days  
17 before the production-money secured party first gives new  
18 value to enable the debtor to produce the crops if the  
19 holder had filed a financing statement covering the crops  
20 before the date of the filing made by the production-  
21 money secured party; and

22 (3) The notification states that the production-money  
23 secured party has or expects to acquire a production-  
24 money security interest in the debtor's crops and provides  
25 a description of the crops.

26 (c) Except as otherwise provided in subsection (d) or (e)  
27 of this section, if more than one security interest qualifies  
28 for priority in the same collateral under subsection (a) of  
29 this section, the security interests rank according to  
30 priority in time of filing under section 9-322(a).

31 (d) To the extent that a person holding a perfected  
32 security interest in production-money crops that are the  
33 subject of a production-money security interest gives new  
34 value to enable the debtor to produce the production-  
35 money crops and the value is in fact used for the produc-  
36 tion of the production-money crops, the security interests  
37 rank according to priority in time of filing under section 9-  
38 322(a).

39 (e) To the extent that a person holds both an agricultural  
40 lien and a production-money security interest in the same  
41 collateral securing the same obligations, the rules of  
42 priority applicable to agricultural liens govern priority.

**§46-9-325. Priority of security interests in transferred collateral.**

1 (a) **Subordination of security interest in transferred**  
2 **collateral.** Except as otherwise provided in subsection (b)  
3 of this section, a security interest created by a debtor is  
4 subordinate to a security interest in the same collateral  
5 created by another person if:

6 (1) The debtor acquired the collateral subject to the  
7 security interest created by the other person;

8 (2) The security interest created by the other person was  
9 perfected when the debtor acquired the collateral; and

10 (3) There is no period thereafter when the security  
11 interest is unperfected.

12 (b) **Limitation of subsection (a) subordination.** Subsec-  
13 tion (a) of this section subordinates a security interest only  
14 if the security interest:

15 (1) Otherwise would have priority solely under section  
16 9-322(a) or 9-324; or

17 (2) Arose solely under section 2-711(3) or 2A-508(5).

**§46-9-326. Priority of security interests created by new debtor.**

1 (a) **Subordination of security interest created by new**  
2 **debtor.** Subject to subsection (b) of this section, a security  
3 interest created by a new debtor which is perfected by a  
4 filed financing statement that is effective solely under  
5 section 9-508 in collateral in which a new debtor has or  
6 acquires rights is subordinate to a security interest in the  
7 same collateral which is perfected other than by a filed  
8 financing statement that is effective solely under section  
9 9-508.

10 (b) **Priority under other provisions; multiple original**  
11 **debtors.** The other provisions of this part determine the  
12 priority among conflicting security interests in the same

13 collateral perfected by filed financing statements that are  
14 effective solely under section 9-508. However, if the  
15 security agreements to which a new debtor became bound  
16 as debtor were not entered into by the same original  
17 debtor, the conflicting security interests rank according to  
18 priority in time of the new debtor's having become bound.

**§46-9-327. Priority of security interests in deposit account.**

1 The following rules govern priority among conflicting  
2 security interests in the same deposit account:

3 (1) A security interest held by a secured party having  
4 control of the deposit account under section 9-104 has  
5 priority over a conflicting security interest held by a  
6 secured party that does not have control.

7 (2) Except as otherwise provided in paragraphs (3) and  
8 (4) of this section, security interests perfected by control  
9 under section 9-314 rank according to priority in time of  
10 obtaining control.

11 (3) Except as otherwise provided in paragraph (4) of this  
12 section, a security interest held by the bank with which the  
13 deposit account is maintained has priority over a conflict-  
14 ing security interest held by another secured party.

15 (4) A security interest perfected by control under section  
16 9-104(a)(3) has priority over a security interest held by the  
17 bank with which the deposit account is maintained.

**§46-9-328. Priority of security interests in investment property.**

1 The following rules govern priority among conflicting  
2 security interests in the same investment property:

3 (1) A security interest held by a secured party having  
4 control of investment property under section 9-106 has  
5 priority over a security interest held by a secured party  
6 that does not have control of the investment property.

7 (2) Except as otherwise provided in paragraphs (3) and  
8 (4) of this section, conflicting security interests held by  
9 secured parties each of which has control under section  
10 9-106 rank according to priority in time of:

- 11 (A) If the collateral is a security, obtaining control;
- 12 (B) If the collateral is a security entitlement carried in a  
13 securities account and:
- 14 (i) If the secured party obtained control under section  
15 8-106(d)(1), the secured party's becoming the person for  
16 which the securities account is maintained;
- 17 (ii) If the secured party obtained control under section  
18 8-106(d)(2), the securities intermediary's agreement to  
19 comply with the secured party's entitlement orders with  
20 respect to security entitlements carried or to be carried in  
21 the securities account; or
- 22 (iii) If the secured party obtained control through  
23 another person under section 8-106(d)(3), the time on  
24 which priority would be based under this paragraph if the  
25 other person were the secured party; or
- 26 (C) If the collateral is a commodity contract carried with  
27 a commodity intermediary, the satisfaction of the require-  
28 ment for control specified in section 9-106(b)(2) with  
29 respect to commodity contracts carried or to be carried  
30 with the commodity intermediary.
- 31 (3) A security interest held by a securities intermediary  
32 in a security entitlement or a securities account main-  
33 tained with the securities intermediary has priority over a  
34 conflicting security interest held by another secured party.
- 35 (4) A security interest held by a commodity intermediary  
36 in a commodity contract or a commodity account main-  
37 tained with the commodity intermediary has priority over  
38 a conflicting security interest held by another secured  
39 party.
- 40 (5) A security interest in a certificated security in  
41 registered form which is perfected by taking delivery  
42 under section 9-313(a) and not by control under section  
43 9-314 has priority over a conflicting security interest  
44 perfected by a method other than control.
- 45 (6) Conflicting security interests created by a broker,  
46 securities intermediary or commodity intermediary which

47 are perfected without control under section 9-106 rank equally.

48 (7) In all other cases, priority among conflicting security  
49 interests in investment property is governed by sections  
50 9-322 and 9-323.

**§46-9-329. Priority of security interests in letter-of-credit right.**

1 The following rules govern priority among conflicting  
2 security interests in the same letter-of-credit right:

3 (1) A security interest held by a secured party having  
4 control of the letter-of-credit right under section 9-107 has  
5 priority to the extent of its control over a conflicting  
6 security interest held by a secured party that does not have  
7 control.

8 (2) Security interests perfected by control under section  
9 9-314 rank according to priority in time of obtaining  
10 control.

**§46-9-330. Priority of purchaser of chattel paper or instrument.**

1 (a) **Purchaser's priority: security interest claimed merely**  
2 **as proceeds.** A purchaser of chattel paper has priority over  
3 a security interest in the chattel paper which is claimed  
4 merely as proceeds of inventory subject to a security  
5 interest if:

6 (1) In good faith and in the ordinary course of the pur-  
7 chaser's business, the purchaser gives new value and takes  
8 possession of the chattel paper or obtains control of the  
9 chattel paper under section 9-105; and

10 (2) The chattel paper does not indicate that it has been  
11 assigned to an identified assignee other than the pur-  
12 chaser.

13 (b) **Purchaser's priority: other security interests.** A  
14 purchaser of chattel paper has priority over a security  
15 interest in the chattel paper which is claimed other than  
16 merely as proceeds of inventory subject to a security  
17 interest if the purchaser gives new value and takes posses-  
18 sion of the chattel paper or obtains control of the chattel

19 paper under section 9-105 in good faith, in the ordinary  
20 course of the purchaser's business, and without know  
21 ledge that the purchase violates the rights of the secured  
22 party.

23 (c) **Chattel paper purchaser's priority in proceeds.**  
24 Except as otherwise provided in section 9-327, a purchaser  
25 having priority in chattel paper under subsection (a) or (b)  
26 of this section also has priority in proceeds of the chattel  
27 paper to the extent that:

28 (1) Section 9-322 provides for priority in the proceeds; or

29 (2) The proceeds consist of the specific goods covered by  
30 the chattel paper or cash proceeds of the specific goods,  
31 even if the purchaser's security interest in the proceeds is  
32 unperfected.

33 (d) **Instrument purchaser's priority.** Except as otherwise  
34 provided in section 9-331(a), a purchaser of an instrument  
35 has priority over a security interest in the instrument  
36 perfected by a method other than possession if the pur-  
37 chaser gives value and takes possession of the instrument  
38 in good faith and without knowledge that the purchase  
39 violates the rights of the secured party.

40 (e) **Holder of purchase-money security interest gives new**  
41 **value.** For purposes of subsections (a) and (b) of this  
42 section, the holder of a purchase-money security interest  
43 in inventory gives new value for chattel paper constituting  
44 proceeds of the inventory.

45 (f) **Indication of assignment gives knowledge.** For  
46 purposes of subsections (b) and (d) of this section, if  
47 chattel paper or an instrument indicates that it has been  
48 assigned to an identified secured party other than the  
49 purchaser, a purchaser of the chattel paper or instrument  
50 has knowledge that the purchase violates the rights of the  
51 secured party.

**§46-9-331. Priority of rights of purchasers of instruments,  
documents, and securities under other articles;  
priority of interests in financial assets and  
security entitlements under article eight.**

1 (a) **Rights under articles three, seven and eight not**  
 2 **limited.** This article does not limit the rights of a holder in  
 3 due course of a negotiable instrument, a holder to which a  
 4 negotiable document of title has been duly negotiated, or  
 5 a protected purchaser of a security. These holders or  
 6 purchasers take priority over an earlier security interest,  
 7 even if perfected, to the extent provided in articles three,  
 8 seven and eight.

9 (b) **Protection under article eight.** This article does not  
 10 limit the rights of or impose liability on a person to the  
 11 extent that the person is protected against the assertion of  
 12 an adverse claim under article eight.

13 (c) **Filing not notice.** Filing under this article does not  
 14 constitute notice of a claim or defense to the holders, or  
 15 purchasers, or persons described in subsections (a) and (b)  
 16 of this section.

**§46-9-332. Transfer of money; transfer of funds from deposit account.**

1 (a) **Transferee of money.** A transferee of money takes the  
 2 money free of a security interest unless the transferee acts  
 3 in collusion with the debtor in violating the rights of the  
 4 secured party.

5 (b) **Transferee of funds from deposit account.** A trans-  
 6 feree of funds from a deposit account takes the funds free  
 7 of a security interest in the deposit account unless the  
 8 transferee acts in collusion with the debtor in violating the  
 9 rights of the secured party.

**§46-9-333. Priority of certain liens arising by operation of law.**

1 (a) **"Possessory lien."** In this section, "possessory lien"  
 2 means an interest, other than a security interest or an  
 3 agricultural lien:

4 (1) Which secures payment or performance of an obliga-  
 5 tion for services or materials furnished with respect to  
 6 goods by a person in the ordinary course of the person's  
 7 business;

8 (2) Which is created by statute or rule of law in favor of  
 9 the person; and



10 (3) Whose effectiveness depends on the person's posses-  
11 sion of the goods.

12 (b) **Priority of possessory lien.** A possessory lien on  
13 goods has priority over a security interest in the goods  
14 unless the lien is created by a statute that expressly  
15 provides otherwise.

**§46-9-334. Priority of security interests in fixtures and crops.**

1 (a) **Security interest in fixtures under this article.** A  
2 security interest under this article may be created in goods  
3 that are fixtures or may continue in goods that become  
4 fixtures. A security interest does not exist under this  
5 article in ordinary building materials incorporated into an  
6 improvement on land.

7 (b) **Security interest in fixtures under real-property law.**  
8 This article does not prevent creation of an encumbrance  
9 upon fixtures under real property law.

10 (c) **General rule: subordination of security interest in**  
11 **fixtures.** In cases not governed by subsections (d) through  
12 (h), inclusive, of this section, a security interest in fixtures  
13 is subordinate to a conflicting interest of an encumbrancer  
14 or owner of the related real property other than the debtor.

15 (d) **Fixtures purchase-money priority.** Except as other-  
16 wise provided in subsection (h) of this section, a perfected  
17 security interest in fixtures has priority over a conflicting  
18 interest of an encumbrancer or owner of the real property  
19 if the debtor has an interest of record in or is in possession  
20 of the real property and:

21 (1) The security interest is a purchase-money security  
22 interest;

23 (2) The interest of the encumbrancer or owner arises  
24 before the goods become fixtures; and

25 (3) The security interest is perfected by a fixture filing  
26 before the goods become fixtures or within twenty days  
27 thereafter.

28 (e) **Priority of security interest in fixtures over interests**  
29 **in real property.** A perfected security interest in fixtures

30 has priority over a conflicting interest of an encumbrancer  
31 or owner of the real property if:

32 (1) The debtor has an interest of record in the real  
33 property or is in possession of the real property and the  
34 security interest:

35 (A) Is perfected by a fixture filing before the interest of  
36 the encumbrancer or owner is of record; and

37 (B) Has priority over any conflicting interest of a prede-  
38 cessor in title of the encumbrancer or owner;

39 (2) Before the goods become fixtures, the security  
40 interest is perfected by any method permitted by this  
41 article and the fixtures are readily removable:

42 (A) Factory or office machines;

43 (B) Equipment that is not primarily used or leased for  
44 use in the operation of the real property; or

45 (C) Replacements of domestic appliances that are  
46 consumer goods;

47 (3) The conflicting interest is a lien on the real property  
48 obtained by legal or equitable proceedings after the  
49 security interest was perfected by any method permitted  
50 by this article; or

51 (4) The security interest is:

52 (A) Created in a manufactured home in a manufactured-  
53 home transaction; and

54 (B) Perfected pursuant to a statute described in section  
55 9-311(a)(2).

56 (f) **Priority based on consent, disclaimer or right to**  
57 **remove.** A security interest in fixtures, whether or not  
58 perfected, has priority over a conflicting interest of an  
59 encumbrancer or owner of the real property if:

60 (1) The encumbrancer or owner has, in an authenticated  
61 record, consented to the security interest or disclaimed an  
62 interest in the goods as fixtures; or

63 (2) The debtor has a right to remove the goods as against  
64 the encumbrancer or owner.

65 (g) **Continuation of subsection (f) priority.** The priority  
66 of the security interest under subsection (f)(2) of this  
67 section continues for a reasonable time if the debtor's right  
68 to remove the goods as against the encumbrancer or owner  
69 terminates.

70 (h) **Priority of construction mortgage.** A mortgage is a  
71 construction mortgage to the extent that it secures an  
72 obligation incurred for the construction of an improve-  
73 ment on land, including the acquisition cost of the land, if  
74 a recorded record of the mortgage so indicates. Except as  
75 otherwise provided in subsections (e) and (f) of this  
76 section, a security interest in fixtures is subordinate to a  
77 construction mortgage if a record of the mortgage is  
78 recorded before the goods become fixtures and the goods  
79 become fixtures before the completion of the construction.  
80 A mortgage has this priority to the same extent as a  
81 construction mortgage to the extent that it is given to  
82 refinance a construction mortgage.

83 (i) **Priority of security interest in crops.** A perfected  
84 security interest in crops growing on real property has  
85 priority over a conflicting interest of an encumbrancer or  
86 owner of the real property if the debtor has an interest of  
87 record in or is in possession of the real property.

88 (j) **Subsection (i) prevails.** Subsection (i) of this section  
89 prevails over any inconsistent provision of an existing or  
90 future statute, rule or regulation of this state unless the  
91 provision is contained in a statute of this state, refers  
92 expressly to this section and states that the provision  
93 prevails over this section.

#### §46-9-335. Accessions.

1 (a) **Creation of security interest in accession.** A security  
2 interest may be created in an accession and continues in  
3 collateral that becomes an accession.

4 (b) **Perfection of security interest.** If a security interest  
5 is perfected when the collateral becomes an accession, the  
6 security interest remains perfected in the collateral.

7 (c) **Priority of security interest.** Except as otherwise  
8 provided in subsection (d) of this section, the other provi-  
9 sions of this part determine the priority of a security  
10 interest in an accession.

11 (d) **Compliance with certificate-of-title statute.** A  
12 security interest in an accession is subordinate to a  
13 security interest in the whole which is perfected by  
14 compliance with the requirements of a certificate-of-title  
15 statute under section 9-311(b).

16 (e) **Removal of accession after default.** After default,  
17 subject to part 6, a secured party may remove an accession  
18 from other goods if the security interest in the accession  
19 has priority over the claims of every person having an  
20 interest in the whole.

21 (f) **Reimbursement following removal.** A secured party  
22 that removes an accession from other goods under subsec-  
23 tion (e) of this section shall promptly reimburse any holder  
24 of a security interest or other lien on, or owner of, the  
25 whole or of the other goods, other than the debtor, for the  
26 cost of repair of any physical injury to the whole or the  
27 other goods. The secured party need not reimburse the  
28 holder or owner for any diminution in value of the whole  
29 or the other goods caused by the absence of the accession  
30 removed or by any necessity for replacing it. A person  
31 entitled to reimbursement may refuse permission to  
32 remove until the secured party gives adequate assurance  
33 for the performance of the obligation to reimburse.

#### §46-9-336. **Commingled goods.**

1 (a) **"Commingled goods."** In this section, "commingled  
2 goods" means goods that are physically united with other  
3 goods in such a manner that their identity is lost in a  
4 product or mass.

5 (b) **No security interest in commingled goods as such.** A  
6 security interest does not exist in commingled goods as  
7 such. However, a security interest may attach to a product  
8 or mass that results when goods become commingled  
9 goods.

10 (c) **Attachment of security interest to product or mass.**

11 If collateral becomes commingled goods, a security interest  
12 attaches to the product or mass.

13 (d) **Perfection of security interest.** If a security interest  
14 in collateral is perfected before the collateral becomes  
15 commingled goods, the security interest that attaches to  
16 the product or mass under subsection (c) of this section is  
17 perfected.

18 (e) **Priority of security interest.** Except as otherwise  
19 provided in subsection (f) of this section, the other provi-  
20 sions of this part determine the priority of a security  
21 interest that attaches to the product or mass under subsec-  
22 tion (c) of this section.

23 (f) **Conflicting security interests in product or mass.** If  
24 more than one security interest attaches to the product or  
25 mass under subsection (c) of this section, the following  
26 rules determine priority:

27 (1) A security interest that is perfected under subsection  
28 (d) has priority over a security interest that is unperfected  
29 at the time the collateral becomes commingled goods.

30 (2) If more than one security interest is perfected under  
31 subsection (d) of this section, the security interests rank  
32 equally in proportion to value of the collateral at the time  
33 it became commingled goods.

**§46-9-337. Priority of security interests in goods covered by  
certificate of title.**

1 If, while a security interest in goods is perfected by any  
2 method under the law of another jurisdiction, this state  
3 issues a certificate of title that does not show that the  
4 goods are subject to the security interest or contain a  
5 statement that they may be subject to security interests  
6 not shown on the certificate:

7 (1) A buyer of the goods, other than a person in the  
8 business of selling goods of that kind, takes free of the  
9 security interest if the buyer gives value and receives  
10 delivery of the goods after issuance of the certificate and  
11 without knowledge of the security interest; and

12 (2) The security interest is subordinate to a conflicting  
13 security interest in the goods that attaches, and is per-  
14 fected under section 9-311(b), after issuance of the certifi-  
15 cate and without the conflicting secured party's knowledge  
16 of the security interest.

**§46-9-338. Priority of security interest or agricultural lien  
perfected by filed financing statement providing  
certain incorrect information.**

1 If a security interest or agricultural lien is perfected by  
2 a filed financing statement providing information de-  
3 scribed in section 9-516(b)(5) which is incorrect at the time  
4 the financing statement is filed:

5 (1) The security interest or agricultural lien is subordi-  
6 nate to a conflicting perfected security interest in the  
7 collateral to the extent that the holder of the conflicting  
8 security interest gives value in reasonable reliance upon  
9 the incorrect information; and

10 (2) A purchaser, other than a secured party, of the  
11 collateral takes free of the security interest or agricultural  
12 lien to the extent that, in reasonable reliance upon the  
13 incorrect information, the purchaser gives value and, in  
14 the case of chattel paper, documents, goods, instruments,  
15 or a security certificate, receives delivery of the collateral.

**§46-9-339. Priority subject to subordination.**

1 This article does not preclude subordination by agree-  
2 ment by a person entitled to priority.

SUBPART 4. RIGHTS OF BANK.

**§46-9-340. Effectiveness of right of recoupment or set-off  
against deposit account.**

1 (a) **Exercise of recoupment or set-off.** Except as other-  
2 wise provided in subsection (c) of this section, a bank with  
3 which a deposit account is maintained may exercise any  
4 right of recoupment or set-off against a secured party that  
5 holds a security interest in the deposit account.

6 (b) **Recoupment or set-off not affected by security**  
7 **interest.** Except as otherwise provided in subsection (c) of

8 this section, the application of this article to a security  
9 interest in a deposit account does not affect a right of  
10 recoupment or set-off of the secured party as to a deposit  
11 account maintained with the secured party.

12 (c) **When set-off ineffective.** The exercise by a bank of a  
13 set-off against a deposit account is ineffective against a  
14 secured party that holds a security interest in the deposit  
15 account which is perfected by control under section  
16 9-104(a)(3), if the set-off is based on a claim against the  
17 debtor.

**§46-9-341. Bank's rights and duties with respect to deposit account.**

1 Except as otherwise provided in section 9-340(c), and  
2 unless the bank otherwise agrees in an authenticated  
3 record, a bank's rights and duties with respect to a deposit  
4 account maintained with the bank are not terminated,  
5 suspended or modified by:

6 (1) The creation, attachment or perfection of a security  
7 interest in the deposit account;

8 (2) The bank's knowledge of the security interest; or

9 (3) The bank's receipt of instructions from the secured  
10 party.

**§46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.**

1 This article does not require a bank to enter into an  
2 agreement of the kind described in section 9-104(a)(2),  
3 even if its customer so requests or directs. A bank that has  
4 entered into such an agreement is not required to confirm  
5 the existence of the agreement to another person unless  
6 requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES.

**§46-9-401. Alienability of debtor's rights.**

1 (a) **Other law governs alienability; exceptions.** Except as  
2 otherwise provided in subsection (b) of this section and  
3 sections 9-406, 9-407, 9-408 and 9-409, whether a debtor's

4 rights in collateral may be voluntarily or involuntarily  
5 transferred is governed by law other than this article.

6 (b) **Agreement does not prevent transfer.** An agreement  
7 between the debtor and secured party which prohibits a  
8 transfer of the debtor's rights in collateral or makes the  
9 transfer a default does not prevent the transfer from  
10 taking effect.

**§46-9-402. Secured party not obligated on contract of debtor or  
in tort.**

1 The existence of a security interest, agricultural lien, or  
2 authority given to a debtor to dispose of or use collateral,  
3 without more, does not subject a secured party to liability  
4 in contract or tort for the debtor's acts or omissions.

**§46-9-403. Agreement not to assert defenses against assignee.**

1 (a) **"Value."** In this section, "value" has the meaning  
2 provided in section 3-303(a).

3 (b) **Agreement not to assert claim or defense.** Except  
4 as otherwise provided in this section, an agree-  
5 ment between an account debtor and an assignor  
6 not to assert against an assignee any claim or defense  
7 that the account debtor may have against the as-  
8 signor is enforceable by an assignee that takes an assign-  
9 ment:

10 (1) For value;

11 (2) In good faith;

12 (3) Without notice of a claim of a property or possessory  
13 right to the property assigned; and

14 (4) Without notice of a defense or claim in recoupment of  
15 the type that may be asserted against a person entitled to  
16 enforce a negotiable instrument under section 3-305(a).

17 (c) **When subsection (b) not applicable.** Subsection (b) of  
18 this section does not apply to defenses of a type that may  
19 be asserted against a holder in due course of a negotiable  
20 instrument under section 3-305(b).



21 (d) **Omission of required statement in consumer transac-**  
22 **tion.** In a consumer transaction, if a record evidences the  
23 account debtor's obligation, law other than this article  
24 requires that the record include a statement to the effect  
25 that the rights of an assignee are subject to claims or  
26 defenses that the account debtor could assert against the  
27 original obligee and the record does not include such a  
28 statement:

29 (1) The record has the same effect as if the record  
30 included such a statement; and

31 (2) The account debtor may assert against an assignee  
32 those claims and defenses that would have been available  
33 if the record included such a statement.

34 (e) **Rule for individual under other law.** This section is  
35 subject to law other than this article which establishes a  
36 different rule for an account debtor who is an individual  
37 and who incurred the obligation primarily for personal,  
38 family, or household purposes.

39 (f) **Other law not displaced.** Except as otherwise pro-  
40 vided in subsection (d) of this section, this section does not  
41 displace law other than this article which gives effect to an  
42 agreement by an account debtor not to assert a claim or  
43 defense against an assignee.

**§46-9-404. Rights acquired by assignee; claims and defenses  
against assignee.**

1 (a) **Assignee's rights subject to terms, claims and de-**  
2 **fenses; exceptions.** Unless an account debtor has made an  
3 enforceable agreement not to assert defenses or claims,  
4 and subject to subsections (b) through (e), inclusive, of this  
5 section, the rights of an assignee are subject to:

6 (1) All terms of the agreement between the account  
7 debtor and assignor and any defense or claim in recoup-  
8 ment arising from the transaction that gave rise to the  
9 contract; and

10 (2) Any other defense or claim of the account debtor  
11 against the assignor which accrues before the account

12 debtor receives a notification of the assignment authenti-  
13 cated by the assignor or the assignee.

14 (b) **Account debtor's claim reduces amount owed to**  
15 **assignee.** Subject to subsection (c) of this section and  
16 except as otherwise provided in subsection (d) of this  
17 section, the claim of an account debtor against an assignor  
18 may be asserted against an assignee under subsection (a)  
19 of this section only to reduce the amount the account  
20 debtor owes.

21 (c) **Rule for individual under other law.** This section is  
22 subject to law other than this article which establishes a  
23 different rule for an account debtor who is an individual  
24 and who incurred the obligation primarily for personal,  
25 family or household purposes.

26 (d) **Omission of required statement in consumer transac-**  
27 **tion.** In a consumer transaction, if a record evidences the  
28 account debtor's obligation, law other than this article  
29 requires that the record include a statement to the effect  
30 that the account debtor's recovery against an assignee with  
31 respect to claims and defenses against the assignor may  
32 not exceed amounts paid by the account debtor under the  
33 record, and the record does not include such a statement,  
34 the extent to which a claim of an account debtor against  
35 the assignor may be asserted against an assignee is deter-  
36 mined as if the record included such a statement.

37 (e) **Inapplicability to health-care-insurance receivable.**  
38 This section does not apply to an assignment of a health-  
39 care-insurance receivable.

#### §46-9-405. **Modification of assigned contract.**

1 (a) **Effect of modification on assignee.** A modification of  
2 or substitution for an assigned contract is effective against  
3 an assignee if made in good faith. The assignee acquires  
4 corresponding rights under the modified or substituted  
5 contract. The assignment may provide that the modifica-  
6 tion or substitution is a breach of contract by the assignor.  
7 This subsection is subject to subsections (b) through (d),  
8 inclusive, of this section.

9 (b) **Applicability of subsection (a).** Subsection (a) applies  
10 to the extent that:

11 (1) The right to payment or a part thereof under an  
12 assigned contract has not been fully earned by perfor-  
13 mance; or

14 (2) The right to payment or a part thereof has been fully  
15 earned by performance and the account debtor has not  
16 received notification of the assignment under section  
17 9-406(a).

18 (c) **Rule for individual under other law.** This section is  
19 subject to law other than this article which establishes a  
20 different rule for an account debtor who is an individual  
21 and who incurred the obligation primarily for personal,  
22 family or household purposes.

23 (d) **Inapplicability to health-care-insurance receivable.**  
24 This section does not apply to an assignment of a health-  
25 care-insurance receivable.

**§46-9-406. Discharge of account debtor; notification of assign-  
ment; identification and proof of assignment;  
restrictions on assignment of accounts, chattel  
paper, payment intangibles and promissory notes  
ineffective.**

1 (a) **Discharge of account debtor; effect of notification.**  
2 Subject to subsections (b) through (i), an account debtor on  
3 an account, chattel paper or a payment intangible may  
4 discharge its obligation by paying the assignor until, but  
5 not after, the account debtor receives a notification,  
6 authenticated by the assignor or the assignee, that the  
7 amount due or to become due has been assigned and that  
8 payment is to be made to the assignee. After receipt of the  
9 notification, the account debtor may discharge its obliga-  
10 tion by paying the assignee and may not discharge the  
11 obligation by paying the assignor.

12 (b) **When notification ineffective.** Subject to subsection  
13 (h) of this section, notification is ineffective under subsec-  
14 tion (a) of this section:

15 (1) If it does not reasonably identify the rights assigned;

16 (2) To the extent that an agreement between an account  
17 debtor and a seller of a payment intangible limits the  
18 account debtor's duty to pay a person other than the seller  
19 and the limitation is effective under law other than this  
20 article; or

21 (3) At the option of an account debtor, if the notification  
22 notifies the account debtor to make less than the full  
23 amount of any installment or other periodic payment to  
24 the assignee, even if:

25 (A) Only a portion of the account, chattel paper or  
26 payment intangible has been assigned to that assignee;

27 (B) A portion has been assigned to another assignee; or

28 (C) The account debtor knows that the assignment to  
29 that assignee is limited.

30 (c) **Proof of assignment.** Subject to subsection (h) of this  
31 section, if requested by the account debtor, an assignee  
32 shall seasonably furnish reasonable proof that the assign-  
33 ment has been made. Unless the assignee complies, the  
34 account debtor may discharge its obligation by paying the  
35 assignor, even if the account debtor has received a notifi-  
36 cation under subsection (a) of this section.

37 (d) **Term restricting assignment generally ineffective.**  
38 Except as otherwise provided in subsection (e) of this  
39 section and sections 2A-303 and 9-407, and subject to  
40 subsection (h) of this section, a term in an agreement  
41 between an account debtor and an assignor or in a promis-  
42 sory note is ineffective to the extent that it:

43 (1) Prohibits, restricts or requires the consent of the  
44 account debtor or person obligated on the promissory note  
45 to the assignment or transfer of, or the creation, attach-  
46 ment, perfection or enforcement of a security interest in,  
47 the account, chattel paper, payment intangible or promis-  
48 sory note; or

49 (2) Provides that the assignment or transfer or the  
50 creation, attachment, perfection or enforcement of the  
51 security interest may give rise to a default, breach, right of  
52 recoupment, claim, defense, termination, right of termina-

53 tion or remedy under the account, chattel paper, payment  
54 intangible or promissory note.

55 (e) **Inapplicability of subsection (d) to certain sales.**  
56 Subsection (d) of this section does not apply to the sale of  
57 a payment intangible or promissory note.

58 (f) **Legal restrictions on assignment generally ineffective.**  
59 Except as otherwise provided in sections 2A-303 and 9-407  
60 and subject to subsections (h) and (i) of this section, a rule  
61 of law, statute or regulation that prohibits, restricts or  
62 requires the consent of a government, governmental body  
63 or official, or account debtor to the assignment or transfer  
64 of, or creation of a security interest in, an account or  
65 chattel paper is ineffective to the extent that the rule of  
66 law, statute or regulation:

67 (1) Prohibits, restricts or requires the consent of the  
68 government, governmental body or official, or account  
69 debtor to the assignment or transfer of, or the creation,  
70 attachment, perfection or enforcement of a security  
71 interest in the account or chattel paper; or

72 (2) Provides that the assignment or transfer or the  
73 creation, attachment, perfection or enforcement of the  
74 security interest may give rise to a default, breach, right of  
75 recoupment, claim, defense, termination, right of termina-  
76 tion or remedy under the account or chattel paper.

77 (g) **Subsection (b)(3) not waivable.** Subject to subsection  
78 (h) of this section, an account debtor may not waive or  
79 vary its option under subsection (b)(3) of this section.

80 (h) **Rule for individual under other law.** This section is  
81 subject to law other than this article which establishes a  
82 different rule for an account debtor who is an individual  
83 and who incurred the obligation primarily for personal,  
84 family or household purposes.

85 (i) **Inapplicability to health-care-insurance receivable.**  
86 This section does not apply to an assignment of a health-  
87 care-insurance receivable.

88 (j) **Section prevails over specified inconsistent law.** This  
89 section prevails over any inconsistent provision of an

90 existing or future statute, rule or regulation of this state  
 91 unless the provision is contained in a statute of this state,  
 92 refers expressly to this section and states that the provi-  
 93 sion prevails over this section.

**§46-9-407. Restrictions on creation or enforcement of security  
 interest in leasehold interest or in lessor's resid-  
 ual interest.**

1 (a) **Term restricting assignment generally ineffective.**  
 2 Except as otherwise provided in subsection (b) of this  
 3 section, a term in a lease agreement is ineffective to the  
 4 extent that it:

5 (1) Prohibits, restricts or requires the consent of a party  
 6 to the lease to the assignment or transfer of, or the cre-  
 7 ation, attachment, perfection, or enforcement of a security  
 8 interest in, an interest of a party under the lease contract  
 9 or in the lessor's residual interest in the goods; or

10 (2) Provides that the assignment or transfer or the  
 11 creation, attachment, perfection, or enforcement of the  
 12 security interest may give rise to a default, breach, right of  
 13 recoupment, claim, defense, termination, right of termina-  
 14 tion or remedy under the lease.

15 (b) **Effectiveness of certain terms.** Except as otherwise  
 16 provided in section 2A-303(7), a term described in subsec-  
 17 tion (a)(2) is effective to the extent that there is:

18 (1) A transfer by the lessee of the lessee's right of posses-  
 19 sion or use of the goods in violation of the term; or

20 (2) A delegation of a material performance of either  
 21 party to the lease contract in violation of the term.

22 (c) **Security interest not material impairment.** The  
 23 creation, attachment, perfection or enforcement of a  
 24 security interest in the lessor's interest under the lease  
 25 contract or the lessor's residual interest in the goods is not  
 26 a transfer that materially impairs the lessee's prospect of  
 27 obtaining return performance or materially changes the  
 28 duty of or materially increases the burden or risk imposed  
 29 on the lessee within the purview of section 2A-303(4)  
 30 unless, and then only to the extent that, enforcement

31 actually results in a delegation of material performance of  
32 the lessor.

**§46-9-408. Restrictions on assignment of promissory notes,  
health-care-insurance receivables and certain  
general intangibles ineffective.**

1 (a) **Term restricting assignment generally ineffective.**  
2 Except as otherwise provided in subsection (b) of this  
3 section, a term in a promissory note or in an agreement  
4 between an account debtor and a debtor which relates to  
5 a health-care-insurance receivable or a general intangible,  
6 including a contract, permit, license or franchise, and  
7 which term prohibits, restricts or requires the consent of  
8 the person obligated on the promissory note or the account  
9 debtor to, the assignment or transfer of, or creation,  
10 attachment or perfection of a security interest in, the  
11 promissory note, health-care-insurance receivable, or  
12 general intangible, is ineffective to the extent that the  
13 term:

14 (1) Would impair the creation, attachment or perfection  
15 of a security interest; or

16 (2) Provides that the assignment or transfer or the  
17 creation, attachment or perfection of the security interest  
18 may give rise to a default, breach, right of recoupment,  
19 claim, defense, termination, right of termination, or  
20 remedy under the promissory note, health-care-insurance  
21 receivable or general intangible.

22 (b) **Applicability of subsection (a) to sales of cer-**  
23 **tain rights to payment.** Subsection (a) of this  
24 section applies to a security interest in a payment  
25 intangible or promissory note only if the security interest  
26 arises out of a sale of the payment intangible or promis-  
27 sory note.

28 (c) **Legal restrictions on assignment generally ineffective.**  
29 A rule of law, statute or regulation that prohibits, restricts  
30 or requires the consent of a government, governmental  
31 body or official, person obligated on a promissory note, or  
32 account debtor to the assignment or transfer of, or creation  
33 of a security interest in, a promissory note, health-care-

34 insurance receivable or general intangible, including a  
35 contract, permit, license or franchise between an account  
36 debtor and a debtor, is ineffective to the extent that the  
37 rule of law, statute or regulation:

38 (1) Would impair the creation, attachment or perfection  
39 of a security interest; or

40 (2) Provides that the assignment or transfer or the  
41 creation, attachment or perfection of the security interest  
42 may give rise to a default, breach, right of recoupment,  
43 claim, defense, termination, right of termination or remedy  
44 under the promissory note, health-care-insurance receiv-  
45 able or general intangible.

46 (d) **Limitation on ineffectiveness under subsections (a)**  
47 **and (c).** To the extent that a term in a promissory note or  
48 in an agreement between an account debtor and a debtor  
49 which relates to a health-care-insurance receivable or  
50 general intangible or a rule of law, statute or regulation  
51 described in subsection (c) of this section would be effec-  
52 tive under law other than this article but is ineffective  
53 under subsection (a) or (c) of this section, the creation,  
54 attachment or perfection of a security interest in the  
55 promissory note, health-care-insurance receivable or  
56 general intangible:

57 (1) Is not enforceable against the person obligated on the  
58 promissory note or the account debtor;

59 (2) Does not impose a duty or obligation on the person  
60 obligated on the promissory note or the account debtor;

61 (3) Does not require the person obligated on the promissory  
62 note or the account debtor to recognize the security  
63 interest, pay or render performance to the secured party,  
64 or accept payment or performance from the secured party;

65 (4) Does not entitle the secured party to use or assign the  
66 debtor's rights under the promissory note, health-care-  
67 insurance receivable or general intangible, including any  
68 related information or materials furnished to the debtor in  
69 the transaction giving rise to the promissory note, health-  
70 care-insurance receivable or general intangible;



71 (5) Does not entitle the secured party to use, assign,  
72 possess or have access to any trade secrets or confidential  
73 information of the person obligated on the promissory note  
74 or the account debtor; and

75 (6) Does not entitle the secured party to enforce the  
76 security interest in the promissory note, health-care-  
77 insurance receivable or general intangible.

78 (e) **Section prevails over specified inconsistent law.** This  
79 section prevails over any inconsistent provisions of an  
80 existing or future statute, rule or regulation of this state  
81 unless the provision is contained in a statute of this state,  
82 refers expressly to this section and states that the provi-  
83 sion prevails over this section.

**§46-9-409. Restrictions on assignment of letter-of-credit rights  
ineffective.**

1 (a) **Term or law restricting assignment generally ineffec-**  
2 **tive.** A term in a letter of credit or a rule of law, statute,  
3 regulation, custom or practice applicable to the letter of  
4 credit which prohibits, restricts or requires the consent of  
5 an applicant, issuer or nominated person to a beneficiary's  
6 assignment of or creation of a security interest in a letter  
7 of-credit right is ineffective to the extent that the term or  
8 rule of law, statute, regulation, custom or practice:

9 (1) Would impair the creation, attachment or perfection  
10 of a security interest in the letter-of-credit right; or

11 (2) Provides that the assignment or the creation, attach-  
12 ment or perfection of the security interest may give rise to  
13 a default, breach, right of recoupment, claim, defense,  
14 termination, right of termination or remedy under the  
15 letter-of-credit right.

16 (b) **Limitation on ineffectiveness under subsection (a).**  
17 To the extent that a term in a letter of credit is ineffective  
18 under subsection (a) of this section but would be effective  
19 under law other than this article or a custom or practice  
20 applicable to the letter of credit, to the transfer of a right  
21 to draw or otherwise demand performance under the letter  
22 of credit, or to the assignment of a right to proceeds of the

23 letter of credit, the creation, attachment, or perfection of  
24 a security interest in the letter-of-credit right:

25 (1) Is not enforceable against the applicant, issuer,  
26 nominated person or transferee beneficiary;

27 (2) Imposes no duties or obligations on the applicant,  
28 issuer, nominated person or transferee beneficiary; and

29 (3) Does not require the applicant, issuer, nominated  
30 person or transferee beneficiary to recognize the security  
31 interest, pay or render performance to the secured party,  
32 or accept payment or other performance from the secured  
33 party.

#### PART 5. FILING.

##### SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

###### §46-9-501. Filing office.

1 (a) **Filing offices.** Except as otherwise provided in  
2 subsection (b) of this section, if the local law of this state  
3 governs perfection of a security interest or agricultural  
4 lien, the office in which to file a financing statement to  
5 perfect the security interest or agricultural lien is:

6 (1) The office designated for the filing or recording of a  
7 record of a mortgage on the related real property, if:

8 (A) The collateral is as-extracted collateral or timber to  
9 be cut; or

10 (B) The financing statement is filed as a fixture filing  
11 and the collateral is goods that are or are to become  
12 fixtures; or

13 (2) The office of the secretary of state, in all other cases,  
14 including a case in which the collateral is goods that are or  
15 are to become fixtures and the financing statement is not  
16 filed as a fixture filing.

17 (b) **Filing office for transmitting utilities.** The office in  
18 which to file a financing statement to perfect a security  
19 interest in collateral, including fixtures, of a transmitting  
20 utility is the office of secretary of state. The financing

21 statement also constitutes a fixture filing as to the collat-  
22 eral indicated in the financing statement which is or is to  
23 become fixtures.

**§46-9-502. Contents of financing statement; record of mortgage  
as financing statement; time of filing financing  
statement.**

1 (a) **Sufficiency of financing statement.** Subject to  
2 subsection (b), a financing statement is sufficient only if it:

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a represen-  
5 tative of the secured party; and

6 (3) Indicates the collateral covered by the financing  
7 statement.

8 (b) **Real-property-related financing statements.** Ex-  
9 cept as otherwise provided in section 9-501(b), to  
10 be sufficient, a financing statement that covers as-  
11 extracted collateral or timber to be cut, or which  
12 is filed as a fixture filing and covers goods that are or are  
13 to become fixtures, must satisfy subsection (a) of this  
14 section and also:

15 (1) Indicate that it covers this type of collateral;

16 (2) Indicate that it is to be filed for record in the real  
17 property records;

18 (3) Provide a description of the real property to which  
19 the collateral is related sufficient to give constructive  
20 notice of mortgage under the law of this state if the  
21 description were contained in a record of the mortgage of  
22 the real property; and

23 (4) If the debtor does not have an interest of record in the  
24 real property, provide the name of a record owner.

25 (c) **Record of mortgage as financing statement.** A record  
26 of a mortgage is effective, from the date of recording, as a  
27 financing statement filed as a fixture filing or as a financ-  
28 ing statement covering as-extracted collateral or timber to  
29 be cut only if:

30 (1) The record indicates the goods or accounts that it  
31 covers;

32 (2) The goods are or are to become fixtures relate to the  
33 real property described in the record or the collateral is  
34 related to the real property described in the record and is  
35 as-extracted collateral or timber to be cut;

36 (3) The record satisfies the requirements for a financing  
37 statement in this section other than an indication that it is  
38 to be filed in the real property records; and

39 (4) The record is duly recorded.

40 **(d) Filing before security agreement or attachment.** A  
41 financing statement may be filed before a security agree-  
42 ment is made or a security interest otherwise attaches.

**§46-9-503. Name of debtor and secured party.**

1 (a) **Sufficiency of debtor's name.** A financing statement  
2 sufficiently provides the name of the debtor:

3 (1) If the debtor is a registered organization, only if the  
4 financing statement provides the name of the debtor  
5 indicated on the public record of the debtor's jurisdiction  
6 of organization which shows the debtor to have been  
7 organized;

8 (2) If the debtor is a decedent's estate, only if the financ-  
9 ing statement provides the name of the decedent and  
10 indicates that the debtor is an estate;

11 (3) If the debtor is a trust or a trustee acting with respect  
12 to property held in trust, only if the financing statement:

13 (A) Provides the name specified for the trust in its  
14 organic documents or, if no name is specified, provides the  
15 name of the settlor and additional information sufficient  
16 to distinguish the debtor from other trusts having one or  
17 more of the same settlors; and

18 (B) Indicates, in the debtor's name or otherwise, that the  
19 debtor is a trust or is a trustee acting with respect to  
20 property held in trust; and

21 (4) In other cases:

22 (A) If the debtor has a name, only if it provides the  
23 individual or organizational name of the debtor; and

24 (B) If the debtor does not have a name, only if it provides  
25 the names of the partners, members, associates or other  
26 persons comprising the debtor.

27 (b) **Additional debtor-related information.** A financing  
28 statement that provides the name of the debtor in accor-  
29 dance with subsection (a) of this section is not rendered  
30 ineffective by the absence of:

31 (1) A trade name or other name of the debtor; or

32 (2) Unless required under subsection (a)(4)(B) of this  
33 section, names of partners, members, associates or other  
34 persons comprising the debtor.

35 (c) **Debtor's trade name insufficient.** A financing  
36 statement that provides only the debtor's trade name does  
37 not sufficiently provide the name of the debtor.

38 (d) **Representative capacity.** Failure to indicate the  
39 representative capacity of a secured party or representa-  
40 tive of a secured party does not affect the sufficiency of a  
41 financing statement.

42 (e) **Multiple debtors and secured parties.** A financing  
43 statement may provide the name of more than one debtor  
44 and the name of more than one secured party.

**§46-9-504. Indication of collateral.**

1 A financing statement sufficiently indicates the collat-  
2 eral that it covers if the financing statement provides:

3 (1) A description of the collateral pursuant to section  
4 9-108; or

5 (2) An indication that the financing statement covers all  
6 assets or all personal property.

**§46-9-505. Filing and compliance with other statutes and  
treaties for consignments, leases, other bailments  
and other transactions.**

1 (a) **Use of terms other than "debtor" and "secured**  
2 **party."** A consignor, lessor, or other bailor of goods, a  
3 licensor or a buyer of a payment intangible or promissory  
4 note may file a financing statement, or may comply with  
5 a statute or treaty described in section 9-311(a), using the  
6 terms "consignor", "consignee", "lessor", "lessee",  
7 "bailor", "bailee", "licensor", "licensee", "owner",  
8 "registered owner", "buyer", "seller" or words of similar  
9 import, instead of the terms "secured party" and "debtor".

10 (b) **Effect of financing statement under subsection (a).**  
11 This part applies to the filing of a financing statement  
12 under subsection (a) of this section and, as appropriate, to  
13 compliance that is equivalent to filing a financing state-  
14 ment under section 9-311(b), but the filing or compliance  
15 is not of itself a factor in determining whether the collat-  
16 eral secures an obligation. If it is determined for another  
17 reason that the collateral secures an obligation, a security  
18 interest held by the consignor, lessor, bailor, licensor,  
19 owner or buyer which attaches to the collateral is per-  
20 fected by the filing or compliance.

**§46-9-506. Effect of errors or omissions.**

1 (a) **Minor errors and omissions.** A financing statement  
2 substantially satisfying the requirements of this part is  
3 effective, even if it has minor errors or omissions, unless  
4 the errors or omissions make the financing statement  
5 seriously misleading.

6 (b) **Financing statement seriously misleading.** Except as  
7 otherwise provided in subsection (c) of this section, a  
8 financing statement that fails sufficiently to provide the  
9 name of the debtor in accordance with section 9-503(a) is  
10 seriously misleading.

11 (c) **Financing statement not seriously misleading.** If a  
12 search of the records of the filing office under the debtor's  
13 correct name, using the filing office's standard search  
14 logic, if any, would disclose a financing statement that  
15 fails sufficiently to provide the name of the debtor in  
16 accordance with section 9-503(a), the name provided does  
17 not make the financing statement seriously misleading.

18 (d) **“Debtor’s correct name.”** For purposes of section  
19 9-508(b), the “debtor’s correct name” in subsection (c) of  
20 this section means the correct name of the new debtor.

**§46-9-507. Effect of certain events on effectiveness of financing statement.**

1 (a) **Disposition.** A filed financing statement remains  
2 effective with respect to collateral that is sold, exchanged,  
3 leased, licensed or otherwise disposed of and in which a  
4 security interest or agricultural lien continues, even if the  
5 secured party knows of or consents to the disposition.

6 (b) **Information becoming seriously misleading.** Except  
7 as otherwise provided in subsection (c) of this section and  
8 section 9-508, a financing statement is not rendered  
9 ineffective if, after the financing statement is filed, the  
10 information provided in the financing statement becomes  
11 seriously misleading under section 9-506.

12 (c) **Change in debtor’s name.** If a debtor so changes its  
13 name that a filed financing statement becomes seriously  
14 misleading under section 9-506:

15 (1) The financing statement is effective to perfect a  
16 security interest in collateral acquired by the debtor  
17 before, or within four months after, the change; and

18 (2) The financing statement is not effective to perfect a  
19 security interest in collateral acquired by the debtor more  
20 than four months after the change, unless an amendment  
21 to the financing statement which renders the financing  
22 statement not seriously misleading is filed within four  
23 months after the change.

**§46-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.**

1 (a) **Financing statement naming original debtor.** Except  
2 as otherwise provided in this section, a filed financing  
3 statement naming an original debtor is effective to perfect  
4 a security interest in collateral in which a new debtor has  
5 or acquires rights to the extent that the financing state-  
6 ment would have been effective had the original debtor  
7 acquired rights in the collateral.

8     **(b) Financing statement becoming seriously misleading.**  
9     If the difference between the name of the original debtor  
10    and that of the new debtor causes a filed financing state-  
11    ment that is effective under subsection (a) of this section  
12    to be seriously misleading under section 9-506:

13    (1) The financing statement is effective to perfect a  
14    security interest in collateral acquired by the new debtor  
15    before, and within four months after, the new debtor  
16    becomes bound under section 9-203(d); and

17    (2) The financing statement is not effective to perfect a  
18    security interest in collateral acquired by the new debtor  
19    more than four months after the new debtor becomes  
20    bound under section 9-203(d) unless an initial financing  
21    statement providing the name of the new debtor is filed  
22    before the expiration of that time.

23    **(c) When section not applicable.** This section does not  
24    apply to collateral as to which a filed financing statement  
25    remains effective against the new debtor under section  
26    9-507(a).

**§46-9-509. Persons entitled to file a record.**

1     **(a) Person entitled to file record.** A person may file an  
2     initial financing statement, amendment that adds collat-  
3     eral covered by a financing statement, or amendment that  
4     adds a debtor to a financing statement only if:

5     (1) The debtor authorizes the filing in an authenticated  
6     record or pursuant to subsection (b) or (c) of this section;  
7     or

8     (2) The person holds an agricultural lien that has become  
9     effective at the time of filing and the financing statement  
10    covers only collateral in which the person holds an agri-  
11    cultural lien.

12    **(b) Security agreement as authorization.** By authenticat-  
13    ing or becoming bound as debtor by a security agreement,  
14    a debtor or new debtor authorizes the filing of an initial  
15    financing statement, and an amendment, covering:

16    (1) The collateral described in the security agreement;  
17    and



18 (2) Property that becomes collateral under section  
19 9-315(a)(2), whether or not the security agreement ex-  
20 pressly covers proceeds.

21 (c) **Acquisition of collateral as authorization.** By acquir-  
22 ing collateral in which a security interest or agricultural  
23 lien continues under section 9-315(a)(1), a debtor autho-  
24 rizes the filing of an initial financing statement, and an  
25 amendment, covering the collateral and property that  
26 becomes collateral under section 9-315(a)(2).

27 (d) **Person entitled to file certain amendments.** A person  
28 may file an amendment other than an amendment that  
29 adds collateral covered by a financing statement or an  
30 amendment that adds a debtor to a financing statement  
31 only if:

32 (1) The secured party of record authorizes the filing; or

33 (2) The amendment is a termination statement for a  
34 financing statement as to which the secured party of  
35 record has failed to file or send a termination statement as  
36 required by section 9-513(a) or (c), the debtor authorizes  
37 the filing and the termination statement indicates that the  
38 debtor authorized it to be filed.

39 (e) **Multiple secured parties of record.** If there is more  
40 than one secured party of record for a financing statement,  
41 each secured party of record may authorize the filing of an  
42 amendment under subsection (d) of this section.

**§46-9-510. Effectiveness of filed record.**

1 (a) **Filed record effective if authorized.** A filed record is  
2 effective only to the extent that it was filed by a person  
3 that may file it under section 9-509.

4 (b) **Authorization by one secured party of record.** A  
5 record authorized by one secured party of record does not  
6 affect the financing statement with respect to another  
7 secured party of record.

8 (c) **Continuation statement not timely filed.** A continua-  
9 tion statement that is not filed within the six-month  
10 period prescribed by section 9-515(d) is ineffective.

**§46-9-511. Secured party of record.**

1 (a) **Secured party of record.** A secured party of record  
 2 with respect to a financing statement is a person whose  
 3 name is provided as the name of the secured party or a  
 4 representative of the secured party in an initial financing  
 5 statement that has been filed. If an initial financing  
 6 statement is filed under section 9-514(a), the assignee  
 7 named in the initial financing statement is the secured  
 8 party of record with respect to the financing statement.

9 (b) **Amendment naming secured party of record.** If an  
 10 amendment of a financing statement which provides the  
 11 name of a person as a secured party or a representative of  
 12 a secured party is filed, the person named in the amend-  
 13 ment is a secured party of record. If an amendment is filed  
 14 under section 9-514(b), the assignee named in the amend-  
 15 ment is a secured party of record.

16 (c) **Amendment deleting secured party of record.** A  
 17 person remains a secured party of record until the filing of  
 18 an amendment of the financing statement which deletes  
 19 the person.

**§46-9-512. Amendment of financing statement.**

1 (a) **Amendment of information in financing statement.**  
 2 Subject to section 9-509, a person may add or delete  
 3 collateral covered by, continue or terminate the effective-  
 4 ness of, or, subject to subsection (e) of this section, other-  
 5 wise amend the information provided in, a financing  
 6 statement by filing an amendment that:

7 (1) Identifies, by its file number, the initial financing  
 8 statement to which the amendment relates; and

9 (2) If the amendment relates to an initial financing  
 10 statement filed or recorded in a filing office described in  
 11 section 9-501(a)(1), provides the date and time that the  
 12 initial financing statement was filed or recorded and the  
 13 information specified in section 9-502(b).

14 (b) **Period of effectiveness not affected.** Except as  
 15 otherwise provided in section 9-515, the filing of an

16 amendment does not extend the period of effectiveness of  
17 the financing statement.

18 (c) **Effectiveness of amendment adding collateral.** A  
19 financing statement that is amended by an amendment  
20 that adds collateral is effective as to the added collateral  
21 only from the date of the filing of the amendment.

22 (d) **Effectiveness of amendment adding debtor.** A  
23 financing statement that is amended by an amendment  
24 that adds a debtor is effective as to the added debtor only  
25 from the date of the filing of the amendment.

26 (e) **Certain amendments ineffective.** An amendment is  
27 ineffective to the extent it:

28 (1) Purports to delete all debtors and fails to provide the  
29 name of a debtor to be covered by the financing statement;  
30 or

31 (2) Purports to delete all secured parties of record and  
32 fails to provide the name of a new secured party of record.

**§46-9-513. Termination statement.**

1 (a) **Consumer goods.** A secured party shall cause the  
2 secured party of record for a financing statement to file a  
3 termination statement for the financing statement if the  
4 financing statement covers consumer goods and:

5 (1) There is no obligation secured by the collateral  
6 covered by the financing statement and no commitment to  
7 make an advance, incur an obligation or otherwise give  
8 value; or

9 (2) The debtor did not authorize the filing of the initial  
10 financing statement.

11 (b) **Time for compliance with subsection (a).** To comply  
12 with subsection (a) of this section, a secured party shall  
13 cause the secured party of record to file the termination  
14 statement:

15 (1) Within one month after there is no obligation secured  
16 by the collateral covered by the financing statement and

17 no commitment to make an advance, incur an obligation  
18 or otherwise give value; or

19 (2) If earlier, within twenty days after the secured party  
20 receives an authenticated demand from a debtor.

21 (c) **Other collateral.** In cases not governed by subsection  
22 (a), within twenty days after a secured party receives an  
23 authenticated demand from a debtor, the secured party  
24 shall cause the secured party of record for a financing  
25 statement to send to the debtor a termination statement  
26 for the financing statement or file the termination state-  
27 ment in the filing office if:

28 (1) Except in the case of a financing statement covering  
29 accounts or chattel paper that has been sold or goods that  
30 are the subject of a consignment, there is no obligation  
31 secured by the collateral covered by the financing state-  
32 ment and no commitment to make an advance, incur an  
33 obligation, or otherwise give value;

34 (2) The financing statement covers accounts or chattel  
35 paper that has been sold but as to which the account  
36 debtor or other person obligated has discharged its  
37 obligation;

38 (3) The financing statement covers goods that were the  
39 subject of a consignment to the debtor but are not in the  
40 debtor's possession; or

41 (4) The debtor did not authorize the filing of the initial  
42 financing statement.

43 (d) **Effect of filing termination statement.** Except as  
44 otherwise provided in section 9-510, upon the filing of a  
45 termination statement with the filing office, the financing  
46 statement to which the termination statement relates  
47 ceases to be effective. Except as otherwise provided in  
48 section 9-510, for purposes of section 9-519 (g), 9-522 (a),  
49 and 9-523 (c), the filing with the filing office of a termina-  
50 tion statement relating to a financing statement that  
51 indicates that the debtor is a transmitting utility also  
52 causes the effectiveness of the financing statement to  
53 lapse.

**§46-9-514. Assignment of powers of secured party of record.**

1 (a) **Assignment reflected on initial financing statement.**  
2 Except as otherwise provided in subsection (c) of this  
3 section, an initial financing statement may reflect an  
4 assignment of all of the secured party's power to authorize  
5 an amendment to the financing statement by providing the  
6 name and mailing address of the assignee as the name and  
7 address of the secured party.

8 (b) **Assignment of filed financing statement.** Except as  
9 otherwise provided in subsection (c) of this section, a  
10 secured party of record may assign of record all or part of  
11 its power to authorize an amendment to a financing  
12 statement by filing in the filing office an amendment of  
13 the financing statement which:

14 (1) Identifies, by its file number, the initial financing  
15 statement to which it relates;

16 (2) Provides the name of the assignor; and

17 (3) Provides the name and mailing address of the as-  
18 signee.

19 (c) **Assignment of record of mortgage.** An assignment of  
20 record of a security interest in a fixture covered by a  
21 record of a mortgage which is effective as a financing  
22 statement filed as a fixture filing under section 9-502(c)  
23 may be made only by an assignment of record of the  
24 mortgage in the manner provided by law of this state other  
25 than the Uniform Commercial Code.

**§46-9-515. Duration and effectiveness of financing statement;  
effect of lapsed financing statement.**

1 (a) **Five-year effectiveness.** Except as otherwise pro-  
2 vided in subsections (b), (e), (f) and (g) of this section, a  
3 filed financing statement is effective for a period of five  
4 years after the date of filing.

5 (b) **Public-finance or manufactured-home transaction.**  
6 Except as otherwise provided in subsections (e), (f) and (g)  
7 of this section, an initial financing statement filed in  
8 connection with a public-finance transaction or  
9 manufactured-home transaction is effective for a period of

10 forty years after the date of filing if it indicates that it is  
11 filed in connection with a public-finance transaction or  
12 manufactured-home transaction.

13 (c) **Lapse and continuation of financing statement.** The  
14 effectiveness of a filed financing statement lapses on the  
15 expiration of the period of its effectiveness unless before  
16 the lapse a continuation statement is filed pursuant to  
17 subsection (d) of this section. Upon lapse, a financing  
18 statement ceases to be effective and any security interest  
19 or agricultural lien that was perfected by the financing  
20 statement becomes unperfected, unless the security  
21 interest is perfected otherwise. If the security interest or  
22 agricultural lien becomes unperfected upon lapse, it is  
23 deemed never to have been perfected as against a pur-  
24 chaser of the collateral for value.

25 (d) **When continuation statement may be filed.** A  
26 continuation statement may be filed only within six  
27 months before the expiration of the five-year period  
28 specified in subsection (a) of this section or the thirty-year  
29 period specified in subsection (b) of this section, whichever  
30 is applicable.

31 (e) **Effect of filing continuation statement.** Except as  
32 otherwise provided in section 9-510, upon timely filing of  
33 a continuation statement, the effectiveness of the initial  
34 financing statement continues for a period of five years  
35 commencing on the day on which the financing statement  
36 would have become ineffective in the absence of the filing.  
37 Upon the expiration of the five-year period, the financing  
38 statement lapses in the same manner as provided in  
39 subsection (c) of this section, unless, before the lapse,  
40 another continuation statement is filed pursuant to  
41 subsection (d) of this section. Succeeding continuation  
42 statements may be filed in the same manner to continue  
43 the effectiveness of the initial financing statement.

44 (f) **Transmitting utility financing statement.** If a debtor  
45 is a transmitting utility and a filed financing statement so  
46 indicates, the financing statement is effective until a  
47 termination statement is filed.

48 (g) **Record of mortgage as financing statement.** A record  
49 of a mortgage that is effective as a financing statement  
50 filed as a fixture filing under section 9-502(c) remains  
51 effective as a financing statement filed as a fixture filing  
52 until the mortgage is released or satisfied of record or its  
53 effectiveness otherwise terminates as to the real property.

**§46-9-516. What constitutes filing; effectiveness of filing.**

1 (a) **What constitutes filing.** Except as otherwise pro-  
2 vided in subsection (b) of this section, communication of a  
3 record to a filing office and tender of the filing fee or  
4 acceptance of the record by the filing office constitutes  
5 filing.

6 (b) **Refusal to accept record; filing does not occur.** Filing  
7 does not occur with respect to a record that a filing office  
8 refuses to accept because:

9 (1) The record is not communicated by a method or  
10 medium of communication authorized by the filing office;

11 (2) An amount equal to or greater than the applicable  
12 filing fee is not tendered;

13 (3) The filing office is unable to index the record be-  
14 cause:

15 (A) In the case of an initial financing statement, the  
16 record does not provide a name for the debtor;

17 (B) In the case of an amendment or correction statement,  
18 the record:

19 (i) Does not identify the initial financing statement as  
20 required by section 9-512 or 9-518, as applicable; or

21 (ii) Identifies an initial financing statement whose  
22 effectiveness has lapsed under section 9-515;

23 (C) In the case of an initial financing statement that  
24 provides the name of a debtor identified as an individual  
25 or an amendment that provides a name of a debtor identi-  
26 fied as an individual which was not previously provided in  
27 the financing statement to which the record relates, the  
28 record does not identify the debtor's last name; or

29 (D) In the case of a record filed or recorded in the filing  
30 office described in section 9-501(a)(1), the record does not  
31 provide a sufficient description of the real property to  
32 which it relates;

33 (4) In the case of an initial financing statement or an  
34 amendment that adds a secured party of record, the record  
35 does not provide a name and mailing address for the  
36 secured party of record;

37 (5) In the case of an initial financing statement or an  
38 amendment that provides a name of a debtor which was  
39 not previously provided in the financing statement to  
40 which the amendment relates, the record does not:

41 (A) Provide a mailing address for the debtor;

42 (B) Indicate whether the debtor is an individual or an  
43 organization; or

44 (C) If the financing statement indicates that the debtor  
45 is an organization, provide:

46 (i) A type of organization for the debtor;

47 (ii) A jurisdiction of organization for the debtor; or

48 (iii) An organizational identification number for the  
49 debtor or indicate that the debtor has none;

50 (6) In the case of an assignment reflected in an initial  
51 financing statement under section 9-514(a) or an amend-  
52 ment filed under section 9-514(b), the record does not  
53 provide a name and mailing address for the assignee; or

54 (7) In the case of a continuation statement, the record is  
55 not filed within the six-month period prescribed by section  
56 9-515(d).

57 (c) **Rules applicable to subsection (b).** For purposes of  
58 subsection (b):

59 (1) A record does not provide information if the filing  
60 office is unable to read or decipher the information; and

61 (2) A record that does not indicate that it is an amend-  
62 ment or identify an initial financing statement to which it



63 relates, as required by section 9-512, 9-514 or 9-518, is an  
64 initial financing statement.

65 (d) **Refusal to accept record; record effective as filed**  
66 **record.** A record that is communicated to the filing office  
67 with tender of the filing fee, but which the filing office  
68 refuses to accept for a reason other than one set forth in  
69 subsection (b) of this section, is effective as a filed record  
70 except as against a purchaser of the collateral which gives  
71 value in reasonable reliance upon the absence of the record  
72 from the files.

**§46-9-517. Effect of indexing errors.**

1 The failure of the filing office to index a record correctly  
2 does not affect the effectiveness of the filed record.

**§46-9-518. Claim concerning inaccurate or wrongfully filed  
record.**

1 (a) **Correction statement.** A person may file in the filing  
2 office a correction statement with respect to a record  
3 indexed there under the person's name if the person  
4 believes that the record is inaccurate or was wrongfully  
5 filed.

6 (b) **Sufficiency of correction statement.** A correction  
7 statement must:

8 (1) Identify the record to which it relates by:

9 (A) The file number assigned to the initial financing  
10 statement to which the record relates; and

11 (B) If the correction statement relates to a record filed or  
12 recorded in a filing office described in section 9-501(a)(1),  
13 the date and time that the initial financing statement was  
14 filed or recorded and the information specified in section  
15 9-502(b);

16 (2) Indicate that it is a correction statement; and

17 (3) Provide the basis for the person's belief that the  
18 record is inaccurate and indicate the manner in which the  
19 person believes the record should be amended to cure any

20 inaccuracy or provide the basis for the person's belief that  
21 the record was wrongfully filed.

22 (c) **Record not affected by correction statement.** The  
23 filing of a correction statement does not affect the effec-  
24 tiveness of an initial financing statement or other filed  
25 record.

SUBPART 2. DUTIES AND OPERATION  
OF FILING OFFICE.

§46-9-519. **Numbering, maintaining and indexing records;  
communicating information provided in re-  
cords.**

1 (a) **Filing office duties.** For each record filed in a filing  
2 office, the filing office shall:

3 (1) Assign a unique number to the filed record;

4 (2) Create a record that bears the number assigned to the  
5 filed record and the date and time of filing;

6 (3) Maintain the filed record for public inspection; and

7 (4) Index the filed record in accordance with subsections  
8 (c), (d) and (e) of this section.

9 (b) **File number.** A file number assigned after the first  
10 day of January, two thousand two, must include a digit  
11 that:

12 (1) Is mathematically derived from or related to the other  
13 digits of the file number; and

14 (2) Aids the filing office in determining whether a  
15 number communicated as the file number includes a  
16 single-digit or transpositional error.

17 (c) **Indexing: general.** Except as otherwise provided in  
18 subsections (d) and (e) of this section, the filing office  
19 shall:

20 (1) Index an initial financing statement according to the  
21 name of the debtor and index all filed records relating to  
22 the initial financing statement in a manner that associates  
23 with one another an initial financing statement and all

24 filed records relating to the initial financing statement;  
25 and

26 (2) Index a record that provides a name of a debtor  
27 which was not previously provided in the financing  
28 statement to which the record relates also according to the  
29 name that was not previously provided.

30 (d) **Indexing: real-property-related financing statement.**  
31 If a financing statement is filed as a fixture filing or covers  
32 as-extracted collateral or timber to be cut, it must be filed  
33 for record and the filing office shall index it:

34 (1) Under the names of the debtor and of each owner of  
35 record shown on the financing statement as if they were  
36 the mortgagors under a mortgage of the real property  
37 described; and

38 (2) To the extent that the law of this state provides for  
39 indexing of records of mortgages under the name of the  
40 mortgagee, under the name of the secured party as if the  
41 secured party were the mortgagee thereunder, or, if  
42 indexing is by description, as if the financing statement  
43 were a record of a mortgage of the real property described.

44 (e) **Indexing: real-property-related assignment.** If a  
45 financing statement is filed as a fixture filing or covers as-  
46 extracted collateral or timber to be cut, the filing office  
47 shall index an assignment filed under section 9-514(a) or  
48 an amendment filed under section 9-514(b):

49 (1) Under the name of the assignor as grantor; and

50 (2) To the extent that the law of this state provides for  
51 indexing a record of the assignment of a mortgage under  
52 the name of the assignee.

53 (f) **Retrieval and association capability.** The filing office  
54 shall maintain a capability:

55 (1) To retrieve a record by the name of the debtor and:

56 (A) If the filing office is described in section 9-501(a)(1),  
57 by the file number assigned to the initial financing state-  
58 ment to which the record relates and the date and time  
59 that the record was filed or recorded; or

60 (B) If the filing office is described in section 9-501(a)(2),  
61 by the file number assigned to the initial financing state-  
62 ment to which the record relates; and

63 (2) To associate and retrieve with one another an initial  
64 financing statement and each filed record relating to the  
65 initial financing statement.

66 (g) **Removal of debtor's name.** The filing office may not  
67 remove a debtor's name from the index until one year after  
68 the effectiveness of a financing statement naming the  
69 debtor lapses under section 9-515 with respect to all  
70 secured parties of record.

71 (h) **Timeliness of filing office performance.** The filing  
72 office shall perform the acts required by subsections (a)  
73 through (e), inclusive, of this section at the time and in the  
74 manner prescribed by filing-office rule, but not later than  
75 two business days after the filing office receives the record  
76 in question.

#### §46-9-520. Acceptance and refusal to accept record.

1 (a) **Mandatory refusal to accept record.** A filing office  
2 shall refuse to accept a record for filing for a reason set  
3 forth in section 9-516(b) and may refuse to accept a record  
4 for filing only for a reason set forth in section 9-516(b).

5 (b) **Communication concerning refusal.** If a filing office  
6 refuses to accept a record for filing, it shall communicate  
7 to the person that presented the record the fact of and  
8 reason for the refusal and the date and time the record  
9 would have been filed had the filing office accepted it.  
10 The communication must be made at the time and in the  
11 manner prescribed by filing-office rule but, in the case of  
12 a filing office described in section 9-501(a)(2), in no event  
13 more than two business days after the filing office receives  
14 the record.

15 (c) **When filed financing statement effective.** A filed  
16 financing statement satisfying section 9-502(a) and (b) is  
17 effective, even if the filing office is required to refuse to  
18 accept it for filing under subsection (a) of this section.  
19 However, section 9-338 applies to a filed financing state-  
20 ment providing information described in section 9-

21 516(b)(5) which is incorrect at the time the financing  
22 statement is filed.

23 (d) **Separate application to multiple debtors.** If a record  
24 communicated to a filing office provides information that  
25 relates to more than one debtor, this part applies as to  
26 each debtor separately.

**§46-9-521. Uniform form of written financing statement and  
amendment.**

1 (a) **Initial financing statement form.** A filing office that  
2 accepts written records may not refuse to accept a written  
3 initial financing statement in the following form and  
4 format except for a reason set forth in section 9-516(b):



**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only ONE debtor name (1a or 1b) - do not abbreviate or combine names**

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

1d. TAX ID #: SSN OR EIN

ADD. INFO RE ORGANIZATION DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only ONE debtor name (2a or 2b) - do not abbreviate or combine names**

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #: SSN OR EIN

ADD. INFO RE ORGANIZATION DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

NONE

**3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only ONE secured party name (3a or 3b)**

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

**4. This FINANCING STATEMENT covers the following collateral:**

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILOBR | SELLER/BUYER | AG. LIEN | NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed for record (or recorded) in the REAL ESTATE RECORDS. Attach Assignment  (if applicable) | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) | ADDITIONAL FEE | All Debtors | Debtor 1 | Debtor 2

8. OPTIONAL FILER REFERENCE DATA

**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (14 or 19) ON RELATED FINANCING STATEMENT

14. ORGANIZATION'S NAME		
OR	19. INDIVIDUAL'S LAST NAME	
	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTORS' EXACT FULL LEGAL NAME. Insert only one name (11a or 11b); do not abbreviate or combine names

11a. ORGANIZATION'S NAME					
OR	11b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
11d. TAX ID #: SSN OR EIN		11e. INFO RE: ORGANIZATION DEBTOR	11f. TYPE OF ORGANIZATION	11g. JURISDICTION OF ORGANIZATION	11h. ORGANIZATIONAL ID #, if any
					<input type="checkbox"/> NONE

12.  ADDITIONAL SECURED PARTY'S or  ASSIGNOR S/P'S NAME. Insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME					
OR	12b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
			CITY	STATE	POSTAL CODE
			CITY	STATE	POSTAL CODE

13. This FINANCING STATEMENT covers  goods to be cut or  equipment, collectible, or is filed as a  future filing.

14. Description of real estate:

15. Additional collateral description:

16. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

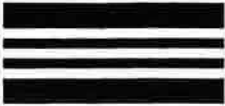
Debtor is a  Trust or  Trustee acting with respect to property held in trust or  Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSFERRED UTILITY
- Filed in connection with a Manufactured Home Transaction -- effective 30 years
- Filed in connection with a Public Utility Transaction -- effective 30 years

5 (b) **Amendment form.** A filing office that accepts written  
6 records may not refuse to accept a written record in the  
7 following form and format except for a reason set forth in  
8 section 9-516(b):





**UCC FINANCING STATEMENT AMENDMENT**

**FOLLOW INSTRUCTIONS (front and back) CAREFULLY**

**A. NAME & PHONE OF CONTACT AT FILER (optional)**

**B. SEND ACKNOWLEDGMENT TO: (Name and Address)**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. INITIAL FINANCING STATEMENT FILE # 1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2.  **TERMINATION:** Obviate/erase the Financing Statement identified above in respect to security interest(s) of the Secured Party authorizing the Termination Statement.

3.  **CONTINUATION:** Continuation of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued by the additional parties provided by applicable law.

4.  **ASSIGNMENT (all or partial):** Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in Items 6 and/or 7.

**CHANGE** name and/or address: Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c.  **DELETE** name: Give record name to be deleted in Item 6a or 6b.  **ADD** name: Complete Item 7a or 7b, and also Item 7c; also complete Items 7d-7g (if applicable).

**6. CURRENT RECORD INFORMATION:**

**ORGANIZATION'S NAME**

**INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**7. CHANGED (NEW) OR ADDED INFORMATION:**

**ORGANIZATION'S NAME**

**INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**7c. MAILING ADDRESS** CITY STATE POSTAL CODE COUNTRY

**7d. TAX ID #:** SSN OR EIN **7e. ADDL. INFO RE ORGANIZATION DEBTOR** **7f. TYPE OF ORGANIZATION** **7g. JURISDICTION OF ORGANIZATION** **7h. ORGANIZATIONAL ID #, party**  NONE

**8. AMENDMENT (COLLATERAL CHANGE):**  deleted or  added, or give entire  revised collateral description, or describe collateral  assigned.

**9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Asset transfer; if this is an Assignment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

**ORGANIZATION'S NAME**

**INDIVIDUAL'S LAST NAME** FIRST NAME MIDDLE NAME SUFFIX

**10. OPTIONAL FILER REFERENCE DATA**

**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

**FOLLOW INSTRUCTIONS (Print and read CAREFULLY)**

11. INITIAL FINANCING STATEMENT FILE # (print as item 1a on Assignment form)		
12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (use as item 8 on Amendment form)		
12a. ORGANIZATION'S NAME		
OR		
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME (if any)

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**§46-9-522. Maintenance and destruction of records.**

1     **(a) Post-lapse maintenance and retrieval of information.**

2     The filing office shall maintain a record of the information  
3     provided in a filed financing statement for at least one  
4     year after the effectiveness of the financing statement has  
5     lapsed under section 9-515 with respect to all secured  
6     parties of record. The record must be retrievable by using  
7     the name of the debtor and:

8     (1) If the record was filed or recorded in the filing office  
9     described in section 9-501(a)(1), by using the file number  
10    assigned to the initial financing statement to which the  
11    record relates and the date and time that the record was  
12    filed or recorded; or

13    (2) If the record was filed in the filing office described in  
14    section 9-501(a)(2), by using the file number assigned to  
15    the initial financing statement to which the record relates.

16    **(b) Destruction of written records.** Except to the extent  
17    that a statute governing disposition of public records  
18    provides otherwise, the filing office immediately may  
19    destroy any written record evidencing a financing state-  
20    ment. However, if the filing office destroys a written  
21    record, it shall maintain another record of the financing  
22    statement which complies with subsection (a) of this  
23    section.

**§46-9-523. Information from filing office; sale or license of records.**

1     **(a) Acknowledgment of filing written record.** If a person  
2     that files a written record requests an acknowledgment of  
3     the filing, the filing office shall send to the person an  
4     image of the record showing the number assigned to the  
5     record pursuant to section 9-519(a)(1) and the date and  
6     time of the filing of the record. However, if the person  
7     furnishes a copy of the record to the filing office, the filing  
8     office may instead:

9 (1) Note upon the copy the number assigned to the record  
10 pursuant to section 9-519(a)(1) and the date and time of  
11 the filing of the record; and

12 (2) Send the copy to the person.

13 (b) **Acknowledgment of filing other record.** If a person  
14 files a record other than a written record, the filing office  
15 shall communicate to the person an acknowledgment that  
16 provides:

17 (1) The information in the record;

18 (2) The number assigned to the record pursuant to  
19 section 9-519(a)(1); and

20 (3) The date and time of the filing of the record.

21 (c) **Communication of requested information.** The filing  
22 office shall communicate or otherwise make available in  
23 a record the following information to any person that  
24 requests it:

25 (1) Whether there is on file on a date and time specified  
26 by the filing office, but not a date earlier than three  
27 business days before the filing office receives the request,  
28 any financing statement that:

29 (A) Designates a particular debtor;

30 (B) Has not lapsed under section 9-515 with respect to all  
31 secured parties of record; and

32 (C) If the request so states, has lapsed under section  
33 9-515 and a record of which is maintained by the filing  
34 office under section 9-522(a);

35 (2) The date and time of filing of each financing state-  
36 ment; and

37 (3) The information provided in each financing state-  
38 ment.

39 (d) **Medium for communicating information.** In comply-  
40 ing with its duty under subsection (c) of this section, the  
41 filing office may communicate information in any medium.

42 However, if requested, the filing office shall communicate  
43 information by issuing its written certificate.

44 (e) **Timeliness of filing office performance.** The filing  
45 office shall perform the acts required by subsections (a)  
46 through (d), inclusive, of this section at the time and in the  
47 manner prescribed by filing-office rule, but not later than  
48 two business days after the filing office receives the  
49 request.

50 (f) **Public availability of records.** At least weekly, the  
51 secretary of state shall offer to sell or license to the public  
52 on a nonexclusive basis, in bulk, copies of all records filed  
53 in it under this part, in every medium from time to time  
54 available to the filing office.

**§46-9-524. Delay by filing office.**

1 Delay by the filing office beyond a time limit prescribed  
2 by this part is excused if:

3 (1) The delay is caused by interruption of communication  
4 or computer facilities, war, emergency conditions, failure  
5 of equipment or other circumstances beyond control of the  
6 filing office; and

7 (2) The filing office exercises reasonable diligence under  
8 the circumstances.

**§46-9-525. Fees.**

1 (a) **Initial financing statement or other record: general**  
2 **rule.** Except as otherwise provided in subsection (e) of this  
3 section, the fee for filing and indexing a record under this  
4 part, other than an initial financing statement of the kind  
5 described in subsection (b) of this section, is the amount  
6 specified in subsection (c) of this section, if applicable,  
7 plus:

8 (1) Ten dollars if the record is communicated in writing  
9 and consists of one or two pages;

10 (2) Ten dollars if the record is communicated in writing  
11 and consists of more than two pages; and

12 (3) Ten dollars if the record is communicated by another  
13 medium authorized by filing-office rule.

14 (b) **Initial financing statement: public-finance and**  
15 **manufactured housing transactions.** Except as otherwise  
16 provided in subsection (e) of this section, the fee for filing  
17 and indexing an initial financing statement of the kind is  
18 the amount specified in subsection (c) of this section, if  
19 applicable, plus:

20 (1) Ten dollars if the financing statement indicates that  
21 it is filed in connection with a public-finance transaction;

22 (2) Ten dollars if the financing statement indicates that  
23 it is filed in connection with a manufactured-home  
24 transaction.

25 (c) **Number of names.** The number of names required to  
26 be indexed does not affect the amount of the fee in subsec-  
27 tions (a) and (b) of this section.

28 (d) **Response to information request.** The fee for re-  
29 sponding to a request for information from the filing  
30 office, including for issuing a certificate showing whether  
31 there is on file any financing statement naming a particu-  
32 lar debtor, is:

33 (1) Five dollars if the request is communicated in  
34 writing;

35 (2) Five dollars if the request is communicated by  
36 another medium authorized by filing-office rule; and

37 (3) Fifty cents per page for each active lien.

38 (e) **Record of mortgage.** This section does not require a  
39 fee with respect to a record of a mortgage which is effe c-  
40 tive as a financing statement filed as a fixture filing or as  
41 a financing statement covering as-extracted collateral or  
42 timber to be cut under section 9-502(c). However, the  
43 recording and satisfaction fees that otherwise would be  
44 applicable to the record of the mortgage apply.

45 (f) **Deposit of funds.** All fees and moneys collected by  
46 the secretary of state pursuant to the provisions of this  
47 article shall be deposited by the secretary of state in a

48 separate fund in the state treasury and shall be expended  
49 solely for the purposes of this article, unless otherwise  
50 provided by appropriation or other action of the Legisla-  
51 ture.

**§46-9-526. Filing-office rules.**

1 (a) **Adoption of filing-office rules.** The secretary of state  
2 shall propose rules for legislative approval consistent with  
3 this article and in accordance with the provisions of article  
4 three, chapter twenty-nine-a of this code.

5 (1) Consistent with this article; and

6 (2) Promulgated pursuant to the provisions of chapter  
7 twenty-nine-a of this code.

8 (b) **Harmonization of rules.** To keep the filing-office  
9 rules and practices of the filing office in harmony with the  
10 rules and practices of filing offices in other jurisdictions  
11 that enact substantially this part, and to keep the technol-  
12 ogy used by the filing office compatible with the technol-  
13 ogy used by filing offices in other jurisdictions that enact  
14 substantially this part, the secretary of state, so far as is  
15 consistent with the purposes, policies and provisions of  
16 this article, in proposing filing-office rules for legislative  
17 approval, shall:

18 (1) Consult with filing offices in other jurisdictions that  
19 enact substantially this part; and

20 (2) Consult the most recent version of the model rules  
21 promulgated by the international association of corporate  
22 administrators or any successor organization; and

23 (3) Take into consideration the rules and practices of,  
24 and the technology used by, filing offices in other jurisdic-  
25 tions that enact substantially this part.

**§46-9-527. Duty to report.**

1 The secretary of state shall report [on or before  
2 \_\_\_\_\_ ] to the joint committee on government and  
3 finance the first day of July each year on the operation of  
4 the filing office. The report must contain a statement of  
5 the extent to which:

6 (1) The filing-office rules are not in harmony with the  
7 rules of filing offices in other jurisdictions that enact  
8 substantially this part and the reasons for these variations;  
9 and

10 (2) The filing-office rules are not in harmony with the  
11 most recent version of the model rules promulgated by the  
12 international association of corporate administrators, or  
13 any successor organization, and the reasons for these  
14 variations.

PART 6. DEFAULT.  
SUBPART 1. DEFAULT AND ENFORCEMENT  
OF SECURITY INTEREST.

**§46-9-601. Rights after default; judicial enforcement; consignor  
or buyer of accounts, chattel paper, payment  
intangibles or promissory notes.**

1 (a) **Rights of secured party after default.** After default,  
2 a secured party has the rights provided in this part and,  
3 except as otherwise provided in section 9-602, those  
4 provided by agreement of the parties. A secured party:

5 (1) May reduce a claim to judgment, foreclose or other-  
6 wise enforce the claim, security interest or agricultural  
7 lien by any available judicial procedure; and

8 (2) If the collateral is documents, may proceed either as  
9 to the documents or as to the goods they cover.

10 (b) **Rights and duties of secured party in possession or  
11 control.** A secured party in possession of collateral or  
12 control of collateral under section 9-104, 9-105, 9-106 or  
13 9-107 has the rights and duties provided in section 9-207.

14 (c) **Rights cumulative; simultaneous exercise.** The rights  
15 under subsections (a) and (b) of this section are cumulative  
16 and may be exercised simultaneously.

17 (d) **Rights of debtor and obligor.** Except as otherwise  
18 provided in subsection (g) of this section and section 9-605,  
19 after default, a debtor and an obligor have the rights  
20 provided in this part and by agreement of the parties.



21 (e) **Lien of levy after judgment.** If a secured party has  
22 reduced its claim to judgment, the lien of any levy that  
23 may be made upon the collateral by virtue of an execution  
24 based upon the judgment relates back to the earliest of:

25 (1) The date of perfection of the security interest or  
26 agricultural lien in the collateral;

27 (2) The date of filing a financing statement covering the  
28 collateral; or

29 (3) Any date specified in a statute under which the  
30 agricultural lien was created.

31 (f) **Execution sale.** A sale pursuant to an execution is a  
32 foreclosure of the security interest or agricultural lien by  
33 judicial procedure within the meaning of this section. A  
34 secured party may purchase at the sale and thereafter hold  
35 the collateral free of any other requirements of this article.

36 (g) **Consignor or buyer of certain rights to payment.**  
37 Except as otherwise provided in section 9-607(c), this part  
38 imposes no duties upon a secured party that is a consignor  
39 or is a buyer of accounts, chattel paper, payment intangi-  
40 bles or promissory notes.

**§46-9-602. Waiver and variance of rights and duties.**

1 Except as otherwise provided in section 9-624, to the  
2 extent that they give rights to a debtor or obligor and  
3 impose duties on a secured party, the debtor or obligor  
4 may not waive or vary the rules stated in the following  
5 listed sections:

6 (1) Section 9-207(b)(4)(C), which deals with use and  
7 operation of the collateral by the secured party;

8 (2) Section 9-210, which deals with requests for an  
9 accounting and requests concerning a list of collateral and  
10 statement of account;

11 (3) Section 9-607(c), which deals with collection and  
12 enforcement of collateral;

13 (4) Sections 9-608(a) and 9-615(c) to the extent that they  
14 deal with application or payment of noncash proceeds of  
15 collection, enforcement, or disposition;

16 (5) Sections 9-608(a) and 9-615(d) to the extent that they  
17 require accounting for or payment of surplus proceeds of  
18 collateral;

19 (6) Section 9-609 to the extent that it imposes upon a  
20 secured party that takes possession of collateral without  
21 judicial process the duty to do so without breach of the  
22 peace;

23 (7) Sections 9-610(b), 9-611, 9-613 and 9-614, which deal  
24 with disposition of collateral;

25 (8) Section 9-615(f), which deals with calculation of a  
26 deficiency or surplus when a disposition is made to the  
27 secured party, a person related to the secured party, or a  
28 secondary obligor;

29 (9) Section 9-616, which deals with explanation of the  
30 calculation of a surplus or deficiency;

31 (10) Sections 9-620, 9-621 and 9-622, which deal with  
32 acceptance of collateral in satisfaction of obligation;

33 (11) Section 9-623, which deals with redemption of  
34 collateral;

35 (12) Section 9-624, which deals with permissible waivers;  
36 and

37 (13) Sections 9-625 and 9-626, which deal with the  
38 secured party's liability for failure to comply with this  
39 article.

**§146-9-603. Agreement on standards concerning rights and  
duties.**

1 (a) **Agreed standards.** The parties may determine by  
2 agreement the standards measuring the fulfillment of the  
3 rights of a debtor or obligor and the duties of a secured  
4 party under a rule stated in section 9-602 if the standards  
5 are not manifestly unreasonable.

- 6 (b) **Agreed standards inapplicable to breach of peace.**  
7 Subsection (a) of this section does not apply to the duty  
8 under section 9-609 to refrain from breaching the peace.

**§46-9-604. Procedure if security agreement covers real property  
or fixtures.**

- 1 (a) **Enforcement: personal and real property.** If a  
2 security agreement covers both personal and real property,  
3 a secured party may proceed:
- 4 (1) Under this part as to the personal property without  
5 prejudicing any rights with respect to the real property; or
- 6 (2) As to both the personal property and the real prop-  
7 erty in accordance with the rights with respect to the real  
8 property, in which case the other provisions of this part do  
9 not apply.
- 10 (b) **Enforcement: fixtures.** Subject to subsection (c) of  
11 this section, if a security agreement covers goods that are  
12 or become fixtures, a secured party may proceed:
- 13 (1) Under this part; or
- 14 (2) In accordance with the rights with respect to real  
15 property, in which case the other provisions of this part do  
16 not apply.
- 17 (c) **Removal of fixtures.** Subject to the other provisions  
18 of this part, if a secured party holding a security interest  
19 in fixtures has priority over all owners and encumbrancers  
20 of the real property, the secured party, after default, may  
21 remove the collateral from the real property.
- 22 (d) **Injury caused by removal.** A secured party that  
23 removes collateral shall promptly reimburse any encum-  
24 brancer or owner of the real property, other than the  
25 debtor, for the cost of repair of any physical injury caused  
26 by the removal. The secured party need not reimburse the  
27 encumbrancer or owner for any diminution in value of the  
28 real property caused by the absence of the goods removed  
29 or by any necessity of replacing them. A person entitled to  
30 reimbursement may refuse permission to remove until the  
31 secured party gives adequate assurance for the perfor-  
32 mance of the obligation to reimburse.

**§46-9-605. Unknown debtor or secondary obligor.**

1 A secured party does not owe a duty based on its status  
2 as secured party:

3 (1) To a person that is a debtor or obligor, unless the  
4 secured party knows:

5 (A) That the person is a debtor or obligor;

6 (B) The identity of the person; and

7 (C) How to communicate with the person; or

8 (2) To a secured party or lienholder that has filed a  
9 financing statement against a person, unless the secured  
10 party knows:

11 (A) That the person is a debtor; and

12 (B) The identity of the person.

**§46-9-606. Time of default for agricultural lien.**

1 For purposes of this part, a default occurs in connection  
2 with an agricultural lien at the time the secured party  
3 becomes entitled to enforce the lien in accordance with the  
4 statute under which it was created.

**§46-9-607. Collection and enforcement by secured party.**

1 (a) **Collection and enforcement generally.** If so agreed,  
2 and in any event after default, a secured party:

3 (1) May notify an account debtor or other person obli-  
4 gated on collateral to make payment or otherwise render  
5 performance to or for the benefit of the secured party;

6 (2) May take any proceeds to which the secured party is  
7 entitled under section 9-315;

8 (3) May enforce the obligations of an account debtor or  
9 other person obligated on collateral and exercise the rights  
10 of the debtor with respect to the obligation of the account  
11 debtor or other person obligated on collateral to make  
12 payment or otherwise render performance to the debtor,  
13 and with respect to any property that secures the obliga-

14 tions of the account debtor or other person obligated on  
15 the collateral;

16 (4) If it holds a security interest in a deposit account  
17 perfected by control under section 9-104(a)(1), may apply  
18 the balance of the deposit account to the obligation  
19 secured by the deposit account; and

20 (5) If it holds a security interest in a deposit account  
21 perfected by control under section 9-104(a)(2) or (3), may  
22 instruct the bank to pay the balance of the deposit account  
23 to or for the benefit of the secured party.

24 (b) **Nonjudicial enforcement of mortgage.** If necessary to  
25 enable a secured party to exercise under subsection (a)(3)  
26 of this section the right of a debtor to enforce a mortgage  
27 nonjudicially, the secured party may record in the office in  
28 which a record of the mortgage is recorded:

29 (1) A copy of the security agreement that creates or  
30 provides for a security interest in the obligation secured by  
31 the mortgage; and

32 (2) The secured party's sworn affidavit in recordable  
33 form stating that:

34 (A) A default has occurred; and

35 (B) The secured party is entitled to enforce the mortgage  
36 nonjudicially.

37 (c) **Commercially reasonable collection and enforcement.**  
38 A secured party shall proceed in a commercially reason-  
39 able manner if the secured party:

40 (1) Undertakes to collect from or enforce an obligation  
41 of an account debtor or other person obligated on collat-  
42 eral; and

43 (2) Is entitled to charge back uncollected collateral or  
44 otherwise to full or limited recourse against the debtor or  
45 a secondary obligor.

46 (d) **Expenses of collection and enforcement.** A secured  
47 party may deduct from the collections made pursuant to  
48 subsection (c) of this section reasonable expenses of

49 collection and enforcement, including reasonable attor-  
50 ney's fees and legal expenses incurred by the secured  
51 party.

52 (e) **Duties to secured party not affected.** This section  
53 does not determine whether an account debtor, bank or  
54 other person obligated on collateral owes a duty to a  
55 secured party.

**§46-9-608. Application of proceeds of collection or enforce-  
ment; liability for deficiency and right to sur-  
plus.**

1 (a) **Application of proceeds, surplus and deficiency if**  
2 **obligation secured.** If a security interest or agricultural  
3 lien secures payment or performance of an obligation, the  
4 following rules apply:

5 (1) A secured party shall apply or pay over for applica-  
6 tion the cash proceeds of collection or enforcement under  
7 section 9-607 in the following order to:

8 (A) The reasonable expenses of collection and enforce-  
9 ment and, to the extent provided for by agreement and not  
10 prohibited by law, reasonable attorney's fees and legal  
11 expenses incurred by the secured party;

12 (B) The satisfaction of obligations secured by the secu-  
13 rity interest or agricultural lien under which the collection  
14 or enforcement is made; and

15 (C) The satisfaction of obligations secured by any  
16 subordinate security interest in or other lien on the  
17 collateral subject to the security interest or agricultural  
18 lien under which the collection or enforcement is made if  
19 the secured party receives an authenticated demand for  
20 proceeds before distribution of the proceeds is completed.

21 (2) If requested by a secured party, a holder of a subordi-  
22 nate security interest or other lien shall furnish reasonable  
23 proof of the interest or lien within a reasonable time.  
24 Unless the holder complies, the secured party need not  
25 comply with the holder's demand under paragraph (1)(C)  
26 of this subsection.

27 (3) A secured party need not apply or pay over for  
28 application noncash proceeds of collection and enforce-  
29 ment under section 9-607 unless the failure to do so would  
30 be commercially unreasonable. A secured party that  
31 applies or pays over for application noncash proceeds shall  
32 do so in a commercially reasonable manner.

33 (4) A secured party shall account to and pay a debtor for  
34 any surplus, and the obligor is liable for any deficiency.

35 (b) **No surplus or deficiency in sales of certain rights to**  
36 **payment.** If the underlying transaction is a sale of ac-  
37 counts, chattel paper, payment intangibles or promissory  
38 notes, the debtor is not entitled to any surplus and the  
39 obligor is not liable for any deficiency.

**§46-9-609. Secured party's right to take possession after default.**

1 (a) **Possession; rendering equipment unusable; disposi-**  
2 **tion on debtor's premises.** After default, a secured party:

3 (1) May take possession of the collateral; and

4 (2) Without removal, may render equipment unusable  
5 and dispose of collateral on a debtor's premises under  
6 section 9-610.

7 (b) **Judicial and nonjudicial process.** A secured party  
8 may proceed under subsection (a) of this section:

9 (1) Pursuant to judicial process; or

10 (2) Without judicial process, if it proceeds without  
11 breach of the peace.

12 (c) **Assembly of collateral.** If so agreed, and in any event  
13 after default, a secured party may require the debtor to  
14 assemble the collateral and make it available to the  
15 secured party at a place to be designated by the secured  
16 party which is reasonably convenient to both parties.

**§46-9-610. Disposition of collateral after default.**

1 (a) **Disposition after default.** After default, a secured  
2 party may sell, lease, license or otherwise dispose of any or  
3 all of the collateral in its present condition or following  
4 any commercially reasonable preparation or processing.

5 (b) **Commercially reasonable disposition.** Every aspect  
6 of a disposition of collateral, including the method,  
7 manner, time, place and other terms, must be commer-  
8 cially reasonable. If commercially reasonable, a secured  
9 party may dispose of collateral by public or private  
10 proceedings, by one or more contracts, as a unit or in  
11 parcels, and at any time and place and on any terms.

12 (c) **Purchase by secured party.** A secured party may  
13 purchase collateral:

14 (1) At a public disposition; or

15 (2) At a private disposition only if the collateral is of a  
16 kind that is customarily sold on a recognized market or the  
17 subject of widely distributed standard price quotations.

18 (d) **Warranties on disposition.** A contract for sale, lease,  
19 license or other disposition includes the warranties  
20 relating to title, possession, quiet enjoyment, and the like  
21 which by operation of law accompany a voluntary disposi-  
22 tion of property of the kind subject to the contract.

23 (e) **Disclaimer of warranties.** A secured party may  
24 disclaim or modify warranties under subsection (d) of this  
25 section:

26 (1) In a manner that would be effective to disclaim or  
27 modify the warranties in a voluntary disposition of  
28 property of the kind subject to the contract of disposition;  
29 or

30 (2) By communicating to the purchaser a record evidenc-  
31 ing the contract for disposition and including an express  
32 disclaimer or modification of the warranties.

33 (f) **Record sufficient to disclaim warranties.** A record is  
34 sufficient to disclaim warranties under subsection (e) of  
35 this section if it indicates "There is no warranty relating to  
36 title, possession, quiet enjoyment, or the like in this  
37 disposition" or uses words of similar import.

**§46-9-611. Notification before disposition of collateral.**

1 (a) **"Notification date."** In this section, "notification  
2 date" means the earlier of the date on which:



3 (1) A secured party sends to the debtor and any second-  
4 ary obligor an authenticated notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right  
6 to notification.

7 (b) **Notification of disposition required.** Except as  
8 otherwise provided in subsection (d) of this section, a  
9 secured party that disposes of collateral under section  
10 9-610 shall send to the persons specified in subsection (c)  
11 of this section a reasonable authenticated notification of  
12 disposition.

13 (c) **Persons to be notified.** To comply with subsection (b),  
14 the secured party shall send an authenticated notification  
15 of disposition to:

16 (1) The debtor;

17 (2) Any secondary obligor; and

18 (3) If the collateral is other than consumer goods:

19 (A) Any other person from which the secured party has  
20 received, before the notification date, an authenticated  
21 notification of a claim of an interest in the collateral;

22 (B) Any other secured party or lienholder that, ten days  
23 before the notification date, held a security interest in or  
24 other lien on the collateral perfected by the filing of a  
25 financing statement that:

26 (i) Identified the collateral;

27 (ii) Was indexed under the debtor's name as of that date;  
28 and

29 (iii) Was filed in the office in which to file a financing  
30 statement against the debtor covering the collateral as of  
31 that date; and

32 (C) Any other secured party that, ten days before the  
33 notification date, held a security interest in the collateral  
34 perfected by compliance with a statute, regulation, or  
35 treaty described in section 9-311(a).

36 (d) **Subsection (b) inapplicable: perishable collateral;**  
37 **recognized market.** Subsection (b) of this section does not  
38 apply if the collateral is perishable or threatens to decline  
39 speedily in value or is of a type customarily sold on a  
40 recognized market.

41 (e) **Compliance with subsection (c)(3)(B).** A secured  
42 party complies with the requirement for notification  
43 prescribed by subsection (c)(3)(B) of this section if:

44 (1) Not later than twenty days or earlier than thirty days  
45 before the notification date, the secured party requests, in  
46 a commercially reasonable manner, information concern-  
47 ing financing statements indexed under the debtor's name  
48 in the office indicated in subsection (c)(3)(B) of this  
49 section; and

50 (2) Before the notification date, the secured party:

51 (A) Did not receive a response to the request for infor-  
52 mation; or

53 (B) Received a response to the request for information  
54 and sent an authenticated notification of disposition to  
55 each secured party or other lienholder named in that  
56 response whose financing statement covered the collateral.

**§46-9-612. Timeliness of notification before disposition of collateral.**

1 (a) **Reasonable time is question of fact.** Except as  
2 otherwise provided in subsection (b) of this section,  
3 whether a notification is sent within a reasonable time is  
4 a question of fact.

5 (b) **Ten-day period sufficient in non-consumer transac-**  
6 **tion.** In a transaction other than a consumer transaction,  
7 a notification of disposition sent after default and ten days  
8 or more before the earliest time of disposition set forth in  
9 the notification is sent within a reasonable time before the  
10 disposition.

**§46-9-613. Contents and form of notification before disposition of collateral: general.**

1 Except in a consumer-goods transaction, the following  
2 rules apply:

3 (1) The contents of a notification of disposition are  
4 sufficient if the notification:

5 (A) Describes the debtor and the secured party;

6 (B) Describes the collateral that is the subject of the  
7 intended disposition;

8 (C) States the method of intended disposition;

9 (D) States that the debtor is entitled to an accounting of  
10 the unpaid indebtedness and states the charge, if any, for  
11 an accounting; and

12 (E) States the time and place of a public disposition or  
13 the time after which any other disposition is to be made.

14 (2) Whether the contents of a notification that lacks any  
15 of the information specified in paragraph (1) of this  
16 section are nevertheless sufficient is a question of fact.

17 (3) The contents of a notification providing substantially  
18 the information specified in paragraph (1) of this section  
19 are sufficient, even if the notification includes:

20 (A) Information not specified by that paragraph; or

21 (B) Minor errors that are not seriously misleading.

22 (4) A particular phrasing of the notification is not  
23 required.

24 (5) The following form of notification and the form  
25 appearing in section 9-614(3), when completed, each  
26 provides sufficient information:

27 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

28 To: [Name of debtor, obligor, or  
29 other person to which the  
30 notification is sent].

31 From: [Name, address, and telephone  
32 number of secured party]

33 Name of Debtor(s): [Include only if debtor(s) are not an  
34 addressee]

35 *For a public disposition:*

36 We will sell or [lease or license, *as applicable*] the \_  
37 [describe collateral] to the highest qualified bidder in  
38 public as follows:

39 Day and Date: \_\_\_\_\_

40 Time: \_\_\_\_\_

41 Place: \_\_\_\_\_

42 *For a private disposition:*

43 We will sell [or lease or license, *as applicable*] the  
44 [describe collateral] privately sometime after [day  
45 and date].

46 You are entitled to an accounting of the unpaid indebt-  
47 edness secured by the property that we intend to sell [or  
48 lease or license, *as applicable*] for a charge of \$\_\_\_\_\_.  
49 You may request an accounting by calling us at  
50 [telephone number].

51 **[End of Form]**

**§46-9-614. Contents and form of notification before disposition  
of collateral: consumer-goods transaction.**

1 In a consumer-goods transaction, the following rules  
2 apply:

3 (1) A notification of disposition must provide the  
4 following information:

5 (A) The information specified in section 9-613(1);

6 (B) A description of any liability for a deficiency of the  
7 person to which the notification is sent;

8 (C) A telephone number from which the amount that  
9 must be paid to the secured party to redeem the collateral  
10 under section 9-623 is available; and

11 (D) A telephone number or mailing address from which  
12 additional information concerning the disposition and the  
13 obligation secured is available.

14 (2) A particular phrasing of the notification is not  
15 required.

16 (3) The following form of notification, when completed,  
17 provides sufficient information:

18 [Name and address of secured party]\_\_\_

19 \_\_\_[Date]\_\_\_

20 **NOTICE OF OUR PLAN TO SELL PROPERTY**

21 [Name and address of any obligor who is also a  
22 debtor]\_\_\_

23 Subject: \_\_\_[Identification of Transaction]\_\_\_

24 We have your \_\_\_[describe collateral]\_\_\_, because you  
25 broke promises in our agreement.

26 *For a public disposition:*

27 We will sell \_\_\_[describe collateral]\_\_\_ at public sale. A  
28 sale could include a lease or license. The sale will be held  
29 as follows:

30 Date: \_\_\_\_\_

31 Time: \_\_\_\_\_

32 Place: \_\_\_\_\_

33 You may attend the sale and bring bidders if you want.

34 *For a private disposition:*

35 We will sell \_\_\_[describe collateral]\_\_\_ at private sale  
36 sometime after \_\_\_[date]\_\_\_. A sale could include a lease or

37 license. The money that we get from the sale (after paying  
 38 our costs) will reduce the amount you owe. If we get  
 39 less money than you owe, you \_\_\_\_\_ [*will or will not,*  
 40 *as applicable*]\_\_\_\_\_ still owe us the difference. If we  
 41 get more money than you owe, you will get  
 42 the extra money, unless we must pay it to someone  
 43 else.

44 You can get the property back at any time before we sell  
 45 it by paying us the full amount you owe (not just the past  
 46 due payments), including our expenses. To learn the exact  
 47 amount you must pay, call us at \_\_\_\_\_ [*telephone number*]\_\_\_\_\_.

48 If you want us to explain to you in writing how we have  
 49 figured the amount that you owe us, you may call us at  
 50 \_\_\_\_\_ [*telephone number*]\_\_\_\_\_ or write us at \_\_\_\_\_ [*secured party's*  
 51 *address*]\_\_\_\_\_ and request a written explanation.

52 If you need more information about the sale call us at  
 53 \_\_\_\_\_ [*telephone number*]\_\_\_\_\_ or write us at \_\_\_\_\_ [*secured party's*  
 54 *address*]\_\_\_\_\_.

55 We are sending this notice to the following other people  
 56 who have an interest in \_\_\_\_\_ [*describe collateral*]\_\_\_\_\_ or who  
 57 owe money under your agreement:

58 \_\_\_\_\_ [*Names of all other debtors and obligors, if any*]\_\_\_\_\_

59 **[End of Form]**

60 (4) A notification in the form of paragraph (3) of this  
 61 section is sufficient, even if additional information appears  
 62 at the end of the form.

63 (5) A notification in the form of paragraph (3) of this  
 64 section is sufficient, even if it includes errors in informa-  
 65 tion not required by paragraph (1) of this section, unless  
 66 the error is misleading with respect to rights arising under  
 67 this article.

68 (6) If a notification under this section is not in the form  
 69 of paragraph (3) of this section, law other than this article  
 70 determines the effect of including information not required  
 71 by paragraph (1) of this section.

**§46-9-615. Application of proceeds of disposition; liability for  
 deficiency and right to surplus.**

1     **(a) Application of proceeds.** A secured party shall apply  
2 or pay over for application the cash proceeds of disposi-  
3 tion under section 9-610 in the following order to:

4     (1) The reasonable expenses of retaking, holding,  
5 preparing for disposition, processing and disposing, and,  
6 to the extent provided for by agreement and not prohib-  
7 ited by law, reasonable attorney's fees and legal expenses  
8 incurred by the secured party;

9     (2) The satisfaction of obligations secured by the secu-  
10 rity interest or agricultural lien under which the disposi-  
11 tion is made;

12     (3) The satisfaction of obligations secured by any  
13 subordinate security interest in or other subordinate lien  
14 on the collateral if:

15     (A) The secured party receives from the holder of the  
16 subordinate security interest or other lien an authenticated  
17 demand for proceeds before distribution of the proceeds is  
18 completed; and

19     (B) In a case in which a consignor has an interest in the  
20 collateral, the subordinate security interest or other lien is  
21 senior to the interest of the consignor; and

22     (4) A secured party that is a consignor of the collateral  
23 if the secured party receives from the consignor an authen-  
24 ticated demand for proceeds before distribution of the  
25 proceeds is completed.

26     **(b) Proof of subordinate interest.** If requested by a  
27 secured party, a holder of a subordinate security interest  
28 or other lien shall furnish reasonable proof of the interest  
29 or lien within a reasonable time. Unless the holder does  
30 so, the secured party need not comply with the holder's  
31 demand under subsection (a)(3).

32     **(c) Application of noncash proceeds.** A secured party  
33 need not apply or pay over for application noncash  
34 proceeds of disposition under section 9-610 unless the  
35 failure to do so would be commercially unreasonable. A  
36 secured party that applies or pays over for application

37 noncash proceeds shall do so in a commercially reasonable  
38 manner.

39 (d) **Surplus or deficiency if obligation secured.** If the  
40 security interest under which a disposition is made secures  
41 payment or performance of an obligation, after making the  
42 payments and applications required by subsection (a) of  
43 this section and permitted by subsection (c) of this section:

44 (1) Unless subsection (a)(4) of this section requires the  
45 secured party to apply or pay over cash proceeds to a  
46 consignor, the secured party shall account to and pay a  
47 debtor for any surplus; and

48 (2) The obligor is liable for any deficiency.

49 (e) **No surplus or deficiency in sales of certain rights to**  
50 **payment.** If the underlying transaction is a sale of ac-  
51 counts, chattel paper, payment intangibles or promissory  
52 notes:

53 (1) The debtor is not entitled to any surplus; and

54 (2) The obligor is not liable for any deficiency.

55 (f) **Calculation of surplus or deficiency in disposition to**  
56 **person related to secured party.** The surplus or deficiency  
57 following a disposition is calculated based on the amount  
58 of proceeds that would have been realized in a disposition  
59 complying with this part to a transferee other than the  
60 secured party, a person related to the secured party, or a  
61 secondary obligor if:

62 (1) The transferee in the disposition is the secured party,  
63 a person related to the secured party, or a secondary  
64 obligor; and

65 (2) The amount of proceeds of the disposition is signifi-  
66 cantly below the range of proceeds that a complying  
67 disposition to a person other than the secured party, a  
68 person related to the secured party, or a secondary obligor  
69 would have brought.

70 (g) **Cash proceeds received by junior secured party.** A  
71 secured party that receives cash proceeds of a disposition  
72 in good faith and without knowledge that the receipt



73 violates the rights of the holder of a security interest or  
74 other lien that is not subordinate to the security interest or  
75 agricultural lien under which the disposition is made:

76 (1) Takes the cash proceeds free of the security interest  
77 or other lien;

78 (2) Is not obligated to apply the proceeds of the disposi-  
79 tion to the satisfaction of obligations secured by the  
80 security interest or other lien; and

81 (3) Is not obligated to account to or pay the holder of the  
82 security interest or other lien for any surplus.

**§46-9-616. Explanation of calculation of surplus or deficiency.**

1 (a) **Definitions.** In this section:

2 (1) "Explanation" means a writing that:

3 (A) States the amount of the surplus or deficiency;

4 (B) Provides an explanation in accordance with subsec-  
5 tion (c) of this section of how the secured party calculated  
6 the surplus or deficiency;

7 (C) States, if applicable, that future debits, credits,  
8 charges, including additional credit service charges or  
9 interest, rebates, and expenses may affect the amount of  
10 the surplus or deficiency; and

11 (D) Provides a telephone number or mailing address  
12 from which additional information concerning the trans-  
13 action is available.

14 (2) "Request" means a record:

15 (A) Authenticated by a debtor or consumer obligor;

16 (B) Requesting that the recipient provide an explanation;  
17 and

18 (C) Sent after disposition of the collateral under section  
19 9-610.

20 (b) **Explanation of calculation.** In a consumer-goods  
21 transaction in which the debtor is entitled to a surplus or

22 a consumer obligor is liable for a deficiency under section  
23 9-615, the secured party shall:

24 (1) Send an explanation to the debtor or consumer  
25 obligor, as applicable, after the disposition and:

26 (A) Before or when the secured party accounts to the  
27 debtor and pays any surplus or first makes written de-  
28 mand on the consumer obligor after the disposition for  
29 payment of the deficiency; and

30 (B) Within fourteen days after receipt of a request; or

31 (2) In the case of a consumer obligor who is liable for a  
32 deficiency, within fourteen days after receipt of a request,  
33 send to the consumer obligor a record waiving the secured  
34 party's right to a deficiency.

35 (c) **Required information.** To comply with subsection  
36 (a)(1)(B) of this section, a writing must provide the follow-  
37 ing information in the following order:

38 (1) The aggregate amount of obligations secured by the  
39 security interest under which the disposition was made,  
40 and, if the amount reflects a rebate of unearned interest or  
41 credit service charge, an indication of that fact, calculated  
42 as of a specified date:

43 (A) If the secured party takes or receives possession of  
44 the collateral after default, not more than thirty-five days  
45 before the secured party takes or receives possession; or

46 (B) If the secured party takes or receives possession of  
47 the collateral before default or does not take possession of  
48 the collateral, not more than thirty-five days before the  
49 disposition;

50 (2) The amount of proceeds of the disposition;

51 (3) The aggregate amount of the obligations after  
52 deducting the amount of proceeds;

53 (4) The amount, in the aggregate or by type, and types of  
54 expenses, including expenses of retaking, holding, prepar-  
55 ing for disposition, processing, and disposing of the  
56 collateral, and attorney's fees secured by the collateral

57 which are known to the secured party and relate to the  
58 current disposition;

59 (5) The amount, in the aggregate or by type, and types of  
60 credits, including rebates of interest or credit service  
61 charges, to which the obligor is known to be entitled and  
62 which are not reflected in the amount in paragraph (1) of  
63 this subsection; and

64 (6) The amount of the surplus or deficiency.

65 (d) **Substantial compliance.** A particular phrasing of the  
66 explanation is not required. An explanation complying  
67 substantially with the requirements of subsection (a) of  
68 this section is sufficient, even if it includes minor errors  
69 that are not seriously misleading.

70 (e) **Charges for responses.** A debtor or consumer obligor  
71 is entitled without charge to one response to a request  
72 under this section during any six-month period in which  
73 the secured party did not send to the debtor or consumer  
74 obligor an explanation pursuant to subdivision (1),  
75 subsection (b) of this section. The secured party may  
76 require payment of a charge not exceeding twenty-five  
77 dollars for each additional response.

**§46-9-617. Rights of transferee of collateral.**

1 (a) **Effects of disposition.** A secured party's disposition  
2 of collateral after default:

3 (1) Transfers to a transferee for value all of the debtor's  
4 rights in the collateral;

5 (2) Discharges the security interest under which the  
6 disposition is made; and

7 (3) Discharges any subordinate security interest or other  
8 subordinate lien.

9 (b) **Rights of good-faith transferee.** A transferee that  
10 acts in good faith takes free of the rights and interests  
11 described in subsection (a) of this section, even if the  
12 secured party fails to comply with this article or the  
13 requirements of any judicial proceeding.

14 (c) **Rights of other transferee.** If a transferee does not  
15 take free of the rights and interests described in subsection  
16 (a) of this section, the transferee takes the collateral  
17 subject to:

18 (1) The debtor's rights in the collateral;

19 (2) The security interest or agricultural lien under which  
20 the disposition is made; and

21 (3) Any other security interest or other lien.

**§46-9-618. Rights and duties of certain secondary obligors.**

1 (a) **Rights and duties of secondary obligor.** A secondary  
2 obligor acquires the rights and becomes obligated to  
3 perform the duties of the secured party after the secondary  
4 obligor:

5 (1) Receives an assignment of a secured obligation from  
6 the secured party;

7 (2) Receives a transfer of collateral from the secured  
8 party and agrees to accept the rights and assume the duties  
9 of the secured party; or

10 (3) Is subrogated to the rights of a secured party with  
11 respect to collateral.

12 (b) **Effect of assignment, transfer or subrogation.** An  
13 assignment, transfer or subrogation described in subsec-  
14 tion (a) of this section:

15 (1) Is not a disposition of collateral under section 9-610;  
16 and

17 (2) Relieves the secured party of further duties under  
18 this article.

**§46-9-619. Transfer of record or legal title.**

1 (a) **"Transfer statement."** In this section, "transfer  
2 statement" means a record authenticated by a secured  
3 party stating:

4 (1) That the debtor has defaulted in connection with an  
5 obligation secured by specified collateral;

6 (2) That the secured party has exercised its post-default  
7 remedies with respect to the collateral;

8 (3) That, by reason of the exercise, a transferee has  
9 acquired the rights of the debtor in the collateral; and

10 (4) The name and mailing address of the secured party,  
11 debtor and transferee.

12 (b) **Effect of transfer statement.** A transfer statement  
13 entitles the transferee to the transfer of record of all rights  
14 of the debtor in the collateral specified in the statement in  
15 any official filing, recording, registration or certificate-of-  
16 title system covering the collateral. If a transfer statement  
17 is presented with the applicable fee and request form to  
18 the official or office responsible for maintaining the  
19 system, the official or office shall:

20 (1) Accept the transfer statement;

21 (2) Promptly amend its records to reflect the transfer;  
22 and

23 (3) If applicable, issue a new appropriate certificate of  
24 title in the name of the transferee.

25 (c) **Transfer not a disposition; no relief of secured party's**  
26 **duties.** A transfer of the record or legal title to collateral  
27 to a secured party under subsection (b) of this section or  
28 otherwise is not of itself a disposition of collateral under  
29 this article and does not of itself relieve the secured party  
30 of its duties under this article.

**§46-9-620. Acceptance of collateral in full or partial satisfac-  
tion of obligation; compulsory disposition of  
collateral.**

1 (a) **Conditions to acceptance in satisfaction.** Except as  
2 otherwise provided in subsection (g) of this section, a  
3 secured party may accept collateral in full or partial  
4 satisfaction of the obligation it secures only if:

5 (1) The debtor consents to the acceptance under subsec-  
6 tion (c) of this section;

7 (2) The secured party does not receive, within the time  
8 set forth in subsection (d) of this section, a notification of  
9 objection to the proposal authenticated by:

10 (A) A person to which the secured party was required to  
11 send a proposal under section 9-621; or

12 (B) Any other person, other than the debtor, holding an  
13 interest in the collateral subordinate to the security  
14 interest that is the subject of the proposal;

15 (3) If the collateral is consumer goods, the collateral is  
16 not in the possession of the debtor when the debtor  
17 consents to the acceptance; and

18 (4) Subsection (e) of this section does not require the  
19 secured party to dispose of the collateral or the debtor  
20 waives the requirement pursuant to section 9-624.

21 (b) **Purported acceptance ineffective.** A purported or  
22 apparent acceptance of collateral under this section is  
23 ineffective unless:

24 (1) The secured party consents to the acceptance in an  
25 authenticated record or sends a proposal to the debtor; and

26 (2) The conditions of subsection (a) of this section are  
27 met.

28 (c) **Debtor's consent.** For purposes of this section:

29 (1) A debtor consents to an acceptance of collateral in  
30 partial satisfaction of the obligation it secures only if the  
31 debtor agrees to the terms of the acceptance in a record  
32 authenticated after default; and

33 (2) A debtor consents to an acceptance of collateral in  
34 full satisfaction of the obligation it secures only if the  
35 debtor agrees to the terms of the acceptance in a record  
36 authenticated after default or the secured party:

37 (A) Sends to the debtor after default a proposal that is  
38 unconditional or subject only to a condition that collateral  
39 not in the possession of the secured party be preserved or  
40 maintained;

41 (B) In the proposal, proposes to accept collateral in full  
42 satisfaction of the obligation it secures; and

43 (C) Does not receive a notification of objection authenti-  
44 cated by the debtor within twenty days after the proposal  
45 is sent.

46 (d) **Effectiveness of notification.** To be effective under  
47 subsection (a)(2) of this section, a notification of objection  
48 must be received by the secured party:

49 (1) In the case of a person to which the proposal was sent  
50 pursuant to section 9-621, within twenty days after  
51 notification was sent to that person; and

52 (2) In other cases:

53 (A) Within twenty days after the last notification was  
54 sent pursuant to section 9-621; or

55 (B) If a notification was not sent, before the debtor  
56 consents to the acceptance under subsection (c) of this  
57 section.

58 (e) **Mandatory disposition of consumer goods.** A secured  
59 party that has taken possession of collateral shall dispose  
60 of the collateral pursuant to section 9-610 within the time  
61 specified in subsection (f) of this section if:

62 (1) Sixty percent of the cash price has been paid in the  
63 case of a purchase-money security interest in consumer  
64 goods; or

65 (2) Sixty percent of the principal amount of the obliga-  
66 tion secured has been paid in the case of a non-purchase-  
67 money security interest in consumer goods.

68 (f) **Compliance with mandatory disposition requirement.**  
69 To comply with subsection (e) of this section, the secured  
70 party shall dispose of the collateral:

71 (1) Within ninety days after taking possession; or

72 (2) Within any longer period to which the debtor and all  
73 secondary obligors have agreed in an agreement to that  
74 effect entered into and authenticated after default.

75 (g) **No partial satisfaction in consumer transaction.** In  
76 a consumer transaction, a secured party may not accept  
77 collateral in partial satisfaction of the obligation it  
78 secures.

**§46-9-621. Notification of proposal to accept collateral.**

1 (a) **Persons to which proposal to be sent.** A secured  
2 party that desires to accept collateral in full or partial  
3 satisfaction of the obligation it secures shall send its  
4 proposal to:

5 (1) Any person from which the secured party has re-  
6 ceived, before the debtor consented to the acceptance, an  
7 authenticated notification of a claim of an interest in the  
8 collateral;

9 (2) Any other secured party or lienholder that, ten days  
10 before the debtor consented to the acceptance, held a  
11 security interest in or other lien on the collateral perfected  
12 by the filing of a financing statement that:

13 (A) Identified the collateral;

14 (B) Was indexed under the debtor's name as of that date;  
15 and

16 (C) Was filed in the office or offices in which to file a  
17 financing statement against the debtor covering the  
18 collateral as of that date; and

19 (3) Any other secured party that, ten days before the  
20 debtor consented to the acceptance, held a security interest  
21 in the collateral perfected by compliance with a statute,  
22 regulation or treaty described in section 9-311(a).

23 (b) **Proposal to be sent to secondary obligor in partial**  
24 **satisfaction.** A secured party that desires to accept  
25 collateral in partial satisfaction of the obligation it secures  
26 shall send its proposal to any secondary obligor in addition  
27 to the persons described in subsection (a) of this section.

**§46-9-622. Effect of acceptance of collateral.**



1 (a) **Effect of acceptance.** A secured party's acceptance of  
2 collateral in full or partial satisfaction of the obligation it  
3 secures:

4 (1) Discharges the obligation to the extent consented to  
5 by the debtor;

6 (2) Transfers to the secured party all of a debtor's rights  
7 in the collateral;

8 (3) Discharges the security interest or agricultural lien  
9 that is the subject of the debtor's consent and any subordi-  
10 nate security interest or other subordinate lien; and

11 (4) Terminates any other subordinate interest.

12 (b) **Discharge of subordinate interest notwithstanding**  
13 **noncompliance.** A subordinate interest is discharged or  
14 terminated under subsection (a) of this section, even if the  
15 secured party fails to comply with this article.

**§46-9-623. Right to redeem collateral.**

1 (a) **Persons that may redeem.** A debtor, any secondary  
2 obligor, or any other secured party or lienholder may  
3 redeem collateral.

4 (b) **Requirements for redemption.** To redeem collateral,  
5 a person shall tender:

6 (1) Fulfillment of all obligations secured by the collat-  
7 eral; and

8 (2) The reasonable expenses and attorney's fees de-  
9 scribed in section 9-615(a)(1).

10 (c) **When redemption may occur.** A redemption may  
11 occur at any time before a secured party:

12 (1) Has collected collateral under section 9-607;

13 (2) Has disposed of collateral or entered into a contract  
14 for its disposition under section 9-610; or

15 (3) Has accepted collateral in full or partial satisfaction  
16 of the obligation it secures under section 9-622.

**§46-9-624. Waiver.**

1 (a) **Waiver of disposition notification.** A debtor or  
2 secondary obligor may waive the right to notification of  
3 disposition of collateral under section 9-611 only by an  
4 agreement to that effect entered into and authenticated  
5 after default.

6 (b) **Waiver of mandatory disposition.** A debtor may  
7 waive the right to require disposition of collateral under  
8 section 9-620(e) only by an agreement to that effect  
9 entered into and authenticated after default.

10 (c) **Waiver of redemption right.** Except in a consumer-  
11 goods transaction, a debtor or secondary obligor may  
12 waive the right to redeem collateral under section 9-623  
13 only by an agreement to that effect entered into and  
14 authenticated after default.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

**§46-9-625. Remedies for secured party's failure to comply with article.**

1 (a) **Judicial orders concerning noncompliance.** If it is  
2 established that a secured party is not proceeding in  
3 accordance with this article, a court may order or restrain  
4 collection, enforcement, or disposition of collateral on  
5 appropriate terms and conditions.

6 (b) **Damages for noncompliance.** Subject to subsections  
7 (c), (d) and (f) of this section, a person is liable for damages  
8 in the amount of any loss caused by a failure to comply  
9 with this article. Loss caused by a failure to comply may  
10 include loss resulting from the debtor's inability to obtain,  
11 or increased costs of, alternative financing.

12 (c) **Persons entitled to recover damages; statutory  
13 damages in consumer-goods transaction.** Except as  
14 otherwise provided in section 9-628:

15 (1) A person that, at the time of the failure, was a debtor,  
16 was an obligor, or held a security interest in or other lien  
17 on the collateral may recover damages under subsection  
18 (b) of this section for its loss; and

19 (2) If the collateral is consumer goods, a person that was  
20 a debtor or a secondary obligor at the time a secured party  
21 failed to comply with this part may recover for that failure  
22 in any event an amount not less than the credit service  
23 charge plus ten percent of the principal amount of the  
24 obligation or the time-price differential plus ten percent of  
25 the cash price.

26 (d) **Recovery when deficiency eliminated or reduced.** A  
27 debtor whose deficiency is eliminated under section 9-626  
28 may recover damages for the loss of any surplus. How-  
29 ever, a debtor or secondary obligor whose deficiency  
30 is eliminated or reduced under section 9-626 may  
31 not otherwise recover under subsection (b) of this  
32 section for noncompliance with the provisions of this part  
33 relating to collection, enforcement, disposition or accep-  
34 tance.

35 (e) **Statutory damages: noncompliance with specified**  
36 **provisions.** In addition to any damages recoverable under  
37 subsection (b) of this section, the debtor, consumer obligor  
38 or person named as a debtor in a filed record, as applica-  
39 ble, may recover five hundred dollars in each case from a  
40 person that:

41 (1) Fails to comply with section 9-208;

42 (2) Fails to comply with section 9-209;

43 (3) Files a record that the person is not entitled to file  
44 under section 9-509(a);

45 (4) Fails to cause the secured party of record to file or  
46 send a termination statement as required by section  
47 9-513(a) or (c);

48 (5) Fails to comply with section 9-616(b)(1) and whose  
49 failure is part of a pattern, or consistent with a practice, of  
50 noncompliance; or

51 (6) Fails to comply with section 9-616(b)(2).

52 (f) **Statutory damages: noncompliance with section 9-**  
53 **210.** A debtor or consumer obligor may recover damages  
54 under subsection (b) of this section and, in addition, five

55 hundred dollars in each case from a person that, without  
 56 reasonable cause, fails to comply with a request under  
 57 section 9-210. A recipient of a request under section 9-210  
 58 which never claimed an interest in the collateral or  
 59 obligations that are the subject of a request under that  
 60 section has a reasonable excuse for failure to comply with  
 61 the request within the meaning of this subsection.

62 (g) **Limitation of security interest: noncompliance with**  
 63 **section 9-210.** If a secured party fails to comply with a  
 64 request regarding a list of collateral or a statement of  
 65 account under section 9-210, the secured party may claim  
 66 a security interest only as shown in the list or statement  
 67 included in the request as against a person that is reason-  
 68 ably misled by the failure.

**§46-9-626. Action in which deficiency or surplus is in issue.**

1 (a) **Applicable rules if amount of deficiency or surplus in**  
 2 **issue.** In an action arising from a transaction, other than  
 3 a consumer transaction, in which the amount of a defi-  
 4 ciency or surplus is in issue, the following rules apply:

5 (1) A secured party need not prove compliance with the  
 6 provisions of this part relating to collection, enforcement,  
 7 disposition or acceptance unless the debtor or a secondary  
 8 obligor places the secured party's compliance in issue.

9 (2) If the secured party's compliance is placed in issue,  
 10 the secured party has the burden of establishing that the  
 11 collection, enforcement, disposition or acceptance was  
 12 conducted in accordance with this part.

13 (3) Except as otherwise provided in section 9-628, if a  
 14 secured party fails to prove that the collection, enforce-  
 15 ment, disposition, or acceptance was conducted in accor-  
 16 dance with the provisions of this part relating to collec-  
 17 tion, enforcement, disposition, or acceptance, the liability  
 18 of a debtor or a secondary obligor for a deficiency is  
 19 limited to an amount by which the sum of the secured  
 20 obligation, expenses, and attorney's fees exceeds the  
 21 greater of:

22 (A) The proceeds of the collection, enforcement, disposi-  
 23 tion or acceptance; or

24 (B) The amount of proceeds that would have been  
25 realized had the noncomplying secured party proceeded in  
26 accordance with the provisions of this part relating to  
27 collection, enforcement, disposition or acceptance.

28 (4) For purposes of paragraph (3)(B) of this subsection,  
29 the amount of proceeds that would have been realized is  
30 equal to the sum of the secured obligation, expenses and  
31 attorney's fees unless the secured party proves that the  
32 amount is less than that sum.

33 (5) If a deficiency or surplus is calculated under section  
34 9-615(f), the debtor or obligor has the burden of establish-  
35 ing that the amount of proceeds of the disposition is  
36 significantly below the range of prices that a complying  
37 disposition to a person other than the secured party, a  
38 person related to the secured party, or a secondary obligor  
39 would have brought.

40 (b) **Non-consumer transactions; no inference.** The  
41 limitation of the rules in subsection (a) of this section to  
42 transactions other than consumer transactions is intended  
43 to leave to the court the determination of the proper rules  
44 in consumer transactions. The court may not infer from  
45 that limitation the nature of the proper rule in consumer  
46 transactions and may continue to apply established  
47 approaches.

**§46-9-627. Determination of whether conduct was commer-  
cially reasonable.**

1 (a) **Greater amount obtainable under other circum-**  
2 **stances; no preclusion of commercial reasonableness.** The  
3 fact that a greater amount could have been obtained by a  
4 collection, enforcement, disposition or acceptance at a  
5 different time or in a different method from that selected  
6 by the secured party is not of itself sufficient to preclude  
7 the secured party from establishing that the collection,  
8 enforcement, disposition or acceptance was made in a  
9 commercially reasonable manner.

10 (b) **Dispositions that are commercially reasonable.** A  
11 disposition of collateral is made in a commercially reason-  
12 able manner if the disposition is made:

- 13 (1) In the usual manner on any recognized market;  
14 (2) At the price current in any recognized market at the  
15 time of the disposition; or  
16 (3) Otherwise in conformity with reasonable commercial  
17 practices among dealers in the type of property that was  
18 the subject of the disposition.

19 (c) **Approval by court or on behalf of creditors.** A  
20 collection, enforcement, disposition, or acceptance is  
21 commercially reasonable if it has been approved:

- 22 (1) In a judicial proceeding;  
23 (2) By a bona fide creditors' committee;  
24 (3) By a representative of creditors; or  
25 (4) By an assignee for the benefit of creditors.

26 (d) **Approval under subsection (c) not necessary; absence**  
27 **of approval has no effect.** Approval under subsection (c)  
28 of this section need not be obtained and lack of approval  
29 does not mean that the collection, enforcement, disposition  
30 or acceptance is not commercially reasonable.

**§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.**

1 (a) **Limitation of liability of secured party for noncom-**  
2 **pliance with article.** Unless a secured party knows that a  
3 person is a debtor or obligor, knows the identity of the  
4 person and knows how to communicate with the person:

5 (1) The secured party is not liable to the person, or to a  
6 secured party or lienholder that has filed a financing  
7 statement against the person, for failure to comply with  
8 this article; and

9 (2) The secured party's failure to comply with this article  
10 does not affect the liability of the person for a deficiency.

11 (b) **Limitation of liability based on status as secured**  
12 **party.** A secured party is not liable because of its status as  
13 secured party:

14 (1) To a person that is a debtor or obligor, unless the  
15 secured party knows:

16 (A) That the person is a debtor or obligor;

17 (B) The identity of the person; and

18 (C) How to communicate with the person; or

19 (2) To a secured party or lienholder that has filed a  
20 financing statement against a person, unless the secured  
21 party knows:

22 (A) That the person is a debtor; and

23 (B) The identity of the person.

24 (c) **Limitation of liability if reasonable belief that**  
25 **transaction not a consumer-goods transaction or consumer**  
26 **transaction.** A secured party is not liable to any person,  
27 and a person's liability for a deficiency is not affected,  
28 because of any act or omission arising out of the secured  
29 party's reasonable belief that a transaction is not a  
30 consumer-goods transaction or a consumer transaction or  
31 that goods are not consumer goods, if the secured party's  
32 belief is based on its reasonable reliance on:

33 (1) A debtor's representation concerning the purpose for  
34 which collateral was to be used, acquired or held; or

35 (2) An obligor's representation concerning the purpose  
36 for which a secured obligation was incurred.

37 (d) **Limitation of liability for statutory damages.** A  
38 secured party is not liable to any person under section  
39 9-625(c)(2) for its failure to comply with section 9-616.

40 (e) **Limitation of multiple liability for statutory dam-**  
41 **ages.** A secured party is not liable under section  
42 9-625(c)(2) more than once with respect to any one secured  
43 obligation.

#### PART 7. TRANSITION.

##### §46-9-701. Effective date.

1 This article takes effect on the first day of July, two  
2 thousand one.

**§46-9-702. Savings clause.**

1 (a) **Pre-effective-date transactions or liens.** Except as  
2 otherwise provided in this part, this article applies to a  
3 transaction or lien within its scope, even if the transaction  
4 or lien was entered into or created before this article takes  
5 effect.

6 (b) **Continuing validity.** Except as otherwise provided in  
7 subsection (c) of this section and sections 9-703 through  
8 9-709:

9 (1) Transactions and liens that were not governed by  
10 former article nine, were validly entered into or created  
11 before this article takes effect and would be subject to this  
12 article if they had been entered into or created after this  
13 article takes effect, and the rights, duties and interests  
14 flowing from those transactions and liens remain valid  
15 after this article takes effect; and

16 (2) The transactions and liens may be terminated,  
17 completed, consummated and enforced as required or  
18 permitted by this article or by the law that otherwise  
19 would apply if this article had not taken effect.

20 (c) **Pre-effective-date proceedings.** This article does not  
21 affect an action, case or proceeding commenced before this  
22 article takes effect.

**§46-9-703. Security interest perfected before effective date.**

1 (a) **Continuing priority over lien creditor: perfection**  
2 **requirements satisfied.** A security interest that is enforce-  
3 able immediately before this article takes effect and would  
4 have priority over the rights of a person that becomes a  
5 lien creditor at that time is a perfected security interest  
6 under this article if, when this article takes effect, the  
7 applicable requirements for enforceability and perfection  
8 under this article are satisfied without further action.

9 (b) **Continuing priority over lien creditor: perfection**  
10 **requirements not satisfied.** Except as otherwise provided  
11 in section 9-705, if, immediately before this article takes  
12 effect, a security interest is enforceable and would have  
13 priority over the rights of a person that becomes a lien



14 creditor at that time, but the applicable requirements for  
15 enforceability or perfection under this article are not  
16 satisfied when this article takes effect, the security  
17 interest:

18 (1) Is a perfected security interest for two years after this  
19 article takes effect;

20 (2) Remains enforceable thereafter only if the security  
21 interest becomes enforceable under section 9-203 before  
22 the second year expires; and

23 (3) Remains perfected thereafter only if the applicable  
24 requirements for perfection under this article are satisfied  
25 before the second year expires.

**§46-9-704. Security interest unperfected before effective date.**

1 A security interest that is enforceable immediately  
2 before this article takes effect but which would be subor-  
3 dinate to the rights of a person that becomes a lien credi-  
4 tor at that time:

5 (1) Remains an enforceable security interest for two  
6 years after this article takes effect;

7 (2) Remains enforceable thereafter if the security  
8 interest becomes enforceable under section 9-203 when  
9 this article takes effect or within two years thereafter; and

10 (3) Becomes perfected:

11 (A) Without further action, when this article takes effect  
12 if the applicable requirements for perfection under this  
13 article are satisfied before or at that time; or

14 (B) When the applicable requirements for perfection are  
15 satisfied if the requirements are satisfied after that time.

**§46-9-705. Effectiveness of action taken before effective date.**

1 (a) **Pre-effective-date action; two-year perfection period**  
2 **unless reperfected.** If action, other than the filing of a  
3 financing statement, is taken before this article takes  
4 effect and the action would have resulted in priority of a  
5 security interest over the rights of a person that becomes  
6 a lien creditor had the security interest become enforce-

7 able before this article takes effect, the action is effective  
8 to perfect a security interest that attaches under this  
9 article within two years after this article takes effect. An  
10 attached security interest becomes unperfected two years  
11 after this article takes effect unless the security interest  
12 becomes a perfected security interest under this article  
13 before the expiration of that period.

14 (b) **Pre-effective-date filing.** The filing of a financing  
15 statement before this article takes effect is effective to  
16 perfect a security interest to the extent the filing would  
17 satisfy the applicable requirements for perfection under  
18 this article.

19 (c) **Pre-effective-date filing in jurisdiction formerly**  
20 **governing perfection.** This article does not render ineffec-  
21 tive an effective financing statement that, before this  
22 article takes effect, is filed and satisfies the applicable  
23 requirements for perfection under the law of the jurisdic-  
24 tion governing perfection as provided in former section  
25 9-103. However, except as otherwise provided in subsec-  
26 tions (d) and (e) of this section and section 9-706, the  
27 financing statement ceases to be effective at the earlier of:

28 (1) The time the financing statement would have ceased  
29 to be effective under the law of the jurisdiction in which it  
30 is filed; or

31 (2) The thirtieth day of June, two thousand six.

32 (d) **Continuation statement.** The filing of a continuation  
33 statement after this article takes effect does not continue  
34 the effectiveness of the financing statement filed before  
35 this article takes effect. However, upon the timely filing  
36 of a continuation statement after this article takes effect  
37 and in accordance with the law of the jurisdiction govern-  
38 ing perfection as provided in part 3, the effectiveness of a  
39 financing statement filed in the same office in that jurisdic-  
40 tion before this article takes effect continues for the  
41 period provided by the law of that jurisdiction.

42 (e) **Application of subsection (c)(2) to transmitting utility**  
43 **financing statement.** Subsection (c)(2) of this section  
44 applies to a financing statement that, before this article

45 takes effect, is filed against a transmitting utility and  
46 satisfies the applicable requirements for perfection under  
47 the law of the jurisdiction governing perfection as pro-  
48 vided in former section 9-103 only to the extent that part  
49 3 provides that the law of a jurisdiction other than juris-  
50 diction in which the financing statement is filed governs  
51 perfection of a security interest in collateral covered by  
52 the financing statement.

53 (f) **Application of part 5.** A financing statement that  
54 includes a financing statement filed before this article  
55 takes effect and a continuation statement filed after this  
56 article takes effect is effective only to the extent that it  
57 satisfies the requirements of part 5 for an initial financing  
58 statement.

**§46-9-706. When initial financing statement suffices to con-  
tinue effectiveness of financing statement.**

1 (a) **Initial financing statement in lieu of continuation**  
2 **statement.** The filing of an initial financing statement in  
3 the office specified in section 9-501 continues the effec-  
4 tiveness of a financing statement filed before this article  
5 takes effect if:

6 (1) The filing of an initial financing statement in that  
7 office would be effective to perfect a security interest  
8 under this article;

9 (2) The pre-effective-date financing statement was filed  
10 in an office in another state or another office in this state;  
11 and

12 (3) The initial financing statement satisfies subsection  
13 (c) of this section.

14 (b) **Period of continued effectiveness.** The filing of an  
15 initial financing statement under subsection (a) of this  
16 section continues the effectiveness of the pre-effective-  
17 date financing statement:

18 (1) If the initial financing statement is filed before this  
19 article takes effect, for the period provided in former  
20 section 9-403 with respect to a financing statement; and

21 (2) If the initial financing statement is filed after this  
22 article takes effect, for the period provided in section 9-  
23 515 with respect to an initial financing statement.

24 (c) **Requirements for initial financing statement under**  
25 **subsection (a).** To be effective for purposes of subsection  
26 (a) of this section, an initial financing statement must:

27 (1) Satisfy the requirements of part 5 for an initial  
28 financing statement;

29 (2) Identify the pre-effective-date financing statement  
30 by indicating the office in which the financing statement  
31 was filed and providing the dates of filing and file num-  
32 bers, if any, of the financing statement and of the most  
33 recent continuation statement filed with respect to the  
34 financing statement; and

35 (3) Indicate that the pre-effective-date financing state-  
36 ment remains effective.

**§46-9-707. Amendment of pre-effective-date financing state-  
ment.**

1 (a) **“Pre-effective-date financing statement”.** In this  
2 section, “pre-effective-date financing statement” means a  
3 financing statement filed before this article takes effect.

4 (b) **Applicable law.** After this article takes effect, a  
5 person may add or delete collateral covered by, continue  
6 or terminate the effectiveness of, or otherwise amend the  
7 information provided in, a pre-effective-date financing  
8 statement only in accordance with the law of the jurisdic-  
9 tion governing perfection as provided in part 3. However,  
10 the effectiveness of a pre-effective-date financing state-  
11 ment also may be terminated in accordance with the law  
12 of the jurisdiction in which the financing statement is  
13 filed.

14 (c) **Method of amending: general rule.** Except as other-  
15 wise provided in subsection (d) of this section, if the law of  
16 this state governs perfection of a security interest, the  
17 information in a pre-effective-date financing statement  
18 may be amended after this article takes effect only if:

19 (1) The pre-effective-date financing statement and an  
20 amendment are filed in the office specified in section 9-  
21 501.

22 (2) An amendment is filed in the office specified in  
23 section 9-501 concurrently with, or after the filing in that  
24 office of, an initial financing statement that satisfies  
25 section 9-706(c); or

26 (3) An initial financing statement that provides the  
27 information as amended and satisfies section 9-706(c) is  
28 filed in the office specified in section 9-501.

29 (d) **Method of amending: continuation.** If the law of this  
30 state governs perfection of a security interest, the effec-  
31 tiveness of a pre-effective-date financing statement may  
32 be continued only under section 9-705(d) and (f) or 9-706.

33 (e) **Method of amending: additional termination rule.**  
34 Whether or not the law of this state governs perfection of  
35 a security interest, effectiveness of a pre-effective-date  
36 financing statement filed in this state may be terminated  
37 after this article takes effect by filing a termination  
38 statement in the office in which the pre-effective-date  
39 financing statement is filed, unless an initial financing  
40 statement that satisfies section 9-706(c) has been filed in  
41 the office specified by the law of the jurisdiction governing  
42 perfection as provided in part 3 as the office in which to  
43 file a financing statement.

**§46-9-708. Persons entitled to file initial financing statement or  
continuation statement.**

1 A person may file an initial financing statement or a  
2 continuation statement under this part if:

3 (1) The secured party of record authorizes the filing; and

4 (2) The filing is necessary under this part:

5 (A) To continue the effectiveness of a financing state-  
6 ment filed before this article takes effect; or

7 (B) To perfect or continue the perfection of a security  
8 interest.

**§46-9-709. Priority.**

1 (a) **Law governing priority.** This article determines the  
2 priority of conflicting claims to collateral. However, if the  
3 relative priorities of the claims were established before  
4 this article takes effect, former article nine determines  
5 priority.

6 (b) **Priority if security interest becomes enforceable**  
7 **under section 9-203.** For purposes of section 9-322(a), the  
8 priority of a security interest that becomes enforceable  
9 under section 9-203 of this article dates from the time this  
10 article takes effect if the security interest is perfected  
11 under this article by the filing of a financing statement  
12 before this article takes effect which would not have been  
13 effective to perfect the security interest under former  
14 article nine. This subsection does not apply to conflicting  
15 security interests each of which is perfected by the filing  
16 of such a financing statement.

**CHAPTER 46A. WEST VIRGINIA CONSUMER  
CREDIT AND PROTECTION ACT.**

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-119a. Secured transaction; use of price guide value in  
calculating deficiency or surplus.**

1 (a) This section applies to the following transactions:

2 (1) Transactions in which a purchase money security  
3 interest is taken in collateral which is being purchased  
4 primarily for a personal, family, household or agricultural  
5 purpose;

6 (2) Transactions in which a security interest is taken in  
7 collateral which was used primarily for a personal, family,  
8 household or agricultural purpose prior to the giving the  
9 security interest; or

10 (3) Transactions in which a security interest is taken in  
11 collateral for a debt that was incurred primarily for a  
12 personal, family, household or agricultural purpose.

13 (b) This section takes effect on the first day of July, two  
14 thousand two, and is applicable notwithstanding the  
15 provisions of:

16 (1) Section six hundred ten, article nine, chapter forty-  
17 six of this code, providing that disposition may only be by  
18 certain public or private sale, lease or license procedures;

19 (2) Section six hundred ten, article nine, chapter forty-  
20 six of this code, requiring that those procedures be com-  
21 mercially reasonable;

22 (3) Section six hundred fifteen, article nine, chapter  
23 forty-six of this code, providing for the application of the  
24 proceeds;

25 (4) Section six hundred twenty, article nine, chapter  
26 forty six of this code, requiring disposition by sale, lease  
27 or license in certain circumstances; and

28 (5) Section six hundred two, article nine, chapter forty-  
29 six of this code, providing that these sections may not be  
30 waived or varied by agreement.

31 (c) For purposes of this section, the term "debtor" shall  
32 be deemed to refer collectively to each person who is  
33 indebted to a secured creditor in connection with a  
34 consumer lease or consumer loan, whether the person's  
35 obligation arises as a co-maker, endorser or guarantor of  
36 the lease or loan.

37 (d) After a default by the debtor and after the secured  
38 creditor takes or receives possession of collateral or makes  
39 collateral unusable as provided in section six hundred  
40 nine, article nine, chapter forty-six of this code, the  
41 secured creditor may send a written proposal to the debtor  
42 setting forth a value for the secured creditor's collateral  
43 which value, less any expenses of taking and holding the  
44 collateral, shall be credited against the debtor's obligation  
45 to the secured creditor. The written proposal must explain  
46 that:

47 (1) The proposal becomes effective only if the debtor  
48 agrees to it in writing but the debtor is not required to  
49 agree to the written proposal;

50 (2) If the debtor does not agree to the proposal in  
51 writing, then the goods which are the subject of the  
52 written proposal will be disposed of in a "commercially  
53 reasonable" manner by the secured creditor in accordance  
54 with applicable law, and the amount received from the  
55 disposition of the collateral, less the expenses of taking  
56 and holding the collateral, preparing the collateral of the  
57 sale or lease, and selling the collateral, will be the amount  
58 credited against the debtor's obligation to the secured  
59 creditor when calculating the deficiency owed by the  
60 debtor to the secured creditor or the surplus owed by the  
61 secured creditor to the debtor;

62 (3) If the debtor agrees to the written proposal, then the  
63 debtor will thereby release and waive any claims against  
64 the secured creditor that the disposition of the collateral  
65 was not commercially reasonable or was otherwise im-  
66 proper; and

67 (4) The written proposal may set forth a date and time  
68 by which the debtor's written agreement must be received  
69 by secured creditor in order for the agreement to become  
70 effective.

71 (5) The following form, when reproduced on a single  
72 sheet of paper with no other statements or agreements and  
73 accurately completed, meets the requirements of this  
74 section even if it contains typographical or other minor  
75 errors that are not misleading:

76 [*Name and address of secured party*]

77 [*Date*]

78 TO: [*Name and address of debtor*]

79 **OFFER TO CREDIT PRICE GUIDE VALUE**

80 We have possession of your\_\_[describe collateral]\_\_  
81 ("property") (or we have made it unusable by you),  
82 because you broke the terms of our agreement.

83 By law, we may sell, lease or license this property in any  
84 commercially reasonable manner. If we choose to sell the  
85 property at a public sale we will give you notice of the  
86 date, time and place of the sale and you may attend the



87 sale and bring bidders if you want. If we choose to sell the  
88 property at a private sale we will give you notice of the  
89 date after which the sale will take place. From the money  
90 we are paid from the sale of the property, we may subtract  
91 our expenses in getting the property from you, storing it,  
92 preparing and selling, leasing or licensing it. The sale  
93 money left over after these expenses are subtracted will  
94 then be subtracted from what you owe us. If we receive  
95 less money than you owe, you will still owe us the differ-  
96 ence. If we receive more money than you owe, you will get  
97 the extra money back (unless we are required to pay it to  
98 someone else).

99 Instead of selling, leasing or licensing this property, we  
100 are now offering to subtract the amount of \$            [enter  
101 *amount*] from what you owe us. We have calculated this  
102 amount by adding the retail value of the property of \$  
103 [insert retail value] and the [insert other value pursuant  
104 to § 46A-2-119a(5)] value of the property of \$            [enter  
105 *amount*] and dividing that total by 2 ("value amount").  
106 These values were obtained from \_\_\_\_\_, a price  
107 guide in general use as of the date we got possession of or  
108 rendered the property unusable by you. From the value  
109 amount we have subtracted our expenses of \$            [enter  
110 *amount*] in taking back the property from you, and our  
111 expenses of \$            [enter amount] for storing the property  
112 through the date below by which you must respond to this  
113 offer.

114 You do not have to accept this offer. To agree to our  
115 offer, you must sign this notice at the bottom no sooner  
116 than one day after the date on which you received this  
117 offer and deliver it or have it delivered to us before            [enter  
118 *date by which the secured party determines the offer must*  
119 *be accepted*]. If you agree to this offer, you are giving up  
120 any right to hold us liable for the way that we sell, lease or  
121 otherwise dispose of the property and account for the  
122 proceeds.

123 You can get the property back at any time before you  
124 accept this offer or we sell, lease or license the property by  
125 paying us the full amount you owe (not just the past due  
126 payments), including our expenses so far. To learn the

127 exact amount you must pay, you may call us at [telephone  
128 number] . If you want us to explain to you in writing how  
129 we calculated the amount that you owe us, you may call us  
130 at [telephone number] or write us at [secured party's  
131 address] and request a written explanation.

132 [We are sending this notice to the following other people  
133 who owe money under our agreement. They will also have  
134 to agree to our offer or we will sell the property as we  
135 normally do.

136 *[Names of all other debtors and obligors, if any]*

137 I accept the offer:

138 Signed \_\_\_\_\_

139 Date of signature \_\_\_\_\_

140 **[End of Form]**

141 (e) (1) The value of the collateral set forth in the written  
142 proposal shall be determined from any price guide used  
143 generally by persons who are not purchasers or lessees of  
144 that type of collateral and who insure, lend money for the  
145 purchase of, lease or otherwise deal in goods of the same  
146 type as the collateral when it would be to the advantage of  
147 the user for the price guide to have higher values.

148 (2) The value of the collateral set forth in the written  
149 proposal shall be determined as of the date the secured  
150 party took possession of the collateral, received possession  
151 of the collateral or rendered the collateral unusable.

152 (3) For a motor vehicle, as that term is defined by section  
153 one, article one, chapter seventeen-a of this code, the value  
154 of the motor vehicle collateral shall be calculated by  
155 adding together the retail value and the trade-in value for  
156 the motor vehicle and dividing that sum by two.

157 (4) For a manufactured home, mobile home or house  
158 trailer, as those terms are defined in section one, article  
159 six, chapter seventeen-a of this code, which at the time of  
160 default was located on a lot owned by the debtor, an  
161 obligor or a person related to the debtor, the value of the  
162 manufactured home, mobile home or house trailer collat-

163 eral shall be calculated by adding together the retail value  
164 and the wholesale value designated for the manufactured  
165 home that is moved for resale, mobile home or house  
166 trailer and dividing that sum by two.

167 (5) For a manufactured home, mobile home or house  
168 trailer, as those terms are defined in section one, article  
169 six, chapter seventeen-a of this code, which at the time of  
170 default was located on a lot owned by a person or organi-  
171 zation in the business of renting or leasing lots or on a lot  
172 owned by a person who is not the debtor, an obligor or a  
173 person related to the debtor or obligor, the value of the  
174 manufactured home, mobile home or house trailer collat-  
175 eral shall be calculated by adding together the retail value  
176 and the wholesale value designated for collateral that is  
177 offered for sale without moving the collateral from its  
178 current location, and dividing that sum by two.

179 (6) For other personal property, the value of the collat-  
180 eral shall be calculated by adding together the used retail  
181 value and the highest listed wholesale value for the  
182 property and dividing that sum by two.

183 (f) If the debtor agrees in writing to the written proposal  
184 within the time period prescribed by the secured creditor,  
185 then:

186 (1) The collateral value as calculated in subsection (e)  
187 above, less any expenses of taking and holding the collat-  
188 eral, shall be applied to the indebtedness as provided in  
189 section six hundred fifteen, article nine, chapter forty-six  
190 of this code;

191 (2) Any expenses incurred by the secured creditor in the  
192 actual sale or lease of the collateral or preparing the  
193 collateral for sale or lease may not be charged to the  
194 debtor but must be born by the secured creditor; and

195 (3) The secured creditor is not required to dispose of the  
196 collateral in a commercially reasonable manner and is not  
197 liable for any failure to comply with any law of this state  
198 relating to the disposition of the collateral or application  
199 of the proceeds.

200 (g) The written agreement of the debtor is not valid  
201 unless it is signed by the debtor on or after the next  
202 calendar day after it is received by the debtor or the  
203 second calendar day after it was sent to the debtor.

204 (h) If the debtor is more than one person, then the  
205 secured creditor must send the proposal described in  
206 subsection (d) of this section to all such persons. If any  
207 one of the persons indebted to a secured creditor on a  
208 consumer lease or consumer loan does not agree in writing  
209 to the proposal or does not respond timely to the proposal,  
210 then the secured creditor must proceed with a sale or other  
211 disposition of its collateral as provided in article nine,  
212 chapter forty-six of this code.

213 (i) If a person other than the debtor has a recorded  
214 ownership interest in property securing the debtor's  
215 obligation to a secured creditor and such other person is  
216 not also indebted to the secured creditor on such obliga-  
217 tion, then the secured creditor must send a copy of the  
218 proposal described in subsection (d) of this section to such  
219 other person but is not required to obtain such other  
220 person's consent or agreement to the proposal in order to  
221 effect the proposal.

222 (j) Upon receipt of the debtor's executed acceptance of  
223 a written proposal described in subsection (d) of this  
224 section, title to the collateral described in the proposal  
225 shall be deemed to pass to the secured creditor unless such  
226 collateral is a vehicle, manufactured home, mobile home  
227 or house trailer.

228 (k) Upon presentation of the debtor's executed accep-  
229 tance of a written proposal described in subsection (d) of  
230 this section to the department of motor vehicles and a  
231 certificate of title to the debtor's vehicle, manufactured  
232 home, mobile home or house trailer described in the  
233 written proposal, the department of motor vehicles shall  
234 issue a new certificate of title to the vehicle, manufactured  
235 home, mobile home or house trailer in the name of the  
236 secured creditor as the owner thereof.

237 (l) Nothing in this section may be construed to create,  
238 directly or indirectly, or impose a duty on the secured

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239 creditor to make a written offer or give notice under this  
240 section. A secured creditor's failure to make a written  
241 proposal shall not subject the secured creditor to any  
242 liability to the debtor or any other person.

243 (m) The provisions of this section may not be waived or  
244 varied.

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

*Mark W. Berry*  
.....  
Chairman Senate Committee

*Jack Austin*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*David Holmes*  
.....  
Clerk of the Senate

*Bryson D. Boy*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *2/5*  
Day of *March*, 2000.

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date

3/15/00

Time

3:10 pm