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
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 469

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

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

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 two, 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; 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 transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

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

13 Sections 2A-105 and 2A-106, applicability of the article on leases.

15 Section 2-402, rights of creditors against sold goods.
Subject to additional definitions contained in the subsequent articles of this chapter which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this chapter:

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

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

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

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

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.
(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading for marine or rail transportation and includes an air consignment note or air waybill.

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

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

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article two may be a buyer in the ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

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

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

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

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

(14) “Delivery” with respect to instruments, documents of title, chattel paper or certificated securities means voluntary transfer of possession.

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

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

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

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

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

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

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

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

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

(25) A person has "notice" of a fact when:
(a) He has actual knowledge of it; or
(b) He has received a notice or notification of it; or
(c) From all the facts and circumstances known to him or her at the time in question he or she has reason to know that it exists. A person "knows" or has "knowledge" of a fact when he or she has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and
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(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when:

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

(b) It is duly delivered at the place of business through which the contract was made or at any other place held out by him or her as the place for receipt of such communications.

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

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

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

(30) "Person" includes an individual or an organization (see section 1-102).
(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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

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

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

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

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of consignor and a buyer of accounts, or chattel paper, a payment intangible or a promissory note in a transaction that is subject to article nine. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with article nine of this chapter. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article two or two-a of this chapter to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with article nine of this chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2-401) is limited in effect to a reservation of a "security interest".

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however,
a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

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

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

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

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

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

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

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

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

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection:

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

(ii) “Reasonably predictable” and “remaining economic life of the goods” are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

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

“Surety” includes guarantor.

“Telegram” includes a message transmitted by radio, teletype, cable, any mechanical method of transmission or the like.

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

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

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

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

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

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

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

“Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

“Written” or “writing” includes printing, typewriting or any other intentional reduction to tangible form.

ARTICLE 2. SALES.

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

(1) In this article unless the context otherwise requires:
(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

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

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

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

"Acceptance". Section 2-606.
"Banker's credit". Section 2-325.
"Between merchants". Section 2-104.
"Cancellation". Section 2-106 (4).
"Commercial unit". Section 2-105.
"Confirmed credit". Section 2-325.
"Conforming to contract". Section 2-106.
"Contract for sale". Section 2-106.
"Cover". Section 2-712.
"Entrusting". Section 2-403.
"Financing agency." Section 2-104.
"Future goods". Section 2-105.
"Goods". Section 2-105.
"Identification". Section 2-501.
"Installment contract". Section 2-612.
"Letter of credit". Section 2-325.
"Lot". Section 2-105.

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

7 (2) Unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his
contract, or impair materially his chance of obtaining
return performance. A right to damages for breach of the
whole contract or a right arising out of the assignor's due
performance of his entire obligation can be assigned
despite agreement otherwise.

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

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

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

(6) The other party may treat any assignment which
delegates performance as creating reasonable grounds for
insecurity and may without prejudice to his rights against
the assignor demand assurances from the assignee (section 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 delivcred
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.
(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

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

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

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

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

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

ARTICLE 2A. LEASES.

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

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

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

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

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

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

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

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

(g) "Finance lease" means a lease with respect to which:
(i) The lessor does not select, manufacture or supply the
goods;
(ii) The lessor acquires the goods or the right to posses-
sion and use of the goods in connection with the lease; and
(iii) One of the following occurs:
(A) The lessee receives a copy of the contract by which
the lessor acquired the goods or the right to possession and
use of the goods before signing the lease contract;
(B) The lessee's approval of the contract by which the
lessor acquired the goods or the right to possession and use
of the goods is a condition to effectiveness of the lease
contract;
(C) The lessee, before signing the lease contract, receives
an accurate and complete statement designating the
promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing: (a) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

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

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease.
Unless the context clearly indicates otherwise, the term includes a sublease.

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

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

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

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

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

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

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

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

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

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

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

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

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

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

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

(2) Other definitions applying to this article and the sections in which they appear are:
“Accessions”. Section 2A-310(1).

“Construction mortgage”. Section 2A-309(1)(d).

“Encumbrance”. Section 2A-309(1)(e).

“Fixtures”. Section 2A-309(1)(a).

“Fixture filing”. Section 2A-309(1)(b).

“Purchase money lease”. Section 2A-309(1)(c).

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

“Account”. Section 9-102(a)(2).

“Between merchants”. Section 2-104(3).

“Buyer”. Section 2-103(1)(a).

“Chattel paper”. Section 9-102(a)(11).

“Consumer goods”. Section 9-102(a)(23).


“Entrusting”. Section 2-403(3).

“General intangible”. Section 9-102(a)(42).

“Good faith”. Section 2-103(1)(b).

“Instrument”. Section 9-102(a)(47).

“Merchant”. Section 2-104(1).

“Mortgage”. Section 9-102(a)(55).

“Pursuant to commitment”. Section 9-102(a)(68).

“Receipt”. Section 2-103(1)(c).

“Sale”. Section 2-106(1).

“Sale on approval”. Section 2-326.

“Sale or return”. Section 2-326.

“Seller”. Section 2-103(1)(d).
In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

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

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

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

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

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

(a) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives
the default or otherwise agrees, has the rights and remedies described in section 2A-501(2);

(b) If paragraph (a) is not applicable and if a transfer is made that: (i) Is prohibited under a lease agreement; or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) The transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

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

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, 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) Except as otherwise provided in section 2A-306, a creditor of a lessee takes subject to the lease contract.
(2) Except as otherwise provided in subsection (3) of this section and in sections 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in sections 9-317, 9-321, and 9-323, a lessee takes a leasehold interest subject 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) In this section:

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

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

(c) A lease is a “purchase money lease” unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(d) A mortgage is a “construction mortgage” to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(e) “Encumbrance” includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

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

(3) This article does not prevent creation of a lease of fixtures pursuant to real estate law.
(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) The lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

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

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

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

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

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

(d) The lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding subsection (4) of this section but otherwise subject to subsections (4) and (5) of this section,
the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

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

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

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance
with the relevant provisions of the article on secured transactions (article nine).

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

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

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

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

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

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

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

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

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

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

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying 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 in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

2. (b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to article nine, but:

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

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

   (3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long 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 a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 7-403) or with power of disposition under this chapter (sections 2-403 and 9-320) or other statute or rule of law; nor
(b) acquiesced in the procurement by the bailor or his
nominee of any document of title.

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

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

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

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

(c) An interest in a partnership or limited liability
company is not a security unless it is dealt in or traded on
securities exchanges or in securities markets, its terms
expressly provide that it is a security governed by this
article or it is an investment company security. However,
an interest in a partnership or limited liability company is
a financial asset if it is held in a securities account.
21 (d) A writing that is a security certificate is governed by this article and not by article three of this chapter, even though it also meets the requirements of that article. However, a negotiable instrument governed by article three is a financial asset if it is held in a securities account.

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

29 (f) A commodity contract, as defined in section 9-102(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 bearer form if the certificated security is delivered to the purchaser.

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

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

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

5 (3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

6 (c) A purchaser has “control” of an uncertificated security if:

7 (1) The uncertificated security is delivered to the purchaser; or

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

9 (d) A purchaser has “control” of a security entitlement if:
(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

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

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

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

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

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

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;
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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
15    (b) The local law of the securities intermediary’s juris-
16    diction, as specified in subsection (e) of this section, 
17    governs:
18
19    (1) Acquisition of a security entitlement from the
20    securities intermediary;
21    (2) The rights and duties of the securities intermediary
22    and entitlement holder arising out of a security entitle-
23    ment;
24    (3) Whether the securities intermediary owes any duties
25    to an adverse claimant to a security entitlement; and
26    (4) Whether an adverse claim can be asserted against a
27    person who acquires a security entitlement from the
28    securities intermediary or a person who purchases a
29    security entitlement or interest therein from an entitle-
30    ment holder.
31
32    (c) The local law of the jurisdiction in which a security
33    certificate is located at the time of delivery governs
34    whether an adverse claim can be asserted against a person
35    to whom the security certificate is delivered.
36
37    (d) “Issuer’s jurisdiction” means the jurisdiction under
38    which the issuer of the security is organized or, if permit-
39    ted by the law of that jurisdiction, the law of another
40    jurisdiction specified by the issuer. An issuer organized
41    under the law of this state may specify the law of another
42    jurisdiction as the law governing the matters specified in
43    subdivisions (2) through (5), inclusive, subsection (a) of
44    this section.
The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

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

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

3. If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

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

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

6. A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement or by the
PART 3. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES.

§46-8-301. Delivery.

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

1. The purchaser acquires possession of the security certificate;
2. Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or
3. A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and is: (i) Registered in the name of the purchaser; (ii) payable to the order of the purchaser; or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

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

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

§46-8-302. Rights of purchaser.

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

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

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

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

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

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

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

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 8-106(d)(2); or
(3) If the purchaser obtained control through another person under section 8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

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

ARTICLE 9. SECURED TRANSACTIONS.

PART 1. GENERAL PROVISIONS.

SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.


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

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

(a) Article 9 definitions. In this article:

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

(2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance: (i) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-
insurance receivables. The term does not include: (1) Rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter-of-credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

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

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) Authenticated by a secured party;

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

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

(5) “Agricultural lien” means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

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

(ii) Rent on real property leased by a debtor in connection with its farming operation;

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

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
(ii) Leased real property to a debtor in connection with
the debtor's farming operation; and

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

(6) "As-extracted collateral" means:

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

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

(ii) Attaches to the minerals as extracted; or

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

(7) "Authenticate" means:

(A) To sign; or

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

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

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

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

(11) "Chattel paper" means a record or records that
evidence both a monetary obligation and a security
interest in specific goods, a security interest in specific
goods and software used in the goods, a security interest in
specific goods and license of software used in the goods, a
lease of specific goods or a lease of specific goods and
license of software used in the goods. In this paragraph,
“monetary obligation” means a monetary obligation
secured by the goods or owed under a lease of the goods
and includes a monetary obligation with respect to
software used in the goods. The term does not include: (i)
Charters or other contracts involving the use or hire of a
vessel; or (ii) records that evidence a right to payment
arising out of the use of a credit or charge card or informa-
tion contained on or for use with the card. If a transaction
is evidenced by records that include an instrument or
series of instruments, the group of records taken together
constitutes chattel paper.

(12) “Collateral” means the property subject to a secu-
urity interest or agricultural lien. The term includes:
(A) Proceeds to which a security interest attaches;
(B) Accounts, chattel paper, payment intangibles and
promissory notes that have been sold; and
(C) Goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in
tort with respect to which:
(A) The claimant is an organization; or
(B) The claimant is an individual and the claim:
(i) Arose in the course of the claimant's business or
profession; and
(ii) Does not include damages arising out of personal
injury to or the death of an individual.

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

(15) “Commodity contract” means a commodity futures
contract, an option on a commodity futures contract, a
commodity option or another contract if the contract or
option is:
(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

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

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

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

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

(18) “Communicate” means:

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

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

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

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

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

(A) The merchant:

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

(ii) Is not an auctioneer; and
(iii) Is not generally known by its creditors to be sub-
stantially engaged in selling the goods of others;
(B) With respect to each delivery, the aggregate value of
the goods is one thousand dollars or more at the time of
delivery;
(C) The goods are not consumer goods immediately
before delivery; and
(D) The transaction does not create a security interest
that secures an obligation.
(21) "Consignor" means a person that delivers goods to
a consignee in a consignment.
(22) "Consumer debtor" means a debtor in a consumer
transaction.
(23) "Consumer goods" means goods that are used or
bought for use primarily for personal, family or household
purposes.
(24) "Consumer-goods transaction" means a consumer
transaction in which:
(A) An individual incurs an obligation primarily for
personal, family or household purposes; and
(B) A security interest in consumer goods secures the
obligation.
(25) "Consumer obligor" means an obligor who is an
individual and who incurred the obligation as part of a
transaction entered into primarily for personal, family or
household purposes.
(26) "Consumer transaction" means a transaction in
which: (i) An individual incurs an obligation primarily for
personal, family or household purposes; (ii) a security
interest secures the obligation; and (iii) the collateral is
held or acquired primarily for personal, family or house-
hold purposes. The term includes consumer-goods trans-
actions.
(27) "Continuation statement" means an amendment of
a financing statement which:
(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

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

(B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) A consignee.

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

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

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

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

(33) "Equipment" means goods other than inventory, farm products or consumer goods.

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

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

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

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

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

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

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation.

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

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

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
"Goods" means all things that are movable when a security interest attaches. The term includes: (i) Fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) The program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money or oil, gas, or other minerals before extraction.

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

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

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

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

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be fur-

ished under a contract of service;

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

or

(D) Consist of raw materials, work in process or materi-

als used or consumed in a business.

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

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

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

(52) "Lien creditor" means:

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

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

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

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

(53) "Manufactured home" means a structure, transport-
able in one or more sections, which, in the traveling mode,
is eight body feet or more in width or forty body feet or
more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

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

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

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

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

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

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

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

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) Owes payment or other performance of the obligation; (ii) has provided property
other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable, in whole or in part, for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

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

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

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

(A) The spouse of the individual;
(B) A brother, brother-in-law, sister or sister-in-law of the individual;
(C) An ancestor or lineal descendant of the individual or the individual's spouse; or
(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

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

(A) A person directly or indirectly controlling, controlled by or under common control with the organization;
(B) An officer or director of, or a person performing similar functions with respect to, the organization;
(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
(D) The spouse of an individual described in subparagraph (A), (B) or (C); or
(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) and shares the same home with the individual.

(64) “Proceeds”, except as used in section 9-609(b), means the following property:

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

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

(C) Rights arising out of collateral;

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

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Production-money crops” means crops that secure a production-money obligation incurred with respect to the production of those crops.

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

(67) “Production of crops” includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops and protecting them from damage or disease.

(68) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
"Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

"Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

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

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

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

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

"Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

"Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or
(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

(75) "Secured party" means:

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

(B) A person that holds an agricultural lien;

(C) A consignor;

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

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

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

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

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

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

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (A).

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

(79) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

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

(81) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(82) “Termination statement” means an amendment of a financing statement which:

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

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

(83) “Transmitting utility” means a person primarily engaged in the business of:

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

(B) Transmitting communications electrically, electromagnetically or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. The following definitions in other articles apply to this article:

“Applicant” Section 5-102.

“Beneficiary” Section 5-102.

“Broker” Section 8-102.

“Certificated security” Section 8-102.

“Check” Section 3-104.
"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 8-102.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.

"Lessor" Section 2A-103.

"Lessor's residual interest" Section 2A-103.

"Letter of credit" Section 5-102.

"Merchant" Section 2-104.

"Negotiable instrument" Section 3-104.

"Nominated person" Section 5-102.

"Note" Section 3-104.

"Proceeds of a letter of credit" Section 5-114.

"Prove" Section 3-103.

"Sale" Section 2-106.
Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

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

(a) Definitions. In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

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

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

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

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

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to
software in which the secured party holds or held a purchase-money security interest.

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

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

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

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

e) Application of payment in non-consumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

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

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

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

In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

The limitation of the rules in subsections (e), (f) and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

§46-9-103a. “Production-money crops”; “production-money obligation”; production-money security interest; burden of establishing.

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

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

(1) In accordance with any reasonable method of application to which the parties agree;
(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

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

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

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

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

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

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

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

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

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

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

(3) The secured party becomes the bank's customer with respect to the deposit account.
Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

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

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

1. A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5) and (6) of this section, unalterable;
2. The authoritative copy identifies the secured party as the assignee of the record or records;
3. The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
6. Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

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

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

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

1. The secured party is the commodity intermediary with which the commodity contract is carried; or
(2) The commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

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

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

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


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

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

(1) Specific listing;
(2) Category;
(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;
(4) Quantity;
(5) Computational or allocational formula or procedure; or

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

(c) **Supergeneric description not sufficient.** A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

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

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

(2) The underlying financial asset or commodity contract.

(e) **When description by type insufficient.** A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

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

SUBPART 2. APPLICABILITY OF ARTICLE.

§46-9-109. **Scope.**

(a) **General scope of article.** Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:

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

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;
(4) A consignment;

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

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

(b) Security interest in secured obligation. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

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

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

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

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

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

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

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

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

(3) An assignment of a claim for wages, salary or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

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

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

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

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

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

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

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

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

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

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

(B) Fixtures in section 9-334;

(C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and
(D) Security agreements covering personal and real property in section 9-604;

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

or

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

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

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

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

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

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

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

PART 2. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT.

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

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

(b) Applicable consumer laws and other law. A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans,
credit sales or other extensions of credit, and to any consumer-protection statute or regulation of this state.

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

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

1. Validate any rate, charge, agreement or practice that violates a rule of law, statute or regulation described in subsection (b) of this section; or
2. Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

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

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

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

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

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

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

1. The agreement satisfies subsection (b) (3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
2. Another agreement is not necessary to make a security interest in the property enforceable.

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

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

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

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

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

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

2. **When after-acquired property clause not effective.** A security interest does not attach under a term constituting an after-acquired property clause to:
(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) **Future advances and other value.** A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

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

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

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

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

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

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

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

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

(b) **Requirements of possession not relaxed.** This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party.

**§46-9-206. Security interest arising in purchase or delivery of financial asset.**
(a) **Security interest when person buys through securities intermediary.** A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

1. The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
2. The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) **Security interest secures obligation to pay for financial asset.** The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) **Security interest in payment against delivery transaction.** A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

1. The security or other financial asset:
   
   (A) In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
   
   (B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

2. The agreement calls for delivery against payment.

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

**SUBPART 2. RIGHTS AND DUTIES.**

§46-9-207. **Rights and duties of secured party having possession or control of collateral.**
(a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

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

1. Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;
2. The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
3. The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
4. The secured party may use or operate the collateral:
   a. For the purpose of preserving the collateral or its value;
   b. As permitted by an order of a court having competent jurisdiction; or
   c. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

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

1. May hold as additional security any proceeds, except money or funds, received from the collateral;
(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

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

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

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

(A) To charge back uncollected collateral; or

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

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

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

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

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

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

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

(A) Pay the debtor the balance on deposit in the deposit account; or
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18  (B) Transfer the balance on deposit into a deposit account in the debtor’s name;

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

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

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

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

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

24  (5) A secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver 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 provided in subsection (c), this section applies if:
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(1) There is no outstanding secured obligation; and
(2) The secured party is not committed to make advances, incur obligations or otherwise give value.

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

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

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

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

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

(2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

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

(4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.
(b) **Duty to respond to requests.** Subject to subsections (c), (d), (e) and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) **Request regarding list of collateral; statement concerning type of collateral.** A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

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

(1) Disclaiming any interest in the collateral; and

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

(e) **Request for accounting or regarding statement of account; no interest in obligation claimed.** A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:
(1) Disclaiming any interest in the obligations; and

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

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five 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 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral:

2 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

3 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

4 (3) Except as otherwise provided in paragraph (4) of this section, while negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

5 (A) Perfection of a security interest in the goods by filing a fixture filing;

6 (B) Perfection of a security interest in timber to be cut; and
22 (C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

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

§46-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an 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.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

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

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the 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 perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

2. (b) Bank’s jurisdiction. The following rules determine a bank’s jurisdiction for purposes of this part:

3. (1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank’s jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank’s jurisdiction.

4. (2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank’s jurisdiction.

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

6. (4) If none of the preceding paragraphs applies, the bank’s jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer’s account is located.

7. (5) If none of the preceding paragraphs applies, the bank’s jurisdiction is the jurisdiction in which the chief 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 provided in subsection (c) of this section, the following rules apply:
(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

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

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

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

(b) Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

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

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the
commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary’s jurisdiction.

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

(5) If none of the preceding paragraphs applies, the commodity intermediary’s jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

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

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

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


(a) Governing law: issuer’s or nominated person’s jurisdiction. Subject to subsection (c) of this section, the local law of the issuer’s jurisdiction or a nominated person’s jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer’s jurisdiction or nominated person’s jurisdiction is a state.

(b) Issuer’s or nominated person’s jurisdiction. For purposes of this part, an issuer’s jurisdiction or nominated person’s jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 5-116.
(c) When section not applicable. This section does not apply to a security interest that is perfected only under section 9-308(d).

§46-9-307. Location of debtor.

(a) "Place of business." In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

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

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

(c) Limitation of applicability of subsection (b). Subsection (b) of this section applies only if a debtor's residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

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

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

(f) Location of registered organization organized under federal law; bank branches and agencies. Except as otherwise provided in subsection (i) of this section, a
registered organization that is organized under the law of
the United States and a branch or agency of a bank that is
not organized under the law of the United States or a state
are located:

(1) In the state that the law of the United States designates a state of location;

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

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

(g) Continuation of location: changed in status of registered organization. A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

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

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

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

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

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

(k) Section applies only to this part. This section applies only for purposes of this part.
SUBPART 2. PERFECTION.

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

(a) **Perfection of security interest.** Except as otherwise provided in this section and section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) **Perfection of agricultural lien.** An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) **Continuous perfection; perfection by different methods.** A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) **Supporting obligation.** Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) **Lien securing right to payment.** Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

(f) **Security entitlement carried in securities account.** Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) **Commodity contract carried in commodity account.** Perfection of a security interest in a commodity account
§46-9-309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

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

2. An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

3. A sale of a payment intangible;

4. A sale of a promissory note;

5. A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

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

7. A security interest of a collecting bank arising under section 4-210;

8. A security interest of an issuer or nominated person arising under section 5-118;

9. A security interest arising in the delivery of a financial asset under section 9-206(c);

10. A security interest in investment property created by a broker or securities intermediary;

11. A security interest in a commodity contract or a commodity account created by a commodity intermediary;
(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

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

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

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

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

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

2. That is perfected under section 9-309 when it attaches;

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

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

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

6. In collateral in the secured party's possession under section 9-313;

7. In a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

8. In deposit accounts, electronic chattel paper, investment property or letter-of-credit rights which is perfected by control under section 9-314;
(9) In proceeds which is perfected under section 9-315; or
(10) That is perfected under section 9-316.

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

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

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

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

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

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

(b) Compliance with other law. Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as other-
wise provided in subsection (d) of this section and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

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

(d) **Inapplicability to certain inventory.** During any period in which collateral subject to a statute specified in subsection (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that 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 chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

2. **(b) Control or possession of certain collateral.** Except as otherwise provided in section 9-315(c) and (d) for proceeds:

3. **(1) A security interest in a deposit account may be perfected only by control under section 9-314; and**
(2) Except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

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

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

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

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

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

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

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

(3) Filing as to the goods.

(e) **Temporary perfection: new value.** A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection: goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
(1) Ultimate sale or exchange; or

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

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

(1) Ultimate sale or exchange; or

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

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

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

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

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

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the
collateral from the debtor in the ordinary course of the
debtor's business, when:

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

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

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

(e) **Time of perfection by delivery; continuation of
perfection.** A security interest in a certificated security in
registered form is perfected by delivery when delivery of
the certificated security occurs under section 8-301 and
remains perfected by delivery until the debtor obtains
possession of the security certificate.

(f) **Acknowledgment not required.** A person in posses-
sion of collateral is not required to acknowledge that it
holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or
confirmation.** If a person acknowledges that it holds
possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c)
of this section or section 8-301(a), even if the acknowledg-
ment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than
this article otherwise provides, the person does not owe
any duty to the secured party and is not required to
confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.**
A secured party having possession of collateral does not
relinquish possession by delivering the collateral to a
(1) Effect of delivery under subsection (h); no duties or confirmation. To hold possession of the collateral for the secured party’s benefit; or
(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

§46-9-314. Perfection by control.

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights or electronic chattel paper may be perfected by control of the collateral under section 9-104, 9-105, 9-106 or 9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper or letter-of-credit rights is perfected by control under section 9-104, 9-105 or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:
(1) The secured party does not have control; and
(2) One of the following occurs:
(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§46-9-315. Secured party's rights on disposition of collateral and in proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this article and in section 2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by section 9-3-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. A perfected security 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 collateral;
30 (B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
31 (C) The proceeds are not acquired with cash proceeds;
32 (2) The proceeds are identifiable cash proceeds; or
33 (3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(1) When the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

§46-9-316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law. A security interest perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or
(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) **Security interest perfected or unperfected under law of new jurisdiction.** If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in said subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) **Possessory security interest in collateral moved to new jurisdiction.** A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) **Goods covered by certificate of title from this state.** Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) **When subsection (d) security interest becomes unperfected against purchasers.** A security interest described in subsection (d) of this section becomes
unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary or commodity intermediary. A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time: (A) The security interest or agricultural lien is perfected; or (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles or investment property other than a certificate takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money
§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.

(a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

§46-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights. Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

(a) Buyer in ordinary course of business. Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(a) "Licensee in ordinary course of business." In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

§46-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) **Time of perfection: proceeds and supporting obligations.** For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) **Special priority rules: proceeds and supporting obligations.** Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under section 9-327, 9-328, 9-329, 9-330 or 9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral or an account relating to the collateral.

(d) **First-to-file priority rule for certain collateral.** Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property
or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) **Applicability of subsection (d).** Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter-of-credit rights.

(f) **Limitations on subsections (a) through (e).** Subsections (a) through (e), inclusive, of this section are subject to:

1. Subsection (g) of this section and the other provisions of this part;
2. Section 4-210 with respect to a security interest of a collecting bank;
3. Section 5-118 with respect to a security interest of an issuer or nominated person; and
4. Section 9-110 with respect to a security interest arising under article two or two-a.

(g) **Priority under agricultural lien statute.** A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

§46-9-323. **Future advances.**

(a) **When priority based on time of advance.** Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under section 9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

1. Is made while the security interest is perfected only:
   (A) Under section 9-309 when it attaches; or
   (B) Temporarily under section 9-312(e), (f) or (g); and
(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 9-309 or 9-312(e), (f) or (g).

(b) **Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) **Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.

(d) **Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) **Advances made pursuant to commitment: priority of buyer of goods.** Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:
(1) The time the secured party acquires knowledge of the lease; or
(2) Forty-five days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.


(a) General rule: purchase-money priority. Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;
(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) **Holders of conflicting inventory security interests to be notified.** Subsection (b)(2) through (4), inclusive, of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(d) **Livestock purchase-money priority.** Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money
security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. Subsection (d)(2) through (4), inclusive, of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 9-322(a) applies to the qualifying security interests.

(a) Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in section 9-327, also has priority in their identifiable proceeds.

(b) A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than ten or more than thirty days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this section, the security interests rank according to priority in time of filing under section 9-322(a).

(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under section 9-322(a).
(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

§46-9-325. Priority of security interests in transferred collateral.

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 9-322(a) or 9-324; or

(2) Arose solely under section 2-711(3) or 2A-508(5).

§46-9-326. Priority of security interests created by new debtor.

(a) Subordination of security interest created by new debtor. Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 9-508.

(b) Priority under other provisions; multiple original debtors. The other provisions of this part determine the priority among conflicting security interests in the same
collateral perfected by filed financing statements that are
effective solely under section 9-508. However, if the
security agreements to which a new debtor became bound
as debtor were not entered into by the same original
debtor, the conflicting security interests rank according to
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
security interests in the same deposit account:

2. (1) A security interest held by a secured party having
control of the deposit account under section 9-104 has
priority over a conflicting security interest held by a
secured party that does not have control.

3. (2) Except as otherwise provided in paragraphs (3) and
(4) of this section, security interests perfected by control
under section 9-314 rank according to priority in time of
obtaining control.

4. (3) Except as otherwise provided in paragraph (4) of this
section, a security interest held by the bank with which the
deposit account is maintained has priority over a conflicting
security interest held by another secured party.

5. (4) A security interest perfected by control under section
9-104(a)(3) has priority over a security interest held by the
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
security interests in the same investment property:

2. (1) A security interest held by a secured party having
control of investment property under section 9-106 has
priority over a security interest held by a secured party
that does not have control of the investment property.

3. (2) Except as otherwise provided in paragraphs (3) and
(4) of this section, conflicting security interests held by
secured parties each of which has control under section
9-106 rank according to priority in time of:
(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under section 8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under section 8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 9-313(a) and not by control under section 9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary or commodity intermediary which
are perfected without control under section 9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 9-322 and 9-323.


1 The following rules govern priority among conflicting security interests in the same letter-of-credit right:

3 (1) A security interest held by a secured party having control of the letter-of-credit right under section 9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

8 (2) Security interests perfected by control under section 9-314 rank according to priority in time of obtaining control.

§46-9-330. Priority of purchaser of chattel paper or instrument.

1 (a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

6 (1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9-105; and

10 (2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel
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paper under section 9-105 in good faith, in the ordinary

course of the purchaser's business, and without know

ledge that the purchase violates the rights of the secured

party.

(c) Chattel paper purchaser's priority in proceeds.

Except as otherwise provided in section 9-327, a purchaser

having priority in chattel paper under subsection (a) or (b)
of this section also has priority in proceeds of the chattel

paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by

the chattel paper or cash proceeds of the specific goods,
even if the purchaser's security interest in the proceeds is
unperfected.

(d) Instrument purchaser's priority.

Except as otherwise provided in section 9-331(a), a purchaser of an instrument

has priority over a security interest in the instrument

perfected by a method other than possession if the pur-

chaser gives value and takes possession of the instrument

in good faith and without knowledge that the purchase

violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new

value. For purposes of subsections (a) and (b) of this

section, the holder of a purchase-money security interest

in inventory gives new value for chattel paper constituting

proceeds of the inventory.

(f) Indication of assignment gives knowledge.

For purposes of subsections (b) and (d) of this section, if

chattel paper or an instrument indicates that it has been

assigned to an identified secured party other than the

purchaser, a purchaser of the chattel paper or instrument

has knowledge that the purchase violates the rights of the

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.
Rights under articles three, seven and eight not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles three, seven and eight.

Protection under article eight. This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under article eight.

Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

§46-9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

§46-9-333. Priority of certain liens arising by operation of law.

(a) "Possessory lien." In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and
(3) Whose effectiveness depends on the person's possession of the goods.

(b) **Priority of possessory lien.** A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

§46-9-334. **Priority of security interests in fixtures and crops.**

(a) **Security interest in fixtures under this article.** A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) **Security interest in fixtures under real-property law.** This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) **General rule: subordination of security interest in fixtures.** In cases not governed by subsections (d) through (h), inclusive, of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests 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 remove.** A security interest in fixtures, whether or not
57 perfected, has priority over a conflicting interest of an
58 encumbrancer or owner of the real property if:
59 (1) The encumbrancer or owner has, in an authenticated
60 record, consented to the security interest or disclaimed an
61 interest in the goods as fixtures; or
§46-9-335. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
(c) **Priority of security interest.** Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) **Compliance with certificate-of-title statute.** A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 9-311(b).

(e) **Removal of accession after default.** After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) **Reimbursement following removal.** A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

§46-9-336. **Commingled goods.**

(a) "**Commingled goods.**" In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) **No security interest in commingled goods as such.** A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.


If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 9-311(b), after issuance of the certificate and without the conflicting secured party’s knowledge of the security interest.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

§46-9-339. Priority subject to subordination.

This article does not preclude subordination by agreement 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.

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c) of
this section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 9-104(a)(3), if the set-off is based on a claim against the debtor.

§46-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in section 9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

1. The creation, attachment or perfection of a security interest in the deposit account;
2. The bank's knowledge of the security interest; or
3. The bank's receipt of instructions from the secured party.

§46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the kind described in section 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

PART 4. RIGHTS OF THIRD PARTIES.


(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) of this section and sections 9-406, 9-407, 9-408 and 9-409, whether a debtor's
rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) **Agreement does not prevent transfer.** An agreement between the debtor and secured party which prohibits a transfer of the debtor’s rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

§46-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor’s acts or omissions.

§46-9-403. Agreement not to assert defenses against assignee.

(a) “Value.” In this section, “value” has the meaning provided in section 3-303(a).

(b) **Agreement not to assert claim or defense.** Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3-305(a).

(c) **When subsection (b) not applicable.** Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3-305(b).
(d) **Omission of required statement in consumer transaction.** In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee and the record does not include such a statement:

1. The record has the same effect as if the record included such a statement; and
2. The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) **Other law not displaced.** Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

§46-9-404. **Rights acquired by assignee; claims and defenses against assignee.**

(a) **Assignee's rights subject to terms, claims and defenses; exceptions.** Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), inclusive, of this section, the rights of an assignee are subject to:

1. All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
2. Any other defense or claim of the account debtor against the assignor which accrues before the account
debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.


(a) Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor.

This subsection is subject to subsections (b) through (d), inclusive, of this section.
(b) **Applicability of subsection (a).** Subsection (a) applies to the extent that:

1. The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
2. The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9-406(a).

(c) **Rule for individual under other law.** This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) **Inapplicability to health-care-insurance receivable.** This section does not apply to an assignment of a health-care-insurance receivable.

§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

1. If it does not reasonably identify the rights assigned;
(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (e) of this section and sections 2A-303 and 9-407, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of 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
existing or future statute, rule or regulation of this state
unless the provision is contained in a statute of this state,
refers expressly to this section and states that the provi-
sion prevails over this section.

§46-9-407. Restrictions on creation or enforcement of security
interest in leasehold interest or in lessor’s residual
interest.

(a) Term restricting assignment generally ineffective.
Except as otherwise provided in subsection (b) of this
section, a term in a lease agreement is ineffective to the
extent that it:

1. Prohibits, restricts or requires the consent of a party
to the lease to the assignment or transfer of, or the cre-
ation, attachment, perfection, or enforcement of a security
interest in, an interest of a party under the lease contract
or in the lessor’s residual interest in the goods; or

2. Provides that the assignment or transfer or the
creation, attachment, perfection, or enforcement of the
security interest may give rise to a default, breach, right of
recoupment, claim, defense, termination, right of termina-
tion or remedy under the lease.

(b) Effectiveness of certain terms. Except as otherwise
provided in section 2A-303(7), a term described in subsec-
tion (a)(2) is effective to the extent that there is:

1. A transfer by the lessee of the lessee’s right of posses-
sion or use of the goods in violation of the term; or

2. A delegation of a material performance of either
party to the lease contract in violation of the term.

(c) Security interest not material impairment. The
creation, attachment, perfection or enforcement of a
security interest in the lessor's interest under the lease
contract or the lessor's residual interest in the goods is not
a transfer that materially impairs the lessee's prospect of
obtaining return performance or materially changes the
duty of or materially increases the burden or risk imposed
on the lessee within the purview of section 2A-303(4)
unless, and then only to the extent that, enforcement
§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-
insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;
(5) Does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible.

(e) **Section prevails over specified inconsistent law.** This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

§46-9-409. **Restrictions on assignment of letter-of-credit rights ineffective.**

(a) **Term or law restricting assignment generally ineffective.** A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

(1) Would impair the creation, attachment or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the letter-of-credit right.

(b) **Limitation on ineffectiveness under subsection (a).** To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the
letter of credit, the creation, attachment, or perfection of
a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer,
nominated person or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant,
issuer, nominated person or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated
person or transferee beneficiary to recognize the security
interest, pay or render performance to the secured party,
or accept payment or other performance from the secured
party.

PART 5. FILING.
SUBPART I. FILING OFFICE; CONTENTS AND
EFFECTIVENESS OF FINANCING STATEMENT.


(a) Filing offices. Except as otherwise provided in
subsection (b) of this section, if the local law of this state
governs perfection of a security interest or agricultural
lien, the office in which to file a financing statement to
perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a
record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to
be cut; or

(B) The financing statement is filed as a fixture filing
and the collateral is goods that are or are to become
fixtures; or

(2) The office of the secretary of state, in all other cases,
including a case in which the collateral is goods that are or
are to become fixtures and the financing statement is not
filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in
which to file a financing statement to perfect a security
interest in collateral, including fixtures, of a transmitting
utility is the office of secretary of state. The financing
statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

§46-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Sufficiency of financing statement. Subject to subsection (b), a financing statement is sufficient only if it:

1. Provides the name of the debtor;
2. Provides the name of the secured party or a representative of the secured party; and
3. Indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. Except as otherwise provided in section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

1. Indicate that it covers this type of collateral;
2. Indicate that it is to be filed for record in the real property records;
3. Provide a description of the real property to which the collateral is related sufficient to give constructive notice of mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
4. If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures relate to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(a) Filing before security agreement or attachment. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

§46-9-503. Name of debtor and secured party.

(a) Sufficiency of debtor's name. A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(A) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(B) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:
(A) If the debtor has a name, only if it provides the
individual or organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides
the names of the partners, members, associates or other
persons comprising the debtor.

(b) Additional debtor-related information. A financing
statement that provides the name of the debtor in accor-
dance with subsection (a) of this section is not rendered
ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(4)(B) of this
section, names of partners, members, associates or other
persons comprising the debtor.

(c) Debtor's trade name insufficient. A financing
statement that provides only the debtor's trade name does
not sufficiently provide the name of the debtor.

(d) Representative capacity. Failure to indicate the
representative capacity of a secured party or representa-
tive of a secured party does not affect the sufficiency of a
financing statement.

(e) Multiple debtors and secured parties. A financing
statement may provide the name of more than one debtor
and the name of more than one secured party.

§46-9-504. Indication of collateral.

A financing statement sufficiently indicates the collat-
eral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to section
9-108; or

(2) An indication that the financing statement covers all
assets or all personal property.

§46-9-505. Filing and compliance with other statutes and
treaties for consignments, leases, other bailments
and other transactions.
(a) Use of terms other than “debtor” and “secured party.” A consignor, lessor, or other bailor of goods, a licensor or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 9-311(a), using the terms “consignor”, “consignee”, “lessor”, “lessee”, “bailor”, “bailee”, “licensor”, “licensee”, “owner”, “registered owner”, “buyer”, “seller” or words of similar import, instead of the terms “secured party” and “debtor”.

(b) Effect of financing statement under subsection (a). This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under section 9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner or buyer which attaches to the collateral is perfected by the filing or compliance.

§46-9-506. Effect of errors or omissions.

(a) Minor errors and omissions. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.
(d) "Debtor's correct name." For purposes of section 9-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor.

§46-9-507. Effect of certain events on effectiveness of financing statement.

(a) Disposition. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. Except as otherwise provided in subsection (c) of this section and section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9-506.

(c) Change in debtor's name. If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

§46-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.
(b) **Financing statement becoming seriously misleading.** If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under section 9-506:

1. The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9-203(d); and
2. The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) **When section not applicable.** This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 9-507(a).

§46-9-509. **Persons entitled to file a record.**

(a) **Person entitled to file record.** A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

1. The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or
2. The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) **Security agreement as authorization.** By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

1. The collateral described in the security agreement; and

(2) Property that becomes collateral under section 9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 9-315(a)(2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9-513(a) or (c), the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

§46-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) Authorization by one secured party of record. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.
§46-9-511. Secured party of record.

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 9-514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

§46-9-512. Amendment of financing statement.

(a) Amendment of information in financing statement. Subject to section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 9-501(a)(1), provides the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b).

(b) Period of effectiveness not affected. Except as otherwise provided in section 9-515, the filing of an
amendment does not extend the period of effectiveness of the financing statement.

(c) **Effectiveness of amendment adding collateral.** A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) **Effectiveness of amendment adding debtor.** A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) **Certain amendments ineffective.** An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

§46-9-513. **Termination statement.**

(a) **Consumer goods.** A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) **Time for compliance with subsection (a).** To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and
no commitment to make an advance, incur an obligation
or otherwise give value; or
(2) If earlier, within twenty days after the secured party
receives an authenticated demand from a debtor.

(c) Other collateral. In cases not governed by subsection
(a), within twenty days after a secured party receives an
authenticated demand from a debtor, the secured party
shall cause the secured party of record for a financing
statement to send to the debtor a termination statement
for the financing statement or file the termination state-
ment in the filing office if:

(1) Except in the case of a financing statement covering
accounts or chattel paper that has been sold or goods that
are the subject of a consignment, there is no obligation
secured by the collateral covered by the financing state-
ment and no commitment to make an advance, incur an
obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel
paper that has been sold but as to which the account
debtor or other person obligated has discharged its
obligation;

(3) The financing statement covers goods that were the
subject of a consignment to the debtor but are not in the
debtor's possession; or

(4) The debtor did not authorize the filing of the initial
financing statement.

(d) Effect of filing termination statement. Except as
otherwise provided in section 9-510, upon the filing of a
termination statement with the filing office, the financing
statement to which the termination statement relates
ceases to be effective. Except as otherwise provided in
section 9-510, for purposes of section 9-519 (g), 9-522 (a),
and 9-523 (c), the filing with the filing office of a termina-
tion statement relating to a financing statement that
indicates that the debtor is a transmitting utility also
causes the effectiveness of the financing statement to
lapse.
§46-9-514. Assignment of powers of secured party of record.

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code.

§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Five-year effectiveness. Except as otherwise provided in subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of
forty years after the date of filing if it indicates that it is
filed in connection with a public-finance transaction or
manufactured-home transaction.

(c) **Lapse and continuation of financing statement.** The
effectiveness of a filed financing statement lapses on the
expiration of the period of its effectiveness unless before
the lapse a continuation statement is filed pursuant to
subsection (d) of this section. Upon lapse, a financing
statement ceases to be effective and any security interest
or agricultural lien that was perfected by the financing
statement becomes unperfected, unless the security
interest is perfected otherwise. If the security interest or
agricultural lien becomes unperfected upon lapse, it is
deemed never to have been perfected as against a pur-
chaser of the collateral for value.

(d) **When continuation statement may be filed.** A
continuation statement may be filed only within six
months before the expiration of the five-year period
specified in subsection (a) of this section or the thirty-year
period specified in subsection (b) of this section, whichever
is applicable.

(e) **Effect of filing continuation statement.** Except as
otherwise provided in section 9-510, upon timely filing of
a continuation statement, the effectiveness of the initial
financing statement continues for a period of five years
commencing on the day on which the financing statement
would have become ineffective in the absence of the filing.
Upon the expiration of the five-year period, the financing
statement lapses in the same manner as provided in
subsection (c) of this section, unless, before the lapse,
another continuation statement is filed pursuant to
subsection (d) of this section. Succeeding continuation
statements may be filed in the same manner to continue
the effectiveness of the initial financing statement.

(f) **Transmitting utility financing statement.** If a debtor
is a transmitting utility and a filed financing statement so
indicates, the financing statement is effective until a
termination statement is filed.
(g) **Record of mortgage as financing statement.** A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9-512(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

§46-9-516. **What constitutes filing; effectiveness of filing.**

(a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:

1. The record is not communicated by a method or medium of communication authorized by the filing office;
2. An amount equal to or greater than the applicable filing fee is not tendered;
3. The filing office is unable to index the record because:
   - In the case of an initial financing statement, the record does not provide a name for the debtor;
   - In the case of an amendment or correction statement, the record:
     - Does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or
     - Identifies an initial financing statement whose effectiveness has lapsed under section 9-515;
   - In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) **Rules applicable to subsection (b).** For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it
relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§46-9-517. Effect of indexing errors.

1 The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

§46 9 518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement. A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. A correction statement must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the correction statement relates to a record filed or recorded in a filing office described in section 9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b);

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any
inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

(c) **Record not affected by correction statement.** The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

§46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.

(a) **Filing office duties.** For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d) and (e) of this section.

(b) **File number.** A file number assigned after the first day of January, two thousand two, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) **Indexing: general.** Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all
(d) **Indexing: real-property-related financing statement.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

1. Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

2. To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) **Indexing: real-property-related assignment.** If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9-514(a) or an amendment filed under section 9-514(b):

1. Under the name of the assignor as grantor; and

2. To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee.

(f) **Retrieval and association capability.** The filing office shall maintain a capability:

1. To retrieve a record by the name of the debtor and:

   (A) If the filing office is described in section 9-501(a)(1), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or
If the filing office is described in section 9-501(a)(2),
by the file number assigned to the initial financing state-
ment to which the record relates; and

(2) To associate and retrieve with one another an initial
financing statement and each filed record relating to the
initial financing statement.

(g) Removal of debtor's name. The filing office may not
remove a debtor's name from the index until one year after
the effectiveness of a financing statement naming the
debtor lapses under section 9-515 with respect to all
secured parties of record.

(h) Timeliness of filing office performance. The filing
office shall perform the acts required by subsections (a)
through (e), inclusive, of this section at the time and in the
manner prescribed by filing-office rule, but not later than
two business days after the filing office receives the record
in question.

§46-9-520. Acceptance and refusal to accept record.

(a) Mandatory refusal to accept record. A filing office
shall refuse to accept a record for filing for a reason set
forth in section 9-516(b) and may refuse to accept a record
for filing only for a reason set forth in section 9-516(b).

(b) Communication concerning refusal. If a filing office
refuses to accept a record for filing, it shall communicate
to the person that presented the record the fact of and
reason for the refusal and the date and time the record
would have been filed had the filing office accepted it.
The communication must be made at the time and in the
manner prescribed by filing-office rule but, in the case of
a filing office described in section 9-501(a)(2), in no event
more than two business days after the filing office receives
the record.

(c) When filed financing statement effective. A filed
financing statement satisfying section 9-502(a) and (b) is
effective, even if the filing office is required to refuse to
accept it for filing under subsection (a) of this section.
However, section 9-338 applies to a filed financing state-
ment providing information described in section 9-
21 516(b)(5) which is incorrect at the time the financing statement is filed.

23 (d) **Separate application to multiple debtors.** If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

§46-9-521. **Uniform form of written financing statement and amendment.**

1 (a) **Initial financing statement form.** A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and 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 FILE (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 legal debtor name (1 to 18) - do not abbreviate or combine names

<table>
<thead>
<tr>
<th>1a. ORGANIZATION NAME</th>
<th>1b. INDIVIDUAL'S LAST NAME</th>
<th>1c. MAILING ADDRESS</th>
<th>1d. CITY</th>
<th>1e. STATE POSTAL CODE</th>
<th>1f. COUNTRY</th>
</tr>
</thead>
</table>

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME: Insert only legal debtor name (1 to 18) - do not abbreviate or combine names

<table>
<thead>
<tr>
<th>2a. ORGANIZATION NAME</th>
<th>2b. INDIVIDUAL'S LAST NAME</th>
<th>2c. MAILING ADDRESS</th>
<th>2d. CITY</th>
<th>2e. STATE POSTAL CODE</th>
<th>2f. COUNTRY</th>
</tr>
</thead>
</table>

3. SECURED PARTY'S NAME (or NAME OF PARTY TO WHICH DEBTOR IS OBLIGATED): Insert only legal secured party name (1 to 24)

<table>
<thead>
<tr>
<th>3a. ORGANIZATION NAME</th>
<th>3b. INDIVIDUAL'S LAST NAME</th>
<th>3c. MAILING ADDRESS</th>
<th>3d. CITY</th>
<th>3e. STATE POSTAL CODE</th>
<th>3f. COUNTRY</th>
</tr>
</thead>
</table>

4. The FINANCING STATEMENT covers the following collateral:

<table>
<thead>
<tr>
<th>4. DESCRIPTION OF COLLATERAL</th>
</tr>
</thead>
</table>

5. ALTERNATIVE DESIGNATION OF APPLICABLE BUSINESS ENTITY:

<table>
<thead>
<tr>
<th>5a. LIMITED LIABILITY COMPANY</th>
<th>5b. CORPORATION</th>
<th>5c. CO-OP</th>
<th>5d. PARTNERSHIP</th>
</tr>
</thead>
</table>

6. STATED VALUE REPORTED BY DETAILED APPRAISER:

<table>
<thead>
<tr>
<th>6a. APPRAISER</th>
<th>6b. VALUE</th>
</tr>
</thead>
</table>

7. CURRENT VALUE REPORTED BY DEBTOR:

<table>
<thead>
<tr>
<th>7a. AMOUNT</th>
<th>7b. VALUE</th>
</tr>
</thead>
</table>

8. OPTIONAL FILER REFERENCE DATA

<table>
<thead>
<tr>
<th>8. FILER REFERENCE NUMBER</th>
</tr>
</thead>
</table>

NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/2019)
UCC FINANCING STATEMENT ADDENDUM

INSTRUCTIONS (Printed and Signed Carefully)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.</td>
<td>Name of first debtor (as of 11/10 or related financing statement)</td>
</tr>
<tr>
<td>15.</td>
<td>Name of second debtor</td>
</tr>
</tbody>
</table>

ADDITIONAL ORBITS, EXACT FUL NAME, AND DATE OF ISSUE, DO NOT ALTER OR SUBSTITUTE NAME

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td>Original name</td>
</tr>
<tr>
<td></td>
<td>Date of issue</td>
</tr>
</tbody>
</table>

ADDITIONAL SECURED PARTIES

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.</td>
<td>Name of additional secured party</td>
</tr>
</tbody>
</table>

ADDITIONAL ASSIGNEES

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>Name of additional assignee</td>
</tr>
</tbody>
</table>

ADDITIONAL INFORMATION

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.</td>
<td>Additional information</td>
</tr>
</tbody>
</table>

ADDITIONAL SECURITY INTERESTS

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.</td>
<td>Description of additional security interest</td>
</tr>
</tbody>
</table>

ADDITIONAL SECURITY INTERESTS

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.</td>
<td>Description of additional security interest</td>
</tr>
</tbody>
</table>

ADDITIONAL SECURITY INTERESTS

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>15.</td>
<td>Description of additional security interest</td>
</tr>
</tbody>
</table>

ADDITIONAL SECURITY INTERESTS

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Description of additional security interest</td>
</tr>
</tbody>
</table>

NAME AND ADDRESS OF TRADING ENTITY (as defined in the UCC) (if applicable)

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.</td>
<td>Name and address of trading entity</td>
</tr>
</tbody>
</table>

FORM CUSC (04) (REV 01/08/08)
(b) Amendment form. A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-516(b):

(a) Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

1. If the record was filed or recorded in the filing office described in section 9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

2. If the record was filed in the filing office described in section 9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

§46-9-523. Information from filing office; sale or license of records.

(a) Acknowledgment of filing written record. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:
(1) Note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) **Acknowledgment of filing other record.** If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) **Communication of requested information.** The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor;

(B) Has not lapsed under section 9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) **Medium for communicating information.** In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium.
However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (d), inclusive, of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) Public availability of records. At least weekly, the secretary of state shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

§46-9-524. Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

§46-9-525. Fees.

(a) Initial financing statement or other record: general rule. Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the record is communicated in writing and consists of one or two pages;

(2) Ten dollars if the record is communicated in writing and consists of more than two pages; and
(3) Ten dollars if the record is communicated by another medium authorized by filing-office rule.

(b) Initial financing statement: public-finance and manufactured housing transactions. Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) Ten dollars if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Ten dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Number of names. The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) Response to information request. The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) Five dollars if the request is communicated in writing;

(2) Five dollars if the request is communicated by another medium authorized by filing-office rule; and

(3) Fifty cents per page for each active lien.

(e) Record of mortgage. This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) Deposit of funds. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state in a
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separate fund in the state treasury and shall be expended
solely for the purposes of this article, unless otherwise
provided by appropriation or other action of the Legisla-
ture.


(a) Adoption of filing-office rules. The secretary of state
shall propose rules for legislative approval consistent with
this article and in accordance with the provisions of article
three, chapter twenty-nine-a of this code.

(1) Consistent with this article; and
(2) Promulgated pursuant to the provisions of chapter
twenty-nine-a of this code.

(b) Harmonization of rules. To keep the filing-office
rules and practices of the filing office in harmony with the
rules and practices of filing offices in other jurisdictions
that enact substantially this part, and to keep the technol-
yogy used by the filing office compatible with the technol-
yogy used by filing offices in other jurisdictions that enact
substantially this part, the secretary of state, so far as is
consistent with the purposes, policies and provisions of
this article, in proposing filing-office rules for legislative
approval, shall:

(1) Consult with filing offices in other jurisdictions that
enact substantially this part; and
(2) Consult the most recent version of the model rules
promulgated by the international association of corporate
administrators or any successor organization; and
(3) Take into consideration the rules and practices of,
and the technology used by, filing offices in other jurisdic-
tions that enact substantially this part.

§46-9-527. Duty to report.

The secretary of state shall report (on or before
______ ) to the joint committee on government and
finance the first day of July each year on the operation of
the filing office. The report must contain a statement of
the extent to which:
The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators, or any successor organization, and the reasons for these 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.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under section 9-104, 9-105, 9-106 or 9-107 has the rights and duties provided in section 9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) of this section and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.
(e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

1. The date of perfection of the security interest or agricultural lien in the collateral;
2. The date of filing a financing statement covering the collateral; or
3. Any date specified in a statute under which the agricultural lien was created.

(f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) **Consignor or buyer of certain rights to payment.** Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

§46-9-602. **Waiver and variance of rights and duties.**

Except as otherwise provided in section 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
2. Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
3. Section 9-607(c), which deals with collection and enforcement of collateral;
(4) Sections 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 9-610(b), 9-611, 9-613 and 9-614, which deal with disposition of collateral;

(8) Section 9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 9-620, 9-621 and 9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 9-623, which deals with redemption of collateral;

(12) Section 9-624, which deals with permissible waivers; and

(13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this article.

§146-9-603. Agreement on standards concerning rights and duties.

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9-602 if the standards are not manifestly unreasonable.
§46-9-604. Procedure if security agreement covers real property or fixtures.

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

1. (1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or
2. (2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

1. (1) Under this part; or
2. (2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance 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 as secured party:
2 (1) To a person that is a debtor or obligor, unless the secured party knows:
3 (A) That the person is a debtor or obligor;
4 (B) The identity of the person; and
5 (C) How to communicate with the person; or
6 (2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
7 (A) That the person is a debtor; and
8 (B) The identity of the person.


1 For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

§46-9-607. Collection and enforcement by secured party.

1 (a) Collection and enforcement generally. If so agreed, and in any event after default, a secured party:
2 (1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
3 (2) May take any proceeds to which the secured party is entitled under section 9-315;
4 (3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obliga-
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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 il1...1:
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
collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party.

§46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C) of this subsection.
(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

§46-9-609. Secured party's right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 9-610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

§46-9-610. Disposition of collateral after default.

(a) Disposition after default. After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.
(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates “There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition” or uses words of similar import.

§46-9-611. Notification before disposition of collateral.

(a) “Notification date.” In this section, “notification date” means the earlier of the date on which:

3 (1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right to notification.

7 (b) Notification of disposition required. Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under section 9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

13 (c) Persons to be notified. To comply with subsection (b), the secured party shall send an authenticated notification 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 received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

22 (B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

26 (i) Identified the collateral;

27 (ii) Was indexed under the debtor's name as of that date; and

29 (iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

32 (C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9-311(a).
(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) of this section if:

1. Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B) of this section; and

2. Before the notification date, the secured party:
   1. Did not receive a response to the request for information; or
   2. Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§46-9-612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 9-614(3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

To: [Name of debtor, obligor, or other person to which the notification is sent]

1 In a consumer-goods transaction, the following rules apply:

2 (1) A notification of disposition must provide the following information:

3 (A) The information specified in section 9-613(1);

4 (B) A description of any liability for a deficiency of the person to which the notification is sent;
(C) A telephone number from which the amount that
must be paid to the secured party to redeem the collateral
under section 9-623 is available; and

(D) A telephone number or mailing address from which
additional information concerning the disposition and the
obligation secured is available.

(2) A particular phrasing of the notification is not
required.

(3) The following form of notification, when completed,
provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a
debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you
broke promises in our agreement.

For a public disposition:

We will sell [describe collateral] at public sale. A
sale could include a lease or license. The sale will be held
as follows:

Date: ____________________________

Time: ____________________________

Place: ____________________________

You may attend the sale and bring bidders if you want.

For a private disposition:

We will sell [describe collateral] at private sale
sometime after [date]. A sale could include a lease or
license. The money that we get from the sale (after paying
our costs) will reduce the amount you owe. If we get
less money than you owe, you [will or will not, as applicable] still owe us the difference. If we
get more money than you owe, you will get
the extra money, unless we must pay it to someone
else.

You can get the property back at any time before we sell
it by paying us the full amount you owe (not just the past
due payments), including our expenses. To learn the exact
amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have
figured the amount that you owe us, you may call us at
[telephone number] or write us at [secured party’s
address] and request a written explanation.

If you need more information about the sale call us at
[telephone number] or write us at [secured party’s
address].

We are sending this notice to the following other people
who have an interest in [describe collateral] or who
owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of paragraph (3) of this
section is sufficient, even if additional information appears
at the end of the form.

(5) A notification in the form of paragraph (3) of this
section is sufficient, even if it includes errors in informa-
tion not required by paragraph (1) of this section, unless
the error is misleading with respect to rights arising under
this article.

(6) If a notification under this section is not in the form
of paragraph (3) of this section, law other than this article
determines the effect of including information not required
by paragraph (1) of this section.

§46-9-615. Application of proceeds of disposition; liability for
deficiency and right to surplus.
(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under section 9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

   (A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

   (B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application
(d) **Surplus or deficiency if obligation secured.** If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) **Calculation of surplus or deficiency in disposition to person related to secured party.** The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) **Cash proceeds received by junior secured party.** A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt
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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
(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral
which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) **Substantial compliance.** A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (1), subsection (b) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

§46-9-617. **Rights of transferee of collateral.**

(a) **Effects of disposition.** A secured party's disposition of collateral after default:

1. Transfers to a transferee for value all of the debtor's rights in the collateral;
2. Discharges the security interest under which the disposition is made; and
3. Discharges any subordinate security interest or other subordinate lien.

(b) **Rights of good-faith transferee.** A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer or subrogation. An assignment, transfer or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under section 9-610; and

(2) Relieves the secured party of further duties under this article.

§46-9-619. Transfer of record or legal title.

(a) "Transfer statement." In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;
§46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;
(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under section 9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or 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.
§46-9-621. Notification of proposal to accept collateral.

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in section 9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

§46-9-622. Effect of acceptance of collateral.
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(a) **Effect of acceptance.** A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

1. Discharges the obligation to the extent consented to by the debtor;
2. Transfers to the secured party all of a debtor's rights in the collateral;
3. Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
4. Terminates any other subordinate interest.

(b) **Discharge of subordinate interest notwithstanding noncompliance.** A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this article.

§46-9-623. Right to redeem collateral.

(a) **Persons that may redeem.** A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) **Requirements for redemption.** To redeem collateral, a person shall tender:

1. Fulfillment of all obligations secured by the collateral; and
2. The reasonable expenses and attorney's fees described in section 9-615(a)(1).

(c) **When redemption may occur.** A redemption may occur at any time before a secured party:

1. Has collected collateral under section 9-607;
2. Has disposed of collateral or entered into a contract for its disposition under section 9-610; or
3. Has accepted collateral in full or partial satisfaction of the obligation it secures under section 9-622.

§46-9-624. Waiver.
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(a) **Waiver of disposition notification.** A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9-611 only by an agreement to that effect entered into and authenticated after default.

(b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition of collateral under section 9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) **Waiver of redemption right.** Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9-623 only by an agreement to that effect entered into and authenticated after default.

**SUBPART 2. NONCOMPLIANCE WITH ARTICLE.**

§46-9-625. Remedies for secured party’s failure to comply with article.

(a) **Judicial orders concerning noncompliance.** If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) **Damages for noncompliance.** Subject to subsections (c), (d) and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor’s inability to obtain, or increased costs of, alternative financing.

(c) **Persons entitled to recover damages; statutory damages in consumer-goods transaction.** Except as otherwise provided in section 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and
(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. A debtor whose deficiency is eliminated under section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(e) Statutory damages: noncompliance with specified provisions. In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover five hundred dollars in each case from a person that:

(1) Fails to comply with section 9-208;

(2) Fails to comply with section 9-209;

(3) Files a record that the person is not entitled to file under section 9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by section 9-513(a) or (c);

(5) Fails to comply with section 9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance, or

(6) Fails to comply with section 9-616(b)(2).

(f) Statutory damages: noncompliance with section 9-210. A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five
hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 9-210. A recipient of a request under section 9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) **Limitation of security interest: noncompliance with section 9-210.** If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

§46-9-626. Action in which deficiency or surplus is in issue.

(a) **Applicable rules if amount of deficiency or surplus in issue.** In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

1. (1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

2. (2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part.

3. (3) Except as otherwise provided in section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition 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-
1 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:
(1) In the usual manner on any recognized market;
(2) At the price current in any recognized market at the
time of the disposition; or
(3) Otherwise in conformity with reasonable commercial
practices among dealers in the type of property that was
the subject of the disposition.

(c) Approval by court or on behalf of creditors. A
collection, enforcement, disposition, or acceptance is
commercially reasonable if it has been approved:
(1) In a judicial proceeding;
(2) By a bona fide creditors’ committee;
(3) By a representative of creditors; or
(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence
of approval has no effect. Approval under subsection (c)
of this section need not be obtained and lack of approval
does not mean that the collection, enforcement, disposition
or acceptance is not commercially reasonable.

§46-9-628. Nonliability and limitation on liability of secured
party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncom-
pliance with article. Unless a secured party knows that a
person is a debtor or obligor, knows the identity of the
person and knows how to communicate with the person:
(1) The secured party is not liable to the person, or to a
secured party or lienholder that has filed a financing
statement against the person, for failure to comply with
this article; and
(2) The secured party’s failure to comply with this article
does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured
party. A secured party is not liable because of its status as
secured party:
(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under section 9-625(c)(2) for its failure to comply with section 9-616.

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under section 9-625(c)(2) more than once with respect to any one secured obligation.

PART 7. TRANSITION.

§46-9-701. Effective date.

This article takes effect on the first day of July, two thousand one.
§46-9-702. Savings clause.

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this article takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) of this section and sections 9-703 through 9-709:

(1) Transactions and liens that were not governed by former article nine, were validly entered into or created before this article takes effect and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties and interests flowing from those transactions and liens remain valid after this article takes effect; and

(2) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect.

(c) Pre-effective-date proceedings. This article does not affect an action, case or proceeding commenced before this article takes effect.

§46-9-703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor: perfection requirements satisfied. A security interest that is enforceable immediately before this article takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, when this article takes effect, the applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. Except as otherwise provided in section 9-705, if, immediately before this article takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien
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creditor at that time, but the applicable requirements for
enforceability or perfection under this article are not
satisfied when this article takes effect, the security
interest:
(1) Is a perfected security interest for two years after this
article takes effect;
(2) Remains enforceable thereafter only if the security
interest becomes enforceable under section 9-203 before
the second year expires; and
(3) Remains perfected thereafter only if the applicable
requirements for perfection under this article are satisfied
before the second year expires.

§46-9-704. Security interest unperfected before effective date.
A security interest that is enforceable immediately
before this article takes effect but which would be subor-
dinate to the rights of a person that becomes a lien credi-
or at that time:
(1) Remains an enforceable security interest for two
years after this article takes effect;
(2) Remains enforceable thereafter if the security
interest becomes enforceable under section 9-203 when
this article takes effect or within two years thereafter; and
(3) Becomes perfected:
(A) Without further action, when this article takes effect
if the applicable requirements for perfection under this
article are satisfied before or at that time; or
(B) When the applicable requirements for perfection are
satisfied if the requirements are satisfied after that time.

§46-9-705. Effectiveness of action taken before effective date.
(a) Pre-effective-date action; two-year perfection period
unless reperfected. If action, other than the filing of a
financing statement, is taken before this article takes
effect and the action would have resulted in priority of a
security interest over the rights of a person that becomes
a lien creditor had the security interest become enforce-
able before this article takes effect, the action is effective
to perfect a security interest that attaches under this
article within two years after this article takes effect. An
attached security interest becomes unperfected two years
after this article takes effect unless the security interest
becomes a perfected security interest under this article
before the expiration of that period.

(b) Pre-effective-date filing. The filing of a financing
statement before this article takes effect is effective to
perfect a security interest to the extent the filing would
satisfy the applicable requirements for perfection under
this article.

(c) Pre-effective-date filing in jurisdiction formerly
governing perfection. This article does not render ineffec-
tive an effective financing statement that, before this
article takes effect, is filed and satisfies the applicable
requirements for perfection under the law of the jurisdic-
tion governing perfection as provided in former section
9-103. However, except as otherwise provided in subsec-
tions (d) and (e) of this section and section 9-706, the
financing statement ceases to be effective at the earlier of:

1. The time the financing statement would have ceased
to be effective under the law of the jurisdiction in which it
is filed; or

2. The thirtieth day of June, two thousand six.

(d) Continuation statement. The filing of a continuation
statement after this article takes effect does not continue
the effectiveness of the financing statement filed before
this article takes effect. However, upon the timely filing
of a continuation statement after this article takes effect
and in accordance with the law of the jurisdiction govern-
ing perfection as provided in part 3, the effectiveness of a
financing statement filed in the same office in that juris-
diction before this article takes effect continues for the
period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility
financing statement. Subsection (c)(2) of this section
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.

(b) Period of continued effectiveness. The filing of an
14 initial financing statement under subsection (a) of this
15 section continues the effectiveness of the pre-effective-
16 date financing statement:
17 (1) If the initial financing statement is filed before this
18 article takes effect, for the period provided in former
19 section 9-403 with respect to a financing statement; and
(2) If the initial financing statement is filed after this article takes effect, for the period provided in section 9-515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of part 5 for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

§46-9-707. Amendment of pre-effective-date financing statement.

(a) "Pre-effective-date financing statement". In this section, "pre-effective-date financing statement" means a financing statement filed before this article takes effect.

(b) Applicable law. After this article takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this article takes effect only if:
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19 (1) The pre-effective-date financing statement and an
20 amendment are filed in the office specified in section 9-501'

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.

(a) **Law governing priority.** This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this article takes effect, former article nine determines priority.

(b) **Priority if security interest becomes enforceable under section 9-203.** For purposes of section 9-322(a), the priority of a security interest that becomes enforceable under section 9-203 of this article dates from the time this article takes effect if the security interest is perfected under this article by the filing of a financing statement before this article takes effect which would not have been effective to perfect the security interest under former article nine. This subsection does not apply to conflicting security interests each of which is perfected by the filing 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.

(a) This section applies to the following transactions:

1. (1) Transactions in which a purchase money security interest is taken in collateral which is being purchased primarily for a personal, family, household or agricultural purpose;

2. (2) Transactions in which a security interest is taken in collateral which was used primarily for a personal, family, household or agricultural purpose prior to the giving the security interest; or

3. (3) Transactions in which a security interest is taken in collateral for a debt that was incurred primarily for a personal, family, household or agricultural purpose.
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(b) This section takes effect on the first day of July, two thousand two, and is applicable notwithstanding the provisions of:

(1) Section six hundred ten, article nine, chapter forty-six of this code, providing that disposition may only be by certain public or private sale, lease or license procedures;

(2) Section six hundred ten, article nine, chapter forty-six of this code, requiring that those procedures be commercially reasonable;

(3) Section six hundred fifteen, article nine, chapter forty-six of this code, providing for the application of the proceeds;

(4) Section six hundred twenty, article nine, chapter forty-six of this code, requiring disposition by sale, lease or license in certain circumstances; and

(5) Section six hundred two, article nine, chapter forty-six of this code, providing that these sections may not be waived or varied by agreement.

(c) For purposes of this section, the term “debtor” shall be deemed to refer collectively to each person who is indebted to a secured creditor in connection with a consumer lease or consumer loan, whether the person’s obligation arises as a co-maker, endorser or guarantor of the lease or loan.

(d) After a default by the debtor and after the secured creditor takes or receives possession of collateral or makes collateral unusable as provided in section six hundred nine, article nine, chapter forty-six of this code, the secured creditor may send a written proposal to the debtor setting forth a value for the secured creditor’s collateral which value, less any expenses of taking and holding the collateral, shall be credited against the debtor’s obligation to the secured creditor. The written proposal must explain that:

(1) The proposal becomes effective only if the debtor agrees to it in writing but the debtor is not required to agree to the written proposal;
(2) If the debtor does not agree to the proposal in writing, then the goods which are the subject of the written proposal will be disposed of in a "commercially reasonable" manner by the secured creditor in accordance with applicable law, and the amount received from the disposition of the collateral, less the expenses of taking and holding the collateral, preparing the collateral of the sale or lease, and selling the collateral, will be the amount credited against the debtor's obligation to the secured creditor when calculating the deficiency owed by the debtor to the secured creditor or the surplus owed by the secured creditor to the debtor;

(3) If the debtor agrees to the written proposal, then the debtor will thereby release and waive any claims against the secured creditor that the disposition of the collateral was not commercially reasonable or was otherwise improper; and

(4) The written proposal may set forth a date and time by which the debtor's written agreement must be received by secured creditor in order for the agreement to become effective.

(5) The following form, when reproduced on a single sheet of paper with no other statements or agreements and accurately completed, meets the requirements of this section even if it contains typographical or other minor errors that are not misleading:

[Name and address of secured party]
[Date]

TO: [Name and address of debtor]

OFFER TO CREDIT PRICE GUIDE VALUE

We have possession of your [describe collateral] ("property") (or we have made it unusable by you), because you broke the terms of our agreement.

By law, we may sell, lease or license this property in any commercially reasonable manner. If we choose to sell the property at a public sale we will give you notice of the date, time and place of the sale and you may attend the
sale and bring bidders if you want. If we choose to sell the
property at a private sale we will give you notice of the
date after which the sale will take place. From the money
we are paid from the sale of the property, we may subtract
our expenses in getting the property from you, storing it,
preparing and selling, leasing or licensing it. The sale
money left over after these expenses are subtracted will
then be subtracted from what you owe us. If we receive
less money than you owe, you will still owe us the differ-
ence. If we receive more money than you owe, you will get
the extra money back (unless we are required to pay it to
someone else).

Instead of selling, leasing or licensing this property, we
are now offering to subtract the amount of $\text{[enter
amount]}$ from what you owe us. We have calculated this
amount by adding the retail value of the property of $\text{[insert retail value]}$ and the $\text{[insert other value pursuant
to § 46A-2-119a(5)]}$ value of the property of $\text{[enter
amount]}$ and dividing that total by 2 ("value amount").
These values were obtained from \text{[insert price
guide]}, a price
guide in general use as of the date we got possession of or
rendered the property unusable by you. From the value
amount we have subtracted our expenses of $\text{[enter
amount]}$ in taking back the property from you, and our
expenses of $\text{[enter amount]}$ for storing the property
through the date below by which you must respond to this
offer.

You do not have to accept this offer. To agree to our
offer, you must sign this notice at the bottom no sooner
than one day after the date on which you received this
offer and deliver it or have it delivered to us before \text{[enter
date by which the secured party determines the offer must
be accepted]}\text{.} If you agree to this offer, you are giving up
any right to hold us liable for the way that we sell, lease or
otherwise dispose of the property and account for the
proceeds.

You can get the property back at any time before you
accept this offer or we sell, lease or license the property by
paying us the full amount you owe (not just the past due
payments), including our expenses so far. To learn the
exact amount you must pay, you may call us at [telephone number]. If you want us to explain to you in writing how we calculated the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation.

We are sending this notice to the following other people who owe money under our agreement. They will also have to agree to our offer or we will sell the property as we normally do.

[Names of all other debtors and obligors, if any]

I accept the offer:

Signed ______________________

Date of signature ___________________

[End of Form]

(e) (1) The value of the collateral set forth in the written proposal shall be determined from any price guide used generally by persons who are not purchasers or lessees of that type of collateral and who insure, lend money for the purchase of, lease or otherwise deal in goods of the same type as the collateral when it would be to the advantage of the user for the price guide to have higher values.

(2) The value of the collateral set forth in the written proposal shall be determined as of the date the secured party took possession of the collateral, received possession of the collateral or rendered the collateral unusable.

(3) For a motor vehicle, as that term is defined by section one, article one, chapter seventeen-a of this code, the value of the motor vehicle collateral shall be calculated by adding together the retail value and the trade-in value for the motor vehicle and dividing that sum by two.

(4) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by the debtor, an obligor or a person related to the debtor, the value of the manufactured home, mobile home or house trailer collat-
eral shall be calculated by adding together the retail value and the wholesale value designated for the manufactured home that is moved for resale, mobile home or house trailer and dividing that sum by two.

(5) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by a person or organization in the business of renting or leasing lots or on a lot owned by a person who is not the debtor, an obligor or a person related to the debtor or obligor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for collateral that is offered for sale without moving the collateral from its current location, and dividing that sum by two.

(6) For other personal property, the value of the collateral shall be calculated by adding together the used retail value and the highest listed wholesale value for the property and dividing that sum by two.

(f) If the debtor agrees in writing to the written proposal within the time period prescribed by the secured creditor, then:

(1) The collateral value as calculated in subsection (e) above, less any expenses of taking and holding the collateral, shall be applied to the indebtedness as provided in section six hundred fifteen, article nine, chapter forty-six of this code;

(2) Any expenses incurred by the secured creditor in the actual sale or lease of the collateral or preparing the collateral for sale or lease may not be charged to the debtor but must be born by the secured creditor; and

(3) The secured creditor is not required to dispose of the collateral in a commercially reasonable manner and is not liable for any failure to comply with any law of this state relating to the disposition of the collateral or application of the proceeds.
(g) The written agreement of the debtor is not valid unless it is signed by the debtor on or after the next calendar day after it is received by the debtor or the second calendar day after it was sent to the debtor.

(h) If the debtor is more than one person, then the secured creditor must send the proposal described in subsection (d) of this section to all such persons. If any one of the persons indebted to a secured creditor on a consumer lease or consumer loan does not agree in writing to the proposal or does not respond timely to the proposal, then the secured creditor must proceed with a sale or other disposition of its collateral as provided in article nine, chapter forty-six of this code.

(i) If a person other than the debtor has a recorded ownership interest in property securing the debtor's obligation to a secured creditor and such other person is not also indebted to the secured creditor on such obligation, then the secured creditor must send a copy of the proposal described in subsection (d) of this section to such other person but is not required to obtain such other person's consent or agreement to the proposal in order to effect the proposal.

(j) Upon receipt of the debtor's executed acceptance of a written proposal described in subsection (d) of this section, title to the collateral described in the proposal shall be deemed to pass to the secured creditor unless such collateral is a vehicle, manufactured home, mobile home or house trailer.

(k) Upon presentation of the debtor's executed acceptance of a written proposal described in subsection (d) of this section to the department of motor vehicles and a certificate of title to the debtor's vehicle, manufactured home, mobile home or house trailer described in the written proposal, the department of motor vehicles shall issue a new certificate of title to the vehicle, manufactured home, mobile home or house trailer in the name of the secured creditor as the owner thereof.

(l) Nothing in this section may be construed to create, 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 25th Day of... 2000.

Governor
PRESENTED TO THE:

GOVERNOR

Date 3/5/10

Time 3:10 pm