ENROLLED
Committee Substitute for
SENATE BILL NO. 742

(By Senator JEVINS, Sr.-Al)

PASSED March 10, 2006

In Effect 90 days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 742

(SENATORS JENKINS, DEMPESEY, MINARD, UNGER, CARUTH, HARRISON AND YODER, original sponsors)

[Passed March 10, 2006; in effect ninety days from passage.]
4-210 of said code; to amend and reenact §46-4A-105, §46-4A-106 and §46-4A-204 of said code; to amend and reenact §46-5-103 of said code; to amend and reenact §46-7-101, §46-7-102, §46-7-103, §46-7-104, §46-7-105, §46-7-201, §46-7-202, §46-7-203, §46-7-204, §46-7-205, §46-7-206, §46-7-207, §46-7-208, §46-7-209, §46-7-210, §46-7-301, §46-7-302, §46-7-303, §46-7-304, §46-7-305, §46-7-306, §46-7-307, §46-7-308, §46-7-309, §46-7-401, §46-7-402, §46-7-403, §46-7-404, §46-7-501, §46-7-502, §46-7-503, §46-7-504, §46-7-505, §46-7-506, §46-7-507, §46-7-508, §46-7-509, §46-7-601, §46-7-602 and §46-7-603 of said code; to amend said code by adding thereto three new sections, designated §46-7-106, §46-7-701 and §46-7-702; to amend and reenact §46-8-102 and §46-8-103 of said code; to amend and reenact §46-9-102, §46-9-203, §46-9-207, §46-9-301, §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-317, §46-9-338, §46-9-516 and §46-9-601 of said code, all relating to revising the Uniform Commercial Code, articles one and seven; making conforming amendments to other articles; and authorizing administrative review by Secretary of State of certain fillings in connection with secured transactions.

Be it enacted by the Legislature of West Virginia:

amended and reenacted; that §46-4A-105, §46-4A-106 and §46-4A-204 of said code be amended and reenacted; that §46-5-103 of said code be amended and reenacted; that §46-7-101, §46-7-102, §46-7-103, §46-7-104, §46-7-105, §46-7-201, §46-7-202, §46-7-203, §46-7-204, §46-7-205, §46-7-206, §46-7-207, §46-7-208, §46-7-209, §46-7-210, §46-7-301, §46-7-302, §46-7-303, §46-7-304, §46-7-305, §46-7-306, §46-7-307, §46-7-308, §46-7-309, §46-7-401, §46-7-402, §46-7-403, §46-7-404, §46-7-501, §46-7-502, §46-7-503, §46-7-504, §46-7-505, §46-7-506, §46-7-507, §46-7-508, §46-7-509, §46-7-601, §46-7-602 and §46-7-603 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §46-7-106, §46-7-701 and §46-7-702; that §46-8-102 and §46-8-103 of said code be amended and reenacted; and that §46-9-102, §46-9-203, §46-9-207, §46-9-208, §46-9-301, §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-317, §46-9-338, §46-9-516 and §46-9-601 of said code be amended and reenacted, all to read as follows:

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

PART 1. GENERAL PROVISIONS.

§46-1-101. Short titles.

1 (a) This chapter may be cited as the Uniform Commercial Code.

2 (b) This article may be cited as Uniform Commercial Code – General Provisions.

§46-1-102. Scope of article.

1 This article applies to a transaction to the extent that it is governed by another article of this chapter.

§46-1-103. Construction of uniform commercial code to promote its purposes and policies; applicability of supplemental principles of law.

1 (a) This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are:
(1) To simplify, clarify and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause supplement its provisions.

§46-1-104. Construction against implied repeal.

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§46-1-105. Severability.

If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§46-1-106. Use of singular and plural; gender.

In this chapter, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.
§46-1-107. Section captions.
1 Section captions are part of this chapter.

§46-1-108. Relation to electronic signatures in global and national commerce act.
1 This chapter modifies, limits and supersedes the federal
2 Electronic Signatures in Global and National Commerce
3 Act (15 U.S.C. Section 7001, et. seq.) but does not modify,
4 limit, or supersed Section 101(c) of that act (15 U.S.C.
5 Section 7001(c)) or authorize electronic delivery of any of
6 the notices described in Section 103(b) of that act (15
7 U.S.C. Section 103(b)).

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.
1 (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this chapter that apply to particular articles or parts thereof, have the meanings stated.
2 (b) Subject to definitions contained in other articles of this chapter that apply to particular articles or parts thereof:
3 (1) "Action", in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined.
4 (2) "Aggrieved party" means a party entitled to pursue a remedy.
5 (3) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.
(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, document of title or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

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

(8) "Burden of establishing" a fact means the burden of persuading the trier 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 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 2 may be a buyer in ordinary course of business. "Buyer in
ordinary course of business” does not include a person that
acquires goods in a transfer in bulk or as security for or in
total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term, means so
written, displayed, or presented that a reasonable person
against which it is to operate ought to have noticed it.
Whether a term is “conspicuous” or not is a decision for
the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than
the surrounding text, or in contrasting type, font or color
to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger
type than the surrounding text, or in contrasting type,
font, or color to the surrounding text of the same size, or
set off from surrounding text of the same size by symbols
or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a
transaction primarily for personal, family or household
purposes.

(12) “Contract”, as distinguished from “agreement”,
means the total legal obligation that results from the
parties’ agreement as determined by this chapter as
supplemented by any other applicable laws.

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

(14) “Defendant” includes a person in the position of
defendant in a counterclaim, cross-claim or third-party
claim.

(15) “Delivery”, with respect to an electronic document
of title means voluntary transfer of control and with
respect to an instrument, document of title or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record: (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

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

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

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

(20) "Good faith", except as otherwise provided in article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or
(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of the negotiable electronic document of title.

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

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

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

(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this chapter.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, dis-
counted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

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

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article 9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a "security interest" by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A 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 9. The retention or reservation of
title by a seller of goods notwithstanding shipment or
delivery to the buyer under section 2-401 is limited in
effect to a reservation of a "security interest". Whether a
transaction in the form of a lease creates a "security
interest" is determined pursuant to section 1-203.

(36) "Send" in connection with a writing, record, or
notice means:

(A) 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; or

(B) In any other way to cause to be received any record
or notice within the time it would have arrived if properly
sent.

(37) "Signed" includes using any symbol executed or
adopted with present intention to adopt or accept a
writing.

(38) "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.

(39) "Surety" includes a guarantor or other secondary
obligor.

(40) "Term" means a portion of an agreement that
relates to a particular matter.

(41) "Unauthorized signature" means a signature made
without actual, implied or apparent authority. The term
includes a forgery.
"Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

"Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.


(a) Subject to subsection (f), a person has "notice" of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person "receives" a notice or notification when:

(1) It comes to that person's attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.
(f) 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 it would have been brought to the individual's 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 the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§46-1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that 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 and is not subject to termination by the lessee, and:

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

(2) 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;

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

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) 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;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

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

(5) 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

(6) 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.

(d) 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. Additional consideration is not nominal if:

(1) 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

(2) 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.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

§46-1-204. Value.

Except as otherwise provided in articles 3, 4, and 5 of this chapter, a person gives value for rights if the person acquires them:

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

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

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

§46-1-205. Reasonable time; seasonableness.

Whether a time for taking an action required by this chapter is reasonable depends on the nature, purpose and circumstances of the action.

An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.
§46-1-206. Presumptions.

1 Whenever this chapter creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES.

§46-1-301. Territorial applicability; parties' power to choose applicable law.

1 (a) Except as otherwise provided 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.

6 (b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), this chapter applies to transactions bearing an appropriate relation to this state.

10 (c) If 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 so specified:

14 (1) Section 2-402;

15 (2) Sections 2A-105 and 2A-106;

16 (3) Section 4-102;

17 (4) Section 4A-507;

18 (5) Section 5-116;

19 (6) Section 8-110;

§46-1-302. Variation by agreement.

1 (a) Except as otherwise provided in subsection (b) or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

4 (b) The obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

13 (c) The presence in certain provisions of this chapter of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§46-1-303. Course of performance, course of dealing, and usage of trade.

1 (a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

4 (1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

7 (2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

10 (b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.
(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

1. Express terms prevail over course of performance, course of dealing, and usage of trade;
2. Course of performance prevails over course of dealing and usage of trade; and
3. Course of dealing prevails over usage of trade.

(f) Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.
§46-1-304. Obligation of good faith.

1 Every contract or duty within this chapter imposes an
2 obligation of good faith in its performance and enforce-
3 ment.

§46-1-305. Remedies to be liberally administered.

1 (a) The remedies provided by this chapter must be
2 liberally administered to the end that the aggrieved party
3 may be put in as good a position as if the other party had
4 fully performed but neither consequential or special
5 damages nor penal damages may be had except as specifi-
6 cally provided in this chapter or by other rule of law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by action unless the provision declaring it
9 specifies a different and limited effect.

§46-1-306. Waiver or renunciation of claim or right after

breach.

1 A claim or right arising out of an alleged breach may be
2 discharged in whole or in part without consideration by
3 agreement of the aggrieved party in an authenticated
4 record.


1 A document in due form purporting to be a bill of
2 lading, policy or certificate of insurance, official weigher's
3 or inspector's certificate, consular invoice, or any other
4 document authorized or required by the contract to be
5 issued by a third party is prima facie evidence of its own
6 authenticity and genuineness and of the facts stated in the
7 document by the third party.

§46-1-308. Performance or acceptance under reservation of

rights.

1 (a) A party that with explicit reservation of rights
2 performs or promises performance or assents to perfor-
mance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest,” or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

§46-1-309. Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure,” or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§46-1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

ARTICLE 2. SALES.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER.

§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) [Reserved.]
(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.
- "Merchant". Section 2-104.
- "Overseas". Section 2-323.
- "Person in position of seller". Section 2-707.
- "Present sale". Section 2-106.
- "Sale". Section 2-106.
- "Sale on approval". Section 2-326.
- "Sale or return". Section 2-326.
- "Termination". Section 2-106.

(3) "Control" as provided in Section 7-106 and the following definitions in other articles of this chapter apply to this article:
(4) In addition article one of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-2-104. Definitions: "merchant"; "between merchants"; "financing agency".

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of performance, course of dealing, or usage of trade (Section 1-303); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§46-2-310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received: (i) at the time and place at which the buyer is to receive delivery of the tangible documents; or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and
(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§46-2-323. Form of bill of lading required in overseas shipment, "overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) Due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 2-508); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

§46-2-401. Passing of title; reservation for security; limited application of this section.
Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading.

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he
36 delivers such documents and if the seller is to deliver an
37 electronic document of title, title passes when the seller
38 delivers the document; or

39 (b) If the goods are at the time of contracting already
40 identified and no documents of title are to be delivered,
41 title passes at the time and place of contracting.

42 (4) A rejection or other refusal by the buyer to receive or
43 retain the goods, whether or not justified, or a justified
44 revocation of acceptance retests title to the goods in the
45 seller. Such recessing occurs by operation of law and is
46 not a "sale."

§46-2-503. Manner of seller's tender of delivery.

1 (1) Tender of delivery requires that the seller put and
2 hold conforming goods at the buyer's disposition and give
3 the buyer any notification reasonably necessary to enable
4 him to take delivery. The manner, time and place for
5 tender are determined by the agreement and this article,
6 and in particular.

7 (a) Tender must be at a reasonable hour, and if it is of
8 goods they must be kept available for the period reason-
9 ably necessary to enable the buyer to take possession; but

10 (b) Unless otherwise agreed the buyer must furnish
11 facilities reasonably suited to the receipt of the goods.

12 (2) Where the case is within the next section respecting
13 shipment tender requires that the seller comply with its
14 provisions.

15 (3) Where the seller is required to deliver at a particular
16 destination tender requires that he comply with subsection
17 (1) and also in any appropriate case tender documents as
18 described in subsections (4) and (5) of this section.

19 (4) Where goods are in the possession of a bailee and are
20 to be delivered without being moved.
(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents.

(a) He must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 2-323); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

§46-2-505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) His procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
9 (b) A nonnegotiable bill of lading to himself or his
10 nominee reserves possession of the goods as security but
11 except in a case of conditional delivery (subsection (2) of
12 section 2-507) a nonnegotiable bill of lading naming the
13 buyer as consignee reserves no security interest even
14 though the seller retains possession or control of the bill of
15 lading.

16 (2) When shipment by the seller with reservation of a
17 security interest is in violation of the contract for sale it
18 constitutes an improper contract for transportation within
19 the preceding section but impairs neither the rights given
20 to the buyer by shipment and identification of the goods to
21 the contract nor the seller's powers as a holder of a
22 negotiable document of title.

§46-2-506. Rights of financing agency.

1 (1) A financing agency by paying or purchasing for
2 value a draft which relates to a shipment of goods acquires
3 to the extent of the payment or purchase and in addition
4 to its own rights under the draft and any document of title
5 securing it any rights of the shipper in the goods including
6 the right to stop delivery and the shipper's right to have
7 the draft honored by the buyer.

8 (2) The right to reimbursement of a financing agency
9 which has in good faith honored or purchased the draft
10 under commitment to or authority from the buyer is not
11 impaired by subsequent discovery of defects with refer-
12 ence to any relevant document which was apparently
13 regular.


1 (1) Where the contract requires or authorizes the seller
2 to ship the goods by carrier:
3 (a) If it does not require him to deliver them at a particu-
4 lar destination, the risk of loss passes to the buyer when
the goods are duly delivered to the carrier even though the
shipment is under reservation (section 2-505); but

(b) If it does require him to deliver them at a particular
destination and the goods are there duly tendered while in
the possession of the carrier, the risk of loss passes to the
buyer when the goods are there duly so tendered as to
enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered
without being moved, the risk of loss passes to the buyer.

(a) On his receipt of possession or control of a negotiable
document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right
to possession of the goods; or

(c) After his receipt of possession or control a nonnego-
tiable document of title or other direction to deliver in a
record, as provided in subsection (4)(b) of section 2-503.

(3) In any case not within subsection (1) or (2), the risk of
loss passes to the buyer on his receipt of the goods if the
seller is a merchant; otherwise the risk passes to the buyer
on tender of delivery.

(4) The provisions of this section are subject to contrary
agreement of the parties and to the provisions of this
article on sale on approval (section 2-327) and on effect of
breach on risk of loss (section 2-510).

§46-2-605. Waiver of buyer's objections by failure to particular-
ize.

(1) The buyer's failure to state in connection with
rejection a particular defect which is ascertainable by
reasonable inspection precludes him from relying on the
unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated season-
ably; or
(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

§46-2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller.
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but the seller is liable to the bailee for any ensuing charges
or damages.

(c) If a negotiable document of title has been issued for
goods the bailee is not obliged to obey a notification to
stop until surrender of possession or control of the docu-
ment.

(d) A carrier who has issued a nonnegotiable bill of
lading is not obligated to obey a notification to stop
received from a person other than the consignor.

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.

§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 acquiring goods or documents of title under a
preexisting contract for sale but does not include a trans-
er in bulk or as security for or in total or partial satisfac-
tion of a money debt.

(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
22 gross or carload, or any other unit treated in use or in the
23 relevant market as a single whole.

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

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

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

32 (g) "Finance lease" means a lease with respect to which:
33 (i) The lessor does not select, manufacture or supply the
34 goods;
35 (ii) The lessor acquires the goods or the right to posses-
36 sion and use of the goods in connection with the lease; and
37 (iii) One of the following occurs:
38 (A) The lessee receives a copy of the contract by which
39 the lessor acquired the goods or the right to possession and
40 use of the goods before signing the lease contract;
41 (B) The lessee's approval of the contract by which the
42 lessor acquired the goods or the right to possession and use
43 of the goods is a condition to effectiveness of the lease
44 contract;
45 (C) The lessee, before signing the lease contract, receives
46 an accurate and complete statement designating the
47 promises and warranties, and any disclaimers of warran-
48 ties, limitations or modifications of remedies, or liquidated
49 damages, including those of a third party, such as the
50 manufacturer of the goods, provided to the lessor by the
51 person supplying the goods in connection with or as part
52 of the contract by which the lessor acquired the goods or
53 the right to possession and use of the goods; or
(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.
"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.

"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.

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

"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.

"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 acquiring 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.

"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).
- "Document". Section 9-102(a)(30).
- "Entrusting". Section 2-403(3).
- "General intangible". Section 9-102(a)(42).
- "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).

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

PART 5. DEFAULT.

A. IN GENERAL.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in section 1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.


(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

§46-2A-518. Cover; substitute goods.

(1) After a default by a lessor under the lease contract of the type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages: (i) The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A-519 governs.

§46-2A-519. Lessee's damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.
(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A–504) or otherwise determined pursuant to agreement of the parties (sections 1–302 and 2A–503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A–518(2), or is by purchase or otherwise, the measure of damages for non-delivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A–516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.
§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.

1 (1) A lessor may stop delivery of goods in the possession
2 of a carrier or other bailee if the lessor discovers the lessee
3 to be insolvent and may stop delivery of carload, truck-
4 load, planeload or larger shipments of express or freight if
5 the lessee repudiates or fails to make a payment due before
6 delivery, whether for rent, security or otherwise under the
7 lease contract, or for any other reason the lessor has a
8 right to withhold or take possession of the goods.

9 (2) In pursuing its remedies under subsection (1), the
10 lessor may stop delivery until:

11 (a) Receipt of the goods by the lessee;
12 (b) Acknowledgment to the lessee by any bailee of the
13 goods, except a carrier, that the bailee holds the goods for
14 the lessee; or
15 (c) Such an acknowledgment to the lessee by a carrier
16 via reshipment or as a warehouse.

17 (3)(a) To stop delivery, a lessor shall so notify as to
18 enable the bailee by reasonable diligence to prevent
19 delivery of the goods.

20 (b) After notification, the bailee shall hold and deliver
21 the goods according to the directions of the lessor, but the
22 lessor is liable to the bailee for any ensuing charges or
23 damages.

24 (c) A carrier who has issued a nonnegotiable bill of
25 lading is not obliged to obey a notification to stop received
26 from a person other than the consignor.

§46-2A-527. Lessor's rights to dispose of goods.

1 (1) After a default by a lessee under the lease contract of
2 the type described in section 2A-523(1) or 2A-523(3)(a) or
3 after the lessor refuses to deliver or takes possession of
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goods (section 2A-525 or 2A-526), or, if agreed, after other
default by a lessee, the lessor may dispose of the goods
concerned or the undelivered balance thereof by lease, sale
or otherwise.

(2) Except as otherwise provided with respect to dam-
ages liquidated in the lease agreement (section 2A-504) or
otherwise determined pursuant to agreement of the parties
(sections 1-302 and 2A-503), if the disposition is by lease
agreement substantially similar to the original lease
agreement and the new lease agreement is made in good
faith and in a commercially reasonable manner, the lessor
may recover from the lessee as damages: (i) Accrued and
unpaid rent as of the date of the commencement of the
term of the new lease agreement; (ii) the present value, as
of the same date, of the total rent for the then remaining
lease term of the original lease agreement minus the
present value, as of the same date, of the rent under the
new lease agreement applicable to that period of the new
lease term which is comparable to the then remaining term
of the original lease agreement; and (iii) any incidental
damages allowed under section 2A-530, less expenses
saved in consequence of the lessee’s default.

(3) If the lessor’s disposition is by lease agreement that
for any reason does not qualify for treatment under
subsection (2), or is by sale or otherwise, the lessor may
recover from the lessee as if the lessor had elected not to
dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from
the lessor in good faith for value as a result of a disposition
under this section takes the goods free of the original lease
contract and any rights of the original lessee even though
the lessor fails to comply with one or more of the require-
ments of this article.

(5) The lessor is not accountable to the lessee for any
profit made on any disposition. A lessee who has right-
fully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A-508(5)).

§46-2A-528. Lessor's damages for non-acceptance, failure to pay, repudiation, or other default.

1. (1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee: (i) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor; (ii) the present value as of the date determined under clause (I) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

2. (2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.
ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-103. Definitions.

1 (a) In this article:

2 (1) "Acceptor" means a drawee who has accepted a draft.

4 (2) "Drawee" means a person ordered in a draft to make payment.

6 (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

8 (4) [reserved]

9 (5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

11 (6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

18 (7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article four.

30 (8) "Party" means a party to an instrument.
(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

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

- "Acceptance" Section 3-409.
- "Accommodated party" Section 3-419.
- "Accommodation party" Section 3-419.
- "Alteration" Section 3-407.
- "Anomalous indorsement" Section 3-205.
- "Blank indorsement" Section 3-205.
- "Cashier's check" Section 3-104.
- "Certificate of deposit" Section 3-104.
- "Certified check" Section 3-409.
- "Check" Section 3-104.
- "Consideration" Section 3-303.
- "Draft" Section 3-104.
- "Holder in due course" Section 3-302.
- "Incomplete instrument" Section 3-115.
- "Indorsement" Section 3-204.
- "Indorser" Section 3-204.
- "Instrument" Section 3-104.
- "Issue" Section 3-105.
- "Issuer" Section 3-105.
- "Negotiable instrument" Section 3-104.
- "Negotiation" Section 3-201.
- "Note" Section 3-104.
- "Payable at a definite time" Section 3-108.
- "Payable on demand" Section 3-108.
"Payable to bearer" Section 3-109.
"Payable to order" Section 3-109.
"Payment" Section 3-602.
"Person entitled to enforce" Section 3-301.
"Presentment" Section 3-501.
"Reacquisition" Section 3-207.
"Special indorsement" Section 3-205.
"Teller's check" Section 3-104.
"Transfer of instrument" Section 3-203.
"Traveler's check" Section 3-104.
"Value" Section 3-303.

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

"Bank" Section 4-105.
"Banking day" Section 4-104.
"Clearing house" Section 4-104.
"Collecting bank" Section 4-105.
"Depositary bank" Section 4-105.
"Documentary draft" Section 4-104.
"Intermediary bank" Section 4-105.
"Item" Section 4-104.
"Payor bank" Section 4-105.
"Suspends payments" Section 4-104.

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

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

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

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

(1) "Account" means any deposit or credit account with a bank, including demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
(2) "Afternoon" means the period of a day between noon and midnight;

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

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

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

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

(7) "Draft" means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

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

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

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

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

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

"Agreement for electronic presentment" Section 4-110.
"Bank" Section 4-105.
"Collecting bank" Section 4-105.
"Depositary bank" Section 4-105.
"Intermediary bank" Section 4-105.
"Payor bank" Section 4-105.
"Presenting bank" Section 4-105.
"Presentment notice" Section 4-110.

(c) "Control" as provided in section 7-106 and the following definitions in other articles apply to this article:

"Acceptance" Section 3-409.
"Alteration" Section 3-407.
"Cashier's check" Section 3-104.
"Certificate of deposit" Section 3-104.
"Certified check" Section 3-409.
"Check" Section 3-104.
"Draft" Section 3-104.
"Holder in due course" Section 3-302.
"Instrument" Section 3-104.
"Notice of dishonor" Section 3-503.
"Order" Section 3-103.
"Ordinary care" Section 3-103.
"Person entitled to enforce" Section 3-301.
"Presentment" Section 3-501.
"Promise" Section 3-103.
§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 possession or control of the 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 4A. FUND TRANSFERS.

§46-4A-105. Other definitions.

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Banker" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearing house or other commu-
tion system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) [reserved]

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

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

(1) "Acceptance", §46-4A-209.

(2) "Beneficiary", §46-4A-103.

(3) "Beneficiary's bank", §46-4A-103.

(4) "Executed", §46-4A-301.

(5) "Execution date", §46-4A-301.

(6) "Funds transfer", §46-4A-104.

(7) "Funds-transfer system rule", §46-4A-501.

(8) "Intermediary bank", §46-4A-104.

(9) "Originator", §46-4A-104.

(10) "Originator's bank", §46-4A-104.

(11) "Payment by beneficiary's bank to beneficiary", §46-4A-405.

(12) "Payment by originator to beneficiary”, §46-4A-406.

(13) "Payment by sender to receiving bank", §46-4A-403.

(14) "Payment date", §46-4A-401.

(15) "Payment order”, §46-4A-103.

(16) "Receiving bank”, §46-4A-103.

(18) “Sender”, §46-4A-103.

(c) The following definitions in article four of this chapter apply to this article:

(1) “Clearing house”, §46-4-104.

(2) “Item”, §46-4-104.

(3) “Suspends payments”, §46-4-104.

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

§46-4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-
23 transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

§46-4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is: (1) Not authorized and not effective as the order of the customer under §46-4A-202; or (2) not enforceable, in whole or in part, against the customer under §46-4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment, and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-103. Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.
(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in sections 1-302 and 5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

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

PART 1 GENERAL.

§46-7-101. Short title.

This article may be cited as Uniform Commercial Code–Documents of Title.

§46-7-102. Definitions and index of definitions.

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

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.
(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver: The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods the goods were misdescribed or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:
(A) To execute or adopt a tangible symbol; or
(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) "Contract for sale", Section 2-106.

(2) "Lessee in the ordinary course of business", Section 2A-103.

(3) "Receipt" of goods, Section 2-103.

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

§46-7-103. Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce
Act (15 U.S.C. Section 7001, et. seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between article one, chapter thirty-nine A and this article, this article governs.

§46-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

§46-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.
(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(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 amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART 2 - WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

§46-7-201. Person that may issue a warehouse receipt; storage under bond.
(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

§46-7-202. Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and
(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent, that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to [the Uniform Commercial Code] and do not impair its obligation of delivery under section 7-403 or its duty of care under section 7-204. Any contrary provision is ineffective.

§46-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

§46-7-204. Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person
would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

§46-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

§46-7-206. Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse
gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

§46-7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and
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delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

§46-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

§46-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not
the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection(a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection(b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;
(B) Power to obtain delivery under section 7-403; or
(C) Power of disposition under sections 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.
(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§46-7-210. Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefore, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.
(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.
62  (f) A warehouse may satisfy its lien from the proceeds of
63 any sale pursuant to this section but shall hold the bal-
64 ance, if any, for delivery on demand to any person to
65 which the warehouse would have been bound to deliver
66 the goods.

67  (g) The rights provided by this section are in addition to
68 all other rights allowed by law to a creditor against a
69 debtor.

70  (h) If a lien is on goods stored by a merchant in the
71 course of its business, the lien may be enforced in accor-
72 dance with subsection (a) or (b).

73  (i) A warehouse is liable for damages caused by failure
74 to comply with the requirements for sale under this section
75 and, in case of willful violation, is liable for conversion.

PART 3—BILLS OF LADING: SPECIAL PROVISIONS

§46-7-301. Liability for nonreceipt or misdescription; “said to
contain”; “shipper's weight, load and count”; improper handling.

1  (a) A consignee of a nonnegotiable bill of lading which
2 has given value in good faith, or a holder to which a
3 negotiable bill has been duly negotiated, relying upon the
4 description of the goods in the bill or upon the date shown
5 in the bill, may recover from the issuer damages caused by
6 the misdating of the bill or the nonreceipt or
7 misdescription of the goods, except to the extent that the
8 bill indicates that the issuer does not know whether any
9 part or all of the goods in fact were received or conform to
10 the description, such as in a case in which the description
11 is in terms of marks or labels or kind, quantity, or condi-
12 tion or the receipt or description is qualified by “contents
13 or condition of contents of packages unknown”, “said to
14 contain”, “shipper's weight, load, and count,” or words of
15 similar import, if that indication is true.

16  (b) If goods are loaded by the issuer of a bill of lading;
(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

§46-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to
recover on the bill or other document for any breach by the
other person or the performing carrier of its obligation
under the bill or other document. However, to the extent
that the bill or other document covers an undertaking to
be performed overseas or in territory not contiguous to the
continental United States or an undertaking including
matters other than transportation, this liability for breach
by the other person or the performing carrier may be
varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other
document of title embodying an undertaking to be per-
formed in part by a person other than the issuer are
received by that person, the person is subject, with respect
to its own performance while the goods are in its posses-
sion, to the obligation of the issuer. The person's obliga-
tion is discharged by delivery of the goods to another
person pursuant to the bill or other document and does not
include liability for breach by any other person or by the
issuer.

(c) The issuer of a through bill of lading or other docu-
ment of title described in subsection (a) is entitled to
recover from the performing carrier, or other person in
possession of the goods when the breach of the obligation
under the bill or other document occurred:

(1) The amount it may be required to pay to any person
entitled to recover on the bill or other document for the
breach, as may be evidenced by any receipt, judgment, or
transcript of judgment; and

(2) The amount of any expense reasonably incurred by
the issuer in defending any action commenced by any
person entitled to recover on the bill or other document for
the breach.

§46-7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier
may deliver the goods to a person or destination other than
that stated in the bill or may otherwise dispose of the goods, without liability for misdeliver, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

§46-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith.
and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

§46-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7-105, may procure a substitute bill to be issued at any place designated in the request.

§46-7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§46-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of
lading, a carrier’s lien is limited to charges stated in the
bill or the applicable tariffs or, if no charges are stated, a
reasonable charge.

(b) A lien for charges and expenses under subsection(a)
on goods that the carrier was required by law to receive
for transportation is effective against the consignor or any
person entitled to the goods unless the carrier had notice
that the consignor lacked authority to subject the goods to
those charges and expenses. Any other lien under subsec-
tion(a) is effective against the consignor and any person
that permitted the bailor to have control or possession of
the goods unless the carrier had notice that the bailor
lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily
delivers or unjustifiably refuses to deliver.

§46-7-308. Enforcement of carrier’s lien.

(a) A carrier’s lien on goods may be enforced by public
or private sale of the goods, in bulk or in packages, at any
time or place and on any terms that are commercially
reasonable, after notifying all persons known to claim an
interest in the goods. The notification must include a
statement of the amount due, the nature of the proposed
sale, and the time and place of any public sale. The fact
that a better price could have been obtained by a sale at a
different time or in a method different from that selected
by the carrier is not of itself sufficient to establish that the
sale was not made in a commercially reasonable manner.
The carrier sells goods in a commercially reasonable
manner if the carrier sells the goods in the usual manner in
any recognized market therefor, sells at the price current
in that market at the time of the sale, or otherwise sells in
conformity with commercially reasonable practices among
dealers in the type of goods sold. A sale of more goods
than apparently necessary to be offered to ensure satisfac-
tion of the obligation is not commercially reasonable,
except in cases covered by the preceding sentence.
(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection(a) or the procedure set forth in section 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

§46-7-309. Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.
(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

PART 4. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS.

§ 46-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

1. The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

2. The issuer violated laws regulating the conduct of its business;

3. The goods covered by the document were owned by the bailee when the document was issued; or

4. The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

§ 46-7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the
goods, except as provided in the case of tangible bills of
lading in a set of parts, overissue of documents for fungible
goods, substitutes for lost, stolen, or destroyed docu-
ments, or substitute documents issued pursuant to section
7-105. The issuer is liable for damages caused by its
overissue or failure to identify a duplicate document by a
conspicuous notation.

§46-7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled
under a document of title if the person complies with
subsections (b) and (c), unless and to the extent that the
bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was
rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods
for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in
lawful enforcement of a lien or on a warehouse's lawful
termination of storage;

(4) The exercise by a seller of its right to stop delivery
pursuant to section 2-705 or by a lessor of its right to stop
delivery pursuant to Section 2A-526;

(5) A diversion, reconsignent, or other disposition
pursuant to section 7-303;

(6) Release, satisfaction, or any other personal defense
against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of
title shall satisfy the bailee's lien if the bailee so requests
or if the bailee is prohibited by law from delivering the
goods until the charges are paid.
(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

§46-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5—WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

§46-7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named
person's indorsement in blank or to bearer, any person
may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is
negotiated by delivery alone.

(3) If the document's original terms run to the order of a
named person and it is delivered to the named person, the
effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been in-
dorsed to a named person requires indorsement by the
named person and delivery.

(5) A document is duly negotiated if it is negotiated in
the manner stated in this subsection to a holder that
purchases it in good faith, without notice of any defense
against or claim to it on the part of any person, and for
value, unless it is established that the negotiation is not in
the regular course of business or financing or involves
receiving the document in settlement or payment of a
monetary obligation.

(b) The following rules apply to a negotiable electronic
document of title:

(1) If the document's original terms run to the order of a
named person or to bearer, the document is negotiated by
delivery of the document to another person. Indorsement
by the named person is not required to negotiate the
document.

(2) If the document's original terms run to the order of a
named person and the named person has control of the
document, the effect is the same as if the document had
been negotiated.

(3) A document is duly negotiated if it is negotiated in
the manner stated in this subsection to a holder that
purchases it in good faith, without notice of any defense
against or claim to it on the part of any person, and for
value, unless it is established that the negotiation is not in
the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§46-7-502. Rights acquired by due negotiation.

(a) Subject to sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:
(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

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

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver and entrust them the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 7-403; or

(C) Power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negoti-
24  ated. However, delivery by the carrier in accordance with
25  Part 4 pursuant to its own bill of lading discharges the
26  carrier's obligation to deliver.

§46-7-504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION; EFFECT
OF DIVERSION; STOPPAGE OF DELIVERY.

1  (a) A transferee of a document of title, whether negotia-
2  ble or nonnegotiable, to which the document has been
3  delivered but not duly negotiated, acquires the title and
4  rights that its transferor had or had actual authority to
5  convey.

6  (b) In the case of a transfer of a nonnegotiable document
7  of title, until but not after the bailee receives notice of the
8  transfer, the rights of the transferee may be defeated:

9  (1) By those creditors of the transferor which could treat
10  the transfer as void under section 2-402 or 2A-308;

11  (2) By a buyer from the transferor in ordinary course of
12  business if the bailee has delivered the goods to the buyer
13  or received notification of the buyer's rights;

14  (3) By a lessee from the transferor in ordinary course of
15  business if the bailee has delivered the goods to the lessee
16  or received notification of the lessee's rights; or

17  (4) As against the bailee, by good-faith dealings of the
18  bailee with the transferor.

19  (c) A diversion or other change of shipping instructions
20  by the consignor in a nonnegotiable bill of lading which
21  causes the bailee not to deliver the goods to the consignee
22  defeats the consignee's title to the goods if the goods have
23  been delivered to a buyer in ordinary course of business or
24  a lessee in ordinary course of business and, in any event,
25  defeats the consignee's rights against the bailee.

26  (d) Delivery of the goods pursuant to a nonnegotiable
27  document of title may be stopped by a seller under section
28  2-705 or a lessor under section 2A-526, subject to the
29 requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

§46-7-505. Indorser not guarantor for other parties.

1 The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§46-7-506. Delivery without indorsement: right to compel indorsement.

1 The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§46-7-507. Warranties on negotiation or delivery of document of title.

1 If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-508, unless otherwise agreed the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

6 (1) The document is genuine;

7 (2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

9 (3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§46-7-508. Warranties of collecting bank as to documents of title.

1 A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or
3 with collection of a draft or other claim against delivery of
documents warrants by the delivery of the documents only
its own good faith and authority, even if the collecting
bank or other intermediary has purchased or made ad-
vances against the claim or draft to be collected.

§46-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the
obligations of a contract for sale, a contract for lease, or
the conditions of a letter of credit is determined by article
2, 2A, or 5.

PART 6 - WAREHOUSE RECEIPTS AND
BILLS OF LADING: MISCELLANEOUS PROVISIONS.

§46-7-601. Lost, stolen or destroyed of title.

(a) If a document of title is lost, stolen, or destroyed, a
court may order delivery of the goods or issuance of a
substitute document and the bailee may without liability
to any person comply with the order. If the document was
negotiable, a court may not order delivery of the goods or
issuance of a substitute document without the claimant’s
posting security unless it finds that any person that may
suffer loss as a result of nonsurrender of possession or
control of the document is adequately protected against
the loss. If the document was nonnegotiable, the court
may require security. The court may also order payment
of the bailee’s reasonable costs and attorney’s fees in any
action under this subsection.

(b) A bailee that, without a court order, delivers goods to
a person claiming under a missing negotiable document of
title is liable to any person injured thereby. If the delivery
is not in good faith, the bailee is liable for conversion.
Delivery in good faith is not conversion if the claimant
posts security with the bailee in an amount at least double
the value of the goods at the time of posting to indemnify
any person injured by the delivery which files a notice of
claim within one year after the delivery.

1 Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

§46-7-603. Conflicting claims; interpleader.

1 If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

PART 7 - MISCELLANEOUS PROVISIONS

§46-7-701. Applicability.

1 This article applies to a document of title that is issued or a bailment that arises on or after the effective date of this article. This article does not apply to a document of title that is issued or a bailment that arises before the effective date of this article even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after the effective date of this article. This article does not apply to a right of action that has accrued before the effective date of this article.
§46-7-702. Savings clause.

1 A document of title issued or a bailment that arises before the effective date of this article and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this article as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8–102. Definitions.

(a) In this article:

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

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

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

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

(5) "Clearing corporation" means:

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

(ii) A federal reserve bank; or

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

(6) "Communicate" means to:

(i) Send a signed writing; or

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

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

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

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

(i) A security;

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

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

(10)[reserved]

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

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

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

(i) The security certificate specifies a person entitled to
the security; and

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

(14) "Securities intermediary" means:

(i) A clearing corporation; or

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

(15) "Security", except as otherwise provided in section
8-103, means an obligation of an issuer or a share, partici-
pation or other interest in an issuer or in property or an
enterprise of an issuer:
(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

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

(iii) Which:

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

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

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

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

(18) "Uncertificated security" means a security that is not represented by a certificate.

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

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

(c) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.
(d) The characterization of a person, business or transaction for purposes of this article does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule.

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

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

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

(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.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
A commodity contract, as defined in section 9-102(a)(15), is not a security or a financial asset.

A document of title is not a financial asset unless section 8-102(a)(9)(iii) applies.

ARTICLE 9. 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: (i) 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 information 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 security 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 maintained by a commodity intermediary in which a commodity 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 substantially 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 household purposes. The term includes consumer-goods transactions.

(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(b).

(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) [reserved].

(44) "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.

(45) "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.
(46) "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.

(47) "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 furnished 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 materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities 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, transportable 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.
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349 (55) "Mortgage" means a consensual interest in real
350 property, including fixtures, which secures payment or
351 performance of an obligation.

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

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

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

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

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

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

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

380 (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.

(69) “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.

(70) “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.

(71) "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.

(72) "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.

(73) "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.

(74) "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. "Control" as provided in section 7-106 and 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.
§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;

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

(3) One of the following conditions is met:

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

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

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

(D) The collateral is deposit accounts, electronic chattel paper, investment property letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor's security agreement.

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

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

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

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

§46-9-207. 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 7-106, 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, 
incure 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 obliga-
tion 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

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

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

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

(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

(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;

(4) A secured party having control of investment prop-
erty 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;

(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; and

(6) A secured party having control of an electronic
document shall:

(A) Give control of the electronic document to the debtor
or its designated custodian;

(B) If the debtor designates a custodian that is the
designated custodian with which the authoritative copy of
the electronic document 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

(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.
§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:

(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.

(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.

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

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

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(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.

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.
1 (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.

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

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

4 (2) That is perfected under section 9-309 when it attaches;

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

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

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

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

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

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

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

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

13 (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.
§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.

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

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

(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 or control 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 tangible 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 possession 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 acknowledgment 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 person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(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, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 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, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 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.

§46-9-317. 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, tangible 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, electronic documents, general intangibles or investment property other than a certificated security 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 security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

§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 tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

§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.
6 (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:

9 (1) The record is not communicated by a method or
medium of communication authorized by the filing office;

11 (2) An amount equal to or greater than the applicable
filing fee is not tendered;

13 (3) The filing office is unable to index the record be-
cause:

15 (A) In the case of an initial financing statement, the
record does not provide a name for the debtor;

17 (B) In the case of an amendment or correction statement,
the record:

19 (i) Does not identify the initial financing statement as
required by section 9-512 or 9-518, as applicable; or

21 (ii) Identifies an initial financing statement whose
effectiveness has lapsed under section 9-515;

23 (C) 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 identi-
fied 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

29 (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;

33 (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.

(e) Administrative review. If the Secretary of State determines that a financing statement which identifies a public official or employee as a debtor is fraudulent or that an individual debtor and an individual secured party would appear to be the same individual on the financing statement or that the individual debtor claims to be a transmitting utility, without supporting documents, the Secretary may commence administrative proceedings to remove the statement from its records in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(1) Upon the commencement of proceedings pursuant to this subsection, the Secretary of State shall identify the financing statement in its records as subject to administrative review and publish a notice in the West Virginia Register regarding the proceedings.

(2) A financing statement may be found to be fraudulent only if, based upon clear and convincing evidence, no good faith basis exists upon which to conclude that the secured party was authorized to file the statement and the statement was submitted for the purpose of harassment or intimidation or fraudulent intent of the alleged debtor.

(3) If upon the completion of administrative review, it is determined that the filing of a financing statement was fraudulent, the filing party shall be assessed all costs incurred by the Secretary in reaching a final determination, including reimbursement for all costs of the hearing. The filing party may also be subject to a civil penalty not exceeding five hundred dollars per fraudulent filing. If upon completion of administrative review or any subsequent appeal of a decision of the Secretary of State, it is
determined that a filing subject to appeal is not fraudulent, the secretary or court may award the prevailing party reasonable costs and expenses, including attorney fees.

(4) The Secretary of State shall annually submit a report to the Legislature regarding actions taken against fraudulent filings pursuant to this section which identifies the number and characteristics of such proceedings, identifies any creditors found to have made fraudulent filings, describes proceedings initiated by the secretary in which it is ultimately determined that fraudulent filings did not occur, describes the number and type of complaints received by the Secretary in which it is alleged that fraudulent filings have occurred, and describes the actions taken by the secretary to investigate complaints concerning allegedly fraudulent filings and the results of the investigations.

(5) A decision by the secretary to remove a financing statement determined to have been fraudulently filed subject to appeal de novo to the Circuit Court of Kanawha County. Pending the outcome of an appeal, the financing statement may not be removed from the records of the Secretary, but shall be identified in the records as having been adjudicated to be fraudulent, subject to a pending appeal by the putative creditor.

(6) A financing statement filed by a regulated financial institution is not subject to the provisions of this section. For the purposes of this section, a regulated financial institution is a bank, bank and trust company, trust company, savings bank, savings association, building and loan association, credit union, consumer finance company, insurance company, investment company, mortgage lender or broker, securities broker, dealer or underwriter, or other institution chartered, licensed, registered or otherwise authorized under federal law, the law of this state or any other state, to engage in secured lending.
§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

1 (a) Rights of secured party after default. After default, 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:

5 (1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

8 (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 7-106, 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.
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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 is approved this the th Day of , 2006.

Governor