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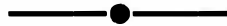
SECOND REGULAR SESSION, 2012



ENROLLED

House Bill No. 4251

(By Delegates Doyle, Rodighiero, Ferro,
Frazier, Reynolds and Storch)



Passed March 8, 2011

To Take Effect Ninety Days From Passage

HB 4251

E N R O L L E D

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H. B. 4251

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES DOYLE, RODIGHIERO, FERRO,
FRAZIER, REYNOLDS AND STORCH)

[Passed March 8, 2012; to take effect ninety days from passage.]

AN ACT to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-2A-103 of said code; to amend and reenact §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to amend said code by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all relating generally to amendments to the uniform commercial code; amending and adding definitions; amending what constitutes control of electronic ^{chattel} chattle paper; providing for effect on filed financing statements of change in governing law; amending priority of security interests created by new debtor; amending effectiveness of terms restricting assignment; improving the system for filing financing statements; providing greater protection for existing secured party having a security interest in after-acquired property upon relocation of debtor; reforming the correction statement process; technical changes; and providing transitional rules regarding perfection of security interests, effectiveness of financing statements, persons entitled to file financing statements and priority of financing statements.

*de
Amey D. Boy
Chief of the House
3/15/12*

Be it enacted by the Legislature of West Virginia:

That §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended, be repealed; that §46-2A-103 of said code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625 of said code be amended and reenacted; and that said code be amended by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all to read as follows:

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.

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

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

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

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

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

23 (d) “Conforming” goods or performance under a lease
24 contract means goods or performance that are in accordance
25 with the obligations under the lease contract.

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

29 (f) “Fault” means wrongful act, omission, breach or
30 default.

31 (g) “Finance lease” means a lease with respect to which:

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

34 (ii) The lessor acquires the goods or the right to
35 possession and use of the goods in connection with the lease;
36 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 lessor
42 acquired the goods or the right to possession and use of the
43 goods is a condition to effectiveness of the lease contract;

44 (C) The lessee, before signing the lease contract, receives
45 an accurate and complete statement designating the promises
46 and warranties, and any disclaimers of warranties, limitations
47 or modifications of remedies, or liquidated damages,
48 including those of a third party, such as the manufacturer of
49 the goods, provided to the lessor by the person supplying the
50 goods in connection with or as part of the contract by which
51 the lessor acquired the goods or the right to possession and
52 use of the goods; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

128 (u) "Present value" means the amount as of a date certain
129 of one or more sums payable in the future, discounted to the
130 date certain. The discount is determined by the interest rate
131 specified by the parties if the rate was not manifestly
132 unreasonable at the time the transaction was entered into;

133 otherwise, the discount is determined by a commercially
134 reasonable rate that takes into account the facts and
135 circumstances of each case at the time the transaction was
136 entered into.

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

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

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

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

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

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

152 "Accessions". Section 2A-310(1).

153 "Construction mortgage". Section 2A-309(1)(d).

154 "Encumbrance". Section 2A-309(1)(e).

155 "Fixtures". Section 2A-309(1)(a).

156 "Fixture filing". Section 2A-309(1)(b).

157 "Purchase money lease". Section 2A-309(1)(c).

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

160	“Account”.	Section 9–102(a)(2).
161	“Between merchants”.	Section 2–104(3).
162	“Buyer”.	Section 2–103(1)(a).
163	“Chattel paper”.	Section 9–102(a)(11).
164	“Consumer goods”.	Section 9–102(a)(23).
165	“Document”.	Section 9–102(a)(30).
166	“Entrusting”.	Section 2–403(3).
167	“General intangible”.	Section 9–102(a)(42).
168	“Instrument”.	Section 9–102(a)(47).
169	“Merchant”.	Section 2–104(1).
170	“Mortgage”.	Section 9–102(a)(55).
171	“Pursuant to commitment”.	9-102(a)(69).
172	“Receipt”.	Section 2–103(1)(c).
173	“Sale”.	Section 2–106(1).
174	“Sale on approval”.	Section 2–326.
175	“Sale or return”.	Section 2–326.
176	“Seller”.	Section 2–103(1)(d).

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

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

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

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

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

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

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

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

33 (A) Authenticated by a secured party;

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

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

39 (5) "Agricultural lien" means an interest, in farm
40 products:

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

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

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

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

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

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

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

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

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

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

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

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

64 (7) "Authenticate" means:

65 (A) To sign; or

66 (B) To attach to or logically associate with the record an
67 electronic sound, symbol or process, with present intent to
68 adopt or accept a record.

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

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

75 (10) "Certificate of title" means a certificate of title with
76 respect to which a statute provides for the security interest in
77 question to be indicated on the certificate as a condition or
78 result of the security interest's obtaining priority over the
79 rights of a lien creditor with respect to the collateral. The
80 term includes another record maintained as an alternative to
81 a certificate of title by the governmental unit that issues
82 certificates of title if a statute permits the security interest in
83 question to be indicated on the record as a condition or result
84 of the security interest's obtaining priority over the rights of
85 a lien creditor with respect to the collateral.

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

103 (12) "Collateral" means the property subject to a security
104 interest or agricultural lien. The term includes:

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

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

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

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

111 (A) The claimant is an organization; or

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

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

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

117 (14) "Commodity account" means an account maintained
118 by a commodity intermediary in which a commodity contract
119 is carried for a commodity customer.

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

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

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

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

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

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

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

140 (18) “Communicate.” means:

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

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

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

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

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

152 (A) The merchant:

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

155 (ii) Is not an auctioneer; and

156 (iii) Is not generally known by its creditors to be
157 substantially engaged in selling the goods of others;

158 (B) With respect to each delivery, the aggregate value of
159 the goods is \$1,000 or more at the time of delivery;

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

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

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

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

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

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

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

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

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

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

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

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

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

194 (28) "Debtor" means:

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

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

200 (C) A consignee.

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

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

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

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

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

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

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

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

220 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

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

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

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

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

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

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

253 (43) [reserved].

254 (44) "Goods" means all things that are movable when a
255 security interest attaches. The term includes: (i) Fixtures; (ii)
256 standing timber that is to be cut and removed under a
257 conveyance or contract for sale; (iii) the unborn young of
258 animals; (iv) crops grown, growing or to be grown, even if
259 the crops are produced on trees, vines or bushes; and (v)

260 manufactured homes. The term also includes a computer
261 program embedded in goods and any supporting information
262 provided in connection with a transaction relating to the
263 program if: (i) The program is associated with the goods in
264 such a manner that it customarily is considered part of the
265 goods; or (ii) by becoming the owner of the goods, a person
266 acquires a right to use the program in connection with the
267 goods. The term does not include a computer program
268 embedded in goods that consist solely of the medium in
269 which the program is embedded. The term also does not
270 include accounts, chattel paper, commercial tort claims,
271 deposit accounts, documents, general intangibles,
272 instruments, investment property, letter-of-credit rights,
273 letters of credit, money or oil, gas, or other minerals before
274 extraction.

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

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

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

293 right to payment arising out of the use of a credit or charge
294 card or information contained on or for use with the card.

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

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

298 (B) Are held by a person for sale or lease or to be
299 furnished under a contract of service;

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

302 (D) Consist of raw materials, work in process or materials
303 used or consumed in a business.

304 (49) "Investment property" means a security, whether
305 certificated or uncertificated, security entitlement, securities
306 account, commodity contract or commodity account.

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

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

316 (52) "Lien creditor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

378 (A) The spouse of the individual;

379 (B) A brother, brother-in-law, sister or sister-in-law of the
380 individual;

381 (C) An ancestor or lineal descendant of the individual or
382 the individual's spouse; or

383 (D) Any other relative, by blood or marriage, of the
384 individual or the individual's spouse who shares the same
385 home with the individual.

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

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

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

392 (C) An officer or director of, or a person performing
393 similar functions with respect to, a person described in
394 subparagraph (A);

395 (D) The spouse of an individual described in
396 subparagraph (A), (B) or (C); or

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

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

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

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

406 (C) Rights arising out of collateral;

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

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

415 (65) "Production-money crops" means crops that secure
416 a production-money obligation incurred with respect to the
417 production of those crops.

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

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

426 (68) "Promissory note" means an instrument that
427 evidences a promise to pay a monetary obligation, does not
428 evidence an order to pay, and does not contain an
429 acknowledgment by a bank that the bank has received for
430 deposit a sum of money or funds.

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

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

438 (A) Debt securities are issued;

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

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

445 (71) "Public organic record" means a record that is
446 available to the public for inspection and is:

447 (A) A record consisting of the record initially filed with
448 or issued by a state or the United States to form or organize
449 an organization and any record filed with or issued by the
450 state or the United States which amends or restates the initial
451 record;

452 (B) An organic record of a business trust consisting of the
453 record initially filed with a state and any record filed with the

454 state which amends or restates the initial record, if a statute
455 of the state governing business trusts requires that the record
456 be filed with the state; or

457 (C) A record consisting of legislation enacted by the
458 Legislature of a state or the Congress of the United States
459 which forms or organizes an organization, any record
460 amending the legislation, and any record filed with or issued
461 by the state or the United States which amends or restates the
462 name of the organization.

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

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

474 (74) "Registered organization" means an organization
475 formed or organized solely under the law of a single state or
476 the United States by the filing of a public organic record
477 with, the issuance of a public organic record by, or the
478 enactment of legislation by the state or the United States.
479 The term includes a business trust that is formed or organized
480 under the law of a single state if a statute of the state
481 governing business trusts requires that the business trust's
482 organic record be filed with the state.

483 (75) "Secondary obligor" means an obligor to the extent
484 that:

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

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

489 (76) "Secured party" means:

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

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

494 (C) A consignor;

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

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

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

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

504 (78) "Send," in connection with a record or notification,
505 means:

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

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

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

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

522 (81) "Supporting obligation" means a letter-of-credit
523 right or secondary obligation that supports the payment or
524 performance of an account, chattel paper, a document, a
525 general intangible, an instrument or investment property.

526 (82) "Tangible chattel paper" means chattel paper
527 evidenced by a record or records consisting of information
528 that is inscribed on a tangible medium.

529 (83) "Termination statement" means an amendment of a
530 financing statement which:

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

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

535 (84) "Transmitting utility" means a person primarily
536 engaged in the business of:

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

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

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

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

544 (b) Definitions in other articles. "Control" as provided in
545 section 7-106 and the following definitions in other articles
546 apply to this article:

547 "Applicant" Section 5-102.

548 "Beneficiary" Section 5-102.

549 "Broker" Section 8-102.

550 "Certificated security" Section 8-102.

551 "Check" Section 3-104.

552 "Clearing corporation" Section 8-102.

553 "Contract for sale" Section 2-106.

554 "Customer" Section 4-104.

555 "Entitlement holder" Section 8-102.

556 "Financial asset" Section 8-102.

557 "Holder in due course" Section 3-302.

558	"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5-102.
559		
560	"Issuer" (with respect to a security)	Section 8-201.
561	"Issuer" (with respect to a document of title)	Section 7-102.
562		
563	"Lease"	Section 2A-103.
564	"Lease agreement"	Section 2A-103.
565	"Lease contract"	Section 2A-103.
566	"Leasehold interest"	Section 2A-103.
567	"Lessee"	Section 2A-103.
568	"Lessee in ordinary course of business"	Section 2A-103.
569		
570	"Lessor"	Section 2A-103.
571	"Lessor's residual interest"	Section 2A-103.
572	"Letter of credit"	Section 5-102.
573	"Merchant"	Section 2-104.
574	"Negotiable instrument"	Section 3-104.
575	"Nominated person"	Section 5-102.
576	"Note"	Section 3-104.
577	"Proceeds of a letter of credit"	Section 5-114.

578	“Prove”	Section 3-103.
579	“Sale”	Section 2-106.
580	“Securities account”	Section 8-501.
581	“Securities intermediary”	Section 8-102.
582	“Security”	Section 8-102.
583	“Security certificate”	Section 8-102.
584	“Security entitlement”	Section 8-102.
585	“Uncertificated security”	Section 8-102.

586 (c) Article 1 definitions and principles. Article 1 contains
587 general definitions and principles of construction and
588 interpretation applicable throughout this article.

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

1 (a) General rule: control of electronic chattel paper. A
2 secured party has control of electronic chattel paper if a
3 system employed for evidencing the transfer of interests in
4 the chattel paper reliably establishes the secured party as the
5 person to which the chattel paper was assigned.

6 (b) Specific facts giving control: a system satisfies
7 subsection (a) of this section if the record or records
8 comprising the chattel paper are created, stored, and assigned
9 in such a manner that:

10 (1) A single authoritative copy of the record or records
11 exists which is unique, identifiable and, except as otherwise
12 provided in subdivisions (4), (5) and (6) of this section,
13 unalterable;

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

16 (3) The authoritative copy is communicated to and
17 maintained by the secured party or its designated custodian;

18 (4) Copies or amendments that add or change an
19 identified assignee of the authoritative copy can be made only
20 with the consent of the secured party;

21 (5) Each copy of the authoritative copy and any copy of
22 a copy is readily identifiable as a copy that is not the
23 authoritative copy; and

24 (6) Any amendment of the authoritative copy is readily
25 identifiable as an authorized or unauthorized revision.

§46-9-307. Location of debtor.

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

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

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

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

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

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

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

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

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

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

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

42 state of location, including by designating its main office,
43 home office or other comparable office; or

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) *Compliance with other law.* -- Compliance with the
23 requirements of a statute, regulation or treaty described in
24 subsection (a) of this section for obtaining priority over the
25 rights of a lien creditor is equivalent to the filing of a
26 financing statement under this article. Except as otherwise
27 provided in subsection (d) of this section and sections 9-313
28 and 9-316(d) and (e) for goods covered by a certificate of
29 title, a security interest in property subject to a statute,

30 regulation or treaty described in subsection (a) may be
31 perfected only by compliance with those requirements, and
32 a security interest so perfected remains perfected
33 notwithstanding a change in the use or transfer of possession
34 of the collateral.

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

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

§46-9-316. Effect of change in governing law.

1 (a) *General rule: effect on perfection of change in*
2 *governing law.* -- A security interest perfected pursuant to the
3 law of the jurisdiction designated in section 9-301(1) or 9-
4 305(c) remains perfected until the earliest of:

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

7 (2) The expiration of four months after a change of the
8 debtor's location to another jurisdiction; or

9 (3) The expiration of one year after a transfer of collateral
10 to a person that thereby becomes a debtor and is located in
11 another jurisdiction.

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

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

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

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

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

33 (d) *Goods covered by certificate of title from this state.--*
34 Except as otherwise provided in subsection (e) of this section,
35 a security interest in goods covered by a certificate of title
36 which is perfected by any method under the law of another
37 jurisdiction when the goods become covered by a certificate
38 of title from this state remains perfected until the security

39 interest would have become unperfected under the law of the
40 other jurisdiction had the goods not become so covered.

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

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

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

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

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

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

67 **(g) *Subsection (f) security interest perfected or***
68 ***unperfected under law of new jurisdiction.*** -- If a security
69 **interest described in subsection (f) of this section becomes**
70 **perfected under the law of the other jurisdiction before the**
71 **earlier of the time or the end of the period described in that**
72 **subsection, it remains perfected thereafter. If the security**
73 **interest does not become perfected under the law of the other**
74 **jurisdiction before the earlier of that time or the end of that**
75 **period, it becomes unperfected and is deemed never to have**
76 **been perfected as against a purchaser of the collateral for**
77 **value.**

78 **(h) *Effect on filed financing statement of change in***
79 ***governing law.*** -- The following rules apply to collateral to
80 **which a security interest attaches within four months after the**
81 **debtor changes its location to another jurisdiction:**

82 **(1) A financing statement filed before the change**
83 **pursuant to the law of the jurisdiction designated in section**
84 **9-301(1) or 9-305(c) is effective to perfect a security interest**
85 **in the collateral if the financing statement would have been**
86 **effective to perfect a security interest in the collateral had the**
87 **debtor not changed its location.**

88 **(2) If a security interest perfected by a financing**
89 **statement that is effective under paragraph (1) becomes**
90 **perfected under the law of the other jurisdiction before the**
91 **earlier of the time the financing statement would have**
92 **become ineffective under the law of the jurisdiction**
93 **designated in section 9-301(1) or 9-305(c) or the expiration**
94 **of the four-month period, it remains perfected thereafter. If**
95 **the security interest does not become perfected under the law**
96 **of the other jurisdiction before the earlier time or event, it**
97 **becomes unperfected and is deemed never to have been**
98 **perfected as against a purchaser of the collateral for value.**

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(A) Effect of change in governing law on financing statement filed against original debtor. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

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(i) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

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(ii) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

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

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

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

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

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

24 (d) *Licensees and buyers of certain collateral.* -- A
25 licensee of a general intangible or a buyer, other than a
26 secured party, of collateral other than tangible chattel paper,
27 tangible documents, goods, instruments, or a certificated
28 security takes free of a security interest if the licensee or
29 buyer gives value without knowledge of the security interest
30 and before it is perfected.

31 (e) *Purchase-money security interest.* -- Except as
32 otherwise provided in sections 9-320 and 9-321, if a person
33 files a financing statement with respect to a purchase-money
34 security interest before or within twenty days after the debtor
35 receives delivery of the collateral, the security interest takes

36 priority over the rights of a buyer, lessee or lien creditor
37 which arise between the time the security interest attaches
38 and the time of filing.

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

1 (a) *Subordination of security interest created by new*
2 *debtor.* — Subject to subsection (b) of this section, a security
3 interest that is created by a new debtor in collateral in which
4 the new debtor has or acquires rights and is perfected solely
5 by a filed financing statement that would be ineffective to
6 perfect the security interest but for the application of Section
7 9-316(i)(1) or 9-508 is subordinate to a security interest in the
8 same collateral which is perfected other than by such a filed
9 financing statement.

10 (b) *Priority under other provisions; multiple original*
11 *debtors.* — The other provisions of this part determine the
12 priority among conflicting security interests in the same
13 collateral perfected by filed financing described in subsection
14 (a) of this section. However, if the security agreements to
15 which a new debtor became bound as debtor were not entered
16 into by the same original debtor, the conflicting security
17 interests rank according to priority in time of the new
18 debtor's having become bound.

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PART 4. RIGHTS OF THIRD PARTIES.

§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

1 (a) *Discharge of account debtor; effect of notification.*—
2 Subject to subsections (b) through (i), an account debtor on

3 an account, chattel paper or a payment intangible may
4 discharge its obligation by paying the assignor until, but not
5 after, the account debtor receives a notification, authenticated
6 by the assignor or the assignee, that the amount due or to
7 become due has been assigned and that payment is to be
8 made to the assignee. After receipt of the notification, the
9 account debtor may discharge its obligation by paying the
10 assignee and may not discharge the obligation by paying the
11 assignor.

12 (b) *When notification ineffective.* -- Subject to subsection
13 (h) of this section, notification is ineffective under subsection
14 (a) of this section:

15 (1) If it does not reasonably identify the rights assigned;

16 (2) To the extent that an agreement between an account
17 debtor and a seller of a payment intangible limits the account
18 debtor's duty to pay a person other than the seller and the
19 limitation is effective under law other than this article; or

20 (3) At the option of an account debtor, if the notification
21 notifies the account debtor to make less than the full amount
22 of any installment or other periodic payment to the assignee,
23 even if:

24 (A) Only a portion of the account, chattel paper or
25 payment intangible has been assigned to that assignee;

26 (B) A portion has been assigned to another assignee; or

27 (C) The account debtor knows that the assignment to that
28 assignee is limited.

29 (c) *Proof of assignment.* -- Subject to subsection (h) of
30 this section, if requested by the account debtor, an assignee

31 shall seasonably furnish reasonable proof that the assignment
32 has been made. Unless the assignee complies, the account
33 debtor may discharge its obligation by paying the assignor,
34 even if the account debtor has received a notification under
35 subsection (a) of this section.

36 (d) *Term restricting assignment generally ineffective.* --
37 Except as otherwise provided in subsection (e) of this section
38 and sections 2A-303 and 9-407, and subject to subsection (h)
39 of this section, a term in an agreement between an account
40 debtor and an assignor or in a promissory note is ineffective
41 to the extent that it:

42 (1) Prohibits, restricts or requires the consent of the
43 account debtor or person obligated on the promissory note to
44 the assignment or transfer of, or the creation, attachment,
45 perfection or enforcement of a security interest in, the
46 account, chattel paper, payment intangible or promissory
47 note; or

48 (2) Provides that the assignment or transfer or the
49 creation, attachment, perfection or enforcement of the
50 security interest may give rise to a default, breach, right of
51 recoupment, claim, defense, termination, right of termination
52 or remedy under the account, chattel paper, payment
53 intangible or promissory note.

54 (e) *Inapplicability of subsection (d) to certain sales.*--
55 Subsection (d) of this section does not apply to the sale of a
56 payment intangible or promissory note other than a sale
57 pursuant to a disposition under section 9-610 or an
58 acceptance of collateral under section 9-620.

59 (f) *Legal restrictions on assignment generally ineffective.* --
60 Except as otherwise provided in sections 2A-303 and 9-407
61 and subject to subsections (h) and (i) of this section, a rule of

62 law, statute or regulation that prohibits, restricts or requires
63 the consent of a government, governmental body or official,
64 or account debtor to the assignment or transfer of, or creation
65 of a security interest in, an account or chattel paper is
66 ineffective to the extent that the rule of law, statute or
67 regulation:

68 (1) Prohibits, restricts or requires the consent of the
69 government, governmental body or official, or account debtor
70 to the assignment or transfer of, or the creation, attachment,
71 perfection or enforcement of a security interest in the account
72 or chattel paper; or

73 (2) Provides that the assignment or transfer or the
74 creation, attachment, perfection or enforcement of the
75 security interest may give rise to a default, breach, right of
76 recoupment, claim, defense, termination, right of termination
77 or remedy under the account or chattel paper.

78 (g) *Subsection (b)(3) not waivable.* -- Subject to
79 subsection (h) of this section, an account debtor may not
80 waive or vary its option under subsection (b)(3) of this
81 section.

82 (h) *Rule for individual under other law.* -- This section is
83 subject to law other than this article which establishes a
84 different rule for an account debtor who is an individual and
85 who incurred the obligation primarily for personal, family or
86 household purposes.

87 (i) *Inapplicability.* -- This section does not apply to an
88 assignment of a health-care-insurance receivable. Subsection
89 (f) does not apply to an assignment or transfer of, or the
90 creation, attachment, perfection or enforcement of a security
91 interest in, a right the transfer of which is prohibited or
92 restricted by any of the following statutes to the extent that

93 the statute is inconsistent with subsection (f): Chapter twenty-
94 three, article four, section eighteen, chapter forty-six-a, article
95 six-h, and a claim or right to receive benefits under a special
96 needs trust as described in 42 U.S.C. §1396p(d)(4).

97 (j) *Section prevails over specified inconsistent law.* --
98 This section prevails over any inconsistent provision of an
99 existing or future statute, rule or regulation of this state unless
100 the provision is contained in a statute of this state, refers
101 expressly to this section and states that the provision prevails
102 over this section.

**§46-9-408. Restrictions on assignment of promissory notes,
health-care-insurance receivables and certain
general intangibles ineffective.**

1 (a) *Term restricting assignment generally ineffective.*--
2 Except as otherwise provided in subsection (b) of this
3 section, a term in a promissory note or in an agreement
4 between an account debtor and a debtor which relates to a
5 health-care-insurance receivable or a general intangible,
6 including a contract, permit, license or franchise, and which
7 term prohibits, restricts or requires the consent of the person
8 obligated on the promissory note or the account debtor to, the
9 assignment or transfer of or creation, attachment or perfection
10 of a security interest in, the promissory note, health-care-
11 insurance receivable or general intangible, is ineffective to
12 the extent that the term:

13 (1) Would impair the creation, attachment or perfection
14 of a security interest; or

15 (2) Provides that the assignment or transfer or the
16 creation, attachment or perfection of the security interest may
17 give rise to a default, breach, right of recoupment, claim,
18 defense, termination, right of termination or remedy under the

19 promissory note, health-care-insurance receivable or general
20 intangible.

21 (b) Applicability of subsection (a) to sales of certain
22 rights to payment. Subsection (a) of this section applies to a
23 security interest in a payment intangible or promissory note
24 only if the security interest arises out of a sale of the payment
25 intangible or promissory note other than a sale pursuant to a
26 disposition under section 9-610 or an acceptance of collateral
27 under section 9-620.

28 (c) *Legal restrictions on assignment generally ineffective.* --
29 A rule of law, statute or regulation that prohibits, restricts or
30 requires the consent of a government, governmental body or
31 official, person obligated on a promissory note, or account
32 debtor to the assignment or transfer of, or creation of a
33 security interest in, a promissory note, health-care-insurance
34 receivable or general intangible, including a contract, permit,
35 license or franchise between an account debtor and a debtor,
36 is ineffective to the extent that the rule of law, statute or
37 regulation:

38 (1) Would impair the creation, attachment or perfection
39 of a security interest; or

40 (2) Provides that the assignment or transfer or the
41 creation, attachment or perfection of the security interest may
42 give rise to a default, breach, right of recoupment, claim,
43 defense, termination, right of termination or remedy under the
44 promissory note, health-care-insurance receivable or general
45 intangible.

46 (d) *Limitation on ineffectiveness under subsections (a)*
47 *and (c).* -- To the extent that a term in a promissory note or
48 in an agreement between an account debtor and a debtor
49 which relates to a health-care-insurance receivable or general

50 intangible or a rule of law, statute or regulation described in
51 subsection (c) of this section would be effective under law
52 other than this article but is ineffective under subsection (a)
53 or (c) of this section, the creation, attachment or perfection of
54 a security interest in the promissory note, health-care-
55 insurance receivable or general intangible:

56 (1) Is not enforceable against the person obligated on the
57 promissory note or the account debtor;

58 (2) Does not impose a duty or obligation on the person
59 obligated on the promissory note or the account debtor;

60 (3) Does not require the person obligated on the
61 promissory note or the account debtor to recognize the
62 security interest, pay or render performance to the secured
63 party, or accept payment or performance from the secured
64 party;

65 (4) Does not entitle the secured party to use or assign the
66 debtor's rights under the promissory note, health-care-
67 insurance receivable or general intangible, including any
68 related information or materials furnished to the debtor in the
69 transaction giving rise to the promissory note, health-care-
70 insurance receivable or general intangible;

71 (5) Does not entitle the secured party to use, assign,
72 possess or have access to any trade secrets or confidential
73 information of the person obligated on the promissory note or
74 the account debtor; and

75 (6) Does not entitle the secured party to enforce the
76 security interest in the promissory note, health-care-insurance
77 receivable or general intangible.

78 (e) *Section prevails over specified inconsistent law.* --
79 This section prevails over any inconsistent provisions of an
80 existing or future statute, rule or regulation of this state unless
81 the provision is contained in a statute of this state, refers
82 expressly to this section and states that the provision prevails
83 over this section.

84 (f) *Inapplicability.* -- Subsection (c) of this section does
85 not apply to an assignment or transfer of or the creation,
86 attachment, perfection, or enforcement of a security interest
87 in, a right the transfer of which is prohibited or restricted by
88 any of the following statutes, to the extent that the statute is
89 inconsistent with said subsection: Chapter twenty-three,
90 article four, section eighteen; chapter forty-six-a, article six-
91 h; and a claim or right to receive benefits under a special
92 needs trust as described in 42 U.S.C. §1396(d)(4).

**§46-9-502. Contents of financing statement; record of mortgage
as financing statement; time of filing financing
statement.**

1 (a) *Sufficiency of financing statement.* -- Subject to
2 subsection (b), a financing statement is sufficient only if it:

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a
5 representative of the secured party; and

6 (3) Indicates the collateral covered by the financing
7 statement.

8 (b) *Real-property-related financing statements.* -- Except
9 as otherwise provided in section 9-501(b), to be sufficient, a
10 financing statement that covers as-extracted collateral or
11 timber to be cut, or which is filed as a fixture filing and

12 covers goods that are or are to become fixtures, must satisfy
13 subsection (a) of this section and also:

14 (1) Indicate that it covers this type of collateral;

15 (2) Indicate that it is to be filed for record in the real
16 property records;

17 (3) Provide a description of the real property to which the
18 collateral is related sufficient to give constructive notice of a
19 mortgage under the law of this state if the description were
20 contained in a record of the mortgage of the real property;
21 and

22 (4) If the debtor does not have an interest of record in the
23 real property, provide the name of a record owner.

24 (c) *Record of mortgage as financing statement.* -- A
25 record of a mortgage is effective, from the date of recording,
26 as a financing statement filed as a fixture filing or as a
27 financing statement covering as-extracted collateral or timber
28 to be cut only if:

29 (1) The record indicates the goods or accounts that it
30 covers;

31 (2) The goods are or are to become fixtures relate to the
32 real property described in the record or the collateral is
33 related to the real property described in the record and is as-
34 extracted collateral or timber to be cut;

35 (3) The record satisfies the requirements for a financing
36 statement in this section: *Provided, That*

37 (A) The record need not indicate that it is to be filed in
38 the real property records; and

39 (B) The record sufficiently provides the name of a debtor
40 who is an individual if it provides the individual name of the
41 debtor or the surname and first personal name of the debtor,
42 even if the debtor is an individual to whom section 9-
43 503(a)(4) applies; and

44 (4) The record is duly recorded.

45 (d) *Filing before security agreement or attachment.* -- A
46 financing statement may be filed before a security agreement
47 is made or a security interest otherwise attaches.

§46-9-503. Name of debtor and secured party.

1 (a) *Sufficiency of debtor's name.* -- A financing statement
2 sufficiently provides the name of the debtor:

3 (1) Except as otherwise provided in paragraph (3) of this
4 section, if the debtor is a registered organization or the
5 collateral is held in a trust that is a registered organization,
6 only if the financing statement provides the name that is
7 stated to be the registered organization's name on the public
8 organic record most recently filed with or issued or enacted
9 by the debtor's jurisdiction of organization which purports to
10 state, amend or restate the registered organization's name;

11 (2) Subject to subsection (f) of this section, if the
12 collateral is being administered by the personal representative
13 of a decedent, only if the financing statement provides, as the
14 name of the debtor, the name of the decedent and indicates
15 that collateral is being administered by a personal
16 representative;

17 (3) If the collateral is held in a trust that is not a registered
18 organization, only if the financing statement:

19 (A) Provides, as the name of the debtor:

20 (i) If the organic record of the trust specifies a name for
21 the trust, the name specified; or

22 (ii) If the organic record of the trust does not specify a
23 name for the trust, the name of the settlor or testator; and

24 (B) In a separate part of the financing statement:

25 (i) If the name is provided in accordance with
26 subparagraph (A)(i), indicates that the collateral is held in a
27 trust; or

28 (ii) If the name is provided in accordance with
29 subparagraph (A)(ii), provides additional information
30 sufficient to distinguish the trust from other trusts having one
31 or more of the same settlors or the same testator and indicates
32 that the collateral is held in a trust, unless the additional
33 information so indicates;

34 (4) Subject to subsection (g), if the debtor is an individual
35 to whom this state has issued a driver's license that has not
36 expired, only if the financing statement provides the name of
37 the individual which is indicated on the driver's license;

38 (5) If the debtor is an individual to whom subdivision (4)
39 does not apply, only if the financing statement provides the
40 individual name of the debtor or the surname and first
41 personal name of the debtor; and

42 (6) In other cases:

43 (A) If the debtor has a name, only if the financing
44 statement provides the organizational name of the debtor; and

45 (B) If the debtor does not have a name, only if it provides
46 the names of the partners, members, associates or other
47 persons comprising the debtor, in a manner that each name
48 provided would be sufficient if the person named were the
49 debtor.

50 (b) *Additional debtor-related information.* -- A financing
51 statement that provides the name of the debtor in accordance
52 with subsection (a) of this section is not rendered ineffective
53 by the absence of:

54 (1) A trade name or other name of the debtor; or

55 (2) Unless required under subsection (a)(6)(B) of this
56 section, names of partners, members, associates or other
57 persons comprising the debtor.

58 (c) *Debtor's trade name insufficient.* -- A financing
59 statement that provides only the debtor's trade name does not
60 sufficiently provide the name of the debtor.

61 (d) *Representative capacity.*-- Failure to indicate the
62 representative capacity of a secured party or representative of
63 a secured party does not affect the sufficiency of a financing
64 statement.

65 (e) *Multiple debtors and secured parties.* -- A financing
66 statement may provide the name of more than one debtor and
67 the name of more than one secured party.

68 (f) *Name of decedent.* -- The name of the decedent
69 indicated on the order appointing the personal representative
70 of the decedent issued by the court having jurisdiction over
71 the collateral is sufficient as the "name of the decedent"
72 under subdivision (a)(2) of this section.

73 (g) *Multiple driver's licenses.* -- If this state has issued to
74 an individual more than one driver's license of a kind
75 described in subdivision (a)(4) of this section, the one that
76 was issued most recently is the one to which subdivision
77 (a)(4) refers.

78 (h) *Definition.* -- In this section, the "name of the settlor
79 or testator" means:

80 (1) If the settlor is a registered organization, the name that
81 is stated to be the settlor's name on the public organic record
82 most recently filed with or issued or enacted by the settlor's
83 jurisdiction of organization which purports to state, amend,
84 or restate the settlor's name; or

85 (2) In other cases, the name of the settlor or testator
86 indicated in the trust's organic record.

**§46-9-507. Effect of certain events on effectiveness of financing
statement.**

1 (a) *Disposition.* -- A filed financing statement remains
2 effective with respect to collateral that is sold, exchanged,
3 leased, licensed or otherwise disposed of and in which a
4 security interest or agricultural lien continues, even if the
5 secured party knows of or consents to the disposition.

6 (b) *Information becoming seriously misleading.* --
7 Except as otherwise provided in subsection (c) of this section
8 and section 9-508, a financing statement is not rendered
9 ineffective if, after the financing statement is filed, the
10 information provided in the financing statement becomes
11 seriously misleading under section 9-506.

12 (c) *Change in debtor's name.* -- If the name that a filed
13 financing statement provides for a debtor becomes

14 insufficient as the name of the debtor under section 9-503(a)
15 so that the financing statement becomes seriously misleading
16 under section 9-506:

17 (1) The financing statement is effective to perfect a
18 security interest in collateral acquired by the debtor before,
19 or within four months after, the filed financing statement
20 becomes seriously misleading; and

21 (2) The financing statement is not effective to perfect a
22 security interest in collateral acquired by the debtor more
23 than four months after the filed financing statement becomes
24 seriously misleading, unless an amendment to the financing
25 statement which renders the financing statement not seriously
26 misleading is filed within four months after the financing
27 statement became seriously misleading.

**§46-9-515. Duration and effectiveness of financing statement;
effect of lapsed financing statement.**

1 (a) *Five-year effectiveness.* -- Except as otherwise
2 provided in subsections (b), (e), (f) and (g) of this section, a
3 filed financing statement is effective for a period of five years
4 after the date of filing.

5 (b) *Public-finance or manufactured-home transaction.* --
6 Except as otherwise provided in subsections (e), (f) and (g)
7 of this section, an initial financing statement filed in
8 connection with a public-finance transaction or
9 manufactured-home transaction is effective for a period of
10 forty years after the date of filing if it indicates that it is filed
11 in connection with a public-finance transaction or
12 manufactured-home transaction.

13 (c) *Lapse and continuation of financing statement.* -- The
14 effectiveness of a filed financing statement lapses on the

15 expiration of the period of its effectiveness unless before the
16 lapse a continuation statement is filed pursuant to subsection
17 (d) of this section. Upon lapse, a financing statement ceases
18 to be effective and any security interest or agricultural lien
19 that was perfected by the financing statement becomes
20 unperfected, unless the security interest is perfected
21 otherwise. If the security interest or agricultural lien becomes
22 unperfected upon lapse, it is deemed never to have been
23 perfected as against a purchaser of the collateral for value.

24 (d) *When continuation statement may be filed.* -- A
25 continuation statement may be filed only within six months
26 before the expiration of the five-year period specified in
27 subsection (a) of this section or the thirty-year period
28 specified in subsection (b) of this section, whichever is
29 applicable.

30 (e) *Effect of filing continuation statement.* -- Except as
31 otherwise provided in section 9-510, upon timely filing of a
32 continuation statement, the effectiveness of the initial
33 financing statement continues for a period of five years
34 commencing on the day on which the financing statement
35 would have become ineffective in the absence of the filing.
36 Upon the expiration of the five-year period, the financing
37 statement lapses in the same manner as provided in
38 subsection (c) of this section, unless, before the lapse, another
39 continuation statement is filed pursuant to subsection (d) of
40 this section. Succeeding continuation statements may be
41 filed in the same manner to continue the effectiveness of the
42 initial financing statement.

43 (f) *Transmitting utility financing statement.* -- If a debtor
44 is a transmitting utility and a filed initial financing statement
45 so indicates, the financing statement is effective until a
46 termination statement is filed.

47 (g) *Record of mortgage as financing statement.* -- A
48 record of a mortgage that is effective as a financing statement
49 filed as a fixture filing under section 9-502(c) remains
50 effective as a financing statement filed as a fixture filing until
51 the mortgage is released or satisfied of record or its
52 effectiveness otherwise terminates as to the real property.

§46-9-516. What constitutes filing; effectiveness of filing.

1 (a) *What constitutes filing.* -- Except as otherwise
2 provided in subsection (b) of this section, communication of
3 a record to a filing office and tender of the filing fee or
4 acceptance of the record by the filing office constitutes filing.

5 (b) *Refusal to accept record; filing does not occur.* --
6 Filing does not occur with respect to a record that a filing
7 office refuses to accept because:

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

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

12 (3) The filing office is unable to index the record
13 because:

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

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

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

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

22 (C) In the case of an initial financing statement that
23 provides the name of a debtor identified as an individual or
24 an amendment that provides a name of a debtor identified as
25 an individual which was not previously provided in the
26 financing statement to which the record relates, the record
27 does not identify the debtor's surname; or

28 (D) In the case of a record filed or recorded in the filing
29 office described in section 9-501(a)(1), the record does not
30 provide a sufficient description of the real property to which
31 it relates;

32 (4) In the case of an initial financing statement or an
33 amendment that adds a secured party of record, the record
34 does not provide a name and mailing address for the secured
35 party of record;

36 (5) In the case of an initial financing statement or an
37 amendment that provides a name of a debtor which was not
38 previously provided in the financing statement to which the
39 amendment relates, the record does not:

40 (A) Provide a mailing address for the debtor;

41 (B) Indicate whether the name provided as the name of
42 the debtor is the name of an individual or an organization;

43 (6) In the case of an assignment reflected in an initial
44 financing statement under section 9-514(a) or an amendment
45 filed under section 9-514(b), the record does not provide a
46 name and mailing address for the assignee; or

47 (7) In the case of a continuation statement, the record is
48 not filed within the six-month period prescribed by section 9-
49 515(d).

50 (c) *Rules applicable to subsection (b).* -- For purposes of
51 subsection (b):

52 (1) A record does not provide information if the filing
53 office is unable to read or decipher the information; and

54 (2) A record that does not indicate that it is an
55 amendment or identify an initial financing statement to which
56 it relates, as required by section 9-512, 9-514 or 9-518, is an
57 initial financing statement.

58 (d) *Refusal to accept record; record effective as filed*
59 *record.* -- A record that is communicated to the filing office
60 with tender of the filing fee, but which the filing office
61 refuses to accept for a reason other than one set forth in
62 subsection (b) of this section, is effective as a filed record
63 except as against a purchaser of the collateral which gives
64 value in reasonable reliance upon the absence of the record
65 from the files.

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

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

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

87 (3) If upon the completion of administrative review, it is
88 determined that the filing of a financing statement was
89 fraudulent, the filing party shall be assessed all costs incurred
90 by the Secretary in reaching a final determination, including
91 reimbursement for all costs of the hearing. The filing party
92 may also be subject to a civil penalty not exceeding \$500 per
93 fraudulent filing. If upon completion of administrative
94 review or any subsequent appeal of a decision of the
95 Secretary of State, it is determined that a filing subject to
96 appeal is not fraudulent, the secretary or court may award the
97 prevailing party reasonable costs and expenses, including
98 attorney fees.

99 (4) The Secretary of State shall annually submit a report
100 to the Legislature regarding actions taken against fraudulent
101 filings pursuant to this section which identifies the number
102 and characteristics of such proceedings, identifies any
103 creditors found to have made fraudulent filings, describes
104 proceedings initiated by the secretary in which it is ultimately
105 determined that fraudulent filings did not occur, describes the
106 number and type of complaints received by the secretary in
107 which it is alleged that fraudulent filings have occurred, and
108 describes the actions taken by the secretary to investigate

109 complaints concerning allegedly fraudulent filings and the
110 results of the investigations.

111 (5) A decision by the secretary to remove a financing
112 statement determined to have been fraudulently filed subject
113 to appeal *de novo* to the circuit court of Kanawha County.
114 Pending the outcome of an appeal, the financing statement
115 may not be removed from the records of the Secretary, but
116 shall be identified in the records as having been adjudicated
117 to be fraudulent, subject to a pending appeal by the putative
118 creditor.

119 (6) A financing statement filed by a regulated financial
120 institution is not subject to the provisions of this section. For
121 the purposes of this section, a regulated financial institution
122 is a bank, bank and trust company, trust company, savings
123 bank, savings association, building and loan association,
124 credit union, consumer finance company, insurance company,
125 investment company, mortgage lender or broker, securities
126 broker, dealer or underwriter, or other institution chartered,
127 licensed, registered or otherwise authorized under federal
128 law, the law of this state or any other state, to engage in
129 secured lending.

**§46-9-518. Claim concerning inaccurate or wrongfully filed
record.**

1 (a) *Statement with respect to record indexed under*
2 *person's name.* -- A person may file in the filing office an
3 information statement with respect to a record indexed there
4 under the person's name if the person believes that the record
5 is inaccurate or was wrongfully filed.

6 (b) *Contents of statement under subsection (a).* -- An
7 information statement under subsection (a) of this section
8 must:

9 (1) Identify the record to which it relates by:

10 (A) The file number assigned to the initial financing
11 statement to which the record relates; and

12 (B) If the information statement relates to a record filed
13 or recorded in a filing office described in section 9-501(a)(1),
14 the date and time that the initial financing statement was filed
15 or recorded and the information specified in section 9-502(b);

16 (2) Indicate that it is an information statement; and

17 (3) Provide the basis for the person's belief that the
18 record is inaccurate and indicate the manner in which the
19 person believes the record should be amended to cure any
20 inaccuracy or provide the basis for the person's belief that the
21 record was wrongfully filed.

22 (c) *Statement by secured party of record.* -- A person
23 may file in the filing office an information statement with
24 respect to a record filed there if the person is a secured party
25 of record with respect to the financing statement to which the
26 record relates and believes that the person that filed the
27 record was not entitled to do so under section 9-509(d).

28 (d) *Contents of statement under subsection (c).* -- An
29 information statement under subsection (c) of this section
30 must:

31 (1) Identify the record to which it relates by:

32 (A) The file number assigned to the initial financing
33 statement to which the record relates; and

34 (B) If the information statement relates to a record filed
35 or recorded in a filing office described in section 9-501(a)(1),

36 the date and time that the initial financing statement was filed
37 or recorded and the information specified in section 9-502(b);

38 (2) Indicate that it is an information statement; and

39 (3) Provide the basis for the person's belief that the
40 person that filed the record was not entitled to do so under
41 Section 9-509(d).

42 (e) *Record not affected by information statement.* -- The
43 filing of ~~a~~ an information statement does not affect the
44 effectiveness of an initial financing statement or other filed
45 record.

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§46-9-607. Collection and enforcement by secured party.

1 (a) *Collection and enforcement generally.* -- If so agreed,
2 and in any event after default, a secured party:

3 (1) May notify an account debtor or other person
4 obligated on collateral to make payment or otherwise render
5 performance to or for the benefit of the secured party;

6 (2) May take any proceeds to which the secured party is
7 entitled under section 9-315;

8 (3) May enforce the obligations of an account debtor or
9 other person obligated on collateral and exercise the rights of
10 the debtor with respect to the obligation of the account debtor
11 or other person obligated on collateral to make payment or
12 otherwise render performance to the debtor, and with respect
13 to any property that secures the obligations of the account
14 debtor or other person obligated on the collateral;

15 (4) If it holds a security interest in a deposit account
16 perfected by control under section 9-104(a)(1), may apply the

17 balance of the deposit account to the obligation secured by
18 the deposit account; and

19 (5) If it holds a security interest in a deposit account
20 perfected by control under section 9-104(a)(2) or (3), may
21 instruct the bank to pay the balance of the deposit account to
22 or for the benefit of the secured party.

23 (b) *Nonjudicial enforcement of mortgage.* – If necessary
24 to enable a secured party to exercise under subsection (a)(3)
25 of this section the right of a debtor to enforce a mortgage
26 nonjudicially, the secured party may record in the office in
27 which a record of the mortgage is recorded:

28 (1) A copy of the security agreement that creates or
29 provides for a security interest in the obligation secured by
30 the mortgage; and

31 (2) The secured party's sworn affidavit in recordable
32 form stating that:

33 (A) A default has occurred with respect to the obligation
34 secured by the mortgage; and

35 (B) The secured party is entitled to enforce the mortgage
36 nonjudicially.

37 (c) *Commercially reasonable collection and enforcement.*
38 – A secured party shall proceed in a commercially reasonable
39 manner if the secured party:

40 (1) Undertakes to collect from or enforce an obligation of
41 an account debtor or other person obligated on collateral; and

42 (2) Is entitled to charge back uncollected collateral or
43 otherwise to full or limited recourse against the debtor or a
44 secondary obligor.

45 (d) *Expenses of collection and enforcement.* -- A secured
 46 party may deduct from the collections made pursuant to
 47 subsection (c) of this section reasonable expenses of
 48 collection and enforcement, including reasonable attorney's
 49 fees and legal expenses incurred by the secured party.

50 (e) *Duties to secured party not affected.* -- This section
 51 does not determine whether an account debtor, bank or other
 52 person obligated on collateral owes a duty to a secured party.

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

§46-9-625. Remedies for secured party's failure to comply with article.

1 (a) *Judicial orders concerning noncompliance.*-- If it is
 2 established that a secured party is not proceeding in
 3 accordance with this article, a court may order or restrain
 4 collection, enforcement, or disposition of collateral on
 5 appropriate terms and conditions.

6 (b) *Damages for noncompliance.* -- Subject to
 7 subsections (c), (d) and (f) of this section, a person is liable
 8 for damages in the amount of any loss caused by a failure to
 9 comply with this article. Loss caused by a failure to comply
 10 may include loss resulting from the debtor's inability to
 11 obtain, or increased costs of, alternative financing.

12 (c) *Persons entitled to recover damages; statutory*
 13 *damages if collateral is consumer goods.* -- Except as
 14 otherwise provided in section 9-628:

15 (1) A person that, at the time of the failure, was a debtor,
 16 was an obligor, or held a security interest in or other lien on
 17 the collateral may recover damages under subsection (b) of
 18 this section for its loss; and

19 (2) If the collateral is consumer goods, a person that was
20 a debtor or a secondary obligor at the time a secured party
21 failed to comply with this part may recover for that failure in
22 any event an amount not less than the credit service charge
23 plus ten percent of the principal amount of the obligation or
24 the time-price differential plus ten percent of the cash price.

25 (d) *Recovery when deficiency eliminated or reduced.* -- A
26 debtor whose deficiency is eliminated under section 9-626
27 may recover damages for the loss of any surplus. However,
28 a debtor or secondary obligor whose deficiency is eliminated
29 or reduced under section 9-626 may not otherwise recover
30 under subsection (b) of this section for noncompliance with
31 the provisions of this part relating to collection, enforcement,
32 disposition or acceptance.

33 (e) *Statutory damages: noncompliance with specified*
34 *provisions.* -- In addition to any damages recoverable under
35 subsection (b) of this section, the debtor, consumer obligor or
36 person named as a debtor in a filed record, as applicable, may
37 recover \$500 in each case from a person that:

38 (1) Fails to comply with section 9-208;

39 (2) Fails to comply with section 9-209;

40 (3) Files a record that the person is not entitled to file
41 under section 9-509(a);

42 (4) Fails to cause the secured party of record to file or
43 send a termination statement as required by section 9-513(a)
44 or (c);

45 (5) Fails to comply with section 9-616(b)(1) and whose
46 failure is part of a pattern, or consistent with a practice, of
47 noncompliance; or

48 (6) Fails to comply with section 9-616(b)(2).

49 (f) *Statutory damages: noncompliance with section 9-*
50 *210.* -- A debtor or consumer obligor may recover damages
51 under subsection (b) of this section and, in addition, \$500 in
52 each case from a person that, without reasonable cause, fails
53 to comply with a request under section 9-210. A recipient of
54 a request under section 9-210 which never claimed an interest
55 in the collateral or obligations that are the subject of a request
56 under that section has a reasonable excuse for failure to
57 comply with the request within the meaning of this
58 subsection.

59 (g) *Limitation of security interest: noncompliance with*
60 *section 9-210.* -- If a secured party fails to comply with a
61 request regarding a list of collateral or a statement of account
62 under section 9-210, the secured party may claim a security
63 interest only as shown in the list or statement included in the
64 request as against a person that is reasonably misled by the
65 failure.

PART 8. TRANSITION PROVISIONS FOR 2012 AMENDMENTS.

§46-9-801. Effective date.

1 The amendments to this article enacted by the Legislature
2 during the 2012 Regular Legislative Session take effect on
3 July 1, 2013.

§46-9-802. Savings clause.

1 (a) *Preeffective-date transactions or liens.* -- Except as
2 otherwise provided in this part, this article applies to a
3 transaction or lien within its scope, even if the transaction or
4 lien was entered into or created before the amendments to this

5 article during the 2012 Regular Legislative Session take
6 effect as provided in section 9-801.

7 (b) *Preeffective-date proceedings.* -- This article does not
8 affect an action, case, or proceeding commenced before the
9 amendments to this article during the 2012 Regular
10 Legislative Session take effect as provided in section 9-801.

§46-9-803. Security interest perfected before effective date.

1 (a) *Continuing perfection: perfection requirements*
2 *satisfied.* -- A security interest that is a perfected security
3 interest immediately before the amendments to this article
4 take effect is a perfected security interest under this article if,
5 when this article takes effect, the applicable requirements for
6 attachment and perfection under this article as amended by
7 the Legislature during the 2012 Regular Legislative Session
8 are satisfied without further action.

9 (b) *Continuing perfection: perfection requirements not*
10 *satisfied.* -- Except as otherwise provided in section 9-805,
11 if, immediately before amendments to this article take effect,
12 a security interest is a perfected security interest, but the
13 applicable requirements for perfection under this article as
14 amended by the Legislature during the 2012 Regular
15 Legislative Session are not satisfied when the amendments to
16 this article take effect, the security interest remains perfected
17 thereafter only if the applicable requirements for perfection
18 under this article as amended by the Legislature during the
19 2012 Regular Legislative Session are satisfied within one
20 year after the amendments take effect.

§46-9-804. Security interest unperfected before effective date.

1 A security interest that is an unperfected security interest
2 immediately before the amendments to this article during the

3 2012 Regular Legislative Session take effect becomes a
4 perfected security interest:

5 (1) Without further action, when the amendments to this
6 article during the 2012 Regular Legislative Session take
7 effect if the applicable requirements for perfection under this
8 article as amended during the 2012 Regular Legislative
9 Session are satisfied before or at that time; or

10 (2) When the applicable requirements for perfection are
11 satisfied if the requirements are satisfied after that time.

§46-9-805. Effectiveness of action taken before effective date.

1 (a) *Preeffective-date filing effective.* -- The filing of a
2 financing statement before the amendments to this article
3 during the 2012 Regular Legislative Session take effect is
4 effective to perfect a security interest to the extent the filing
5 would satisfy the applicable requirements for perfection
6 under this article as amended during the 2012 Regular
7 Legislative Session.

8 (b) *When preeffective-date filing becomes ineffective.* --
9 This article does not render ineffective an effective financing
10 statement that, before the amendments to this article during
11 the 2011 Regular Legislative Session take effect, is filed and
12 satisfies the applicable requirements for perfection under the
13 law of the jurisdiction governing perfection as provided in
14 this article as it existed before its amendment during the
15 2012 Regular Legislative Session. However, except as
16 otherwise provided in subsections (c) and (d) and Section 9-
17 806, the financing statement ceases to be effective:

18 (1) If the financing statement is filed in this state, at the
19 time the financing statement would have ceased to be
20 effective had the amendments to this article during the 2012
21 Regular Legislative Session not taken effect; or

22 (2) If the financing statement is filed in another
23 jurisdiction, at the earlier of:

24 (A) The time the financing statement would have ceased
25 to be effective under the law of that jurisdiction; or

26 (B) June 30, 2018.

27 (c) *Continuation statement.* — The filing of a continuation
28 statement after the amendments to this article during the 2012
29 Regular Legislative Session take effect does not continue the
30 effectiveness of a financing statement filed before those
31 amendments to the article take effect. However, upon the timely
32 filing of a continuation statement after the amendments to this
33 article during the 2012 Regular Legislative session take effect
34 and in accordance with the law of the jurisdiction governing
35 perfection as provided in this article as amended during the 2012
36 Regular Legislative Session, the effectiveness of a financing
37 statement filed in the same office in that jurisdiction before the
38 amendments to this article during the 2012 Regular Legislative
39 Session takes effect continues for the period provided by the law
40 of that jurisdiction.

41 (d) *Application of subsection (b)(2)(B) to transmitting*
42 *utility financing statement.* — Subsection (b)(2)(B) applies to
43 a financing statement that, before the amendments to this
44 article during the 2012 Regular Legislative Session take
45 effect, is filed against a transmitting utility and satisfies the
46 applicable requirements for perfection under the law of the
47 jurisdiction governing perfection as provided in this article
48 as it existed before amendment, only to the extent that this
49 article as amended by during the 2012 Regular Legislative
50 Session provides that the law of a jurisdiction other than the
51 jurisdiction in which the financing statement is filed governs
52 perfection of a security interest in collateral covered by the
53 financing statement.

Handwritten note: *the amendments to this article during the 2012 Regular Legislative Session take*

54 (e) *Application of Part 5.* -- A financing statement that
 55 includes a financing statement filed before this [Act] takes
 56 effect and a continuation statement filed after the
 57 amendments to this article during the 2012 Regular
 58 Legislative Session take effect is effective only to the extent
 59 that it satisfies the requirements of Part 5 as amended during
 60 the 2012 Regular Legislative Session for an initial financing
 61 statement. A financing statement that indicates that the
 62 debtor is a decedent's estate indicates that the collateral is
 63 being administered by a personal representative within the
 64 meaning of section 9-503(a)(2) as amended during the 2012
 65 Regular Legislative Session. A financing statement that
 66 indicates that the debtor is a trust or is a trustee acting with
 67 respect to property held in trust indicates that the collateral is
 68 held in a trust within the meaning of section 9-503(a)(3) as
 69 amended during the 2012 Regular Legislative Session.

the amendments to this article during the
2012 Regular Legislative Session take

§46-9-806. When initial financing statement suffices to continue effectiveness of financing statement.

1 (a) *Initial financing statement in lieu of continuation*
 2 *statement.* -- The filing of an initial financing statement in
 3 the office specified in section 9-501 continues the
 4 effectiveness of a financing statement filed before the
 5 amendments to this article during the 2012 Regular
 6 Legislative Session take effect if:

7 (1) The filing of an initial financing statement in that
 8 office would be effective to perfect a security interest under
 9 this article as amended during the 2012 Regular Legislative
 10 Session;

11 (2) The preeffective-date financing statement was filed in
 12 an office in another state; and

13 (3) The initial financing statement satisfies subsection (c).

14 (b) *Period of continued effectiveness.* -- The filing of an
15 initial financing statement under subsection (a) continues the
16 effectiveness of the preeffective-date financing statement:

17 (1) If the initial financing statement is filed before the
18 amendments to this article during the 2012 Regular
19 Legislative Session take effect, for the period provided in
20 section 9-515 as it existed prior to the 2012 amendments,
21 with respect to an initial financing statement; and

22 (2) If the initial financing statement is filed after the
23 amendments to this article during the 2012 Regular
24 Legislative Session take effect, for the period provided in
25 section 9-515 as amended by the Legislature during the 2012
26 Regular Legislative Session, with respect to an initial
27 financing statement.

28 (c) *Requirements for initial financing statement under*
29 *subsection (a).* -- To be effective for purposes of subsection
30 (a), an initial financing statement must:

31 (1) Satisfy the requirements of Part 5 as amended by the
32 Legislature during the 2012 Regular Legislative Session for
33 an initial financing statement;

34 (2) Identify the preeffective-date financing statement by
35 indicating the office in which the financing statement was
36 filed and providing the dates of filing and file numbers, if
37 any, of the financing statement and of the most recent
38 continuation statement filed with respect to the financing
39 statement; and

40 (3) Indicate that the preeffective-date financing statement
41 remains effective.

§46-9-807. Amendment of preeffective-date financing statement.

1 (a) *“Preeffective-date financing statement”*. -- In this
 2 section, “preeffective-date financing statement” means a
 3 financing statement filed before the amendments to this
 4 article during the 2012 Regular Legislative Session take
 5 effect.

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 Clerk of the House
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6 (b) *Applicable law*. -- After the amendments to this
 7 article during the 2012 Regular Legislative Session take
 8 effect, a person may add or delete collateral covered by,
 9 continue or terminate the effectiveness of, or otherwise
 10 amend the information provided in, a preeffective-date
 11 financing statement only in accordance with the law of the
 12 jurisdiction governing perfection as provided in this article as
 13 amended during the 2012 Regular Legislative Session.
 14 However, the effectiveness of a preeffective-date financing
 15 statement also may be terminated in accordance with the law
 16 of the jurisdiction in which the financing statement is filed.

17 (c) *Method of amending: general rule*. -- Except as
 18 otherwise provided in subsection (d), if the law of this state
 19 governs perfection of a security interest, the information in a
 20 preeffective-date financing statement may be amended after
 21 the amendments to this article during the 2012 Regular
 22 Legislative Session take effect only if:

23 (1) The preeffective-date financing statement and an
 24 amendment are filed in the office specified in section 9-501;

25 (2) An amendment is filed in the office specified in
 26 section 9-501 concurrently with, or after the filing in that
 27 office of, an initial financing statement that satisfies section
 28 9-806(c); or

29 (3) An initial financing statement that provides the
30 information as amended and satisfies section 9-806(c) is filed
31 in the office specified in section 9-501.

32 (d) *Method of amending: continuation.* -- If the law of
33 this state governs perfection of a security interest, the
34 effectiveness of a preeffective-date financing statement may
35 be continued only under section 9-805(c) and (e) or 9-806.

36 (e) *Method of amending: additional termination rule.* --
37 Whether or not the law of this state governs perfection of a
38 security interest, the effectiveness of a preeffective-date
39 financing statement filed in this state may be terminated after
40 the amendments to this article during the 2012 Regular
41 Legislative Session take effect by filing a termination
42 statement in the office in which the preeffective-date
43 financing statement is filed, unless an initial financing
44 statement that satisfies section 9-806(c) has been filed in the
45 office specified by the law of the jurisdiction governing
46 perfection as provided in this article as amended during the
47 2012 Regular Legislative Session as the office in which to
48 file a financing statement.

**§46-9-808. Person entitled to file initial financing statement or
continuation statement.**

1 A person may file an initial financing statement or a
2 continuation statement under this part if:

3 (1) The secured party of record authorizes the filing; and

4 (2) The filing is necessary under this part:

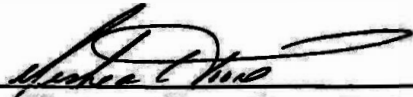
5 (A) To continue the effectiveness of a financing statement
6 filed before the amendments to this article during the 2012
7 Regular Legislative Session take effect; or

8 (B) To perfect or continue the perfection of a security
9 interest.


§46-9-809. Priority.

1 This article determines the priority of conflicting claims
2 to collateral. However, if the relative priorities of the claims
3 were established before the amendments to this article during
4 the 2012 Regular Legislative Session take effect, this article,
5 as it existed before the 2012 amendments determines priority.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



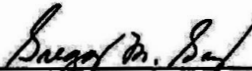
Chairman, House Committee



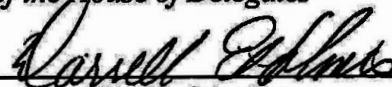
Chairman, Senate Committee

Originating in the House.

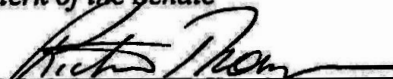
To take effect ninety days from passage.



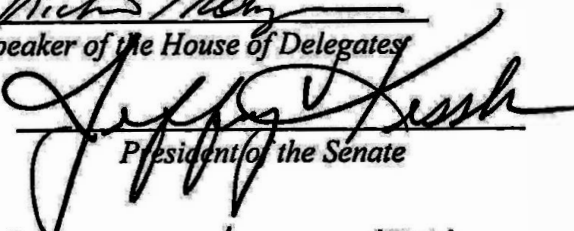
Clerk of the House of Delegates



Clerk of the Senate



Speaker of the House of Delegates



President of the Senate

The within is approved this the 15th
day of March, 2012.



Governor

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 12 2012

Time 10:25 *am*