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WEST VIRGINIA
SENATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

Committee Substitute for

SENATE BILL NO. 742

(By Senator JENKINS, ET AL)



PASSED MARCH 10, 2006

In Effect 20 days from Passage

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CLERK WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 742

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

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to repeal §46-1-109, §46-1-207 and §46-1-208 of the Code of West Virginia, 1931, as amended; to repeal §46-2-208 of said code; to repeal §46-2A-207 of said code; to amend and reenact §46-1-101, §46-1-102, §46-1-103, §46-1-104, §46-1-105, §46-1-106, §46-1-107, §46-1-108, §46-1-201, §46-1-202, §46-1-203, §46-1-204, §46-1-205 and §46-1-206 of said code; to amend said code by adding thereto ten new sections, designated §46-1-301, §46-1-302, §46-1-303, §46-1-304, §46-1-305, §46-1-306, §46-1-307, §46-1-308, §46-1-309 and §46-1-310; to amend and reenact §46-2-103, §46-2-104, §46-2-202, §46-2-310, §46-2-323, §46-2-401, §46-2-503, §46-2-505, §46-2-506, §46-2-509, §46-2-605 and §46-2-705 of said code; to amend and reenact §46-2A-103, §46-2A-501, §46-2A-514, §46-2A-518, §46-2A-519, §46-2A-526, §46-2A-527 and §46-2A-528 of said code; to amend and reenact §46-3-103 of said code; to amend and reenact §46-4-104 and §46-

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

Be it enacted by the Legislature of West Virginia:

That §46-1-109, §46-1-207 and §46-1-208 of the Code of West Virginia, 1931, be repealed; that §46-2-208 of said code be repealed; that §46-2A-207 of said code be repealed; that §46-1-101, §46-1-102, §46-1-103, §46-1-104, §46-1-105, §46-1-106, §46-1-107, §46-1-108, §46-1-201, §46-1-202, §46-1-203, §46-1-204, §46-1-205 and §46-1-206 of said code be amended and reenacted; that said code be amended by adding thereto ten new sections, designated §46-1-301, §46-1-302, §46-1-303, §46-1-304, §46-1-305, §46-1-306, §46-1-307, §46-1-308, §46-1-309 and §46-1-310; that §46-2-103, §46-2-104, §46-2-202, §46-2-310, §46-2-323, §46-2-401, §46-2-503, §46-2-505, §46-2-506, §46-2-509, §46-2-605 and §46-2-705 of said code be amended and reenacted; that §46-2A-103, §46-2A-501, §46-2A-514, §46-2A-518, §46-2A-519, §46-2A-526, §46-2A-527 and §46-2A-528 of said code be amended and reenacted; that §46-3-103 of said code be amended and reenacted; that §46-4-104 and §46-4-210 of said code be

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

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

PART 1. GENERAL PROVISIONS.

§46-1-101. Short titles.

1 (a) This chapter may be cited as the Uniform Commer-
2 cial Code.

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

§46-1-102. Scope of article.

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

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

1 (a) This chapter must be liberally construed and applied
2 to promote its underlying purposes and policies, which are:

3 (1) To simplify, clarify and modernize the law governing
4 commercial transactions;

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

8 (3) To make uniform the law among the various jurisdic-
9 tions.

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

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

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

§46-1-105. Severability.

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

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

1 In this chapter, unless the statutory context otherwise
2 requires:

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

5 (2) Words of any gender also refer to any other gender.

§46-1-107. Section captions.

1 Section captions are part of this chapter.

§46-1-108. Relation to electronic signatures in global and national commerce act.

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

PART 2. GENERAL DEFINITIONS AND
PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

1 (a) Unless the context otherwise requires, words or
2 phrases defined in this section, or in the additional defini-
3 tions contained in other articles of this chapter that apply
4 to particular articles or parts thereof, have the meanings
5 stated.

6 (b) Subject to definitions contained in other articles of
7 this chapter that apply to particular articles or parts
8 thereof:

9 (1) "Action", in the sense of a judicial proceeding,
10 includes recoupment, counterclaim, set-off, suit in equity
11 and any other proceeding in which rights are determined.

12 (2) "Aggrieved party" means a party entitled to pursue
13 a remedy.

14 (3) "Agreement", as distinguished from "contract",
15 means the bargain of the parties in fact, as found in their
16 language or inferred from other circumstances, including
17 course of performance, course of dealing, or usage of trade
18 as provided in section 1-303.

19 (4) "Bank" means a person engaged in the business of
20 banking and includes a savings bank, savings and loan
21 association, credit union, and trust company.

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

26 (6) "Bill of lading" means a document of title evidencing
27 the receipt of goods for shipment issued by a person
28 engaged in the business of directly or indirectly transport-
29 ing or forwarding goods. The term does not include a
30 warehouse receipt.

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

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

36 (9) "Buyer in ordinary course of business" means a
37 person that buys goods in good faith, without knowledge
38 that the sale violates the rights of another person in the
39 goods, and in the ordinary course from a person, other
40 than a pawnbroker, in the business of selling goods of that
41 kind. A person buys goods in the ordinary course if the
42 sale to the person comports with the usual or customary
43 practices in the kind of business in which the seller is
44 engaged or with the seller's own usual or customary
45 practices. A person that sells oil, gas or other minerals at
46 the wellhead or minehead is a person in the business of
47 selling goods of that kind. A buyer in ordinary course of
48 business may buy for cash, by exchange of other property,
49 or on secured or unsecured credit, and may acquire goods
50 or documents of title under a preexisting contract for sale.
51 Only a buyer that takes possession of the goods or has a
52 right to recover the goods from the seller under article 2
53 may be a buyer in ordinary course of business. "Buyer in

54 ordinary course of business” does not include a person that
55 acquires goods in a transfer in bulk or as security for or in
56 total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

86 (15) “Delivery”, with respect to an electronic document
87 of title means voluntary transfer of control and with

88 respect to an instrument, document of title or chattel
89 paper, means voluntary transfer of possession.

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

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

108 (18) "Fungible goods" means:

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

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

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

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

116 (21) "Holder" means:

117 (A) The person in possession of a negotiable instrument
118 that is payable either to bearer or to an identified person
119 that is the person in possession; or

120 (B) The person in possession of a negotiable tangible
121 document of title if the goods are deliverable either to
122 bearer or to the order of the person in possession; or

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

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

128 (23) "Insolvent" means:

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

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

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

135 (24) "Money" means a medium of exchange currently
136 authorized or adopted by a domestic or foreign govern-
137 ment. The term includes a monetary unit of account
138 established by an intergovernmental organization or by
139 agreement between two or more countries.

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

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

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

150 (28) "Present value" means the amount as of a date
151 certain of one or more sums payable in the future, dis-

152 counted to the date certain by use of either an interest rate
153 specified by the parties if that rate is not manifestly
154 unreasonable at the time the transaction is entered into or,
155 if an interest rate is not so specified, a commercially
156 reasonable rate that takes into account the facts and
157 circumstances at the time the transaction is entered into.

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

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

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

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

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

173 (34) "Right" includes remedy.

174 (35) "Security interest" means an interest in personal
175 property or fixtures which secures payment or perfor-
176 mance of an obligation. "Security interest" includes any
177 interest of a consignor and a buyer of accounts, chattel
178 paper, a payment intangible or a promissory note in a
179 transaction that is subject to article 9. "Security interest"
180 does not include the special property interest of a buyer of
181 goods on identification of those goods to a contract for sale
182 under section 2-401, but a buyer may also acquire a
183 "security interest" by complying with article 9. Except as
184 otherwise provided in section 2-505, the right of a seller or
185 lessor of goods under article 2 or 2A to retain or acquire

186 possession of the goods is not a “security interest”, but a
187 seller or lessor may also acquire a “security interest” by
188 complying with article 9. The retention or reservation of
189 title by a seller of goods notwithstanding shipment or
190 delivery to the buyer under section 2-401 is limited in
191 effect to a reservation of a “security interest”. Whether a
192 transaction in the form of a lease creates a “security
193 interest” is determined pursuant to section 1-203.

194 (36) “Send” in connection with a writing, record, or
195 notice means:

196 (A) To deposit in the mail or deliver for transmission by
197 any other usual means of communication with postage or
198 cost of transmission provided for and properly addressed
199 and, in the case of an instrument, to an address specified
200 thereon or otherwise agreed, or if there be none to any
201 address reasonable under the circumstances; or

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

205 (37) “Signed” includes using any symbol executed or
206 adopted with present intention to adopt or accept a
207 writing.

208 (38) “State” means a state of the United States, the
209 District of Columbia, Puerto Rico, the United States
210 Virgin Islands, or any territory or insular possession
211 subject to the jurisdiction of the United States.

212 (39) “Surety” includes a guarantor or other secondary
213 obligor.

214 (40) “Term” means a portion of an agreement that
215 relates to a particular matter.

216 (41) “Unauthorized signature” means a signature made
217 without actual, implied or apparent authority. The term
218 includes a forgery.

219 (42) "Warehouse receipt" means a document of title
220 issued by a person engaged in the business of storing goods
221 for hire.

222 (43) "Writing" includes printing, typewriting, or any
223 other intentional reduction to tangible form. "Written"
224 has a corresponding meaning.

§46-1-202. Notice; knowledge.

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

3 (1) Has actual knowledge of it;

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

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

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

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

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

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

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

20 (2) It is duly delivered in a form reasonable under the
21 circumstances at the place of business through which the
22 contract was made or at another location held out by that
23 person as the place for receipt of such communications.

24 (f) Notice, knowledge, or a notice or notification received
25 by an organization is effective for a particular transaction
26 from the time it is brought to the attention of the individ-
27 ual conducting that transaction and, in any event, from the
28 time it would have been brought to the individual's
29 attention if the organization had exercised due diligence.
30 An organization exercises due diligence if it maintains
31 reasonable routines for communicating significant infor-
32 mation to the person conducting the transaction and there
33 is reasonable compliance with the routines. Due diligence
34 does not require an individual acting for the organization
35 to communicate information unless the communication is
36 part of the individual's regular duties or the individual has
37 reason to know of the transaction and that the transaction
38 would be materially affected by the information.

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

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

4 (b) A transaction in the form of a lease creates a security
5 interest if the consideration that the lessee is to pay the
6 lessor for the right to possession and use of the goods is an
7 obligation for the term of the lease and is not subject to
8 termination by the lessee, and:

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

11 (2) The lessee is bound to renew the lease for the remain-
12 ing economic life of the goods or is bound to become the
13 owner of the goods;

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

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

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

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

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

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

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

35 (5) The lessee has an option to renew the lease for a fixed
36 rent that is equal to or greater than the reasonably pre-
37 dictable fair market rent for the use of the goods for the
38 term of the renewal at the time the option is to be per-
39 formed; or

40 (6) The lessee has an option to become the owner of the
41 goods for a fixed price that is equal to or greater than the
42 reasonably predictable fair market value of the goods at
43 the time the option is to be performed.

44 (d) Additional consideration is nominal if it is less than
45 the lessee's reasonably predictable cost of performing
46 under the lease agreement if the option is not exercised.
47 Additional consideration is not nominal if:

48 (1) When the option to renew the lease is granted to the
49 lessee, the rent is stated to be the fair market rent for the

50 use of the goods for the term of the renewal determined at
51 the time the option is to be performed; or

52 (2) When the option to become the owner of the goods is
53 granted to the lessee, the price is stated to be the fair
54 market value of the goods determined at the time the
55 option is to be performed.

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

§46-1-204. Value.

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

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

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

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

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

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

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

4 (b) An action is taken seasonably if it is taken at or
5 within the time agreed or, if no time is agreed, at or within
6 a reasonable time.

§46-1-206. Presumptions.

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

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES.

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

1 (a) Except as otherwise provided in this section, when a
2 transaction bears a reasonable relation to this state and
3 also to another state or nation the parties may agree that
4 the law either of this state or of such other state or nation
5 shall govern their rights and duties.

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

10 (c) If one of the following provisions of this chapter
11 specifies the applicable law, that provision governs and a
12 contrary agreement is effective only to the extent permit-
13 ted by the law so specified:

14 (1) Section 2-402;

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

16 (3) Section 4-102;

17 (4) Section 4A-507;

18 (5) Section 5-116;

19 (6) Section 8-110;

20 (7) Sections 9-301 through 9-307.

§46-1-302. Variation by agreement.

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

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

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

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

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

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

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

10 (b) A “course of dealing” is a sequence of conduct
11 concerning previous transactions between the parties to a
12 particular transaction that is fairly to be regarded as
13 establishing a common basis of understanding for inter-
14 preting their expressions and other conduct.

15 (c) A “usage of trade” is any practice or method of
16 dealing having such regularity of observance in a place,
17 vocation, or trade as to justify an expectation that it will
18 be observed with respect to the transaction in question.
19 The existence and scope of such a usage must be proved as
20 facts. If it is established that such a usage is embodied in
21 a trade code or similar record, the interpretation of the
22 record is a question of law.

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

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

38 (1) Express terms prevail over course of performance,
39 course of dealing, and usage of trade;

40 (2) Course of performance prevails over course of dealing
41 and usage of trade; and

42 (3) Course of dealing prevails over usage of trade.

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

46 (g) Evidence of a relevant usage of trade offered by one
47 party is not admissible unless that party has given the
48 other party notice that the court finds sufficient to prevent
49 unfair surprise to the other party.

§46-1-304. Obligation of good faith.

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

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

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

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

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

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

§46-1-307. Prima facie evidence by third-party documents.

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

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

1 (a) A party that with explicit reservation of rights
2 performs or promises performance or assents to perfor-

3 mance in a manner demanded or offered by the other party
4 does not thereby prejudice the rights reserved. Such words
5 as "without prejudice," "under protest," or the like are
6 sufficient.

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

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

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

§46-1-310. Subordinated obligations.

1 An obligation may be issued as subordinated to perfor-
2 mance of another obligation of the person obligated, or a
3 creditor may subordinate its right to performance of an
4 obligation by agreement with either the person obligated
5 or another creditor of the person obligated. Subordination
6 does not create a security interest as against either the
7 common debtor or a subordinated creditor.

ARTICLE 2. SALES.

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

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

- 1 (1) In this article unless the context otherwise requires:
- 2 (a) "Buyer" means a person who buys or contracts to buy
3 goods.
- 4 (b) [Reserved.]

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

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

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

12	"Acceptance".	Section 2-606.
13	"Banker's credit".	Section 2-325.
14	"Between merchants".	Section 2-104.
15	"Cancellation".	Section 2-106 (4).
16	"Commercial unit".	Section 2-105.
17	"Confirmed credit".	Section 2-325.
18	"Conforming to contract".	Section 2-106.
19	"Contract for sale".	Section 2-106.
20	"Cover".	Section 2-712.
21	"Entrusting".	Section 2-403.
22	"Financing agency".	Section 2-104.
23	"Future goods".	Section 2-105.
24	"Goods".	Section 2-105.
25	"Identification".	Section 2-501.
26	"Installment contract".	Section 2-612.
27	"Letter of credit".	Section 2-325.
28	"Lot".	Section 2-105.
29	"Merchant".	Section 2-104.
30	"Overseas".	Section 2-323.
31	"Person in position of seller".	Section 2-707.
32	"Present sale".	Section 2-106.
33	"Sale".	Section 2-106.
34	"Sale on approval".	Section 2-326.
35	"Sale or return".	Section 2-326.
36	"Termination".	Section 2-106.

37 (3) "Control" as provided in Section 7-106 and the
38 following definitions in other articles of this chapter apply
39 to this article:

40	"Check."	Section 3-104.
41	"Consignee."	Section 7-102.
42	"Consignor."	Section 7-102.
43	"Consumer goods."	Section 9-102.
44	"Dishonor."	Section 3-502.
45	"Draft."	Section 3-104.

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

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

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

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

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

§46-2-202. Final written expression: parol or extrinsic evidence.

1 Terms with respect to which the confirmatory memo-
2 randa of the parties agree or which are otherwise set forth
3 in a writing intended by the parties as a final expression of
4 their agreement with respect to such terms as are included
5 therein may not be contradicted by evidence of any prior
6 agreement or of a contemporaneous oral agreement but
7 may be explained or supplemented:

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

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

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

1 Unless otherwise agreed:

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

5 (b) If the seller is authorized to send the goods he may
6 ship them under reservation, and may tender the docu-
7 ments of title, but the buyer may inspect the goods after
8 their arrival before payment is due unless such inspection
9 is inconsistent with the terms of the contract (section
10 2-513); and

11 (c) If delivery is authorized and made by way of docu-
12 ments of title otherwise than by subsection (b) then
13 payment is due regardless of where the goods are to be
14 received: (i) at the time and place at which the buyer is to
15 receive delivery of the tangible documents; or (ii) at the
16 time the buyer is to receive delivery of the electronic
17 documents and at the seller's place of business or if none,
18 the seller's residence; and

19 (d) Where the seller is required or authorized to ship the
20 goods on credit the credit period runs from the time of
21 shipment but postdating the invoice or delaying its
22 dispatch will correspondingly delay the starting of the
23 credit period.

**§46-2-323. Form of bill of lading required in overseas shipment,
“overseas”.**

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

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

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

16 (b) Even though the full set is demanded, if the docu-
17 ments are sent from abroad the person tendering an
18 incomplete set may nevertheless require payment upon
19 furnishing an indemnity which the buyer in good faith
20 deems adequate.

21 (3) A shipment by water or by air or a contract contem-
22 plating such shipment is “overseas” insofar as by usage of
23 trade or agreement it is subject to the commercial, financ-
24 ing or shipping practices characteristic of international
25 deep water commerce.

**§46-2-401. Passing of title; reservation for security; limited
application of this section.**

1 Each provision of this article with regard to the rights,
2 obligations and remedies of the seller, the buyer, purchas-
3 ers or other third parties applies irrespective of title to the
4 goods except where the provision refers to such title.
5 Insofar as situations are not covered by the other provi-
6 sions of this article and matters concerning title become
7 material the following rules apply:

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

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

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

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

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

34 (a) If the seller is to deliver a tangible document of title,
35 title passes at the time when and the place where he

36 delivers such documents and if the seller is to deliver an
37 electronic document of title, title passes when the seller
38 delivers the document; or

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

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

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

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

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

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

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

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

19 (4) Where goods are in the possession of a bailee and are
20 to be delivered without being moved.

21 (a) Tender requires that the seller either tender a nego-
22 tiable document of title covering such goods or procure
23 acknowledgment by the bailee of the buyer's right to
24 possession of the goods; but

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

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

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

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

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

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

3 (a) His procurement of a negotiable bill of lading to his
4 own order or otherwise reserves in him a security interest
5 in the goods. His procurement of the bill to the order of a
6 financing agency or of the buyer indicates in addition only
7 the seller's expectation of transferring that interest to the
8 person named.

9 (b) A nonnegotiable bill of lading to himself or his
10 nominee reserves possession of the goods as security but
11 except in a case of conditional delivery (subsection (2) of
12 section 2-507) a nonnegotiable bill of lading naming the
13 buyer as consignee reserves no security interest even
14 though the seller retains possession or control of the bill of
15 lading.

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

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

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

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

§46-2-509. Risk of loss in the absence of breach.

1 (1) Where the contract requires or authorizes the seller
2 to ship the goods by carrier:

3 (a) If it does not require him to deliver them at a particu-
4 lar destination, the risk of loss passes to the buyer when

5 the goods are duly delivered to the carrier even though the
6 shipment is under reservation (section 2-505); but

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

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

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

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

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

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

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

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

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

5 (a) Where the seller could have cured it if stated season-
6 ably; or

7 (b) Between merchants when the seller has after rejec-
8 tion made a request in writing for a full and final written
9 statement of all defects on which the buyer proposes to
10 rely.

11 (2) Payment against documents made without reserva-
12 tion of rights precludes recovery of the payment for defects
13 apparent in the documents.

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

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

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

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

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

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

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

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

22 (b) After such notification the bailee must hold and
23 deliver the goods according to the directions of the seller

24 but the seller is liable to the bailee for any ensuing charges
25 or damages.

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

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

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
4 sale to him or her is in violation of the ownership rights or
5 security interest or leasehold interest of a third party in
6 the goods, buys in ordinary course from a person in the
7 business of selling goods of that kind but does not include
8 a pawnbroker. "Buying" may be for cash or by exchange
9 of other property or on secured or unsecured credit and
10 includes acquiring goods or documents of title under a
11 preexisting contract for sale but does not include a trans-
12 fer in bulk or as security for or in total or partial satisfac-
13 tion of a money debt.

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

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

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

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

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

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

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

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

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

37 (iii) One of the following occurs:

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

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

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

54 (D) If the lease is not a consumer lease, the lessor, before
55 the lessee signs the lease contract, informs the lessee in
56 writing:

57 (a) Of the identity of the person supplying the goods to the
58 lessor, unless the lessee has selected that person and
59 directed the lessor to acquire the goods or the right to
60 possession and use of the goods from that person; (b) that
61 the lessee is entitled under this article to the promises and
62 warranties, including those of any third party, provided to
63 the lessor by the person supplying the goods in connection
64 with or as part of the contract by which the lessor ac-
65 quired the goods or the right to possession and use of the
66 goods; and (c) that the lessee may communicate with the
67 person supplying the goods to the lessor and receive an
68 accurate and complete statement of those promises and
69 warranties, including any disclaimers and limitations of
70 them or of remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

158	“Accessions”.	Section 2A-310(1).
159	“Construction mortgage”.	Section 2A-309(1)(d).
160	“Encumbrance”.	Section 2A-309(1)(e).
161	“Fixtures”.	Section 2A-309(1)(a).
162	“Fixture filing”.	Section 2A-309(1)(b).
163	“Purchase money lease”.	Section 2A-309(1)(c).

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

166	“Account”.	Section 9-102(a)(2).
167	“Between merchants”.	Section 2-104(3).
168	“Buyer”.	Section 2-103(1)(a).
169	“Chattel paper”.	Section 9-102(a)(11).
170	“Consumer goods”.	Section 9-102(a)(23).
171	“Document”.	Section 9-102(a)(30).
172	“Entrusting”.	Section 2-403(3).
173	“General intangible”.	Section 9-102(a)(42).
174	“Instrument”.	Section 9-102(a)(47).
175	“Merchant”.	Section 2-104(1).
176	“Mortgage”.	Section 9-102(a)(55).
177	“Pursuant to commitment”.	Section 9-102(a)(68).
178	“Receipt”.	Section 2-103(1)(c).
179	“Sale”.	Section 2-106(1).
180	“Sale on approval”.	Section 2-326.
181	“Sale or return”.	Section 2-326.
182	“Seller”.	Section 2-103(1)(d).

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

PART 5. DEFAULT.

A. IN GENERAL.

§46-2A-501. Default; procedure.

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

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

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

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

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

§46-2A-514. Waiver of lessee's objections.

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

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

7 (b) Between merchants if the lessor or the supplier after
8 rejection has made a request in writing for a full and final
9 written statement of all defects on which the lessee
10 proposes to rely.

11 (2) A lessee's failure to reserve rights when paying rent
12 or other consideration against documents precludes
13 recovery of the payment for defects apparent in the
14 documents.

§46-2A-518. Cover; substitute goods.

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

6 (2) Except as otherwise provided with respect to dam-
7 ages liquidated in the lease agreement (section 2A-504) or
8 otherwise determined pursuant to agreement of the parties
9 (sections 1-302 and 2A-503), if a lessee's cover is by a lease
10 agreement substantially similar to the original lease
11 agreement and the new lease agreement is made in good
12 faith and in a commercially reasonable manner, the lessee
13 may recover from the lessor as damages: (i) The present
14 value, as of the date of the commencement of the term of
15 the new lease agreement, of the rent under the new lease
16 agreement applicable to that period of the new lease term
17 which is comparable to the then remaining term of the
18 original lease agreement minus the present value as of the
19 same date of the total rent for the then remaining lease
20 term of the original lease agreement; and (ii) any inciden-
21 tal or consequential damages, less expenses saved in
22 consequence of the lessor's default.

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

**§46-2A-519. Lessee's damages for non-delivery, repudiation,
default, and breach of warranty in regard to
accepted goods.**

1 (1) Except as otherwise provided with respect to dam-
2 ages liquidated in the lease agreement (section 2A-504) or
3 otherwise determined pursuant to agreement of the parties
4 (sections 1-302 and 2A-503), if a lessee elects not to cover
5 or a lessee elects to cover and the cover is by lease agree-
6 ment that for any reason does not qualify for treatment
7 under section 2A-518(2), or is by purchase or otherwise,
8 the measure of damages for non-delivery or repudiation by
9 the lessor or for rejection or revocation of acceptance by
10 the lessee is the present value, as of the date of the default,
11 of the then market rent minus the present value as of the
12 same date of the original rent, computed for the remaining
13 lease term of the original lease agreement, together with
14 incidental and consequential damages, less expenses saved
15 in consequence of the lessor's default.

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

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

27 (4) Except as otherwise agreed, the measure of damages
28 for breach of warranty is the present value at the time and
29 place of acceptance of the difference between the value of
30 the use of the goods accepted and the value if they had
31 been as warranted for the lease term, unless special
32 circumstances show proximate damages of a different
33 amount, together with incidental and consequential
34 damages, less expenses saved in consequence of the lessor's
35 default or breach of warranty.

§46-2A-526. Lessor's stoppage of delivery in transit or otherwise.

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

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

11 (a) Receipt of the goods by the lessee;

12 (b) Acknowledgment to the lessee by any bailee of the
13 goods, except a carrier, that the bailee holds the goods for
14 the lessee; or

15 (c) Such an acknowledgment to the lessee by a carrier
16 via reshipment or as a warehouse.

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

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

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

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

1 (1) After a default by a lessee under the lease contract of
2 the type described in section 2A-523(1) or 2A-523(3)(a) or
3 after the lessor refuses to deliver or takes possession of

4 goods (section 2A-525 or 2A-526), or, if agreed, after other
5 default by a lessee, the lessor may dispose of the goods
6 concerned or the undelivered balance thereof by lease, sale
7 or otherwise.

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

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

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

37 (5) The lessor is not accountable to the lessee for any
38 profit made on any disposition. A lessee who has right-

40 fully rejected or justifiably revoked acceptance shall
41 account to the lessor for any excess over the amount of the
42 lessee's security interest (section 2A-508(5)).

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

1 (1) Except as otherwise provided with respect to dam-
2 ages liquidated in the lease agreement (section 2A-504) or
3 otherwise determined pursuant to agreement of the parties
4 (sections 1-302 and 2A-503), if a lessor elects to retain the
5 goods or a lessor elects to dispose of the goods and the
6 disposition is by lease agreement that for any reason does
7 not qualify for treatment under section 2A-527(2), or is by
8 sale or otherwise, the lessor may recover from the lessee as
9 damages for a default of the type described in section
10 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default
11 of the lessee: (i) Accrued and unpaid rent as of the date of
12 default if the lessee has never taken possession of the
13 goods, or, if the lessee has taken possession of the goods, as
14 of the date the lessor repossesses the goods or an earlier
15 date on which the lessee makes a tender of the goods to the
16 lessor; (ii) the present value as of the date determined
17 under clause (I) of the total rent for the then remaining
18 lease term of the original lease agreement minus the
19 present value as of the same date of the market rent at the
20 place where the goods are located computed for the same
21 lease term; and (iii) any incidental damages allowed under
22 section 2A-530, less expenses saved in consequence of the
23 lessee's default.

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

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-103. Definitions.

1 (a) In this article:

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

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

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

8 (4) [reserved]

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

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

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

30 (8) "Party" means a party to an instrument.

31 (9) "Promise" means a written undertaking to pay
32 money signed by the person undertaking to pay. An
33 acknowledgment of an obligation by the obligor is not a
34 promise unless the obligor also undertakes to pay the
35 obligation.

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

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

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

43	"Acceptance"	Section 3-409.
44	"Accommodated party"	Section 3-419.
45	"Accommodation party"	Section 3-419.
46	"Alteration"	Section 3-407.
47	"Anomalous indorsement"	Section 3-205.
48	"Blank indorsement"	Section 3-205.
49	"Cashier's check"	Section 3-104.
50	"Certificate of deposit"	Section 3-104.
51	"Certified check"	Section 3-409.
52	"Check"	Section 3-104.
53	"Consideration"	Section 3-303.
54	"Draft"	Section 3-104.
55	"Holder in due course"	Section 3-302.
56	"Incomplete instrument"	Section 3-115.
57	"Indorsement"	Section 3-204.
58	"Indorser"	Section 3-204.
59	"Instrument"	Section 3-104.
60	"Issue"	Section 3-105.
61	"Issuer"	Section 3-105.
62	"Negotiable instrument"	Section 3-104.
63	"Negotiation"	Section 3-201.
64	"Note"	Section 3-104.
65	"Payable at a definite time"	Section 3-108.
66	"Payable on demand"	Section 3-108.

67	“Payable to bearer”	Section 3-109.
68	“Payable to order”	Section 3-109.
69	“Payment”	Section 3-602.
70	“Person entitled to enforce”	Section 3-301.
71	“Presentment”	Section 3-501.
72	“Reacquisition”	Section 3-207.
73	“Special indorsement”	Section 3-205.
74	“Teller’s check”	Section 3-104.
75	“Transfer of instrument”	Section 3-203.
76	“Traveler’s check”	Section 3-104.
77	“Value”	Section 3-303.

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

80	“Bank”	Section 4-105.
81	“Banking day”	Section 4-104.
82	“Clearing house”	Section 4-104.
83	“Collecting bank”	Section 4-105.
84	“Depository bank”	Section 4-105.
85	“Documentary draft”	Section 4-104.
86	“Intermediary bank”	Section 4-105.
87	“Item”	Section 4-104.
88	“Payor bank”	Section 4-105.
89	“Suspends payments”	Section 4-104.

90 (d) In addition article one contains general definitions
91 and principles of construction and interpretation applica-
92 ble throughout this article.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

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

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

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

6 (2) "Afternoon" means the period of a day between noon
7 and midnight;

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

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

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

17 (6) "Documentary draft" means a draft to be presented
18 for acceptance or payment if specified documents, certifi-
19 cated securities (section 8-102) or instructions for uncerti-
20 ficated securities (section 8-102), or other certificates,
21 statements or the like are to be received by the drawee or
22 other payor before acceptance or payment of the draft;

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

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

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

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

36 (11) "Settle" means to pay in cash, by clearing-house
37 settlement, in a charge or credit or by remittance, or

38 otherwise as agreed. A settlement may be either provi-
39 sional or final;

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

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

47	"Agreement for	
48	electronic presentment"	Section 4-110.
49	"Bank"	Section 4-105.
50	"Collecting bank"	Section 4-105.
51	"Depositary bank"	Section 4-105.
52	"Intermediary bank"	Section 4-105.
53	"Payor bank"	Section 4-105.
54	"Presenting bank"	Section 4-105.
55	"Presentment notice"	Section 4-110.

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

58	"Acceptance"	Section 3-409.
59	"Alteration"	Section 3-407.
60	"Cashier's check"	Section 3-104.
61	"Certificate of deposit"	Section 3-104.
62	"Certified check"	Section 3-409.
63	"Check"	Section 3-104.
64	"Draft"	Section 3-104.
65	"Holder in due course"	Section 3-302.
66	"Instrument"	Section 3-104.
67	"Notice of dishonor"	Section 3-503.
68	"Order"	Section 3-103.
69	"Ordinary care"	Section 3-103.
70	"Person entitled to enforce"	Section 3-301.
71	"Presentment"	Section 3-501.
72	"Promise"	Section 3-103.

73	“Prove”	Section 3-103.
74	“Teller’s check”	Section 3-104.
75	“Unauthorized signature”	Section 3-403.

76 (d) In addition, article one contains general definitions
77 and principles of construction and interpretation applica-
78 ble throughout this article.

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

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

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

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

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

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

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

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

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

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

ARTICLE 4A. FUND TRANSFERS.

§46-4A-105. Other definitions.

1 (a) In this article:

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

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

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

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

22 (5) "Funds-transfer system" means a wire transfer
23 network, automated clearing house or other communica-

24 tion system of a clearing house or other association of
25 banks through which a payment order by a bank may be
26 transmitted to the bank to which the order is addressed.

27 (6) [reserved]

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

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

32 (1) "Acceptance", §46-4A-209.

33 (2) "Beneficiary", §46-4A-103.

34 (3) "Beneficiary's bank", §46-4A-103.

35 (4) "Executed", §46-4A-301.

36 (5) "Execution date", §46-4A-301.

37 (6) "Funds transfer", §46-4A-104.

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

39 (8) "Intermediary bank", §46-4A-104.

40 (9) "Originator", §46-4A-104.

41 (10) "Originator's bank", §46-4A-104.

42 (11) "Payment by beneficiary's bank to beneficiary",
43 §46-4A-405.

44 (12) "Payment by originator to beneficiary", §46-4A-
45 406.

46 (13) "Payment by sender to receiving bank", §46-4A-
47 403.

48 (14) "Payment date", §46-4A-401.

49 (15) "Payment order", §46-4A-103.

50 (16) "Receiving bank", §46-4A-103.

51 (17) "Security procedure", §46-4A-201.

52 (18) "Sender", §46-4A-103.

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

55 (1) "Clearing house", §46-4-104.

56 (2) "Item", §46-4-104.

57 (3) "Suspends payments", §46-4-104.

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

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

1 (a) The time of receipt of a payment order or communi-
2 cation cancelling or amending a payment order is deter-
3 mined by the rules applicable to receipt of a notice stated
4 in section 1-202. A receiving bank may fix a cut-off time
5 or times on a funds-transfer business day for the receipt
6 and processing of payment orders and communications
7 cancelling or amending payment orders. Different cut-off
8 times may apply to payment orders, cancellations, or
9 amendments, or to different categories of payment orders,
10 cancellations, or amendments. A cut-off time may apply
11 to senders generally or different cut-off times may apply
12 to different senders or categories of payment orders. If a
13 payment order or communication cancelling or amending
14 a payment order is received after the close of a
15 funds-transfer business day or after the appropriate
16 cut-off time on a funds-transfer business day, the receiv-
17 ing bank may treat the payment order or communication
18 as received at the opening of the next funds-transfer
19 business day.

20 (b) If this article refers to an execution date or payment
21 date or states a day on which a receiving bank is required
22 to take action, and the date or day does not fall on a funds-

23 transfer business day, the next day that is a funds-transfer
24 business day is treated as the date or day stated, unless the
25 contrary is stated in this article.

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

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

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

ARTICLE 5. LETTERS OF CREDIT.

§46-5-103. Scope.

1 (a) This article applies to letters of credit and to certain
2 rights and obligations arising out of transactions involving
3 letters of credit.

4 (b) The statement of a rule in this article does not by
5 itself require, imply, or negate application of the same or
6 a different rule to a situation not provided for, or to a
7 person not specified, in this article.

8 (c) With the exception of this subsection, subsections (a)
9 and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-
10 114(d), and except to the extent prohibited in sections 1-
11 302 and 5-117(d), the effect of this article may be varied by
12 agreement or by a provision stated or incorporated by
13 reference in an undertaking. A term in an agreement or
14 undertaking generally excusing liability or generally
15 limiting remedies for failure to perform obligations is not
16 sufficient to vary obligations prescribed by this article.

17 (d) Rights and obligations of an issuer to a beneficiary or
18 a nominated person under a letter of credit are independ-
19 ent of the existence, performance, or nonperformance of a
20 contract or arrangement out of which the letter of credit
21 arises or which underlies it, including contracts or ar-
22 rangements between the issuer and the applicant and
23 between the applicant and the beneficiary.

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

PART 1 GENERAL.

§46-7-101. Short title.

1 This article may be cited as Uniform Commercial
2 Code-Documents of Title.

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

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

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

5 (2) "Carrier" means a person that issues a bill of lading.

6 (3) "Consignee" means a person named in a bill of lading
7 to which or to whose order the bill promises delivery.

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

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

15 (6) "Good faith" means honesty in fact and the obser-
16 vance of reasonable commercial standards of fair dealing.

17 (7) "Goods" means all things that are treated as movable
18 for the purposes of a contract for storage or transporta-
19 tion.

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

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

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

37 (11) "Sign" means, with present intent to authenticate or
38 adopt a record:

39 (A) To execute or adopt a tangible symbol; or

40 (B) To attach to or logically associate with the record an
41 electronic sound, symbol, or process.

42 (12) "Shipper" means a person that enters into a con-
43 tract of transportation with a carrier.

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

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

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

49 (2) "Lessee in the ordinary course of business", Section
50 2A-103.

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

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

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

1 (a) This article is subject to any treaty or statute of the
2 United States or regulatory statute of this state to the
3 extent the treaty, statute or regulatory statute is applica-
4 ble.

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

13 (c) This [act] modifies, limits, and supersedes the federal
14 Electronic Signatures in Global and National Commerce

15 Act (15 U.S.C. Section 7001, et. seq.) but does not modify,
16 limit, or supersede Section 101(c) of that act (15 U.S.C.
17 Section 7001(c)) or authorize electronic delivery of any of
18 the notices described in Section 103(b) of that act (15
19 U.S.C. Section 7003(b)).

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

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

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

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

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

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

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

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

7 (2) The tangible document when issued contains a
8 statement that it is issued in substitution for the electronic
9 document.

10 (b) Upon issuance of a tangible document of title in
11 substitution for an electronic document of title in accor-
12 dance with subsection (a):

13 (1) The electronic document ceases to have any effect or
14 validity; and

15 (2) The person that procured issuance of the tangible
16 document warrants to all subsequent persons entitled
17 under the tangible document that the warrantor was a
18 person entitled under the electronic document when the
19 warrantor surrendered control of the electronic document
20 to the issuer.

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

25 (1) The person entitled under the tangible document
26 surrenders possession of the document to the issuer; and

27 (2) The electronic document when issued contains a
28 statement that it is issued in substitution for the tangible
29 document.

30 (d) Upon issuance of an electronic document of title in
31 substitution for a tangible document of title in accordance
32 with subsection (c):

33 (1) The tangible document ceases to have any effect or
34 validity; and

35 (2) The person that procured issuance of the electronic
36 document warrants to all subsequent persons entitled
37 under the electronic document that the warrantor was a
38 person entitled under the tangible document when the
39 warrantor surrendered possession of the tangible docu-
40 ment to the issuer.

§46-7-106. Control of electronic document of title.

1 (a) A person has control of an electronic document of
2 title if a system employed for evidencing the transfer of
3 interests in the electronic document reliably establishes
4 that person as the person to which the electronic document
5 was issued or transferred.

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

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

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

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

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

19 (3) The authoritative copy is communicated to and
20 maintained by the person asserting control or its desig-
21 nated custodian;

22 (4) Copies or amendments that add or change an identi-
23 fied assignee of the authoritative copy can be made only
24 with the consent of the person asserting control;

25 (5) Each copy of the authoritative copy and any copy of
26 a copy is readily identifiable as a copy that is not the
27 authoritative copy; and

28 (6) Any amendment of the authoritative copy is readily
29 identifiable as authorized or unauthorized.

PART 2 - WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

**§46-7-201. Person that may issue a warehouse receipt; storage
under bond.**

1 (a) A warehouse receipt may be issued by any ware-
2 house.

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

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

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

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

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

8 (2) The date of issue of the receipt;

9 (3) The unique identification code of the receipt;

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

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

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

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

20 (8) If the receipt is issued for goods that the warehouse
21 owns, either solely, jointly, or in common with others, a
22 statement of the fact of that ownership; and

23 (9) A statement of the amount of advances made and of
24 liabilities incurred for which the warehouse claims a lien
25 or security interest, unless the precise amount of advances
26 made or liabilities incurred, at the time of the issue of the
27 receipt, is unknown to the warehouse or to its agent, that
28 issued the receipt, in which case a statement of the fact
29 that advances have been made or liabilities incurred and
30 the purpose of the advances or liabilities is sufficient.

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

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

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

6 (1) The document conspicuously indicates that the issuer
7 does not know whether all or part of the goods in fact were
8 received or conform to the description, such as a case in
9 which the description is in terms of marks or labels or
10 kind, quantity, or condition, or the receipt or description
11 is qualified by "contents, condition, and quality un-
12 known", "said to contain", or words of similar import, if
13 the indication is true; or

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

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

1 (a) A warehouse is liable for damages for loss of or
2 injury to the goods caused by its failure to exercise care
3 with regard to the goods that a reasonably careful person

4 would exercise under similar circumstances. Unless
5 otherwise agreed, the warehouse is not liable for damages
6 that could not have been avoided by the exercise of that
7 care.

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

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

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

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

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

1 (a) A warehouse, by giving notice to the person on whose
2 account the goods are held and any other person known to
3 claim an interest in the goods, may require payment of any
4 charges and removal of the goods from the warehouse at
5 the termination of the period of storage fixed by the
6 document of title or, if a period is not fixed, within a
7 stated period not less than 30 days after the warehouse

8 gives notice. If the goods are not removed before the date
9 specified in the notice, the warehouse may sell them
10 pursuant to Section 7-210.

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

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

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

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

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

1 (a) Unless the warehouse receipt provides otherwise, a
2 warehouse shall keep separate the goods covered by each
3 receipt so as to permit at all times identification and

4 delivery of those goods. However, different lots of fungible
5 goods may be commingled.

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

§46-7-208. Altered warehouse receipts.

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

§46-7-209. Lien of warehouse.

1 (a) A warehouse has a lien against the bailor on the
2 goods covered by a warehouse receipt or storage agree-
3 ment or on the proceeds thereof in its possession for
4 charges for storage or transportation, including demurrage
5 and terminal charges, insurance, labor, or other charges,
6 present or future, in relation to the goods, and for expenses
7 necessary for preservation of the goods or reasonably
8 incurred in their sale pursuant to law. If the person on
9 whose account the goods are held is liable for similar
10 charges or expenses in relation to other goods whenever
11 deposited and it is stated in the warehouse receipt or
12 storage agreement that a lien is claimed for charges and
13 expenses in relation to other goods, the warehouse also has
14 a lien against the goods covered by the warehouse receipt
15 or storage agreement or on the proceeds thereof in its
16 possession for those charges and expenses, whether or not

17 the other goods have been delivered by the warehouse.
18 However, as against a person to which a negotiable
19 warehouse receipt is duly negotiated, a warehouse's lien is
20 limited to charges in an amount or at a rate specified in
21 the warehouse receipt or, if no charges are so specified, to
22 a reasonable charge for storage of the specific goods
23 covered by the receipt subsequent to the date of the
24 receipt.

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

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

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

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

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

45 (C) Power of disposition under sections 2-403, 2A-304(2),
46 2A-305(2), 9-320, or 9-321(c) or other statute or rule of
47 law; or

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

50 (d) A warehouse's lien on household goods for charges
51 and expenses in relation to the goods under subsection (a)
52 is also effective against all persons if the depositor was the
53 legal possessor of the goods at the time of deposit. In this
54 subsection, "household goods" means furniture, furnish-
55 ings, or personal effects used by the depositor in a dwell-
56 ing.

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

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

1 (a) Except as otherwise provided in subsection(b), a
2 warehouse's lien may be enforced by public or private sale
3 of the goods, in bulk or in packages, at any time or place
4 and on any terms that are commercially reasonable, after
5 notifying all persons known to claim an interest in the
6 goods. The notification must include a statement of the
7 amount due, the nature of the proposed sale, and the time
8 and place of any public sale. The fact that a better price
9 could have been obtained by a sale at a different time or in
10 a method different from that selected by the warehouse is
11 not of itself sufficient to establish that the sale was not
12 made in a commercially reasonable manner. The ware-
13 house sells in a commercially reasonable manner if the
14 warehouse sells the goods in the usual manner in any
15 recognized market therefore, sells at the price current in
16 that market at the time of the sale, or otherwise sells in
17 conformity with commercially reasonable practices among
18 dealers in the type of goods sold. A sale of more goods
19 than apparently necessary to be offered to ensure satisfac-
20 tion of the obligation is not commercially reasonable,
21 except in cases covered by the preceding sentence.

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

25 (1) All persons known to claim an interest in the goods
26 must be notified.

27 (2) The notification must include an itemized statement
28 of the claim, a description of the goods subject to the lien,
29 a demand for payment within a specified time not less
30 than 10 days after receipt of the notification, and a
31 conspicuous statement that unless the claim is paid within
32 that time the goods will be advertised for sale and sold by
33 auction at a specified time and place.

34 (3) The sale must conform to the terms of the notifica-
35 tion.

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

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

50 (c) Before any sale pursuant to this section, any person
51 claiming a right in the goods may pay the amount neces-
52 sary to satisfy the lien and the reasonable expenses
53 incurred in complying with this section. In that event, the
54 goods may not be sold but must be retained by the ware-
55 house subject to the terms of the receipt and this article.

56 (d) A warehouse may buy at any public sale held pursu-
57 ant to this section.

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

62 (f) A warehouse may satisfy its lien from the proceeds of
63 any sale pursuant to this section but shall hold the bal-
64 ance, if any, for delivery on demand to any person to
65 which the warehouse would have been bound to deliver
66 the goods.

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

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

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

PART 3-BILLS OF LADING: SPECIAL PROVISIONS

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

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

16 (b) If goods are loaded by the issuer of a bill of lading;

17 (1) The issuer shall count the packages of goods if
18 shipped in packages and ascertain the kind and quantity
19 if shipped in bulk; and

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

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

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

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

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

1 (a) The issuer of a through bill of lading, or other
2 document of title embodying an undertaking to be per-
3 formed in part by a person acting as its agent or by a
4 performing carrier, is liable to any person entitled to

5 recover on the bill or other document for any breach by the
6 other person or the performing carrier of its obligation
7 under the bill or other document. However, to the extent
8 that the bill or other document covers an undertaking to
9 be performed overseas or in territory not contiguous to the
10 continental United States or an undertaking including
11 matters other than transportation, this liability for breach
12 by the other person or the performing carrier may be
13 varied by agreement of the parties.

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

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

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

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

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

1 (a) Unless the bill of lading otherwise provides, a carrier
2 may deliver the goods to a person or destination other than

3 that stated in the bill or may otherwise dispose of the
4 goods, without liability for misdeliver, on instructions
5 from:

6 (1) The holder of a negotiable bill;

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

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

14 (4) The consignee on a nonnegotiable bill, if the con-
15 signee is entitled as against the consignor to dispose of the
16 goods.

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

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

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

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

10 (c) If a tangible negotiable bill of lading is lawfully
11 issued in a set of parts and different parts are negotiated
12 to different persons, the title of the holder to which the
13 first due negotiation is made prevails as to both the
14 document of title and the goods even if any later holder
15 may have received the goods from the carrier in good faith

16 and discharged the carrier's obligation by surrendering its
17 part.

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

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

§46-7-305. Destination bills.

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

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

§46-7-306. Altered bills of lading.

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

§46-7-307. Lien of carrier.

1 (a) A carrier has a lien on the goods covered by a bill of
2 lading or on the proceeds thereof in its possession for
3 charges after the date of the carrier's receipt of the goods
4 for storage or transportation, including demurrage and
5 terminal charges, and for expenses necessary for preserva-
6 tion of the goods incident to their transportation or
7 reasonably incurred in their sale pursuant to law. How-
8 ever, against a purchaser for value of a negotiable bill of

9 lading, a carrier's lien is limited to charges stated in the
10 bill or the applicable tariffs or, if no charges are stated, a
11 reasonable charge.

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

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

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

1 (a) A carrier's lien on goods may be enforced by public
2 or private sale of the goods, in bulk or in packages, at any
3 time or place and on any terms that are commercially
4 reasonable, after notifying all persons known to claim an
5 interest in the goods. The notification must include a
6 statement of the amount due, the nature of the proposed
7 sale, and the time and place of any public sale. The fact
8 that a better price could have been obtained by a sale at a
9 different time or in a method different from that selected
10 by the carrier is not of itself sufficient to establish that the
11 sale was not made in a commercially reasonable manner.
12 The carrier sells goods in a commercially reasonable
13 manner if the carrier sells the goods in the usual manner in
14 any recognized market therefor, sells at the price current
15 in that market at the time of the sale, or otherwise sells in
16 conformity with commercially reasonable practices among
17 dealers in the type of goods sold. A sale of more goods
18 than apparently necessary to be offered to ensure satisfac-
19 tion of the obligation is not commercially reasonable,
20 except in cases covered by the preceding sentence.

21 (b) Before any sale pursuant to this section, any person
22 claiming a right in the goods may pay the amount neces-
23 sary to satisfy the lien and the reasonable expenses
24 incurred in complying with this section. In that event, the
25 goods may not be sold but must be retained by the carrier,
26 subject to the terms of the bill of lading and this article.

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

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

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

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

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

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

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

1 (a) A carrier that issues a bill of lading, whether negotia-
2 ble or nonnegotiable, shall exercise the degree of care in
3 relation to the goods which a reasonably careful person
4 would exercise under similar circumstances. This subsec-
5 tion does not affect any statute, regulation, or rule of law
6 that imposes liability upon a common carrier for damages
7 not caused by its negligence.

8 (b) Damages may be limited by a term in the bill of
9 lading or in a transportation agreement that the carrier's
10 liability may not exceed a value stated in the bill or
11 transportation agreement if the carrier's rates are depend-
12 ent upon value and the consignor is afforded an opportu-
13 nity to declare a higher value and the consignor is advised
14 of the opportunity. However, such a limitation is not
15 effective with respect to the carrier's liability for conver-
16 sion to its own use.

17 (c) Reasonable provisions as to the time and manner of
18 presenting claims and commencing actions based on the
19 shipment may be included in a bill of lading or a transpor-
20 tation agreement.

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

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

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

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

6 (2) The issuer violated laws regulating the conduct of its
7 business;

8 (3) The goods covered by the document were owned by
9 the bailee when the document was issued; or

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

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

1 A duplicate or any other document of title purporting to
2 cover goods already represented by an outstanding docu-
3 ment of the same issuer does not confer any right in the

4 goods, except as provided in the case of tangible bills of
5 lading in a set of parts, overissue of documents for fungi-
6 ble goods, substitutes for lost, stolen, or destroyed docu-
7 ments, or substitute documents issued pursuant to section
8 7-105. The issuer is liable for damages caused by its
9 overissue or failure to identify a duplicate document by a
10 conspicuous notation.

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

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

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

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

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

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

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

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

19 (7) Any other lawful excuse.

20 (b) A person claiming goods covered by a document of
21 title shall satisfy the bailee's lien if the bailee so requests
22 or if the bailee is prohibited by law from delivering the
23 goods until the charges are paid.

24 (c) Unless a person claiming the goods is a person
25 against which the document of title does not confer a right
26 under section 7-503(a):

27 (1) The person claiming under a document shall surren-
28 der possession or control of any outstanding negotiable
29 document covering the goods for cancellation or indication
30 of partial deliveries; and

31 (2) The bailee shall cancel the document or conspicu-
32 ously indicate in the document the partial delivery or the
33 bailee is liable to any person to which the document is
34 duly negotiated.

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

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

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

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

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

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

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

3 (1) If the document's original terms run to the order of a
4 named person, the document is negotiated by the named
5 person's indorsement and delivery. After the named

6 person's indorsement in blank or to bearer, any person
7 may negotiate the document by delivery alone.

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

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

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

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

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

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

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

35 (3) A document is duly negotiated if it is negotiated in
36 the manner stated in this subsection to a holder that
37 purchases it in good faith, without notice of any defense
38 against or claim to it on the part of any person, and for
39 value, unless it is established that the negotiation is not in

40 the regular course of business or financing or involves
41 taking delivery of the document in settlement or payment
42 of a monetary obligation.

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

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

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

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

4 (1) Title to the document;

5 (2) Title to the goods;

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

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

18 (b) Subject to section 7-503, title and rights acquired by
19 due negotiation are not defeated by any stoppage of the
20 goods represented by the document of title or by surrender
21 of the goods by the bailee and are not impaired even if:

22 (1) The due negotiation or any prior due negotiation
23 constituted a breach of duty;

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

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

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

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

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

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

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

10 (C) Power of disposition under section 2-403, 2A-304(2),
11 2A-305(2), 9-320, or 9-321(c) or other statute or rule of
12 law; or

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

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

21 (c) Title to goods based upon a bill of lading issued to a
22 freight forwarder is subject to the rights of any person to
23 which a bill issued by the freight forwarder is duly negoti-

24 ated. However, delivery by the carrier in accordance with
25 Part 4 pursuant to its own bill of lading discharges the
26 carrier's obligation to deliver.

**§46-7-504. Rights acquired in absence of due negotiation; effect
of diversion; stoppage of delivery.**

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

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

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

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

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

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

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

26 (d) Delivery of the goods pursuant to a nonnegotiable
27 document of title may be stopped by a seller under section
28 2-705 or a lessor under section 2A-526, subject to the

29 requirements of due notification in those sections. A
30 bailee that honors the seller's or lessor's instructions is
31 entitled to be indemnified by the seller or lessor against
32 any resulting loss or expense.

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

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

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

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

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

1 If a person negotiates or delivers a document of title for
2 value, otherwise than as a mere intermediary under section
3 7-508, unless otherwise agreed the transferor, in addition
4 to any warranty made in selling or leasing the goods,
5 warrants to its immediate purchaser only that:

6 (1) The document is genuine;

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

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

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

1 A collecting bank or other intermediary known to be
2 entrusted with documents of title on behalf of another or

3 with collection of a draft or other claim against delivery of
4 documents warrants by the delivery of the documents only
5 its own good faith and authority, even if the collecting
6 bank or other intermediary has purchased or made ad-
7 vances against the claim or draft to be collected.

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

1 Whether a document of title is adequate to fulfill the
2 obligations of a contract for sale, a contract for lease, or
3 the conditions of a letter of credit is determined by article
4 2, 2A, or 5.

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

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

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

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

§46-7-602. Judicial process against goods covered by negotiable document of title.

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

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

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

PART 7 - MISCELLANEOUS PROVISIONS

§46-7-701. Applicability.

1 This article applies to a document of title that is issued
2 or a bailment that arises on or after the effective date of
3 this article. This article does not apply to a document of
4 title that is issued or a bailment that arises before the
5 effective date of this article even if the document of title or
6 bailment would be subject to this article if the document
7 of title had been issued or bailment had arisen on or after
8 the effective date of this article. This article does not
9 apply to a right of action that has accrued before the
10 effective date of this article.

§46-7-702. Savings clause.

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

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-102. Definitions.

1 (a) In this article:

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

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

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

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

15 (5) "Clearing corporation" means:

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

18 (ii) A federal reserve bank; or

19 (iii) Any other person that provides clearance or settle-
20 ment services with respect to financial assets that would

21 require it to register as a clearing agency under the federal
22 securities laws but for an exclusion or exemption from the
23 registration requirement, if its activities as a clearing
24 corporation, including promulgation of rules, are subject
25 to regulation by a federal or state governmental authority.

26 (6) "Communicate" means to:

27 (i) Send a signed writing; or

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

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

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

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

43 (i) A security;

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

50 (iii) Any property that is held by a securities intermedi-
51 ary for another person in a securities account if the
52 securities intermediary has expressly agreed with the other
53 person that the property is to be treated as a financial

54 asset under this article. As context requires, the term
55 means either the interest itself or the means by which a
56 person's claim to it is evidenced, including a certificated or
57 uncertificated security, a security certificate or a security
58 entitlement.

59 (10)[reserved]

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

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

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

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

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

77 (14) "Securities intermediary" means:

78 (i) A clearing corporation; or

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

82 (15) "Security", except as otherwise provided in section
83 8-103, means an obligation of an issuer or a share, partici-
84 pation or other interest in an issuer or in property or an
85 enterprise of an issuer:

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

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

93 (iii) Which:

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

96 (B) Is a medium for investment and by its terms ex-
97 pressly provides that it is a security governed by this
98 article.

99 (16) "Security certificate" means a certificate represent-
100 ing a security.

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

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

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

108	"Appropriate person"	Section 8-107
109	"Control"	Section 8-106
110	"Delivery"	Section 8-301
111	"Investment company security"	Section 8-103
112	"Issuer"	Section 8-201
113	"Overissue"	Section 8-210
114	"Protected purchaser"	Section 8-303
115	"Securities account"	Section 8-501

116 (c) In addition, article one contains general definitions
117 and principles of construction and interpretation applica-
118 ble throughout this article.

119 (d) The characterization of a person, business or transac-
120 tion for purposes of this article does not determine the
121 characterization of the person, business or transaction for
122 purposes of any other law, regulation or rule.

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

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

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

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

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

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

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

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

ARTICLE 9. SECURED TRANSACTIONS.

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

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

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

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

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

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

35 (A) Authenticated by a secured party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66 (7) "Authenticate" means:

67 (A) To sign; or

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

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

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

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

83 (11) "Chattel paper" means a record or records that
84 evidence both a monetary obligation and a security
85 interest in specific goods, a security interest in specific
86 goods and software used in the goods, a security interest in
87 specific goods and license of software used in the goods, a
88 lease of specific goods or a lease of specific goods and
89 license of software used in the goods. In this paragraph,

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

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

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

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

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

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

109 (A) The claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

138 (18) "Communicate" means:

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

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

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

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

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

150 (A) The merchant:

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

153 (ii) Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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

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

180 (26) "Consumer transaction" means a transaction in
181 which: (i) An individual incurs an obligation primarily for
182 personal, family or household purposes; (ii) a security
183 interest secures the obligation; and (iii) the collateral is

184 held or acquired primarily for personal, family or house-
185 hold purposes. The term includes consumer-goods trans-
186 actions.

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

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

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

194 (28) "Debtor" means:

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

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

200 (C) A consignee.

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

205 (30) "Document" means a document of title or a receipt
206 of the type described in section 7-201(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
234 to section 9-526.

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

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

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

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

254 (43) [reserved].

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

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

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

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

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

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

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

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

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

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

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

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

316 include the right of a beneficiary to demand payment or
317 performance under a letter of credit.

318 (52) "Lien creditor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

380 (A) The spouse of the individual;

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

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

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

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

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

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

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

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

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

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

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

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

408 (C) Rights arising out of collateral;

409 (D) To the extent of the value of collateral, claims arising
410 out of the loss, nonconformity, or interference with the use

411 of, defects or infringement of rights in, or damage to, the
412 collateral; or

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

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

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

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

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

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

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

441 (A) Debt securities are issued;

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

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

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

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

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

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

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

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

471 (75) "Secured party" means:

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

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

476 (C) A consignor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

530	"Applicant"	Section 5-102.
531	"Beneficiary"	Section 5-102.
532	"Broker"	Section 8-102.
533	"Certificated security"	Section 8-102.
534	"Check"	Section 3-104.
535	"Clearing corporation"	Section 8-102.
536	"Contract for sale"	Section 2-106.
537	"Customer"	Section 4-104.
538	"Entitlement holder"	Section 8-102.
539	"Financial asset"	Section 8-102.

540	“Holder in due course”	Section 3-302.
541	“Issuer” (with respect to a letter of	
542	credit or letter-of-credit right)	Section 5-102.
543	“Issuer” (with respect	
544	to a security)	Section 8-201.
545	“Issuer” (with respect	
546	to documents of title)	Section 7-102.
547	“Lease”	Section 2A-103.
548	“Lease agreement”	Section 2A-103.
549	“Lease contract”	Section 2A-103.
550	“Leasehold interest”	Section 2A-103.
551	“Lessee”	Section 2A-103.
552	“Lessee in ordinary	
553	course of business”	Section 2A-103.
554	“Lessor”	Section 2A-103.
555	“Lessor’s residual interest”	Section 2A-103.
556	“Letter of credit”	Section 5-102.
557	“Merchant”	Section 2-104.
558	“Negotiable instrument”	Section 3-104.
559	“Nominated person”	Section 5-102.
560	“Note”	Section 3-104.
561	“Proceeds of a letter of credit”	Section 5-114.
562	“Prove”	Section 3-103.
563	“Sale”	Section 2-106.
564	“Securities account”	Section 8-501.
565	“Securities intermediary”	Section 8-102.
566	“Security”	Section 8-102.
567	“Security certificate”	Section 8-102.
568	“Security entitlement”	Section 8-102.
569	“Uncertificated security”	Section 8-102.
570	(c) Article 1 definitions and principles. Article 1 con-	
571	tains general definitions and principles of construction	
572	and interpretation applicable throughout this article.	

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

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

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

9 (1) Value has been given;

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

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

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

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

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

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

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

34 this chapter and section 9-206 on security interests in
35 investment property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) Duties and rights when secured party in possession or
28 control. Except as otherwise provided in subsection (d) of
29 this section, a secured party having possession of collateral
30 or control of collateral under section 7-106, 9-104, 9-105,
31 9-106 or 9-107:

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

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

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

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

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

43 (A) To charge back uncollected collateral; or

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

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

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

1 (a) Applicability of section. This section applies to cases
2 in which there is no outstanding secured obligation and

3 the secured party is not committed to make advances,
4 incur obligations, or otherwise give value.

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

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

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

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

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

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

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

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

32 (C) Take appropriate action to enable the debtor or its
33 designated custodian to make copies of or revisions to the
34 authoritative copy which add or change an identified

35 assignee of the authoritative copy without the consent of
36 the secured party;

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

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

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

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

55 (B) If the debtor designates a custodian that is the
56 designated custodian with which the authoritative copy of
57 the electronic document is maintained for the secured
58 party, communicate to the custodian an authenticated
59 record releasing the designated custodian from any further
60 obligation to comply with instructions originated by the
61 secured party and instructing the custodian to comply
62 with instructions originated by the debtor; and

63 (C) Take appropriate action to enable the debtor or its
64 designated custodian to make copies of or revisions to the
65 authoritative copy which add or change an identified
66 assignee of the authoritative copy without the consent of
67 the secured party.

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

1 Except as otherwise provided in sections 9-303 through
2 9-306, the following rules determine the law governing
3 perfection, the effect of perfection or nonperfection and
4 the priority of a security interest in collateral:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (c) Assignment of perfected security interest. If a
29 secured party assigns a perfected security interest or
30 agricultural lien, a filing under this article is not required
31 to continue the perfected status of the security interest

32 against creditors of and transferees from the original
33 debtor.

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

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

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

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

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

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

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

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

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

22 (d) Goods covered by nonnegotiable document. While
23 goods are in the possession of a bailee that has issued a

24 nonnegotiable document covering the goods, a security
25 interest in the goods may be perfected by:

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

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

30 (3) Filing as to the goods.

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

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

45 (1) Ultimate sale or exchange; or

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

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

55 (1) Ultimate sale or exchange; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (h) Secured party's delivery to person other than debtor.
54 A secured party having possession of collateral does not
55 relinquish possession by delivering the collateral to a
56 person other than the debtor or a lessee of the collateral
57 from the debtor in the ordinary course of the debtor's
58 business if the person was instructed before the delivery or
59 is instructed contemporaneously with the delivery:

60 (1) Effect of delivery under subsection (h); no duties or
61 confirmation. To hold possession of the collateral for the
62 secured party's benefit; or

63 (2) To redeliver the collateral to the secured party.

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

§46-9-314. Perfection by control.

1 (a) Perfection by control. A security interest in invest-
2 ment property, deposit accounts, letter-of-credit rights,
3 electronic chattel paper, or electronic documents may be
4 perfected by control of the collateral under section 7-106,
5 9-104, 9-105, 9-106 or 9-107.

6 (b) Specified collateral: time of perfection by control;
7 continuation of perfection. A security interest in deposit
8 accounts, electronic chattel paper, letter-of-credit rights,
9 or electronic documents is perfected by control under
10 section 7-106, 9-104, 9-105 or 9-107 when the secured
11 party obtains control and remains perfected by control
12 only while the secured party retains control.

13 (c) Investment property: time of perfection by control;
14 continuation of perfection. A security interest in invest-
15 ment property is perfected by control under section 9-106
16 from the time the secured party obtains control and
17 remains perfected by control until:

18 (1) The secured party does not have control; and

19 (2) One of the following occurs:

20 (A) If the collateral is a certificated security, the debtor
21 has or acquires possession of the security certificate;

22 (B) If the collateral is an uncertificated security, the
23 issuer has registered or registers the debtor as the regis-
24 tered owner; or

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

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

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

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

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

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

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

25 (d) Licensees and buyers of certain collateral. A licensee
26 of a general intangible or a buyer, other than a secured
27 party, of accounts, electronic chattel paper, electronic
28 documents, general intangibles or investment property
29 other than a certificated security takes free of a security
30 interest if the licensee or buyer gives value without

31 knowledge of the security interest and before it is per-
32 fected.

33 (e) Purchase-money security interest. Except as other-
34 wise provided in sections 9-320 and 9-321, if a person files
35 a financing statement with respect to a purchase-money
36 security interest before or within twenty days after the
37 debtor receives delivery of the collateral, the security
38 interest takes priority over the rights of a buyer, lessee or
39 lien creditor which arise between the time the security
40 interest attaches and the time of filing.

**§46-9-338. Priority of security interest or agricultural lien
perfected by filed financing statement providing
certain incorrect information.**

1 If a security interest or agricultural lien is perfected by
2 a filed financing statement providing information de-
3 scribed in section 9-516(b)(5) which is incorrect at the time
4 the financing statement is filed:

5 (1) The security interest or agricultural lien is subordi-
6 nate to a conflicting perfected security interest in the
7 collateral to the extent that the holder of the conflicting
8 security interest gives value in reasonable reliance upon
9 the incorrect information; and

10 (2) A purchaser, other than a secured party, of the
11 collateral takes free of the security interest or agricultural
12 lien to the extent that, in reasonable reliance upon the
13 incorrect information, the purchaser gives value and, in
14 the case of tangible chattel paper, tangible documents,
15 goods, instruments, or a security certificate, receives
16 delivery of the collateral.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (B) Indicate whether the debtor is an individual or an
43 organization; or

44 (C) If the financing statement indicates that the debtor
45 is an organization, provide:

46 (i) A type of organization for the debtor;

47 (ii) A jurisdiction of organization for the debtor; or

48 (iii) An organizational identification number for the
49 debtor or indicate that the debtor has none;

50 (6) In the case of an assignment reflected in an initial
51 financing statement under section 9-514(a) or an amend-
52 ment filed under section 9-514(b), the record does not
53 provide a name and mailing address for the assignee; or

54 (7) In the case of a continuation statement, the record is
55 not filed within the six-month period prescribed by section
56 9-515(d).

57 (c) **Rules applicable to subsection (b).** For purposes of
58 subsection (b):

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

61 (2) A record that does not indicate that it is an amend-
62 ment or identify an initial financing statement to which it
63 relates, as required by section 9-512, 9-514 or 9-518, is an
64 initial financing statement.

65 (d) **Refusal to accept record; record effective as filed**
66 **record.** A record that is communicated to the filing office
67 with tender of the filing fee, but which the filing office

68 refuses to accept for a reason other than one set forth in
69 subsection (b) of this section, is effective as a filed record
70 except as against a purchaser of the collateral which gives
71 value in reasonable reliance upon the absence of the record
72 from the files.

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

84 (1) Upon the commencement of proceedings pursuant to
85 this subsection, the Secretary of State shall identify the
86 financing statement in its records as subject to administra-
87 tive review and publish a notice in the *West Virginia*
88 *Register* regarding the proceedings.

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

95 (3) If upon the completion of administrative review, it is
96 determined that the filing of a financing statement was
97 fraudulent, the filing party shall be assessed all costs
98 incurred by the Secretary in reaching a final determina-
99 tion, including reimbursement for all costs of the hearing.
100 The filing party may also be subject to a civil penalty not
101 exceeding five hundred dollars per fraudulent filing. If
102 upon completion of administrative review or any subse-
103 quent appeal of a decision of the Secretary of State, it is

104 determined that a filing subject to appeal is not fraudu-
105 lent, the secretary or court may award the prevailing party
106 reasonable costs and expenses, including attorney fees.

107 (4) The Secretary of State shall annually submit a report
108 to the Legislature regarding actions taken against fraudu-
109 lent filings pursuant to this section which identifies the
110 number and characteristics of such proceedings, identifies
111 any creditors found to have made fraudulent filings,
112 describes proceedings initiated by the secretary in which
113 it is ultimately determined that fraudulent filings did not
114 occur, describes the number and type of complaints
115 received by the Secretary in which it is alleged that
116 fraudulent filings have occurred, and describes the actions
117 taken by the secretary to investigate complaints concern-
118 ing allegedly fraudulent filings and the results of the
119 investigations.

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

128 (6) A financing statement filed by a regulated financial
129 institution is not subject to the provisions of this section.
130 For the purposes of this section, a regulated financial
131 institution is a bank, bank and trust company, trust
132 company, savings bank, savings association, building and
133 loan association, credit union, consumer finance company,
134 insurance company, investment company, mortgage lender
135 or broker, securities broker, dealer or underwriter, or other
136 institution chartered, licensed, registered or otherwise
137 authorized under federal law, the law of this state or any
138 other state, to engage in secured lending.

§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

1 (a) Rights of secured party after default. After default,
2 a secured party has the rights provided in this part and,
3 except as otherwise provided in section 9-602, those
4 provided by agreement of the parties. A secured party:

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

8 (2) If the collateral is documents, may proceed either as
9 to the documents or as to the goods they cover.

10 (b) Rights and duties of secured party in possession or
11 control. A secured party in possession of collateral or
12 control of collateral under section 7-106, 9-104, 9-105,
13 9-106 or 9-107 has the rights and duties provided in
14 section 9-207.

15 (c) Rights cumulative; simultaneous exercise. The rights
16 under subsections (a) and (b) of this section are cumulative
17 and may be exercised simultaneously.

18 (d) Rights of debtor and obligor. Except as otherwise
19 provided in subsection (g) of this section and section 9-605,
20 after default, a debtor and an obligor have the rights
21 provided in this part and by agreement of the parties.

22 (e) Lien of levy after judgment. If a secured party has
23 reduced its claim to judgment, the lien of any levy that
24 may be made upon the collateral by virtue of an execution
25 based upon the judgment relates back to the earliest of:

26 (1) The date of perfection of the security interest or
27 agricultural lien in the collateral;

28 (2) The date of filing a financing statement covering the
29 collateral; or

30 (3) Any date specified in a statute under which the
31 agricultural lien was created.

32 (f) Execution sale. A sale pursuant to an execution is a
33 foreclosure of the security interest or agricultural lien by
34 judicial procedure within the meaning of this section. A
35 secured party may purchase at the sale and thereafter hold
36 the collateral free of any other requirements of this article.

37 (g) Consignor or buyer of certain rights to payment.
38 Except as otherwise provided in section 9-607(c), this part
39 imposes no duties upon a secured party that is a consignor
40 or is a buyer of accounts, chattel paper, payment intangi-
41 bles or promissory notes.

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

Candy White
.....
Chairman Senate Committee

R. Bean
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Russell Holmes
.....
Clerk of the Senate

Bruce M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert A. ...
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:15 pm