

1 **H. B. 4251**

2
3 (By Delegates Doyle, Rodighiero, Ferro,
4 Frazier, Reynolds and Storch)

5 [Introduced January 20, 2012; referred to the
6 Committee on the Judiciary then Finance.]

**Interim
Bill**

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10 A BILL to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104,
11 §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code
12 of West Virginia, 1931, as amended; to amend and reenact §46-
13 2A-103 of said code; to amend and reenact §46-9-102, §46-9-
14 105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326,
15 §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-
16 515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to
17 amend said code by adding thereto nine new sections,
18 designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-
19 805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all
20 relating generally to amendments to the uniform commercial
21 code; improving the system for filing financing statements;
22 greater protection for existing secured party having a
23 security interest in after-acquired property upon relocation
24 of debtor; reforming the correction statement process;
25 technical changes; and transition rules.

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

2 That §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-
3 105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West
4 Virginia, 1931, as amended, be repealed; that §46-2A-103 of said
5 code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-
6 307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-
7 408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-
8 518, §46-9-607 and §46-9-625 of said code be amended and reenacted;
9 and that said code be amended by adding thereto nine new sections,
10 designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805,
11 §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all to read as
12 follows:

13 **ARTICLE 2A. LEASES.**

14 Part 1. General Provisions.

15 **§46-2A-103. Definitions and index of definitions.**

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

17 (a) "Buyer in ordinary course of business" means a person who
18 in good faith and without knowledge that the sale to him or her is
19 in violation of the ownership rights or security interest or
20 leasehold interest of a third party in the goods, buys in ordinary
21 course from a person in the business of selling goods of that kind
22 but does not include a pawnbroker. "Buying" may be for cash or by
23 exchange of other property or on secured or unsecured credit and
24 includes acquiring goods or documents of title under a preexisting

1 contract for sale, but does not include, a transfer in bulk or as
2 security for or in total or partial satisfaction of a money debt.

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

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

12 (d) "Conforming" goods or performance under a lease contract
13 means goods or performance that are in accordance with the
14 obligations under the lease contract.

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

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

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

20 (i) The lessor does not select, manufacture or supply the
21 goods;

22 (ii) The lessor acquires the goods or the right to possession
23 and use of the goods in connection with the lease; and

24 (iii) One of the following occurs:

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

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

7 (C) The lessee, before signing the lease contract, receives an
8 accurate and complete statement designating the promises and
9 warranties, and any disclaimers of warranties, limitations or
10 modifications of remedies, or liquidated damages, including those
11 of a third party, such as the manufacturer of the goods, provided
12 to the lessor by the person supplying the goods in connection with
13 or as part of the contract by which the lessor acquired the goods
14 or the right to possession and use of the goods; or

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

17 (a) Of the identity of the person supplying the goods to the
18 lessor, unless the lessee has selected that person and directed the
19 lessor to acquire the goods or the right to possession and use of
20 the goods from that person; (b) that the lessee is entitled under
21 this article to the promises and warranties, including those of any
22 third party, provided to the lessor by the person supplying the
23 goods in connection with or as part of the contract by which the
24 lessor acquired the goods or the right to possession and use of the

1 goods; and (c) that the lessee may communicate with the person
2 supplying the goods to the lessor and receive an accurate and
3 complete statement of those promises and warranties, including any
4 disclaimers and limitations of them or of remedies.

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

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

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

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

1 otherwise, the term includes a sublease agreement.

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

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

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

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

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

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

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

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

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

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

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

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

1 existing lease.

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

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

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

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

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

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

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

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

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

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

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

19 "Account". Section 9-102(a)(2).

20 "Between merchants". Section 2-104(3).

21 "Buyer". Section 2-103(1)(a).

22 "Chattel paper". Section 9-102(a)(11).

23 "Consumer goods". Section 9-102(a)(23).

24 "Document". Section 9-102(a)(30).

- 1 "Entrusting". Section 2-403(3).
- 2 "General intangible". Section 9-102(a)(42).
- 3 "Instrument". Section 9-102(a)(47).
- 4 "Merchant". Section 2-104(1).
- 5 "Mortgage". Section 9-102(a)(55).
- 6 "Pursuant to commitment". ~~Section 9-102(a)(68)~~ 9-102(a)(69).
- 7 "Receipt". Section 2-103(1)(c).
- 8 "Sale". Section 2-106(1).
- 9 "Sale on approval". Section 2-326.
- 10 "Sale or return". Section 2-326.
- 11 "Seller". Section 2-103(1)(d).

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

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

17 **§46-9-102. Definitions and index of definitions.**

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

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

22 (2) "Account", except as used in "account for", means a right
23 to payment of a monetary obligation, whether or not earned by
24 performance: (i) For property that has been or is to be sold,

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

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

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

1 (A) Authenticated by a secured party;

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

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

7 (5) "Agricultural lien" means an interest, ~~other than a~~
8 ~~security interest,~~ in farm products:

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

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

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

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

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

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

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

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

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

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

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

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

7 (7) "Authenticate" means:

8 (A) To sign; or

9 (B) ~~To execute or otherwise adopt a symbol, or encrypt or~~
10 ~~similarly process a record, in whole or in part, with the present~~
11 ~~intent of the authenticating person to identify the person and~~
12 ~~adopt or accept a record, To attach to or logically associate with~~
13 ~~the record an electronic sound, symbol or process, with present~~
14 ~~intent to adopt or accept a record.~~

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

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

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

1 includes another record maintained as an alternative to a
2 certificate of title by the governmental unit that issues
3 certificates of title if a statute permits the security interest in
4 question to be indicated on the record as a condition or result of
5 the security interest's obtaining priority over the rights of a
6 lien creditor with respect to the collateral.

7 (11) "Chattel paper" means a record or records that evidence
8 both a monetary obligation and a security interest in specific
9 goods, a security interest in specific goods and software used in
10 the goods, a security interest in specific goods and license of
11 software used in the goods, a lease of specific goods or a lease of
12 specific goods and license of software used in the goods. In this
13 paragraph, "monetary obligation" means a monetary obligation
14 secured by the goods or owed under a lease of the goods and
15 includes a monetary obligation with respect to software used in the
16 goods. The term does not include: (i) Charters or other contracts
17 involving the use or hire of a vessel; or (ii) records that
18 evidence a right to payment arising out of the use of a credit or
19 charge card or information contained on or for use with the card.
20 If a transaction is evidenced by records that include an instrument
21 or series of instruments, the group of records taken together
22 constitutes chattel paper.

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

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

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

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

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

7 (A) The claimant is an organization; or

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

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

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

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

16 (15) "Commodity contract" means a commodity futures contract,
17 an option on a commodity futures contract, a commodity option or
18 another contract if the contract or option is:

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

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

1 (16) "Commodity customer" means a person for which a commodity
2 intermediary carries a commodity contract on its books.

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

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

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

10 (18) "Communicate" means:

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

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

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

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

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

22 (A) The merchant:

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

1 (ii) Is not an auctioneer; and

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

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

6 (C) The goods are not consumer goods immediately before
7 delivery; and

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

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

12 (22) "Consumer debtor" means a debtor in a consumer
13 transaction.

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

16 (24) "Consumer-goods transaction" means a consumer transaction
17 in which:

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

20 (B) A security interest in consumer goods secures the
21 obligation.

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

1 (26) "Consumer transaction" means a transaction in which: (i)
2 An individual incurs an obligation primarily for personal, family
3 or household purposes; (ii) a security interest secures the
4 obligation; and (iii) the collateral is held or acquired primarily
5 for personal, family or household purposes. The term includes
6 consumer-goods transactions.

7 (27) "Continuation statement" means an amendment of a
8 financing statement which:

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

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

14 (28) "Debtor" means:

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

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

20 (C) A consignee.

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

24 (30) "Document" means a document of title or a receipt of the

1 type described in section 7-201(b).

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

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

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

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

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

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

15 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

21 (35) "Farming operation" means raising, cultivating,
22 propagating, fattening, grazing or any other farming, livestock or
23 aquacultural operation.

24 (36) "File number" means the number assigned to an initial

1 financing statement pursuant to section 9-519(a).

2 (37) "Filing office" means an office designated in section 9-
3 501 as the place to file a financing statement.

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

6 (39) "Financing statement" means a record or records composed
7 of an initial financing statement and any filed record relating to
8 the initial financing statement.

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

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

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

23 (43) [reserved].

24 (44) "Goods" means all things that are movable when a security

1 interest attaches. The term includes: (i) Fixtures; (ii) standing
2 timber that is to be cut and removed under a conveyance or contract
3 for sale; (iii) the unborn young of animals; (iv) crops grown,
4 growing or to be grown, even if the crops are produced on trees,
5 vines or bushes; and (v) manufactured homes. The term also
6 includes a computer program embedded in goods and any supporting
7 information provided in connection with a transaction relating to
8 the program if: (i) The program is associated with the goods in
9 such a manner that it customarily is considered part of the goods;
10 or (ii) by becoming the owner of the goods, a person acquires a
11 right to use the program in connection with the goods. The term
12 does not include a computer program embedded in goods that consist
13 solely of the medium in which the program is embedded. The term
14 also does not include accounts, chattel paper, commercial tort
15 claims, deposit accounts, documents, general intangibles,
16 instruments, investment property, letter-of-credit rights, letters
17 of credit, money or oil, gas, or other minerals before extraction.

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

24 (46) "Health-care-insurance receivable" means an interest in

1 or claim under a policy of insurance which is a right to payment of
2 a monetary obligation for health-care goods or services provided.

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

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

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

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

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

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

19 (49) "Investment property" means a security, whether
20 certificated or uncertificated, security entitlement, securities
21 account, commodity contract or commodity account.

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

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

7 (52) "Lien creditor" means:

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

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

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

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

15 (53) "Manufactured home" means a structure, transportable in
16 one or more sections, which, in the traveling mode, is eight body
17 feet or more in width or forty body feet or more in length, or,
18 when erected on site, is three hundred twenty or more square feet,
19 and which is built on a permanent chassis and designed to be used
20 as a dwelling with or without a permanent foundation when connected
21 to the required utilities, and includes the plumbing, heating, air-
22 conditioning and electrical systems contained therein. The term
23 includes any structure that meets all of the requirements of this
24 paragraph except the size requirements and with respect to which

1 the manufacturer voluntarily files a certification required by the
2 United States secretary of housing and urban development and
3 complies with the standards established under Title 42 of the
4 United States Code.

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

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

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

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

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

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

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

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

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

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

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

17 (A) The spouse of the individual;

18 (B) A brother, brother-in-law, sister or sister-in-law of the
19 individual;

20 (C) An ancestor or lineal descendant of the individual or the
21 individual's spouse; or

22 (D) Any other relative, by blood or marriage, of the
23 individual or the individual's spouse who shares the same home with
24 the individual.

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

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

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

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

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

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

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

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

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

20 (C) Rights arising out of collateral;

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

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

5 (65) "Production-money crops" means crops that secure a
6 production-money obligation incurred with respect to the production
7 of those crops.

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

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

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

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

24 (70) "Public-finance transaction" means a secured transaction

1 in connection with which:

2 (A) Debt securities are issued;

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

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

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

11 (A) A record consisting of the record initially filed with or
12 issued by a state or the United States to form or organize an
13 organization and any record filed with or issued by the state or
14 the United States which amends or restates the initial record;

15 (B) An organic record of a business trust consisting of the
16 record initially filed with a state and any record filed with the
17 state which amends or restates the initial record, if a statute of
18 the state governing business trusts requires that the record be
19 filed with the state; or

20 (C) A record consisting of legislation enacted by the
21 Legislature of a state or the Congress of the United States which
22 forms or organizes an organization, any record amending the
23 legislation, and any record filed with or issued by the state or
24 the United States which amends or restates the name of the

1 organization.

2 ~~(71)~~ (72) "Pursuant to commitment", with respect to an advance
3 made or other value given by a secured party, means pursuant to the
4 secured party's obligation, whether or not a subsequent event of
5 default or other event not within the secured party's control has
6 relieved or may relieve the secured party from its obligation.

7 ~~(72)~~ (73) "Record", except as used in "for record", "of
8 record", "record or legal title" and "record owner", means
9 information that is inscribed on a tangible medium or which is
10 stored in an electronic or other medium and is retrievable in
11 perceivable form.

12 ~~(73)~~ (74) "Registered organization" means an organization
13 formed or organized solely under the law of a single state or the
14 United States and as to which the state or the United States must
15 maintain a public record showing the organization to have been
16 organized by the filing of a public organic record with, the
17 issuance of a public organic record by, or the enactment of
18 legislation by the state or the United States. The term includes
19 a business trust that is formed or organized under the law of a
20 single state if a statute of the state governing business trusts
21 requires that the business trust's organic record be filed with the
22 state.

23 ~~(74)~~ (75) "Secondary obligor" means an obligor to the extent
24 that:

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

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

5 ~~(75)~~ (76) "Secured party" means:

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

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

10 (C) A consignor;

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

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

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

18 ~~(76)~~ (77) "Security agreement" means an agreement that creates
19 or provides for a security interest.

20 ~~(77)~~ (78) "Send," in connection with a record or notification,
21 means:

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

1 reasonable under the circumstances; or

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

5 ~~(78)~~ (79) "Software" means a computer program and any
6 supporting information provided in connection with a transaction
7 relating to the program. The term does not include a computer
8 program that is included in the definition of goods.

9 ~~(79)~~ (80) "State" means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin Islands
11 or any territory or insular possession subject to the jurisdiction
12 of the United States.

13 ~~(80)~~ (81) "Supporting obligation" means a letter-of-credit
14 right or secondary obligation that supports the payment or
15 performance of an account, chattel paper, a document, a general
16 intangible, an instrument or investment property.

17 ~~(81)~~ (82) "Tangible chattel paper" means chattel paper
18 evidenced by a record or records consisting of information that is
19 inscribed on a tangible medium.

20 ~~(82)~~ (83) "Termination statement" means an amendment of a
21 financing statement which:

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

24 (B) Indicates either that it is a termination statement or

1 that the identified financing statement is no longer effective.

2 ~~(83)~~ (84) "Transmitting utility" means a person primarily
3 engaged in the business of:

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

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

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

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

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

14 "Applicant" Section 5-102.

15 "Beneficiary" Section 5-102.

16 "Broker" Section 8-102.

17 "Certificated security" Section 8-102.

18 "Check" Section 3-104.

19 "Clearing corporation" Section 8-102.

20 "Contract for sale" Section 2-106.

21 "Customer" Section 4-104.

22 "Entitlement holder" Section 8-102.

23 "Financial asset" Section 8-102.

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

1	"Issuer" (with respect to a letter of	
2	credit or letter-of-credit right)	Section 5-102.
3	"Issuer" (with respect to a security)	Section 8-201.
4	"Issuer" (with respect to documents a document of title)	
5		Section 7-102.
6	"Lease"	Section 2A-103.
7	"Lease agreement"	Section 2A-103.
8	"Lease contract"	Section 2A-103.
9	"Leasehold interest"	Section 2A-103.
10	"Lessee"	Section 2A-103.
11	"Lessee in ordinary course of business"	Section 2A-103.
12	"Lessor"	Section 2A-103.
13	"Lessor's residual interest"	Section 2A-103.
14	"Letter of credit"	Section 5-102.
15	"Merchant"	Section 2-104.
16	"Negotiable instrument"	Section 3-104.
17	"Nominated person"	Section 5-102.
18	"Note"	Section 3-104.
19	"Proceeds of a letter of credit"	Section 5-114.
20	"Prove"	Section 3-103.
21	"Sale"	Section 2-106.
22	"Securities account"	Section 8-501.
23	"Securities intermediary"	Section 8-102.
24	"Security"	Section 8-102.

1 "Security certificate" Section 8-102.

2 "Security entitlement" Section 8-102.

3 "Uncertificated security" Section 8-102.

4 (c) Article 1 definitions and principles. Article 1 contains
5 general definitions and principles of construction and
6 interpretation applicable throughout this article.

7 **§46-9-105. Control of electronic chattel paper.**

8 (a) General rule: control of electronic chattel paper. A
9 secured party has control of electronic chattel paper if a system
10 employed for evidencing the transfer of interests in the chattel
11 paper reliably establishes the secured party as the person to which
12 the chattel paper was assigned.

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

17 (1) A single authoritative copy of the record or records
18 exists which is unique, identifiable and, except as otherwise
19 provided in ~~paragraphs~~ subdivisions (4), (5) and (6) of this
20 section, unalterable;

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

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

1 (4) Copies or ~~revisions~~ amendments that add or change an
2 identified assignee of the authoritative copy can be made only with
3 the ~~participation~~ consent of the secured party;

4 (5) Each copy of the authoritative copy and any copy of a copy
5 is readily identifiable as a copy that is not the authoritative
6 copy; and

7 (6) Any ~~revision~~ amendment of the authoritative copy is
8 readily identifiable as an authorized or unauthorized revision.

9 **§46-9-307. Location of debtor.**

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

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

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

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

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

21 (c) *Limitation of applicability of subsection (b).* --
22 Subsection (b) of this section applies only if a debtor's
23 residence, place of business or chief executive office, as
24 applicable, is located in a jurisdiction whose law generally

1 requires information concerning the existence of a nonpossessory
2 security interest to be made generally available in a filing,
3 recording or registration system as a condition or result of the
4 security interest's obtaining priority over the rights of a lien
5 creditor with respect to the collateral. If subsection (b) does
6 not apply, the debtor is located in the District of Columbia.

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

11 (e) *Location of registered organization organized under state*
12 *law.* -- A registered organization that is organized under the law
13 of a state is located in that state.

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

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

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

1 of location, including by designating its main office, home office
2 or other comparable office; or

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

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

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

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

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

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

22 (j) *Location of foreign air carrier.* -- A foreign air carrier
23 under the Federal Aviation Act of 1958, as amended, is located at
24 the designated office of the agent upon which service of process

1 may be made on behalf of the carrier.

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

4 **§46-9-311. Perfection of security interests in property subject to**
5 **certain statutes, regulations and treaties.**

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

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

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

22 (3) A ~~certificate of title~~ statute of another jurisdiction
23 which provides for a security interest to be indicated on ~~the a~~ a
24 certificate of title as a condition or result of the security

1 interest's obtaining priority over the rights of a lien creditor
2 with respect to the property.

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

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

22 (d) *Inapplicability to certain inventory.* -- During any period
23 in which collateral subject to a statute specified in subsection
24 (a)(2) of this section is inventory held for sale or lease by a

1 person or leased by that person as lessor and that person is in the
2 business of selling goods of that kind, this section does not apply
3 to a security interest in that collateral created by that person.

4 **~~§46-9-316. Continued perfection of security interest following~~**
5 **Effect of change in governing law.**

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

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

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

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

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

1 a purchaser of the collateral for value.

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

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

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

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

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

21 (e) *When subsection (d) security interest becomes unperfected*
22 *against purchasers.* -- A security interest described in subsection
23 (d) of this section becomes unperfected as against a purchaser of
24 the goods for value and is deemed never to have been perfected as

1 against a purchaser of the goods for value if the applicable
2 requirements for perfection under section 9-311(b) or 9-313 are not
3 satisfied before the earlier of:

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

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

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

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

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

21 (g) *Subsection (f) security interest perfected or unperfected*
22 *under law of new jurisdiction. --* If a security interest described
23 in subsection (f) of this section becomes perfected under the law
24 of the other jurisdiction before the earlier of the time or the end

1 of the period described in that subsection, it remains perfected
2 thereafter. If the security interest does not become perfected
3 under the law of the other jurisdiction before the earlier of that
4 time or the end of that period, it becomes unperfected and is
5 deemed never to have been perfected as against a purchaser of the
6 collateral for value.

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

11 (1) A financing statement filed before the change pursuant to
12 the law of the jurisdiction designated in section 9-301(1) or
13 9-305(c) is effective to perfect a security interest in the
14 collateral if the financing statement would have been effective to
15 perfect a security interest in the collateral had the debtor not
16 changed its location.

17 (2) If a security interest perfected by a financing statement
18 that is effective under paragraph (1) becomes perfected under the
19 law of the other jurisdiction before the earlier of the time the
20 financing statement would have become ineffective under the law of
21 the jurisdiction designated in section 9-301(1) or 9-305(c) or the
22 expiration of the four-month period, it remains perfected
23 thereafter. If the security interest does not become perfected
24 under the law of the other jurisdiction before the earlier time or

1 event, it becomes unperfected and is deemed never to have been
2 perfected as against a purchaser of the collateral for value.

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

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

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

1 **§46-9-317. Interests that take priority over or take free of**
2 **security interest or agricultural lien.**

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

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

7 (2) Except as otherwise provided in subsection (e) of this
8 section, a person that becomes a lien creditor before the earlier
9 of the time: (A) The security interest or agricultural lien is
10 perfected; or (B) one of the conditions specified in section 9-
11 203(b) (3) is met and a financing statement covering the collateral
12 is filed.

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

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

1 knowledge of the security interest or agricultural lien and before
2 it is perfected.

3 (d) *Licensees and buyers of certain collateral.* -- A licensee
4 of a general intangible or a buyer, other than a secured party, of
5 ~~accounts, electronic chattel paper, electronic documents, general~~
6 ~~intangibles or investment property~~ collateral other than tangible
7 chattel paper, tangible documents, goods, instruments, or a
8 certificated security takes free of a security interest if the
9 licensee or buyer gives value without knowledge of the security
10 interest and before it is perfected.

11 (e) *Purchase-money security interest.* -- Except as otherwise
12 provided in sections 9-320 and 9-321, if a person files a financing
13 statement with respect to a purchase-money security interest before
14 or within twenty days after the debtor receives delivery of the
15 collateral, the security interest takes priority over the rights of
16 a buyer, lessee or lien creditor which arise between the time the
17 security interest attaches and the time of filing.

18 **§46-9-326. Priority of security interests created by new debtor.**

19 (a) *Subordination of security interest created by new debtor.* -
20 - Subject to subsection (b) of this section, a security interest
21 that is created by a new debtor which is in collateral in which the
22 new debtor has or acquires rights and is perfected solely by a
23 filed financing statement that ~~is effective solely under section 9-~~
24 ~~508 in collateral in which a new debtor has or acquires rights~~

1 would be ineffective to perfect the security interest but for the
 2 application of Section 9-316(i)(1) or 9-508 is subordinate to a
 3 security interest in the same collateral which is perfected other
 4 than by such a filed financing statement ~~that is effective solely~~
 5 ~~under section 9-508.~~

6 (b) *Priority under other provisions; multiple original*
 7 *debtors.* -- The other provisions of this part determine the
 8 priority among conflicting security interests in the same
 9 collateral perfected by filed financing ~~statements that are~~
 10 ~~effective solely under section 9-508~~ described in subsection (a) of
 11 this section. However, if the security agreements to which a new
 12 debtor became bound as debtor were not entered into by the same
 13 original debtor, the conflicting security interests rank according
 14 to priority in time of the new debtor's having become bound.

15 PART 4. RIGHTS OF THIRD PARTIES.

16 **§46-9-406. Discharge of account debtor; notification of**
 17 **assignment; identification and proof of**
 18 **assignment; restrictions on assignment of**
 19 **accounts, chattel paper, payment intangibles and**
 20 **promissory notes ineffective.**

21 (a) *Discharge of account debtor; effect of notification.*--
 22 Subject to subsections (b) through (i), an account debtor on an
 23 account, chattel paper or a payment intangible may discharge its
 24 obligation by paying the assignor until, but not after, the account

1 debtor receives a notification, authenticated by the assignor or
2 the assignee, that the amount due or to become due has been
3 assigned and that payment is to be made to the assignee. After
4 receipt of the notification, the account debtor may discharge its
5 obligation by paying the assignee and may not discharge the
6 obligation by paying the assignor.

7 (b) *When notification ineffective.* -- Subject to subsection
8 (h) of this section, notification is ineffective under subsection
9 (a) of this section:

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

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

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

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

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

21 (C) The account debtor knows that the assignment to that
22 assignee is limited.

23 (c) Proof of assignment. Subject to subsection (h) of this
24 section, if requested by the account debtor, an assignee shall

1 seasonably furnish reasonable proof that the assignment has been
2 made. Unless the assignee complies, the account debtor may
3 discharge its obligation by paying the assignor, even if the
4 account debtor has received a notification under subsection (a) of
5 this section.

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

12 (1) Prohibits, restricts or requires the consent of the
13 account debtor or person obligated on the promissory note to the
14 assignment or transfer of, or the creation, attachment, perfection
15 or enforcement of a security interest in, the account, chattel
16 paper, payment intangible or promissory note; or

17 (2) Provides that the assignment or transfer or the creation,
18 attachment, perfection or enforcement of the security interest may
19 give rise to a default, breach, right of recoupment, claim,
20 defense, termination, right of termination or remedy under the
21 account, chattel paper, payment intangible or promissory note.

22 (e) *Inapplicability of subsection (d) to certain sales.*--
23 Subsection (d) of this section does not apply to the sale of a
24 payment intangible or promissory note other than a sale pursuant to

1 a disposition under section 9-610 or an acceptance of collateral
2 under section 9-620.

3 (f) *Legal restrictions on assignment generally ineffective.*--
4 Except as otherwise provided in sections 2A-303 and 9-407 and
5 subject to subsections (h) and (i) of this section, a rule of law,
6 statute or regulation that prohibits, restricts or requires the
7 consent of a government, governmental body or official, or account
8 debtor to the assignment or transfer of, or creation of a security
9 interest in, an account or chattel paper is ineffective to the
10 extent that the rule of law, statute or regulation:

11 (1) Prohibits, restricts or requires the consent of the
12 government, governmental body or official, or account debtor to the
13 assignment or transfer of, or the creation, attachment, perfection
14 or enforcement of a security interest in the account or chattel
15 paper; or

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

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

24 (h) *Rule for individual under other law.* -- This section is

1 subject to law other than this article which establishes a
 2 different rule for an account debtor who is an individual and who
 3 incurred the obligation primarily for personal, family or household
 4 purposes.

5 (i) *Inapplicability.* -- This section does not apply to an
 6 assignment of a health-care-insurance receivable. Subsection (f)
 7 does not apply to an assignment or transfer of, or the creation,
 8 attachment, perfection or enforcement of a security interest in, a
 9 right the transfer of which is prohibited or restricted by any of
 10 the following statutes to the extent that the statute is
 11 inconsistent with subsection (f): Chapter twenty-three, article
 12 four, section eighteen, Chapter forty-six-a, article six-h, and a
 13 claim or right to receive benefits under a special needs trust as
 14 described in 42 U.S.C. §1396p(d) (4).

15 (j) *Section prevails over specified inconsistent law.* -- This
 16 section prevails over any inconsistent provision of an existing or
 17 future statute, rule or regulation of this state unless the
 18 provision is contained in a statute of this state, refers expressly
 19 to this section and states that the provision prevails over this
 20 section.

21 **§46-9-408. Restrictions on assignment of promissory notes,
 22 health-care-insurance receivables and certain
 23 general intangibles ineffective.**

24 (a) *Term restricting assignment generally ineffective.--*

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

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

13 (2) Provides that the assignment or transfer or the creation,
14 attachment or perfection of the security interest may give rise to
15 a default, breach, right of recoupment, claim, defense,
16 termination, right of termination or remedy under the promissory
17 note, health-care-insurance receivable or general intangible.

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

24 (c) *Legal restrictions on assignment generally ineffective.--*

1 A rule of law, statute or regulation that prohibits, restricts or
2 requires the consent of a government, governmental body or
3 official, person obligated on a promissory note, or account debtor
4 to the assignment or transfer of, or creation of a security
5 interest in, a promissory note, health-care-insurance receivable
6 or general intangible, including a contract, permit, license or
7 franchise between an account debtor and a debtor, is ineffective to
8 the extent that the rule of law, statute or regulation:

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

11 (2) Provides that the assignment or transfer or the creation,
12 attachment or perfection of the security interest may give rise to
13 a default, breach, right of recoupment, claim, defense,
14 termination, right of termination or remedy under the promissory
15 note, health-care-insurance receivable or general intangible.

16 (d) *Limitation on ineffectiveness under subsections (a) and*
17 *(c).* -- To the extent that a term in a promissory note or in an
18 agreement between an account debtor and a debtor which relates to
19 a health-care-insurance receivable or general intangible or a rule
20 of law, statute or regulation described in subsection (c) of this
21 section would be effective under law other than this article but is
22 ineffective under subsection (a) or (c) of this section, the
23 creation, attachment or perfection of a security interest in the
24 promissory note, health-care-insurance receivable or general

1 intangible:

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

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

6 (3) Does not require the person obligated on the promissory
7 note or the account debtor to recognize the security interest, pay
8 or render performance to the secured party, or accept payment or
9 performance from the secured party;

10 (4) Does not entitle the secured party to use or assign the
11 debtor's rights under the promissory note, health-care-insurance
12 receivable or general intangible, including any related information
13 or materials furnished to the debtor in the transaction giving rise
14 to the promissory note, health-care-insurance receivable or general
15 intangible;

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

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

23 (e) *Section prevails over specified inconsistent law.* -- This
24 section prevails over any inconsistent provisions of an existing or

1 future statute, rule or regulation of this state unless the
2 provision is contained in a statute of this state, refers expressly
3 to this section and states that the provision prevails over this
4 section.

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

14 **§46-9-502. Contents of financing statement; record of mortgage as**
15 **financing statement; time of filing financing**
16 **statement.**

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

19 (1) Provides the name of the debtor;

20 (2) Provides the name of the secured party or a representative
21 of the secured party; and

22 (3) Indicates the collateral covered by the financing
23 statement.

24 (b) *Real-property-related financing statements.* -- Except as

1 otherwise provided in section 9-501(b), to be sufficient, a
2 financing statement that covers as-extracted collateral or timber
3 to be cut, or which is filed as a fixture filing and covers goods
4 that are or are to become fixtures, must satisfy subsection (a) of
5 this section and also:

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

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

9 (3) Provide a description of the real property to which the
10 collateral is related sufficient to give constructive notice of a
11 mortgage under the law of this state if the description were
12 contained in a record of the mortgage of the real property; and

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

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

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

20 (2) The goods are or are to become fixtures relate to the real
21 property described in the record or the collateral is related to
22 the real property described in the record and is as-extracted
23 collateral or timber to be cut;

24 (3) The record satisfies the requirements for a financing

1 statement in this section; ~~other than an indication~~ but:

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

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

8 (4) The record is duly recorded.

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

12 **§46-9-503. Name of debtor and secured party.**

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

15 (1) Except as otherwise provided in paragraph (3) of this
16 section, if the debtor is a registered organization or the
17 collateral is held in a trust that is a registered organization,
18 only if the financing statement provides the name ~~of the debtor~~
19 ~~indicated~~ that is stated to be the registered organization's name
20 on the public organic record of most recently filed with or issued
21 or enacted by the debtor's jurisdiction of organization which shows
22 ~~the debtor to have been organized~~ purports to state, amend or
23 restate the registered organization's name;

24 (2) Subject to subsection (f) of this section, if the ~~debtor~~

1 ~~is a decedent's estate~~ collateral is being administered by the
2 personal representative of a decedent, only if the financing
3 statement provides, as the name of the debtor, the name of the
4 decedent and indicates that ~~the debtor is an estate~~ collateral is
5 being administered by a personal representative;

6 (3) If the ~~debtor is a trust or a trustee acting with respect~~
7 ~~to property held in trust,~~ only if the financing statement:

8 (A) ~~Provides the name specified for the trust in its organic~~
9 ~~documents or, if no name is specified, provides the name of the~~
10 ~~settlor and additional information sufficient to distinguish the~~
11 ~~debtor from other trusts having one or more of the same settlors;~~
12 and

13 (B) ~~Indicates, in the debtor's name or otherwise, that the~~
14 ~~debtor is a trust or is a trustee acting with respect to property~~
15 ~~held in trust;~~ collateral is held in a trust that is not a
16 registered organization, only if the financing statement:

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

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

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

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

23 (i) If the name is provided in accordance with subparagraph

24 (A) (i), indicates that the collateral is held in a trust; or

1 (ii) If the name is provided in accordance with subparagraph
2 (A) (ii), provides additional information sufficient to distinguish
3 the trust from other trusts having one or more of the same settlors
4 or the same testator and indicates that the collateral is held in
5 a trust, unless the additional information so indicates;

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

10 (5) If the debtor is an individual to whom subdivision (4)
11 does not apply, only if the financing statement provides the
12 individual name of the debtor or the surname and first personal
13 name of the debtor; and

14 ~~(4)~~ (6) In other cases:

15 (A) If the debtor has a name, only if ~~it~~ the financing
16 statement provides the ~~individual or~~ organizational name of the
17 debtor; and

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

22 (b) *Additional debtor-related information.* -- A financing
23 statement that provides the name of the debtor in accordance with
24 subsection (a) of this section is not rendered ineffective by the

1 absence of:

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

3 (2) Unless required under subsection ~~(a)(4)(B)~~ (a)(6)(B) of
4 this section, names of partners, members, associates or other
5 persons comprising the debtor.

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

9 (d) *Representative capacity.*-- Failure to indicate the
10 representative capacity of a secured party or representative of a
11 secured party does not affect the sufficiency of a financing
12 statement.

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

16 (f) Name of decedent. -- The name of the decedent indicated
17 on the order appointing the personal representative of the decedent
18 issued by the court having jurisdiction over the collateral is
19 sufficient as the "name of the decedent" under subdivision (a)(2)
20 of this section.

21 (g) Multiple driver's licenses. -- If this state has issued
22 to an individual more than one driver's license of a kind described
23 in subdivision (a)(4) of this section, the one that was issued most
24 recently is the one to which subdivision (a)(4) refers.

1 (h) Definition. -- In this section, the "name of the settlor
2 or testator" means:

3 (1) If the settlor is a registered organization, the name that
4 is stated to be the settlor's name on the public organic record
5 most recently filed with or issued or enacted by the settlor's
6 jurisdiction of organization which purports to state, amend, or
7 restate the settlor's name; or

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

10 **§46-9-507. Effect of certain events on effectiveness of financing**
11 **statement.**

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

17 (b) *Information becoming seriously misleading.* -- Except as
18 otherwise provided in subsection (c) of this section and section 9-
19 508, a financing statement is not rendered ineffective if, after
20 the financing statement is filed, the information provided in the
21 financing statement becomes seriously misleading under section 9-
22 506.

23 (c) *Change in debtor's name.* -- If ~~a debtor so changes~~ it's
24 the name that a filed financing statement provides for a debtor

1 becomes insufficient as the name of the debtor under section 9-
2 503(a) so that the financing statement becomes seriously misleading
3 under section 9-506:

4 (1) The financing statement is effective to perfect a security
5 interest in collateral acquired by the debtor before, or within
6 four months after, the ~~change~~ filed financing statement becomes
7 seriously misleading; and

8 (2) The financing statement is not effective to perfect a
9 security interest in collateral acquired by the debtor more than
10 four months after the ~~change~~ filed financing statement becomes
11 seriously misleading, unless an amendment to the financing
12 statement which renders the financing statement not seriously
13 misleading is filed within four months after ~~the change~~ the
14 financing statement became seriously misleading.

15 **§46-9-515. Duration and effectiveness of financing statement;**
16 **effect of lapsed financing statement.**

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

21 (b) *Public-finance or manufactured-home transaction.* --
22 Except as otherwise provided in subsections (e), (f) and (g) of
23 this section, an initial financing statement filed in connection
24 with a public-finance transaction or manufactured-home transaction

1 is effective for a period of forty years after the date of filing
2 if it indicates that it is filed in connection with a public-
3 finance transaction or manufactured-home transaction.

4 (c) *Lapse and continuation of financing statement.* -- The
5 effectiveness of a filed financing statement lapses on the
6 expiration of the period of its effectiveness unless before the
7 lapse a continuation statement is filed pursuant to subsection (d)
8 of this section. Upon lapse, a financing statement ceases to be
9 effective and any security interest or agricultural lien that was
10 perfected by the financing statement becomes unperfected, unless
11 the security interest is perfected otherwise. If the security
12 interest or agricultural lien becomes unperfected upon lapse, it is
13 deemed never to have been perfected as against a purchaser of the
14 collateral for value.

15 (d) *When continuation statement may be filed.* -- A
16 continuation statement may be filed only within six months before
17 the expiration of the five-year period specified in subsection (a)
18 of this section or the thirty-year period specified in subsection
19 (b) of this section, whichever is applicable.

20 (e) *Effect of filing continuation statement.* -- Except as
21 otherwise provided in section 9-510, upon timely filing of a
22 continuation statement, the effectiveness of the initial financing
23 statement continues for a period of five years commencing on the
24 day on which the financing statement would have become ineffective

1 in the absence of the filing. Upon the expiration of the five-year
2 period, the financing statement lapses in the same manner as
3 provided in subsection (c) of this section, unless, before the
4 lapse, another continuation statement is filed pursuant to
5 subsection (d) of this section. Succeeding continuation statements
6 may be filed in the same manner to continue the effectiveness of
7 the initial financing statement.

8 (f) *Transmitting utility financing statement.* -- If a debtor
9 is a transmitting utility and a filed initial financing statement
10 so indicates, the financing statement is effective until a
11 termination statement is filed.

12 (g) *Record of mortgage as financing statement.* -- A record of
13 a mortgage that is effective as a financing statement filed as a
14 fixture filing under section 9-502(c) remains effective as a
15 financing statement filed as a fixture filing until the mortgage is
16 released or satisfied of record or its effectiveness otherwise
17 terminates as to the real property.

18 **§46-9-516. What constitutes filing; effectiveness of filing.**

19 (a) *What constitutes filing.* -- Except as otherwise provided
20 in subsection (b) of this section, communication of a record to a
21 filing office and tender of the filing fee or acceptance of the
22 record by the filing office constitutes filing.

23 (b) *Refusal to accept record; filing does not occur.* -- Filing
24 does not occur with respect to a record that a filing office

1 refuses to accept because:

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

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

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

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

9 (B) In the case of an amendment or ~~correction~~ information
10 statement, the record:

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

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

15 (C) In the case of an initial financing statement that
16 provides the name of a debtor identified as an individual or an
17 amendment that provides a name of a debtor identified as an
18 individual which was not previously provided in the financing
19 statement to which the record relates, the record does not identify
20 the debtor's ~~last name~~ surname; or

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

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

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

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

9 (B) Indicate whether the name provided as the name of the
10 debtor is the name of an individual or an organization; ~~or~~

11 ~~(C) If the financing statement indicates that the debtor is an~~
12 ~~organization, provide:~~

13 ~~(i) A type of organization for the debtor;~~

14 ~~(ii) A jurisdiction of organization for the debtor; or~~

15 ~~(iii) An organizational identification number for the debtor~~
16 ~~or indicate that the debtor has none;~~

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

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

23 (c) *Rules applicable to subsection (b).* -- For purposes of
24 subsection (b):

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

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

7 (d) *Refusal to accept record; record effective as filed*
8 *record.* -- A record that is communicated to the filing office with
9 tender of the filing fee, but which the filing office refuses to
10 accept for a reason other than one set forth in subsection (b) of
11 this section, is effective as a filed record except as against a
12 purchaser of the collateral which gives value in reasonable
13 reliance upon the absence of the record from the files.

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

24 (1) Upon the commencement of proceedings pursuant to this

1 subsection, the Secretary of State shall identify the financing
2 statement in its records as subject to administrative review and
3 publish a notice in the *West Virginia Register* regarding the
4 proceedings.

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

11 (3) If upon the completion of administrative review, it is
12 determined that the filing of a financing statement was fraudulent,
13 the filing party shall be assessed all costs incurred by the
14 Secretary in reaching a final determination, including
15 reimbursement for all costs of the hearing. The filing party may
16 also be subject to a civil penalty not exceeding \$500 per
17 fraudulent filing. If upon completion of administrative review or
18 any subsequent appeal of a decision of the Secretary of State, it
19 is determined that a filing subject to appeal is not fraudulent,
20 the secretary or court may award the prevailing party reasonable
21 costs and expenses, including attorney fees.

22 (4) The Secretary of State shall annually submit a report to
23 the Legislature regarding actions taken against fraudulent filings
24 pursuant to this section which identifies the number and

1 characteristics of such proceedings, identifies any creditors found
2 to have made fraudulent filings, describes proceedings initiated by
3 the secretary in which it is ultimately determined that fraudulent
4 filings did not occur, describes the number and type of complaints
5 received by the secretary in which it is alleged that fraudulent
6 filings have occurred, and describes the actions taken by the
7 secretary to investigate complaints concerning allegedly fraudulent
8 filings and the results of the investigations.

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

16 (6) A financing statement filed by a regulated financial
17 institution is not subject to the provisions of this section. For
18 the purposes of this section, a regulated financial institution is
19 a bank, bank and trust company, trust company, savings bank,
20 savings association, building and loan association, credit union,
21 consumer finance company, insurance company, investment company,
22 mortgage lender or broker, securities broker, dealer or
23 underwriter, or other institution chartered, licensed, registered
24 or otherwise authorized under federal law, the law of this state or

1 any other state, to engage in secured lending.

2 **§46-9-518. Claim concerning inaccurate or wrongfully filed record.**

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

8 (b) ~~Sufficiency~~ Contents of ~~correction~~ statement under
 9 subsection (a). -- ~~A correction~~ An information statement under
 10 subsection (a) of this section must:

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

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

14 (B) If the ~~correction~~ information statement relates to a
 15 record filed or recorded in a filing office described in section 9-
 16 501(a)(1), the date and time that the initial financing statement
 17 was filed or recorded and the information specified in section 9-
 18 502(b);

19 (2) Indicate that it is a ~~correction~~ an information statement;
 20 and

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

1 (c) Statement by secured party of record. -- A person may
2 file in the filing office an information statement with respect to
3 a record filed there if the person is a secured party of record
4 with respect to the financing statement to which the record relates
5 and believes that the person that filed the record was not entitled
6 to do so under section 9-509(d).

7 (d) Contents of statement under subsection (c). -- An
8 information statement under subsection (c) of this section must:

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

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

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

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

17 (3) Provide the basis for the person's belief that the person
18 that filed the record was not entitled to do so under Section 9-
19 509(d).

20 ~~(c)~~ (e) Record not affected by ~~correction~~ information
21 statement.-- The filing of a ~~correction~~ an information statement
22 does not affect the effectiveness of an initial financing statement
23 or other filed record.

24 **§46-9-607. Collection and enforcement by secured party.**

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

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

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

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

15 (4) If it holds a security interest in a deposit account
16 perfected by control under section 9-104(a)(1), may apply the
17 balance of the deposit account to the obligation secured by the
18 deposit account; and

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

23 (b) *Nonjudicial enforcement of mortgage.* -- If necessary to
24 enable a secured party to exercise under subsection (a)(3) of this

1 section the right of a debtor to enforce a mortgage nonjudicially,
2 the secured party may record in the office in which a record of the
3 mortgage is recorded:

4 (1) A copy of the security agreement that creates or provides
5 for a security interest in the obligation secured by the mortgage;
6 and

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

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

11 (B) The secured party is entitled to enforce the mortgage
12 nonjudicially.

13 (c) *Commercially reasonable collection and enforcement.* -- A
14 secured party shall proceed in a commercially reasonable manner if
15 the secured party:

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

18 (2) Is entitled to charge back uncollected collateral or
19 otherwise to full or limited recourse against the debtor or a
20 secondary obligor.

21 (d) *Expenses of collection and enforcement.* -- A secured
22 party may deduct from the collections made pursuant to subsection
23 (c) of this section reasonable expenses of collection and
24 enforcement, including reasonable attorney's fees and legal

1 expenses incurred by the secured party.

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

5 SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

6 **§46-9-625. Remedies for secured party's failure to comply with**
7 **article.**

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

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

19 (c) *Persons entitled to recover damages; statutory damages ~~in~~*
20 ~~*consumer-goods transaction*~~ *if collateral is consumer goods.* --
21 Except as otherwise provided in section 9-628:

22 (1) A person that, at the time of the failure, was a debtor,
23 was an obligor, or held a security interest in or other lien on the
24 collateral may recover damages under subsection (b) of this section

1 for its loss; and

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

8 (d) *Recovery when deficiency eliminated or reduced.* -- A
9 debtor whose deficiency is eliminated under section 9-626 may
10 recover damages for the loss of any surplus. However, a debtor or
11 secondary obligor whose deficiency is eliminated or reduced under
12 section 9-626 may not otherwise recover under subsection (b) of
13 this section for noncompliance with the provisions of this part
14 relating to collection, enforcement, disposition or acceptance.

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

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

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

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

24 (4) Fails to cause the secured party of record to file or send

1 a termination statement as required by section 9-513(a) or (c);

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

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

6 (f) *Statutory damages: noncompliance with section 9-210.* --

7 A debtor or consumer obligor may recover damages under subsection
8 (b) of this section and, in addition, \$500 in each case from a
9 person that, without reasonable cause, fails to comply with a
10 request under section 9-210. A recipient of a request under
11 section 9-210 which never claimed an interest in the collateral or
12 obligations that are the subject of a request under that section
13 has a reasonable excuse for failure to comply with the request
14 within the meaning of this subsection.

15 (g) *Limitation of security interest: noncompliance with*
16 *section 9-210.* -- If a secured party fails to comply with a
17 request regarding a list of collateral or a statement of account
18 under section 9-210, the secured party may claim a security
19 interest only as shown in the list or statement included in the
20 request as against a person that is reasonably misled by the
21 failure.

22 PART 8. TRANSITION PROVISIONS FOR 2012 AMENDMENTS.

23 **§46-9-801. Effective date.**

24 The amendments to this article enacted by the Legislature

1 during the 2012 Regular Legislative Session take effect on July 1,
2 2013.

3 **§46-9-802. Savings clause.**

4 (a) Preeffective-date transactions or liens. -- Except as
5 otherwise provided in this part, this article applies to a
6 transaction or lien within its scope, even if the transaction or
7 lien was entered into or created before the amendments to this
8 article during the 2012 Regular Legislative Session take effect as
9 provided in section 9-801.

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

14 **§46-9-803. Security interest perfected before effective date.**

15 (a) Continuing perfection: perfection requirements
16 satisfied.-- A security interest that is a perfected security
17 interest immediately before the amendments to this article take
18 effect is a perfected security interest under this article if, when
19 this article takes effect, the applicable requirements for
20 attachment and perfection under this article as amended by the
21 Legislature during the 2012 Regular Legislative Session are
22 satisfied without further action.

23 (b) Continuing perfection: perfection requirements not
24 satisfied. -- Except as otherwise provided in section 9-805, if,

1 immediately before amendments to this article take effect, a
2 security interest is a perfected security interest, but the
3 applicable requirements for perfection under this article as
4 amended by the Legislature during the 2012 Regular Legislative
5 Session are not satisfied when the amendments to this article take
6 effect, the security interest remains perfected thereafter only if
7 the applicable requirements for perfection under this article as
8 amended by the Legislature during the 2012 Regular Legislative
9 Session are satisfied within one year after the amendments take
10 effect.

11 **§46-9-804. Security interest unperfected before effective date.**

12 A security interest that is an unperfected security interest
13 immediately before the amendments to this article during the 2012
14 Regular Legislative Session take effect becomes a perfected
15 security interest:

16 (1) Without further action, when the amendments to this
17 article during the 2012 Regular Legislative Session take effect if
18 the applicable requirements for perfection under this article as
19 amended during the 2012 Regular Legislative Session are satisfied
20 before or at that time; or

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

23 **§46-9-805. Effectiveness of action taken before effective date.**

24 (a) Preeffective-date filing effective. -- The filing of a

1 financing statement before the amendments to this article during
2 the 2012 Regular Legislative Session take effect is effective to
3 perfect a security interest to the extent the filing would satisfy
4 the applicable requirements for perfection under this article as
5 amended during the 2012 Regular Legislative Session.

6 (b) When preeffective-date filing becomes ineffective. --

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

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

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

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

24 (B) June 30, 2018.

1 (c) Continuation statement. -- The filing of a continuation
2 statement after the amendments to this article during the 2012
3 Regular Legislative Session take effect does not continue the
4 effectiveness of a financing statement filed before those
5 amendments to the article take effect. However, upon the timely
6 filing of a continuation statement after the amendments to this
7 article during the 2012 Regular Legislative session take effect and
8 in accordance with the law of the jurisdiction governing perfection
9 as provided in this article as amended during the 2012 Regular
10 Legislative Session, the effectiveness of a financing statement
11 filed in the same office in that jurisdiction before the amendments
12 to this article during the 2012 Regular Legislative Session takes
13 effect continues for the period provided by the law of that
14 jurisdiction.

15 (d) Application of subsection (b) (2) (B) to transmitting
16 utility financing statement. -- Subsection (b) (2) (B) applies to a
17 financing statement that, before the amendments to this article
18 during the 2012 Regular Legislative Session take effect, is filed
19 against a transmitting utility and satisfies the applicable
20 requirements for perfection under the law of the jurisdiction
21 governing perfection as provided in this article as it existed
22 before amendment, only to the extent that this article as amended
23 by during the 2012 Regular Legislative Session provides that the
24 law of a jurisdiction other than the jurisdiction in which the

1 financing statement is filed governs perfection of a security
2 interest in collateral covered by the financing statement.

3 (e) Application of Part 5. -- A financing statement that
4 includes a financing statement filed before this [Act] takes effect
5 and a continuation statement filed after the amendments to this
6 article during the 2012 Regular Legislative Session take effect is
7 effective only to the extent that it satisfies the requirements of
8 Part 5 as amended during the 2012 Regular Legislative Session for
9 an initial financing statement. A financing statement that
10 indicates that the debtor is a decedent's estate indicates that the
11 collateral is being administered by a personal representative
12 within the meaning of section 9-503(a)(2) as amended during the
13 2012 Regular Legislative Session . A financing statement that
14 indicates that the debtor is a trust or is a trustee acting with
15 respect to property held in trust indicates that the collateral is
16 held in a trust within the meaning of section 9-503(a)(3) as
17 amended during the 2012 Regular Legislative Session.

18 **§46-9-806. When initial financing statement suffices to continue**
19 **effectiveness of financing statement.**

20 (a) Initial financing statement in lieu of continuation
21 statement. -- The filing of an initial financing statement in the
22 office specified in section 9-501 continues the effectiveness of a
23 financing statement filed before the amendments to this article
24 during the 2012 Regular Legislative Session take effect if:

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

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

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

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

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

15 (2) If the initial financing statement is filed after the
16 amendments to this article during the 2012 Regular Legislative
17 Session take effect, for the period provided in section 9-515 as
18 amended by the Legislature during the 2012 Regular Legislative
19 Session, with respect to an initial financing statement.

20 (c) *Requirements for initial financing statement under*
21 *subsection (a).* -- To be effective for purposes of subsection (a),
22 an initial financing statement must:

23 (1) Satisfy the requirements of Part 5 as amended by the
24 Legislature during the 2012 Regular Legislative Session for an

1 initial financing statement;

2 (2) Identify the preeffective-date financing statement by
3 indicating the office in which the financing statement was filed
4 and providing the dates of filing and file numbers, if any, of the
5 financing statement and of the most recent continuation statement
6 filed with respect to the financing statement; and

7 (3) Indicate that the preeffective-date financing statement
8 remains effective.

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

10 (a) "Preeffective-date financing statement". -- In this
11 section, "preeffective-date financing statement" means a financing
12 statement filed before the amendments to this article during the
13 2011 Regular Legislative Session take effect.

14 (b) Applicable law. -- After the amendments to this article
15 during the 2012 Regular Legislative Session take effect, a person
16 may add or delete collateral covered by, continue or terminate the
17 effectiveness of, or otherwise amend the information provided in,
18 a preeffective-date financing statement only in accordance with the
19 law of the jurisdiction governing perfection as provided in this
20 article as amended during the 2012 Regular Legislative Session.
21 However, the effectiveness of a preeffective-date financing
22 statement also may be terminated in accordance with the law of the
23 jurisdiction in which the financing statement is filed.

24 (c) Method of amending: general rule. -- Except as otherwise

1 provided in subsection (d), if the law of this state governs
2 perfection of a security interest, the information in a
3 preeffective-date financing statement may be amended after the
4 amendments to this article during the 2012 Regular Legislative
5 Session take effect only if:

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

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

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

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

18 (e) Method of amending: additional termination rule. --
19 Whether or not the law of this state governs perfection of a
20 security interest, the effectiveness of a preeffective-date
21 financing statement filed in this state may be terminated after the
22 amendments to this article during the 2012 Regular Legislative
23 Session take effect by filing a termination statement in the office
24 in which the preeffective-date financing statement is filed, unless

1 an initial financing statement that satisfies section 9-806(c) has
 2 been filed in the office specified by the law of the jurisdiction
 3 governing perfection as provided in this article as amended during
 4 the 2012 Regular Legislative Session as the office in which to
 5 file a financing statement.

6 **§46-9-808. Person entitled to file initial financing statement or**
 7 **continuation statement.**

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

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

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

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

15 (B) To perfect or continue the perfection of a security
 16 interest.

17 **§46-9-809. Priority.**

18 This article determines the priority of conflicting claims to
 19 collateral. However, if the relative priorities of the claims were
 20 established before the amendments to this article during the 2012
 21 Regular Legislative Session take effect, this article, as it
 22 existed before the 2012 amendments determines priority.

NOTE: The purpose of this bill is to generally amend the

Uniform Commercial Code; to improve the system for filing financing statements; provide greater protection for an existing secured party having a security interest in after-acquired property upon relocation of debtor; and to reform the correction statement process. The bill makes technical changes and provides transition rules.

§46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809 are new; therefore, it has been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.