

H. B. 4251

(BY DELEGATES DOYLE, RODIGHIERO, FERRO,
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[Introduced January 20, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-2A-103 of said code; to amend and reenact §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to amend said code by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all relating generally to amendments to the uniform commercial code; improving the system for filing financing statements; greater protection for

existing secured party having a security interest in after-acquired property upon relocation of debtor; reforming the correction statement process; technical changes; and transition rules.

Be it enacted by the Legislature of West Virginia:

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§46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended, be repealed; that §46-2A-103 of said code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408,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

ARTICLE 2A. LEASES.

Part 1. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

36 (iii) One of the following occurs:

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

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

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

53 (D) If the lease is not a consumer lease, the lessor, before
54 the lessee signs the lease contract, informs the lessee in
55 writing: (a) Of the identity of the person supplying the goods
56 to the lessor, unless the lessee has selected that person and
57 directed the lessor to acquire the goods or the right to
58 possession and use of the goods from that person; (b) that the

59 lessee is entitled under this article to the promises and
60 warranties, including those of any third party, provided to the
61 lessor by the person supplying the goods in connection with
62 or as part of the contract by which the lessor acquired the
63 goods or the right to possession and use of the goods; and (c)
64 that the lessee may communicate with the person supplying
65 the goods to the lessor and receive an accurate and complete
66 statement of those promises and warranties, including any
67 disclaimers and limitations of them or of remedies.

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

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

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

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

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

95 (m) “Leasehold interest” means the interest of the lessor
96 or the lessee under a lease contract.

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

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

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

116 (q) “Lessor’s residual interest” means the lessor’s interest
117 in the goods after expiration, termination or cancellation of
118 the lease contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

158 “Account”. Section 9-102(a)(2).

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

160 “Buyer”. Section 2-103(1)(a).

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

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

163 “Document”. Section 9-102(a)(30).

164 “Entrusting”. Section 2-403(3).

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

166 “Instrument”. Section 9-102(a)(47).

167 “Merchant”. Section 2-104(1).

168 “Mortgage”. Section 9-102(a)(55).

169 “Pursuant to commitment”. ~~Section 9-102(a)(68)~~ 9-
170 102(a)(69).

171 “Receipt”. Section 2-103(1)(c).

172 “Sale”. Section 2-106(1).

173 “Sale on approval”. Section 2–326.

174 “Sale or return”. Section 2–326.

175 “Seller”. Section 2–103(1)(d).

176 (4) In addition, article one contains general definitions

177 and principles of construction and interpretation applicable

178 throughout this article.

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

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

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

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

5 (2) “Account”, except as used in “account for”, means a
6 right to payment of a monetary obligation, whether or not
7 earned by performance: (i) For property that has been or is to
8 be sold, leased, licensed, assigned or otherwise disposed of;
9 (ii) for services rendered or to be rendered; (iii) for a policy
10 of insurance issued or to be issued; (iv) for a secondary

11 obligation incurred or to be incurred; (v) for energy provided or
12 to be provided; (vi) for the use or hire of a vessel under a charter
13 or other contract; (vii) arising out of the use of a credit or charge
14 card or information contained on or for use with the card; or
15 (viii) as winnings in a lottery or other game of chance operated
16 or sponsored by a state, governmental unit of a state or person
17 licensed or authorized to operate the game by a state or
18 governmental unit of a state. The term includes health-care-
19 insurance receivables. The term does not include: (i) Rights to
20 payment evidenced by chattel paper or an instrument; (ii)
21 commercial tort claims; (iii) deposit accounts; (iv) investment
22 property; (v) letter-of-credit rights or letters of credit; or (vi)
23 rights to payment for money or funds advanced or sold, other
24 than rights arising out of the use of a credit or charge card or
25 information contained on or for use with the card.

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

30 (4) “Accounting”, except as used in “accounting for”,

31 means a record:

32 (A) Authenticated by a secured party;

33 (B) Indicating the aggregate unpaid secured obligations

34 as of a date not more than thirty-five days earlier or thirty-

35 five days later than the date of the record; and

36 (C) Identifying the components of the obligations in

37 reasonable detail.

38 (5) “Agricultural lien” means an interest, ~~other than a~~

39 ~~security interest~~, in farm products:

40 (A) Which secures payment or performance of an

41 obligation for:

42 (i) Goods or services furnished in connection with a

43 debtor’s farming operation; or

44 (ii) Rent on real property leased by a debtor in connection

45 with its farming operation;

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

47 (i) In the ordinary course of its business furnished goods

48 or services to a debtor in connection with a debtor’s farming

49 operation; or

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

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

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

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

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

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

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

63 (7) "Authenticate" means:

64 (A) To sign; or

65 (B) ~~To execute or otherwise adopt a symbol, or encrypt~~
66 ~~or similarly process a record, in whole or in part, with the~~
67 ~~present intent of the authenticating person to identify the~~
68 ~~person and adopt or accept a record, To attach to or logically~~

69 associate with the record an electronic sound, symbol or
70 process, with present intent to adopt or accept a record.

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

75 (9) “Cash proceeds” means proceeds that are money,
76 checks, deposit accounts or the like.

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

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

105 (12) “Collateral” means the property subject to a security
106 interest or agricultural lien. The term includes:

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

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

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

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

113 (A) The claimant is an organization; or

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

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

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

119 (14) “Commodity account” means an account maintained
120 by a commodity intermediary in which a commodity contract
121 is carried for a commodity customer.

122 (15) “Commodity contract” means a commodity futures
123 contract, an option on a commodity futures contract, a
124 commodity option or another contract if the contract or
125 option is:

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

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

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

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

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

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

142 (18) “Communicate” means:

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

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

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

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

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

154 (A) The merchant:

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

157 (ii) Is not an auctioneer; and

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

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

162 (C) The goods are not consumer goods immediately
163 before delivery; and

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

166 (21) “Consignor” means a person that delivers goods to
167 a consignee in a consignment.

168 (22) “Consumer debtor” means a debtor in a consumer
169 transaction.

170 (23) “Consumer goods” means goods that are used or
171 bought for use primarily for personal, family or household
172 purposes.

173 (24) “Consumer-goods transaction” means a consumer
174 transaction in which:

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

177 (B) A security interest in consumer goods secures the
178 obligation.

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

183 (26) “Consumer transaction” means a transaction in
184 which: (i) An individual incurs an obligation primarily for

185 personal, family or household purposes; (ii) a security
186 interest secures the obligation; and (iii) the collateral is held
187 or acquired primarily for personal, family or household
188 purposes. The term includes consumer-goods transactions.

189 (27) “Continuation statement” means an amendment of
190 a financing statement which:

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

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

196 (28) “Debtor” means:

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

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

202 (C) A consignee.

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

207 (30) “Document” means a document of title or a receipt
208 of the type described in section 7-201(b).

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

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

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

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

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

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

222 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

233 (37) “Filing office” means an office designated in section
234 9-501 as the place to file a financing statement.

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

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

240 (40) “Fixture filing” means the filing of a financing
241 statement covering goods that are or are to become fixtures

242 and satisfying section 9-502(a) and (b). The term includes
243 the filing of a financing statement covering goods of a
244 transmitting utility which are or are to become fixtures.

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

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

255 (43) [reserved].

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

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

277 (45) “Governmental unit” means a subdivision, agency,
278 department, county, parish, municipality or other unit of the
279 government of the United States, a state or a foreign country.

280 The term includes an organization having a separate
281 corporate existence if the organization is eligible to issue
282 debt on which interest is exempt from income taxation under
283 the laws of the United States.

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

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

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

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

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

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

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

306 (49) “Investment property” means a security, whether
307 certificated or uncertificated, security entitlement, securities
308 account, commodity contract or commodity account.

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

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

318 (52) “Lien creditor” means:

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

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

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

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

326 (53) “Manufactured home” means a structure,
327 transportable in one or more sections, which, in the traveling
328 mode, is eight body feet or more in width or forty body feet
329 or more in length, or, when erected on site, is three hundred
330 twenty or more square feet, and which is built on a
331 permanent chassis and designed to be used as a dwelling with
332 or without a permanent foundation when connected to the
333 required utilities, and includes the plumbing, heating, air-
334 conditioning and electrical systems contained therein. The
335 term includes any structure that meets all of the requirements
336 of this paragraph except the size requirements and with

337 respect to which the manufacturer voluntarily files a
338 certification required by the United States Secretary of
339 Housing and Urban Development and complies with the
340 standards established under Title 42 of the United States
341 Code.

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

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

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

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

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

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

361 (58) “Noncash proceeds” means proceeds other than cash
362 proceeds.

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

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

376 (61) “Payment intangible” means a general intangible
377 under which the account debtor’s principal obligation is a
378 monetary obligation.

379 (62) “Person related to”, with respect to an individual,
380 means:

381 (A) The spouse of the individual;

382 (B) A brother, brother-in-law, sister or sister-in-law of
383 the individual;

384 (C) An ancestor or lineal descendant of the individual or
385 the individual’s spouse; or

386 (D) Any other relative, by blood or marriage, of the
387 individual or the individual’s spouse who shares the same
388 home with the individual.

389 (63) “Person related to”, with respect to an organization,
390 means:

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

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

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

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

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

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

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

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

410 (C) Rights arising out of collateral;

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

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

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

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

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

430 (68) “Promissory note” means an instrument that
431 evidences a promise to pay a monetary obligation, does not
432 evidence an order to pay, and does not contain an
433 acknowledgment by a bank that the bank has received for
434 deposit a sum of money or funds.

435 (69) "Proposal" means a record authenticated by a
436 secured party which includes the terms on which the secured
437 party is willing to accept collateral in full or partial
438 satisfaction of the obligation it secures pursuant to sections
439 9-620, 9-621 and 9-622.

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

442 (A) Debt securities are issued;

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

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

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

451 (A) A record consisting of the record initially filed with
452 or issued by a state or the United States to form or organize
453 an organization and any record filed with or issued by the

454 state or the United States which amends or restates the initial
455 record;

456 (B) An organic record of a business trust consisting of the
457 record initially filed with a state and any record filed with the
458 state which amends or restates the initial record, if a statute
459 of the state governing business trusts requires that the record
460 be filed with the state; or

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

467 ~~(71)~~ (72) “Pursuant to commitment”, with respect to an
468 advance made or other value given by a secured party, means
469 pursuant to the secured party’s obligation, whether or not a
470 subsequent event of default or other event not within the
471 secured party’s control has relieved or may relieve the
472 secured party from its obligation.

473 ~~(72)~~ (73) “Record”, except as used in “for record”, “of
474 record”, “record or legal title” and “record owner”, means
475 information that is inscribed on a tangible medium or which
476 is stored in an electronic or other medium and is retrievable
477 in perceivable form.

478 ~~(73)~~ (74) “Registered organization” means an
479 organization formed or organized solely under the law of a
480 single state or the United States and as to which the state or
481 the United States must maintain a public record showing the
482 organization to have been organized by the filing of a public
483 organic record with, the issuance of a public organic record
484 by, or the enactment of legislation by the state or the United
485 States. The term includes a business trust that is formed or
486 organized under the law of a single state if a statute of the
487 state governing business trusts requires that the business
488 trust’s organic record be filed with the state.

489 ~~(74)~~ (75) “Secondary obligor” means an obligor to the
490 extent that:

491 (A) The obligor’s obligation is secondary; or

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

495 ~~(75)~~ (76) “Secured party” means:

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

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

500 (C) A consignor;

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

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

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

508 ~~(76)~~ (77) “Security agreement” means an agreement that
509 creates or provides for a security interest.

510 ~~(77)~~ (78) “Send,” in connection with a record or
511 notification, means:

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

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

519 ~~(78)~~ (79) “Software” means a computer program and any
520 supporting information provided in connection with a
521 transaction relating to the program. The term does not
522 include a computer program that is included in the definition
523 of goods.

524 ~~(79)~~ (80) “State” means a state of the United States, the
525 District of Columbia, Puerto Rico, the United States Virgin
526 Islands or any territory or insular possession subject to the
527 jurisdiction of the United States.

528 ~~(80)~~ (81) “Supporting obligation” means a letter-of-credit
529 right or secondary obligation that supports the payment or
530 performance of an account, chattel paper, a document, a
531 general intangible, an instrument or investment property.

532 ~~(81)~~ (82) “Tangible chattel paper” means chattel paper
533 evidenced by a record or records consisting of information
534 that is inscribed on a tangible medium.

535 ~~(82)~~ (83) “Termination statement” means an amendment
536 of a financing statement which:

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

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

541 ~~(83)~~ (84) “Transmitting utility” means a person primarily
542 engaged in the business of:

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

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

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

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

550 (b) Definitions in other articles. “Control” as provided in
551 section 7-106 and the following definitions in other articles
552 apply to this article:

553	“Applicant”	Section 5-102.
554	“Beneficiary”	Section 5-102.
555	“Broker”	Section 8-102.
556	“Certificated security”	Section 8-102.
557	“Check”	Section 3-104.
558	“Clearing corporation”	Section 8-102.
559	“Contract for sale”	Section 2-106.
560	“Customer”	Section 4-104.
561	“Entitlement holder”	Section 8-102.
562	“Financial asset”	Section 8-102.
563	“Holder in due course”	Section 3-302.
564	“Issuer” (with respect to a letter of	
565	credit or letter-of-credit right)	Section 5-102.
566	“Issuer” (with respect to a security)	Section 8-201.
567	“Issuer” (with respect to documents	
568	a document of title)	Section 7-102.

569	“Lease”	Section 2A-103.
570	“Lease agreement”	Section 2A-103.
571	“Lease contract”	Section 2A-103.
572	“Leasehold interest”	Section 2A-103.
573	“Lessee”	Section 2A-103.
574	“Lessee in ordinary course of business”	Section 2A-103.
575	“Lessor”	Section 2A-103.
576	“Lessor’s residual interest”	Section 2A-103.
577	“Letter of credit”	Section 5-102.
578	“Merchant”	Section 2-104.
579	“Negotiable instrument”	Section 3-104.
580	“Nominated person”	Section 5-102.
581	“Note”	Section 3-104.
582	“Proceeds of a letter of credit”	Section 5-114.
583	“Prove”	Section 3-103.
584	“Sale”	Section 2-106.
585	“Securities account”	Section 8-501.
586	“Securities intermediary”	Section 8-102.
587	“Security”	Section 8-102.

588 “Security certificate” Section 8-102.

589 “Security entitlement” Section 8-102.

590 “Uncertificated security” Section 8-102.

591 (c) Article 1 definitions and principles. Article 1 contains
592 general definitions and principles of construction and
593 interpretation applicable throughout this article.

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

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

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

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

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

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

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

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

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

§46-9-307. Location of debtor.

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

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

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

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

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

12 (c) *Limitation of applicability of subsection (b).* --

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

23 (d) *Continuation of location: cessation of existence, etc.*--

24 - A person that ceases to exist, have a residence or have a
25 place of business continues to be located in the jurisdiction
26 specified by subsections (b) and (c) of this section.

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

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

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

39 (2) In the state that the registered organization, branch or
40 agency designates, if the law of the United States authorizes
41 the registered organization, branch, or agency to designate its
42 state of location, including by designating its main office,
43 home office or other comparable office; or

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

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

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

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

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

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

64 (j) *Location of foreign air carrier.* -- A foreign air carrier
65 under the Federal Aviation Act of 1958, as amended, is

66 located at the designated office of the agent upon which
67 service of process may be made on behalf of the carrier.

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

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

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

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

9 (2) The following statute of this state: Chapter
10 seventeen-a of this code: *Provided*, That during any period
11 in which collateral is inventory: (i) Held for sale by a person
12 who is in the business of selling goods of that kind; or (ii)
13 held for lease by a vehicle rental agency or similar person

14 engaged solely in the business of leasing vehicles, the filing
15 provision of this article apply to a security interest in that
16 collateral created by such person as a debtor or obligor, as
17 appropriate; or

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

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

33 a security interest so perfected remains perfected
34 notwithstanding a change in the use or transfer of possession
35 of the collateral.

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

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

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

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

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

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

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

12 (b) *Security interest perfected or unperfected under law*
13 *of new jurisdiction.* -- If a security interest described in
14 subsection (a) of this section becomes perfected under the
15 law of the other jurisdiction before the earliest time or event
16 described in said subsection, it remains perfected thereafter.
17 If the security interest does not become perfected under the

18 law of the other jurisdiction before the earliest time or event,
19 it becomes unperfected and is deemed never to have been
20 perfected as against a purchaser of the collateral for value.

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

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

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

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

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

37 another jurisdiction when the goods become covered by a
38 certificate of title from this state remains perfected until the
39 security interest would have become unperfected under the
40 law of the other jurisdiction had the goods not become so
41 covered.

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

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

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

56 (f) *Change in jurisdiction of bank, issuer, nominated*
57 *person, securities intermediary or commodity intermediary.--*

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

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

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

68 (g) *Subsection (f) security interest perfected or*
69 *unperfected under law of new jurisdiction. --* If a security

70 interest described in subsection (f) of this section becomes
71 perfected under the law of the other jurisdiction before the
72 earlier of the time or the end of the period described in that
73 subsection, it remains perfected thereafter. If the security
74 interest does not become perfected under the law of the other

75 jurisdiction before the earlier of that time or the end of that
76 period, it becomes unperfected and is deemed never to have
77 been perfected as against a purchaser of the collateral for
78 value.

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

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

89 (2) If a security interest perfected by a financing
90 statement that is effective under paragraph (1) becomes
91 perfected under the law of the other jurisdiction before the
92 earlier of the time the financing statement would have
93 become ineffective under the law of the jurisdiction

94 designated in section 9-301(1) or 9-305(c) or the expiration
95 of the four-month period, it remains perfected thereafter. If
96 the security interest does not become perfected under the law
97 of the other jurisdiction before the earlier time or event, it
98 becomes unperfected and is deemed never to have been
99 perfected as against a purchaser of the collateral for value.

100 (A) Effect of change in governing law on financing
101 statement filed against original debtor. If a financing
102 statement naming an original debtor is filed pursuant to the
103 law of the jurisdiction designated in Section 9-301(1) or
104 9-305(c) and the new debtor is located in another jurisdiction,
105 the following rules apply:

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

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

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

1 (a) *Conflicting security interests and rights of lien*
2 *creditors.* -- A security interest or agricultural lien is
3 subordinate to the rights of:
4 (1) A person entitled to priority under section 9-322; and
5 (2) Except as otherwise provided in subsection (e) of this
6 section, a person that becomes a lien creditor before the

7 earlier of the time: (A) The security interest or agricultural
8 lien is perfected; or (B) one of the conditions specified in
9 section 9-203(b)(3) is met and a financing statement covering
10 the collateral is filed.

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

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

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

33 (e) *Purchase-money security interest.* -- Except as
34 otherwise provided in sections 9-320 and 9-321, if a person
35 files a financing statement with respect to a purchase-money
36 security interest before or within twenty days after the debtor
37 receives delivery of the collateral, the security interest takes
38 priority over the rights of a buyer, lessee or lien creditor
39 which arise between the time the security interest attaches
40 and the time of filing.

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

1 (a) *Subordination of security interest created by new*
2 *debtor.*-- Subject to subsection (b) of this section, a security

3 interest that is created by a new debtor which is in collateral in
4 which the new debtor has or acquires rights and is perfected
5 solely by a filed financing statement that is effective solely
6 ~~under section 9-508 in collateral in which a new debtor has or~~
7 ~~acquires rights~~ would be ineffective to perfect the security
8 interest but for the application of Section 9-316(i)(1) or 9-508
9 is subordinate to a security interest in the same collateral
10 which is perfected other than by such a filed financing
11 statement ~~that is effective solely under section 9-508.~~

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

PART 4. RIGHTS OF THIRD PARTIES.

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

1 (a) *Discharge of account debtor; effect of notification.--*

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

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

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

16 (2) To the extent that an agreement between an account

17 debtor and a seller of a payment intangible limits the account

18 debtor's duty to pay a person other than the seller and the

19 limitation is effective under law other than this article; or

20 (3) At the option of an account debtor, if the notification

21 notifies the account debtor to make less than the full amount

22 of any installment or other periodic payment to the assignee,

23 even if:

24 (A) Only a portion of the account, chattel paper or

25 payment intangible has been assigned to that assignee;

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

27 (C) The account debtor knows that the assignment to that

28 assignee is limited.

29 (c) Proof of assignment. Subject to subsection (h) of this

30 section, if requested by the account debtor, an assignee shall

31 seasonably furnish reasonable proof that the assignment has

32 been made. Unless the assignee complies, the account debtor

33 may discharge its obligation by paying the assignor, even if

34 the account debtor has received a notification under
35 subsection (a) of this section.

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

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

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

54 (e) *Inapplicability of subsection (d) to certain sales.*--

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

59 (f) *Legal restrictions on assignment generally*

60 *ineffective.*-- Except as otherwise provided in sections 2A-
61 303 and 9-407 and subject to subsections (h) and (i) of this
62 section, a rule of law, statute or regulation that prohibits,
63 restricts or requires the consent of a government,
64 governmental body or official, or account debtor to the
65 assignment or transfer of, or creation of a security interest in,
66 an account or chattel paper is ineffective to the extent that the
67 rule of law, statute or regulation:

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

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

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

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

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

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

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

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

1 (a) *Term restricting assignment generally ineffective.*--
2 Except as otherwise provided in subsection (b) of this
3 section, a term in a promissory note or in an agreement
4 between an account debtor and a debtor which relates to a
5 health-care-insurance receivable or a general intangible,
6 including a contract, permit, license or franchise, and which

7 term prohibits, restricts or requires the consent of the person
8 obligated on the promissory note or the account debtor to, the
9 assignment or transfer of or creation, attachment or
10 perfection of a security interest in, the promissory note,
11 health-care-insurance receivable or general intangible, is
12 ineffective to the extent that the term:

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

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

21 (b) Applicability of subsection (a) to sales of certain
22 rights to payment. Subsection (a) of this section applies to a
23 security interest in a payment intangible or promissory note
24 only if the security interest arises out of a sale of the payment
25 intangible or promissory note other than a sale pursuant to a

26 disposition under section 9-610 or an acceptance of collateral
27 under section 9-620.

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

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

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

46 (d) *Limitation on ineffectiveness under subsections (a)*
47 *and (c).* -- To the extent that a term in a promissory note or
48 in an agreement between an account debtor and a debtor
49 which relates to a health-care-insurance receivable or general
50 intangible or a rule of law, statute or regulation described in
51 subsection (c) of this section would be effective under law
52 other than this article but is ineffective under subsection (a)
53 or (c) of this section, the creation, attachment or perfection of
54 a security interest in the promissory note, health-care-
55 insurance receivable or general intangible:

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

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

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

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

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

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

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

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

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

1 (a) *Sufficiency of financing statement.* -- Subject to
2 subsection (b), a financing statement is sufficient only if it:
3 (1) Provides the name of the debtor;
4 (2) Provides the name of the secured party or a
5 representative of the secured party; and
6 (3) Indicates the collateral covered by the financing
7 statement.

8 (b) *Real-property-related financing statements.* -- Except
9 as otherwise provided in section 9-501(b), to be sufficient, a
10 financing statement that covers as-extracted collateral or
11 timber to be cut, or which is filed as a fixture filing and
12 covers goods that are or are to become fixtures, must satisfy
13 subsection (a) of this section and also:

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

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

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

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

24 (c) *Record of mortgage as financing statement.* -- A
25 record of a mortgage is effective, from the date of recording,
26 as a financing statement filed as a fixture filing or as a

27 financing statement covering as-extracted collateral or timber
28 to be cut only if:

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

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

35 (3) The record satisfies the requirements for a financing
36 statement in this section; ~~other than an indication~~ but:

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

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

44 (4) The record is duly recorded.

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

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

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

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

13 (2) Subject to subsection (f) of this section, if the ~~debtor~~
14 ~~is a decedent's estate~~ collateral is being administered by the
15 personal representative of a decedent, only if the financing

16 statement provides, as the name of the debtor, the name of
17 the decedent and indicates that ~~the debtor is an estate~~
18 collateral is being administered by a personal representative;

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

21 (A) ~~Provides the name specified for the trust in its~~
22 ~~organic documents or, if no name is specified, provides the~~
23 ~~name of the settlor and additional information sufficient to~~
24 ~~distinguish the debtor from other trusts having one or more~~
25 ~~of the same settlors; and~~

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

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

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

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

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

36 (i) If the name is provided in accordance with
37 subparagraph (A)(i), indicates that the collateral is held in a
38 trust; or

39 (ii) If the name is provided in accordance with
40 subparagraph (A)(ii), provides additional information
41 sufficient to distinguish the trust from other trusts having one
42 or more of the same settlors or the same testator and indicates
43 that the collateral is held in a trust, unless the additional
44 information so indicates;

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

49 (5) If the debtor is an individual to whom subdivision (4)
50 does not apply, only if the financing statement provides the
51 individual name of the debtor or the surname and first
52 personal name of the debtor; and

53 ~~(4)~~ (6) In other cases:

54 (A) If the debtor has a name, only if it the financing
55 statement provides the ~~individual~~ or organizational name of
56 the debtor; and

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

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

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

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

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

73 (d) *Representative capacity.* -- Failure to indicate the
74 representative capacity of a secured party or representative of
75 a secured party does not affect the sufficiency of a financing
76 statement.

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

80 (f) *Name of decedent.* -- The name of the decedent
81 indicated on the order appointing the personal representative
82 of the decedent issued by the court having jurisdiction over
83 the collateral is sufficient as the “name of the decedent”
84 under subdivision (a)(2) of this section.

85 (g) *Multiple driver’s licenses.* -- If this state has issued
86 to an individual more than one driver’s license of a kind
87 described in subdivision (a)(4) of this section, the one that
88 was issued most recently is the one to which subdivision
89 (a)(4) refers.

90 (h) *Definition.* -- In this section, the “name of the settlor
91 or testator” means:

92 (1) If the settlor is a registered organization, the name
93 that is stated to be the settlor's name on the public organic
94 record most recently filed with or issued or enacted by the
95 settlor's jurisdiction of organization which purports to state,
96 amend, or restate the settlor's name; or

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

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

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

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

12 (c) *Change in debtor's name.* -- If a ~~debtor so changes~~ it's
13 the name that a filed financing statement provides for a
14 debtor becomes insufficient as the name of the debtor under
15 section 9-503(a) so that the financing statement becomes
16 seriously misleading under section 9-506:

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

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

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

1 (a) *Five-year effectiveness.* -- Except as otherwise
2 provided in subsections (b), (e), (f) and (g) of this section, a

3 filed financing statement is effective for a period of five
4 years after the date of filing.

5 (b) *Public-finance or manufactured-home transaction.* --

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

13 (c) *Lapse and continuation of financing statement.* -- The

14 effectiveness of a filed financing statement lapses on the
15 expiration of the period of its effectiveness unless before the
16 lapse a continuation statement is filed pursuant to subsection
17 (d) of this section. Upon lapse, a financing statement ceases
18 to be effective and any security interest or agricultural lien
19 that was perfected by the financing statement becomes
20 unperfected, unless the security interest is perfected
21 otherwise. If the security interest or agricultural lien becomes

22 unperfected upon lapse, it is deemed never to have been
23 perfected as against a purchaser of the collateral for value.

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

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

41 be filed in the same manner to continue the effectiveness of
42 the initial financing statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (7) In the case of a continuation statement, the record is
54 not filed within the six-month period prescribed by section 9-
55 515(d).

56 (c) *Rules applicable to subsection (b).* -- For purposes of
57 subsection (b):

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

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

64 (d) *Refusal to accept record; record effective as filed*
65 *record.* -- A record that is communicated to the filing office

66 with tender of the filing fee, but which the filing office
67 refuses to accept for a reason other than one set forth in
68 subsection (b) of this section, is effective as a filed record
69 except as against a purchaser of the collateral which gives
70 value in reasonable reliance upon the absence of the record
71 from the files.

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

82 (1) Upon the commencement of proceedings pursuant to
83 this subsection, the Secretary of State shall identify the
84 financing statement in its records as subject to administrative

85 review and publish a notice in the *West Virginia Register*
86 regarding the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (d) Contents of statement under subsection (c). -- An
32 information statement under subsection (c) of this section
33 must:

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

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

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

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

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

45 ~~(c)~~ (e) *Record not affected by ~~correction~~ information*
46 *statement.* -- The filing of ~~a correction~~ an information
47 statement does not affect the effectiveness of an initial
48 financing statement or other filed record.

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

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

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

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

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

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

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

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

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

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

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

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

37 (c) *Commercially reasonable collection and enforcement.*

38 -- A secured party shall proceed in a commercially
39 reasonable manner if the secured party:

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

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

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

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

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

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

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

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

12 (c) *Persons entitled to recover damages; statutory damages*
13 *in consumer-goods transaction if collateral is consumer goods.*

14 -- Except as otherwise provided in section 9-628:

15 (1) A person that, at the time of the failure, was a debtor,
16 was an obligor, or held a security interest in or other lien on

17 the collateral may recover damages under subsection (b) of
18 this section for its loss; and

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

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

33 (e) *Statutory damages: noncompliance with specified*
34 *provisions.* -- In addition to any damages recoverable under
35 subsection (b) of this section, the debtor, consumer obligor or

36 person named as a debtor in a filed record, as applicable, may
37 recover \$500 in each case from a person that:

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

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

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

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

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

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

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

50 -- A debtor or consumer obligor may recover damages under
51 subsection (b) of this section and, in addition, \$500 in each
52 case from a person that, without reasonable cause, fails to
53 comply with a request under section 9-210. A recipient of a
54 request under section 9-210 which never claimed an interest in

55 the collateral or obligations that are the subject of a request
56 under that section has a reasonable excuse for failure to
57 comply with the request within the meaning of this subsection.

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

PART 8. TRANSITION PROVISIONS
FOR 2012 AMENDMENTS.

§46-9-801. Effective date.

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

§46-9-802. Savings clause.

1 (a) Preeffective-date transactions or liens. -- Except as
2 otherwise provided in this part, this article applies to a

3 transaction or lien within its scope, even if the transaction or
4 lien was entered into or created before the amendments to
5 this article during the 2012 Regular Legislative Session take
6 effect as provided in section 9-801.

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

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

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

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

11 if, immediately before amendments to this article take effect,
12 a security interest is a perfected security interest, but the
13 applicable requirements for perfection under this article as
14 amended by the Legislature during the 2012 Regular
15 Legislative Session are not satisfied when the amendments to
16 this article take effect, the security interest remains perfected
17 thereafter only if the applicable requirements for perfection
18 under this article as amended by the Legislature during the
19 2012 Regular Legislative Session are satisfied within one
20 year after the amendments take effect.

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

1 A security interest that is an unperfected security interest
2 immediately before the amendments to this article during the
3 2012 Regular Legislative Session take effect becomes a
4 perfected security interest:

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

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

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

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

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

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

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

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

26 (B) June 30, 2018.

27 (c) Continuation statement. -- The filing of a continuation
28 statement after the amendments to this article during the 2012
29 Regular Legislative Session take effect does not continue the
30 effectiveness of a financing statement filed before those
31 amendments to the article take effect. However, upon the
32 timely filing of a continuation statement after the
33 amendments to this article during the 2012 Regular
34 Legislative session take effect and in accordance with the law
35 of the jurisdiction governing perfection as provided in this
36 article as amended during the 2012 Regular Legislative

37 Session, the effectiveness of a financing statement filed in the
38 same office in that jurisdiction before the amendments to this
39 article during the 2012 Regular Legislative Session takes
40 effect continues for the period provided by the law of that
41 jurisdiction.

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

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

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

1 (a) Initial financing statement in lieu of continuation
2 statement. -- The filing of an initial financing statement in

3 the office specified in section 9-501 continues the
4 effectiveness of a financing statement filed before the
5 amendments to this article during the 2012 Regular
6 Legislative Session take effect if:

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

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

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

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

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

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

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

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

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

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

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

1 (a) “Preeffective-date financing statement.” -- In this
2 section, “preeffective-date financing statement” means a
3 financing statement filed before the amendments to this
4 article during the 2011 Regular Legislative Session take
5 effect.

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

17 (c) Method of amending: general rule. -- Except as
18 otherwise provided in subsection (d), if the law of this state

19 governs perfection of a security interest, the information in
20 a preeffective-date financing statement may be amended after
21 the amendments to this article during the 2012 Regular
22 Legislative Session take effect only if:

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

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

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

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

36 (e) *Method of amending: additional termination rule.* --
37 Whether or not the law of this state governs perfection of a

38 security interest, the effectiveness of a preeffective-date
39 financing statement filed in this state may be terminated after
40 the amendments to this article during the 2012 Regular
41 Legislative Session take effect by filing a termination
42 statement in the office in which the preeffective-date
43 financing statement is filed, unless an initial financing
44 statement that satisfies section 9-806(c) has been filed in the
45 office specified by the law of the jurisdiction governing
46 perfection as provided in this article as amended during the
47 2012 Regular Legislative Session as the office in which to
48 file a financing statement.

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

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

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

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

5 (A) To continue the effectiveness of a financing

6 statement filed before the amendments to this article during

7 the 2012 Regular Legislative Session take effect; or

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

§46-9-809. Priority.

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

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.