

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 549

INTERIM
BILL

By Senators Woodrum and Phillips

[Introduced February 02, 2023; referred
to the committee on the Judiciary]

1 A BILL to amend and reenact §46-1-201, §46-1-204, §46-1-301, and §46-1-306 of the Code of
2 West Virginia, 1931 as amended; to amend and reenact §46-2-102, §46-2-106, §46-2-201,
3 §46-2-202, §46-2-203, §46-2-205, and §46-2-209 of said code; to amend and reenact §46-
4 2A-102, §46-2A-103, §46-2A-107, §46-2A-201, §46-2A-202, §46-2A-203, §46-2A-205,
5 and §46-2A-208 of said code; to amend and reenact §46-3-104, §46-3-105, §46-3-401,
6 and §46-3-604 of said code; to amend and reenact §46-4A-103, §46-4A-201, §46-4A-202,
7 §46-4A-203, §46-4A-207, §46-4A-208, §46-4A-210, §46-4A-211, and §46-4A-305 of said
8 code; to amend and reenact §46-5-104 and §46-5-116 of said code; to amend and reenact
9 §46-7-102 and §46-7-106 of said code; to amend and reenact §46-8-110 and §46-8-303 of
10 said code; to amend and reenact §46-9-102, §46-9-104, §46-9-105, §46-9-203, §46-9-
11 204, §46-9-207, §46-9-208, §46-9-209, §46-9-210, §46-9-301, §46-9-304, §46-9-305,
12 §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-316, §46-9-317, §46-9-323, §46-9-
13 324, §46-9-330, §46-9-331, §46-9-332, §46-9-334, §46-9-341, §46-9-404, §46-9-406,
14 §46-9-408, §46-9-509, §46-9-513, §46-9-601, §46-9-605, §46-9-608, §46-9-611, §46-9-
15 613, §46-9-614, §46-9-615, §46-9-616, §46-9-619, §46-9-620, §46-9-621, §46-9-624,
16 §46-9-628; to amend said code by adding thereto 7 new sections, designated §46-9-105A,
17 §46-9-107A, §46-9-107B, §46-9-306A, §46-9-306B, §46-9-314A, and §46-9-326A; to
18 amend said code by adding a new article, designated §46-12-101, §46-12-102, §46-12-
19 103, §46-12-104, §46-12-105, §46-12-106, §46-12-107; and to amend said code by
20 adding a new article, designated §46-12A-101, §46-12A-102, §46-12A-201, §46-12A-301,
21 §46-12A-302, §46-12A-303, §46-12A-304, §46-12A-305, §46-12A-306, §46-12A-401, all
22 relating to amending the Uniform Commercial Code; defining terms; clarifying article
23 applies to transactions in goods and setting forth the extent to which it applies in a hybrid
24 transaction; amending requirements for statute of frauds by requiring a record sufficient to
25 indicate the contract has been made rather than a writing; amending requirement for
26 parole or extrinsic evidence by replacing the requirement that the parties agree in writing

27 and substituting a requirement that the parties agree in a record; amending the
28 requirement for seals by requiring that the seal be affixed to a record; amending the
29 requirement for firm offers in that the offer must be in a record rather than a writing;
30 amending the requirement for modification, rescission and waiver; amending the scope of
31 leases to incorporate a hybrid lease; amending signature requirements; adding
32 requirement stating that an obligation of a party is not discharged solely by destruction of
33 the check in connection with a process in which information is extracted from the check
34 and an image of the check is made; amending security procedures to add an obligation on
35 the receiving bank or the customer to require symbols, sounds, or biometrics, or requiring a
36 payment or to be sent from a known email address, IP address, or telephone number;
37 clarifying choice of law provisions; clarifying when a person has control of an electronic
38 document of title; setting forth requirements for control of electronic copy of record
39 evidencing chattel paper; setting forth requirements for control of electronic money; setting
40 forth additional duties of security party having control of collateral; setting forth law
41 governing perfection and priority of security interests in chattel paper; amending the
42 perfection of security interests to include controllable accounts, controllable electronic
43 records, and controllable payment intangibles; setting forth that a security interest in
44 electronic money may be perfected only by control; providing a description of perfection by
45 possession and control and time of perfection; stating terms restricting assignment, legal
46 restrictions on assignment are generally ineffective and law relating to the inapplicability of
47 the assignment of health care insurance do not apply to a security interest in an ownership
48 interest in a general partnership, limited partnership, or a limited liability company; stating
49 that no duty is owed by a secured party but providing exceptions to this general rule;
50 providing new form for the disposition of collateral; providing exceptions to limitations of
51 liability; setting forth conflicts in relation to certain articles of code and consumer laws;
52 setting forth rights in controllable accounts, controllable electronic record, and controllable

53 payment intangible; setting forth what constitutes control of controllable electronic record;
54 setting forth discharge of account debtor on controllable account or controllable payment
55 intangible; setting forth governing law; providing for transitional provisions; providing for
56 adjustment date; providing for saving clause; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§46-1-201. General definitions.

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

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

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

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

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

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

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

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

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

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

23 (9) "Buyer in ordinary course of business" means a person that buys goods in good faith,
24 without knowledge that the sale violates the rights of another person in the goods, and in the
25 ordinary course from a person, other than a pawnbroker, in the business of selling goods of that
26 kind. A person buys goods in the ordinary course if the sale to the person comports with the usual
27 or customary practices in the kind of business in which the seller is engaged or with the seller's
28 own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or
29 minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of
30 business may buy for cash, by exchange of other property, or on secured or unsecured credit, and
31 may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that
32 takes possession of the goods or has a right to recover the goods from the seller under article 2
33 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not
34 include a person that acquires goods in a transfer in bulk or as security for or in total or partial
35 satisfaction of a money debt.

36 (10) "Conspicuous", with reference to a term, means so written, displayed, or presented
37 that, based on the totality of the circumstances, a reasonable person against which it is to operate
38 ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court.
39 ~~Conspicuous terms include the following:~~

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

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

45 (11) "Consumer" means an individual who enters into a transaction primarily for personal,

46 family or household purposes.

47 (12) "Contract", as distinguished from "agreement", means the total legal obligation that
48 results from the parties' agreement as determined by this chapter as supplemented by any other
49 applicable laws.

50 (13) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any
51 representative of creditors, including an assignee for the benefit of creditors, a trustee in
52 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or
53 assignor's estate.

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

56 (15) "Delivery", with respect to an electronic document of title means voluntary transfer of
57 control and with respect to an instrument, document of title or an authoritative tangible copy of a
58 record evidencing chattel paper, means voluntary transfer of possession.

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

69 (16A) "Electronic" means relating to technology having electrical, digital, magnetic,
70 wireless, optical, electromagnetic, or similar capabilities.

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

72 (18) "Fungible goods" means:

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

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

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

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

79 (21) "Holder" means:

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

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

84 (C) The person in control, other than pursuant to Section 7-106(6) of the negotiable
85 electronic document of title.

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

88 (23) "Insolvent" means:

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

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

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

93 (24) "Money" means a medium of exchange currently authorized or adopted by a domestic
94 or foreign government. The term includes a monetary unit of account established by an
95 intergovernmental organization or by agreement between two or more countries. The term does
96 not include an electronic record that is a medium of exchange recorded and transferrable in a
97 system that existed and operated for the medium of exchange before the medium of exchange

98 was authorized or adopted by the government.

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

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

102 (27) "Person" means an individual, corporation, business trust, estate, trust, partnership,
103 limited liability company, association, joint venture, government, governmental subdivision,
104 agency, or instrumentality, ~~public corporation~~ or any other legal or commercial entity. The term
105 includes a protected series, however denominated, of an entity if the protected series is
106 established under law other than the Uniform Commercial Code that limits, or limits if conditions
107 specified under the law are satisfied, the ability of a creditor of the entity of any other protected
108 services of the entity to satisfy a claim from the assets of the protected series.

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

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

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

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

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

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

124 (34) "Right" includes remedy.

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

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

138 (A) To deposit in the mail, ~~or deliver for transmission or transit by any other usual means of~~
139 communication with postage or cost of transmission provided for, ~~and properly addressed and, in~~
140 ~~the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none~~
141 addressed to any address reasonable under the circumstances; or

142 (B) ~~In any other way to cause to be received any record or notice within the time it would~~
143 ~~have arrived if properly sent~~ to cause the record of notification to be received within the time it
144 would have been received if properly sent under subparagraph (A).

145 (37) ~~"Signed" includes using any symbol executed or adopted with present intention to~~
146 ~~adopt or accept a writing.~~ "Sign" means, with present intent to authenticate or adopt a record;

147 (A) Execute or adopt a tangible symbol; or

148 (B) Attach to or logically associate with the record an electronic symbol, sound, or process

149 "Signed", "signing" and signature" have corresponding meanings.

150 (38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
151 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
152 United States.

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

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

155 (41) "Unauthorized signature" means a signature made without actual, implied or apparent
156 authority. The term includes a forgery.

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

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

§46-1-204. Value.

1 Except as otherwise provided in articles 3, 4, and 5, 6 and 12 of this chapter, a person gives
2 value for rights if the person acquires them:

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

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

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

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

Part 3. Territorial Applicability and General Rules.

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

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

4 (b) In the absence of an agreement effective under subsection (a), and except as provided

5 in subsection (c), this chapter applies to transactions bearing an appropriate relation to this state.

6 (c) If one of the following provisions of this chapter specifies the applicable law, that
7 provision governs and a contrary agreement is effective only to the extent permitted by the law so
8 specified:

9 (1) Section 2-402;

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

11 (3) Section 4-102;

12 (4) Section 4A-507;

13 (5) Section 5-116;

14 (6) Section 8-110;

15 (7) Sections 9-301 through 9-307;

16 (8) Section 12-107

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

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

ARTICLE 2. SALES.

§46-2-102. Scope; certain security and other transactions excluded from this article.

1 ~~Unless the context otherwise requires, this article applies to transactions in goods; it does~~
2 ~~not apply to any transaction which although in the form of an unconditional contract to sell or~~
3 ~~present sale is intended to operate only as a security transaction nor does this article impair or~~
4 ~~repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.~~¹

5 (1) Unless the context otherwise requires, and except as provided in subsection (3), this
6 Article applies to transactions in goods and, in the case of a hybrid transaction, it applies to the
7 extent provided in subsection (2);

8 (2) In a hybrid transaction:

9 (a) If the sale-of goods aspects do not predominate, only the provisions of this Article which

10 relate primarily to the sale-of goods aspects of the transaction apply, and the provisions that relate
 11 primarily to the transaction as a whole do not apply.

12 (b) If the sale-of goods aspects predominate, this Article applies to the transaction but does
 13 not preclude application in appropriate circumstances of other law to aspects of the transaction
 14 which do not relate to the sale of goods.

15 (3) This Article does not:

16 (a) Apply to a transaction that, even though in the form of an unconditional contract to sell
 17 or present sale, operates only to create a security interest; or

18 (b) Impair or repeal a statute regulating sales to consumers, farmers, or other specified
 19 classes of buyers.

**§46-2-106. Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale";
 "conforming" to contract; "termination"; "cancellation hybrid transaction."**

1 (1) In this article unless the context otherwise requires "contract" and "agreement" are
 2 limited to those relating to the present or future sale of goods. "Contract for sale" includes both a
 3 present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing
 4 of title from the seller to the buyer for a price (section 2-401). A "present sale" means a sale which
 5 is accomplished by the making of the contract.

6 (2) Goods or conduct including any part of a performance are "conforming" or conform to
 7 the contract when they are in accordance with the obligations under the contract.

8 (3) "Termination" occurs when either party pursuant to a power created by agreement or
 9 law puts an end to the contract otherwise than for its breach. On "termination" all obligations which
 10 are still executory on both sides are discharged but any right based on prior breach or
 11 performance survives.

12 (4) "Cancellation" occurs when either party puts an end to the contract for breach by the
 13 other and its effect is the same as that of "termination" except that the cancelling party also retains
 14 any remedy for breach of the whole contract or any unperformed balance.

- 15 (5) "Hybrid transaction" means a single transaction involving a sale of goods and;
 16 (a) The provision of services;
 17 (b) A lease of other goods; or
 18 (c) A sale, lease, or license of property other than goods.

Part 2. form, formation and readjustment of Contract

§46-2-201. Formal requirements; statute of frauds.

- 1 (1) Except as otherwise provided in this section a contract for the sale of goods for the price
 2 of \$500 or more is not enforceable by way of action or defense unless there is ~~some writing a~~
 3 record sufficient to indicate that a contract for sale has been made between the parties and signed
 4 by the party against whom enforcement is sought or by ~~his~~ the party's authorized agent or broker.
 5 A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed upon but the
 6 contract is not enforceable under this ~~paragraph~~ subsection beyond the quantity of goods shown
 7 in ~~such writing~~ the record.
- 8 (2) Between merchants if within a reasonable time a ~~writing~~ record in confirmation of the
 9 contract and sufficient against the sender is received and the party receiving it has reason to know
 10 its contents, it satisfies the requirements of subsection (1) against ~~such~~ the party unless ~~written~~
 11 notice in a record of objection to its contents is given within ten days after it is received.
- 12 (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in
 13 other respects is enforceable
- 14 (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale
 15 to others in the ordinary course of the seller's business and the seller, before notice of repudiation
 16 is received and under circumstances which reasonably indicate that the goods are for the buyer,
 17 has made either a substantial beginning of their manufacture or commitments for their
 18 procurement; or
- 19 (b) if the party against whom enforcement is sought admits in his or her pleading, testimony

20 or otherwise in court that a contract for sale was made, but the contract is not enforceable under
21 this provision beyond the quantity of goods admitted; or

22 (c) with respect to goods for which payment has been made and accepted or which have
23 been received and accepted (section 2-606).

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

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

- 6 (a) By course of performance, course of dealing, or usage of trade (section 1-303); and
- 7 (b) By evidence of consistent additional terms unless the court finds the writing record to
- 8 have been intended also as a complete and exclusive statement of the terms of the agreement.

§46-2-203. Seals inoperative.

1 The affixing of a seal to a writing record evidencing a contract for sale or an offer to buy or
2 sell goods does not constitute the writing record a sealed instrument and the law with respect to
3 sealed instruments does not apply to such a contract or offer.

§46-2-205. Firm offers.

1 An offer by a merchant to buy or sell goods in a signed writing record which by its terms
2 gives assurance that it will be held open is not revocable, for lack of consideration, during the time
3 stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability
4 exceed three months; but any such term of assurance on a form supplied by the offeree must be
5 separately signed by the offeror.

§46-2-209. Modification, rescission and waiver.

1 (1) An agreement modifying a contract within this article needs no consideration to be
2 binding.

3 (2) A signed agreement which excludes modification or rescission except by a signed
4 writing or other signed record cannot be otherwise modified or rescinded, but except as between
5 merchants such a requirement on a form supplied by the merchant must be separately signed by
6 the other party.

7 (3) The requirements of the statute of frauds section of this article (section 2-201) must be
8 satisfied if the contract as modified is within its provisions.

9 (4) Although an attempt at modification or rescission does not satisfy the requirements of
10 subsection (2) or (3) it can operate as a waiver.

11 (5) A party who has made a waiver affecting an executory portion of the contract may
12 retract the waiver by reasonable notification received by the other party that strict performance will
13 be required of any term waived, unless the retraction would be unjust in view of a material change
14 of position in reliance on the waiver.

ARTICLE 2A. LEASES.

§46-2A-102. Scope.

1 This article applies to any transaction, regardless of form, that creates a lease and, in the
2 case of a hybrid lease, it applies to the extent provided in subsection (2).

3 (2) In a hybrid lease:

4 (a) If the lease-of-goods aspects do not predominate;

5 (i) Only the provisions of this Article which relate primarily to the lease-of-goods aspects of
6 the transaction apply, and the provisions that relate primarily to the transaction as a whole do not
7 apply;

8 (ii) Section 2A-209 applies if the lease is a finance lease; and

9 (iii) Section 2A-407 applies to the promises of the lessee in a finance lease to the extent the
10 promises are consideration for the right to possession and use of the leased goods;

11 (b) If the lease-of goods aspects predominate, this Article applies to the transactions, but
12 does not preclude application in appropriate circumstances of other law to aspects of the lease

13 which do not relate to the lease of goods.

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

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

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

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

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

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

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

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

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

25 (iii) One of the following occurs:

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

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

30 (C) The lessee, before signing the lease contract, receives an accurate and complete
31 statement designating the promises and warranties, and any disclaimers of warranties, limitations
32 or modifications of remedies, or liquidated damages, including those of a third party, such as the
33 manufacturer of the goods, provided to the lessor by the person supplying the goods in connection
34 with or as part of the contract by which the lessor acquired the goods or the right to possession and
35 use of the goods; or

36 (D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease
37 contract, informs the lessee in writing: (a) Of the identity of the person supplying the goods to the
38 lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or
39 the right to possession and use of the goods from that person; (b) that the lessee is entitled under
40 this article to the promises and warranties, including those of any third party, provided to the lessor
41 by the person supplying the goods in connection with or as part of the contract by which the lessor
42 acquired the goods or the right to possession and use of the goods; and (c) that the lessee may
43 communicate with the person supplying the goods to the lessor and receive an accurate and
44 complete statement of those promises and warranties, including any disclaimers and limitations of
45 them or of remedies.

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

50 (h1) "Hybrid lease" means a single transaction involving a lease of goods and:

51 (i) The provision of services;

52 (ii) A sale of other goods; or

53 (iii) A sale, lease, or other license of property other than goods.

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

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

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

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

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

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

72 (o) "Lessee in ordinary course of business" means a person who in good faith and without
73 knowledge that the lease to him or her is in violation of the ownership rights or security interest or
74 leasehold interest of a third party in the goods leases in ordinary course from a person in the
75 business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may
76 be for cash or by exchange of other property or on secured or unsecured credit and includes

77 acquiring goods or documents of title under a preexisting lease contract but does not include a
78 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

102 (z) "Termination" occurs when either party pursuant to a power created by agreement or

- 103 law puts an end to the lease contract otherwise than for default.
- 104 (2) Other definitions applying to this article and the sections in which they appear are:
- 105 "Accessions". Section 2A-310(1).
- 106 "Construction mortgage". Section 2A-309(1)(d).
- 107 "Encumbrance". Section 2A-309(1)(e).
- 108 "Fixtures". Section 2A-309(1)(a).
- 109 "Fixture filing". Section 2A-309(1)(b).
- 110 "Purchase money lease". Section 2A-309(1)(c).
- 111 (3) The following definitions in other articles apply to this article:
- 112 "Account". Section 9-102(a)(2).
- 113 "Between merchants". Section 2-104(3).
- 114 "Buyer". Section 2-103(1)(a).
- 115 "Chattel paper". Section 9-102(a)(11).
- 116 "Consumer goods". Section 9-102(a)(23).
- 117 "Document". Section 9-102(a)(30).
- 118 "Entrusting". Section 2-403(3).
- 119 "General intangible". Section 9-102(a)(42).
- 120 "Instrument". Section 9-102(a)(47).
- 121 "Merchant". Section 2-104(1).
- 122 "Mortgage". Section 9-102(a)(55).
- 123 "Pursuant to commitment". 9-102(a)(69).
- 124 "Receipt". Section 2-103(1)(c).
- 125 "Sale". Section 2-106(1).
- 126 "Sale on approval". Section 2-326.
- 127 "Sale or return". Section 2-326.
- 128 "Seller". Section 2-103(1)(d).

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

§46-2A-107. Waiver or renunciation of claim or right after default.

1 Any claim or right arising out of an alleged default or breach of warranty may be
2 discharged, in whole or in part, without consideration by a ~~written~~ waiver or renunciation signed
3 and delivered by the aggrieved party.

Part 2. Formation And Construction Of Lease Contract

§46-2A-201. Statute of frauds.

1 (1) A lease contract is not enforceable by way of action or defense unless:

2 (a) The total payments to be made under the lease contract, excluding payments for
3 options to renew or buy, are less than \$1,000; or

4 (b) There is a ~~writing~~ record, signed by the party against whom enforcement is sought or by
5 that party's authorized agent, sufficient to indicate that a lease contract has been made between
6 the parties and to describe the goods leased and the lease term.

7 (2) Any description of leased goods or of the lease term is sufficient and satisfies
8 subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

9 (3) A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed
10 upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and
11 the quantity of goods shown in the writing record.

12 (4) A lease contract that does not satisfy the requirements of subsection (1), but which is
13 valid in other respects, is enforceable:

14 (a) If the goods are to be specially manufactured or obtained for the lessee and are not
15 suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor,
16 before notice of repudiation is received and under circumstances that reasonably indicate that the
17 goods are for the lessee, has made either a substantial beginning of their manufacture or
18 commitments for their procurement;

19 (b) If the party against whom enforcement is sought admits in that party's pleading,
 20 testimony or otherwise in court that a lease contract was made, but the lease contract is not
 21 enforceable under this provision beyond the quantity of goods admitted; or

22 (c) With respect to goods that have been received and accepted by the lessee.

23 (5) The lease term under a lease contract referred to in subsection (4) is:

24 (a) If there is a writing record signed by the party against whom enforcement is sought or
 25 by that party's authorized agent specifying the lease term, the term so specified;

26 (b) If the party against whom enforcement is sought admits in that party's pleading,
 27 testimony, or otherwise in court a lease term, the term so admitted; or

28 (c) A reasonable lease term.

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

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

6 (a) By course of dealing or usage of trade or by course of performance; and

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

§46-2A-203. Seals inoperative.

1 The affixing of a seal to a writing record evidencing a lease contract or an offer to enter into
 2 a lease contract does not render the writing record a sealed instrument and the law with respect to
 3 sealed instruments does not apply to the lease contract or offer.

§46-2A-205. Firm offers.

1 An offer by a merchant to lease goods to or from another person in a signed writing record
 2 that by its terms gives assurance it will be held open is not revocable, for lack of consideration,

3 during the time stated or, if no time is stated, for a reasonable time, but in no event may the period
 4 of irrevocability exceed three months. Any such term of assurance on a form supplied by the
 5 offeree must be separately signed by the offeror.

§46-2A-208. Modification, rescission and waiver.

1 (1) An agreement modifying a lease contract needs no consideration to be binding.

2 (2) A signed lease agreement that excludes modification or rescission except by a signed
 3 writing record may not be otherwise modified or rescinded, but, except as between merchants,
 4 such a requirement on a form supplied by a merchant must be separately signed by the other
 5 party.

6 (3) Although an attempt at modification or rescission does not satisfy the requirements of
 7 subsection (2), it may operate as a waiver.

8 (4) A party who has made a waiver affecting an executory portion of a lease contract may
 9 retract the waiver by reasonable notification received by the other party that strict performance will
 10 be required of any term waived, unless the retraction would be unjust in view of a material change
 11 of position in reliance on the waiver.

ARTICLE 3. NEGOTIABLE INSTRUMENTS

§46-3-104. Negotiable instrument.

1 (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an
 2 unconditional promise or order to pay a fixed amount of money, with or without interest or other
 3 charges described in the promise or order, if it:

4 (1) Is payable to bearer or to order at the time it is issued or first comes into possession of a
 5 holder;

6 (2) Is payable on demand or at a definite time; and

7 (3) Does not state any other undertaking or instruction by the person promising or ordering
 8 payment to do any act in addition to the payment of money, but the promise or order may contain
 9 (i) an undertaking or power to give, maintain or protect collateral to secure payment, (ii) an

10 authorization or power to the holder to confess judgment or realize on or dispose of collateral or
11 (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a
12 term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a
13 specified forum a dispute concerning the promise or order.

14 (b) "Instrument" means a negotiable instrument.

15 (c) An order that meets all of the requirements of subsection (a), except paragraph (1), and
16 otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a
17 check.

18 (d) A promise or order other than a check is not an instrument if, at the time it is issued or
19 first comes into possession of a holder, it contains a conspicuous statement, however expressed,
20 to the effect that the promise or order is not negotiable or is not an instrument governed by this
21 article.

22 (e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument
23 falls within the definition of both "note" and "draft", a person entitled to enforce the instrument may
24 treat it as either.

25 (f) "Check" means (i) a draft, other than a documentary draft, payable on demand and
26 drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even
27 though it is described on its face by another term, such as "money order".

28 (g) "Cashier's check" means a draft with respect to which the drawer and drawee are the
29 same bank or branches of the same bank.

30 (h) "Teller's check" means a draft drawn by a bank (i) on another bank or (ii) payable at or
31 through a bank.

32 (i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or
33 payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially
34 similar term and (iv) requires, as a condition to payment, a countersignature by a person whose
35 specimen signature appears on the instrument.

36 (j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank
37 that a sum of money has been received by the bank and a promise by the bank to repay the sum of
38 money. A certificate of deposit is a note of the bank.

39 (k) "Demand draft" means a writing that is not signed by a customer, as defined in
40 subdivision (5), subsection (a), section one hundred four, article four of this chapter, and that is
41 created by a third party under the purported authority of the customer for the purpose of charging
42 the customer's account with a bank. A demand draft does not include a check drawn by a fiduciary,
43 as defined in section three hundred seven of this article. A demand draft may contain any or all of
44 the following:

45 (1) The customer's printed or typewritten name or account number;

46 (2) A notation that the customer authorized the draft; and

47 (3) The statement "No signature required", "Authorization on file", "Signature on file", or
48 words to that effect.

§46-3-105. Issue of instrument.

1 (a) "Issue" means:

2 (1) the first delivery of an instrument by the maker or drawer, whether to a holder or
3 nonholder, for the purpose of giving rights on the instrument to any person; or

4 (2) if agreed by the payee, the first transmission by the drawer to the payee of an image of
5 an item and information derived from the item that enables the depository bank to collect the item
6 by transferring or presenting under federal law an electronic check.

7 (b) An unissued instrument, or an unissued incomplete instrument that is completed, is
8 binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally
9 issued or is issued for a special purpose is binding on the maker or drawer, but failure of the
10 condition or special purpose to be fulfilled is a defense.

11 (c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of
12 an instrument.

Part 4. Liability Of Parties.

§46-3-401. Signature.

1 ~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument or (ii)
2 the person is represented by an agent or representative who signed the instrument and the
3 signature is binding on the represented person under section 3-402.

4 ~~(b) A signature may be made (i) manually or by means of a device or machine and (ii) by~~
5 ~~the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed~~
6 ~~or adopted by a person with present intention to authenticate a writing~~

§46-3-604. Discharged by cancellation or renunciation.

1 (a) A person entitled to enforce an instrument, with or without consideration, may
2 discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as
3 surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument,
4 cancellation or striking out of the party's signature or the addition of words to the instrument
5 indicating discharge or (ii) by agreeing not to sue or otherwise renouncing rights against the party
6 by a signed writing. The obligation of a party to pay a check is not discharged solely by destruction
7 of the check in connection with a process in which information is extracted from the check and an
8 image of the check is made and, subsequently, the information and image are transmitted for
9 payment.

10 (b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect
11 the status and rights of a party derived from the indorsement.

ARTICLE 4A. FUNDS TRANSFERS.

§46-4A-103. Payment order -- Definitions.

1 (a) In this article:

2 (1) "Payment order" means an instruction of a sender to a receiving bank, transmitted
3 orally, ~~electronically or in writing,~~ or in a record, to pay, or to cause another bank to pay, a fixed or

4 determinable amount of money to a beneficiary if:

5 (A) The instruction does not state a condition to payment to the beneficiary other than time
6 of payment;

7 (B) The receiving bank is to be reimbursed by debiting an account of, or otherwise
8 receiving payment from, the sender; and

9 (C) The instruction is transmitted by the sender directly to the receiving bank or to an
10 agent, funds-transfer system or communication system for transmittal to the receiving bank.

11 (2) "Beneficiary" means the person to be paid by the beneficiary's bank.

12 (3) "Beneficiary's bank" means the bank identified in a payment order in which an account
13 of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to
14 the beneficiary if the order does not provide for payment to an account.

15 (4) "Receiving bank" means the bank to which the sender's instruction is addressed.

16 (5) "Sender" means the person giving the instruction to the receiving bank.

17 (b) If an instruction complying with subdivision (1), subsection (a) of this section is to make
18 more than one payment to a beneficiary, the instruction is a separate payment order with respect
19 to each payment.

20 (c) A payment order is issued when it is sent to the receiving bank.

§46-4A-201. Security procedure.

1 "Security procedure" means a procedure established by agreement of a customer and a
2 receiving bank for the purpose of (1) verifying that a payment order or communication amending or
3 canceling a payment order is that of the customer or (2) detecting error in the transmission or the
4 content of the payment order or communication. A security procedure may impose an obligation
5 on the receiving bank or the customer and may require the use of algorithms or other codes,
6 identifying words or numbers, symbols, sounds, biometrics, encryption, callback procedures or
7 similar security devices. Comparison of a signature on a payment order or communication with an
8 authorized specimen signature of the customer or requiring a payment order to be sent from a

9 known email address, IP address, or telephone number is not by itself a security procedure.

§46-4A-202. Authorized and verified payment orders.

1 (a) A payment order received by the receiving bank is the authorized order of the person
2 identified as sender if that person authorized the order or is otherwise bound by it under the law of
3 agency.

4 (b) If a bank and its customer have agreed that the authenticity of payment orders issued to
5 the bank in the name of the customer as sender will be verified pursuant to a security procedure, a
6 payment order received by the receiving bank is effective as the order of the customer, whether or
7 not authorized, if (1) the security procedure is a commercially reasonable method of providing
8 security against unauthorized payment orders and (2) the bank proves that it accepted the
9 payment order in good faith and in compliance with the bank's obligations under the security
10 procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record,
11 restricting acceptance of payment orders issued in the name of the customer. The bank is not
12 required to follow an instruction that violates a ~~written~~ an agreement with the customer, evidenced
13 by a record, or notice of which is not received at a time and in a manner affording the bank a
14 reasonable opportunity to act on it before the payment order is accepted.

15 (c) Commercial reasonableness of a security procedure is a question of law to be
16 determined by considering the wishes of the customer expressed to the bank, the circumstances
17 of the customer known to the bank, including the size, type and frequency of payment orders
18 normally issued by the customer to the bank, alternative security procedures offered to the
19 customer and security procedures in general use by customers and receiving banks similarly
20 situated. A security procedure is deemed to be commercially reasonable if (1) the security
21 procedure was chosen by the customer after the bank offered, and the customer refused, a
22 security procedure that was commercially reasonable for that customer and (2) the customer
23 expressly agreed in writing a record to be bound by any payment order, whether or not authorized,
24 issued in its name, and accepted by the bank in compliance with the bank's obligations under the

25 security procedure chosen by the customer.

26 (d) The term "sender" in this article includes the customer in whose name a payment order
27 is issued if the order is the authorized order of the customer under subsection (a) of this section, or
28 it is effective as the order of the customer under subsection (b) of this section.

29 (e) This section applies to amendments and cancellations of payment orders to the same
30 extent it applies to payment orders.

31 (f) Except as provided in this section and in subdivision (1), subsection (a), section two
32 hundred three of this article, rights and obligations arising under this section or section two
33 hundred three of this article may not be varied by agreement.

§46-4A-203. Unenforceability of certain verified payment orders.

1 (a) If an accepted payment order is not, under subsection (a), section two hundred two of
2 this article, an authorized order of a customer identified as sender, but is effective as an order of
3 the customer pursuant to subsection (b), section two hundred two of this article, the following rules
4 apply:

5 (1) By express ~~written~~ agreement evidenced by a record, the receiving bank may limit the
6 extent to which it is entitled to enforce or retain payment of the payment order; or

7 (2) The receiving bank is not entitled to enforce or retain payment of the payment order if
8 the customer proves that the order was not caused, directly or indirectly, by a person (A) entrusted
9 at any time with duties to act for the customer with respect to payment orders or the security
10 procedure or (B) who obtained access to transmitting facilities of the customer or who obtained,
11 from a source controlled by the customer and without authority of the receiving bank, information
12 facilitating breach of the security procedure, regardless of how the information was obtained or
13 whether the customer was at fault. Information includes any access device, computer software or
14 the like.

15 (b) This section applies to amendments of payment orders to the same extent it applies to
16 payment orders.

§46-4A-207. Misdescription of beneficiary.

1 (a) Subject to subsection (b) of this section, if, in a payment order received by the
2 beneficiary's bank, the name, bank account number or other identification of the beneficiary refers
3 to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the
4 order and acceptance of the order cannot occur.

5 (b) If a payment order received by the beneficiary's bank identifies the beneficiary both by
6 name and by an identifying or bank account number and the name and number identify different
7 persons, the following rules apply:

8 (1) Except as otherwise provided in subsection (c) of this section, if the beneficiary's bank
9 does not know that the name and number refer to different persons, it may rely on the number as
10 the proper identification of the beneficiary of the order. The beneficiary's bank need not determine
11 whether the name and number refer to the same person; or

12 (2) If the beneficiary's bank pays the person identified by name or knows that the name and
13 number identify different persons, no person has rights as beneficiary except the person paid by
14 the beneficiary's bank if that person was entitled to receive payment from the originator of the
15 funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

16 (c) If a payment order described in subsection (b) of this section is accepted, the
17 originator's payment order described the beneficiary inconsistently by name and number, and the
18 beneficiary's bank pays the person identified by number as permitted by subdivision (1),
19 subsection (b) of this section, the following rules apply:

20 (1) If the originator is a bank, the originator is obliged to pay its order; or

21 (2) If the originator is not a bank and proves that the person identified by number was not
22 entitled to receive payment from the originator, the originator is not obliged to pay its order unless
23 the originator's bank proves that the originator, before acceptance of the originator's order, had
24 notice that payment of a payment order issued by the originator might be made by the beneficiary's
25 bank on the basis of an identifying or bank account number even if it identifies a person different

26 from the named beneficiary. Proof of notice may be made by any admissible evidence. The
27 originator's bank satisfies the burden of proof if it proves that the originator, before the payment
28 order was accepted, signed a writing record stating the information to which the notice relates.

29 (d) In a case governed by subdivision (1), subsection (b) of this section, if the beneficiary's
30 bank rightfully pays the person identified by number and that person was not entitled to receive
31 payment from the originator, the amount paid may be recovered from that person to the extent
32 allowed by the law governing mistake and restitution as follows:

33 (1) If the originator is obliged to pay its payment order as stated in subsection (c) of this
34 section, the originator has the right to recover; or

35 (2) If the originator is not a bank and is not obliged to pay its payment order, the originator's
36 bank has the right to recover.

§46-4A-208. Misdescription of intermediary bank or beneficiary's bank.

1 (a) This subsection applies to a payment order identifying an intermediary bank or
2 beneficiary's bank only by an identifying number.

3 (1) The receiving bank may rely on the number as the proper identification of the
4 intermediary or beneficiary's bank and need not determine whether the number identifies the
5 bank.

6 (2) The sender is obliged to compensate the receiving bank for any loss and expenses
7 incurred by the receiving bank as a result of its reliance on the number in executing or attempting
8 to execute the order.

9 (b) This subsection applies to a payment order identifying an intermediary bank or the
10 beneficiary's bank both by name and an identifying number if the name and number identify
11 different persons.

12 (1) If the sender is a bank, the receiving bank may rely on the number as the proper
13 identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the
14 sender's order, does not know that the name and number identify different persons. The receiving

15 bank need not determine whether the name and number refer to the same person or whether the
16 number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and
17 expenses incurred by the receiving bank as a result of its reliance on the number in executing or
18 attempting to execute the order.

19 (2) If the sender is not a bank and the receiving bank proves that the sender, before the
20 payment order was accepted, had notice that the receiving bank might rely on the number as the
21 proper identification of the intermediary or beneficiary's bank even if it identifies a person different
22 from the bank identified by name, the rights and obligations of the sender and the receiving bank
23 are governed by subdivision (1) of this subsection, as though the sender were a bank. Proof of
24 notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof
25 if it proves that the sender, before the payment order was accepted, signed a writing record stating
26 the information to which the notice relates.

27 (3) Regardless of whether the sender is a bank, the receiving bank may rely on the name
28 as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the
29 time it executes the sender's order, does not know that the name and number identify different
30 persons. The receiving bank need not determine whether the name and number refer to the same
31 person.

32 (4) If the receiving bank knows that the name and number identify different persons,
33 reliance on either the name or the number in executing the sender's payment order is a breach of
34 the obligation stated in subdivision (1), subsection (a), section three hundred two of this article.

§46-4A-210. Rejection of payment order.

1 (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to
2 the sender orally, ~~electronically~~ or in writing a record. A notice of rejection need not use any
3 particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will
4 not execute or pay the order. Rejection is effective when the notice is given if transmission is by a
5 means that is reasonable in the circumstances. If notice of rejection is given by a means that is not

6 reasonable, rejection is effective when the notice is received. If an agreement of the sender and
7 receiving bank establishes the means to be used to reject a payment order, (1) any means
8 complying with the agreement is reasonable and (2) any means not complying is not reasonable
9 unless no significant delay in receipt of the notice resulted from the use of the noncomplying
10 means.

11 (b) This subsection applies if a receiving bank other than the beneficiary's bank fails to
12 execute a payment order despite existence on the execution date of a withdrawable credit balance
13 in an authorized account of the sender sufficient to cover the order. If the sender does not receive
14 notice of rejection of the order on the execution date and the authorized account of the sender
15 does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order
16 for the number of days elapsing after the execution date to the earlier of the day the order is
17 canceled pursuant to subsection (d), section two hundred eleven of this article or the day the
18 sender receives notice or learns that the order was not executed, counting the final day of the
19 period as an elapsed day. If the withdrawable credit balance during that period falls below the
20 amount of the order, the amount of interest is reduced accordingly.

21 (c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are
22 deemed rejected at the time the bank suspends payments.

23 (d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a
24 payment order precludes a later acceptance of the order.

§46-4A-211. Cancellation and amendment of payment order.

1 (a) A communication of the sender of a payment order cancelling or amending the order
2 may be transmitted to the receiving bank orally, ~~electronically~~ or in writing a record. If a security
3 procedure is in effect between the sender and the receiving bank, the communication is not
4 effective to cancel or amend the order unless the communication is verified pursuant to the
5 security procedure or the bank agrees to the cancellation or amendment.

6 (b) Subject to subsection (a) of this section, a communication by the sender cancelling or

7 amending a payment order is effective to cancel or amend the order if notice of the communication
8 is received at a time and in a manner affording the receiving bank a reasonable opportunity to act
9 on the communication before the bank accepts the payment order.

10 (c) After a payment order has been accepted, cancellation or amendment of the order is
11 not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation
12 or amendment without agreement of the bank.

13 (1) With respect to a payment order accepted by a receiving bank other than the
14 beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or
15 amendment of the payment order issued by the receiving bank is also made.

16 (2) With respect to a payment order accepted by the beneficiary's bank, cancellation or
17 amendment is not effective unless the order was issued in execution of an unauthorized payment
18 order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a
19 payment order (A) that is a duplicate of a payment order previously issued by the sender, (B) that
20 orders payment to a beneficiary not entitled to receive payment from the originator or (C) that
21 orders payment in an amount greater than the amount the beneficiary was entitled to receive from
22 the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to
23 recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law
24 governing mistake and restitution.

25 (d) An unaccepted payment order is canceled by operation of law at the close of the fifth
26 funds-transfer business day of the receiving bank after the execution date or payment date of the
27 order.

28 (e) A canceled payment order cannot be accepted. If an accepted payment order is
29 canceled, the acceptance is nullified and no person has any right or obligation based on the
30 acceptance. Amendment of a payment order is deemed to be cancellation of the original order at
31 the time of amendment and issue of a new payment order in the amended form at the same time.

32 (f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system

33 rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment
34 of the order by the sender or is bound by a funds-transfer system rule allowing cancellation or
35 amendment without the bank's agreement, the sender, whether or not cancellation or amendment
36 is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees,
37 incurred by the bank as a result of the cancellation or amendment or attempted cancellation or
38 amendment.

39 (g) A payment order is not revoked by death or legal incapacity of the sender unless the
40 receiving bank knows of the death or of an adjudication of incapacity by a court of competent
41 jurisdiction and has reasonable opportunity to act before acceptance of the order.

42 (h) A funds-transfer system rule is not effective to the extent it conflicts with subdivision (2),
43 subsection (c) of this section.

§46-4A-305. Liability for late or improper execution or failure to execute payment order.

1 (a) If a funds transfer is completed but execution of a payment order by the receiving bank
2 in breach of section three hundred two of this article results in delay in payment to the beneficiary,
3 the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for
4 the period of delay caused by the improper execution. Except as provided in subsection (c) of this
5 section, additional damages are not recoverable.

6 (b) If execution of a payment order by a receiving bank in breach of section three hundred
7 two of this article results in (1) noncompletion of the funds transfer, (2) failure to use an
8 intermediary bank designated by the originator or (3) issuance of a payment order that does not
9 comply with the terms of the payment order of the originator, the bank is liable to the originator for
10 its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not
11 covered by subsection (a) of this section resulting from the improper execution. Except as
12 provided in subsection (c) of this section, additional damages are not recoverable.

13 (c) In addition to the amounts payable under subsections (a) and (b) of this section,
14 damages, including consequential damages, are recoverable to the extent provided in an express

15 ~~written~~ agreement of the receiving bank, evidenced by a record.

16 (d) If a receiving bank fails to execute a payment order it was obliged by express
17 agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction
18 and for incidental expenses and interest losses resulting from the failure to execute. Additional
19 damages, including consequential damages, are recoverable to the extent provided in an express
20 ~~written~~ agreement of the receiving bank, evidenced by a record but are not otherwise recoverable.

21 (e) Reasonable attorney's fees are recoverable if demand for compensation under
22 subsection (a) or (b) of this section is made and refused before an action is brought on the claim. If
23 a claim is made for breach of an agreement under subsection (d) of this section and the agreement
24 does not provide for damages, reasonable attorney's fees are recoverable if demand for
25 compensation under subsection (d) of this section is made and refused before an action is brought
26 on the claim.

27 (f) Except as stated in this section, the liability of a receiving bank under subsections (a)
28 and (b) of this section may not be varied by agreement.

ARTICLE 5. LETTERS OF CREDIT.

§46-5-104. Formal requirements

1 A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued
2 in any form that is a signed record. ~~and is authenticated: (i) By a signature; or (ii) in accordance~~
3 ~~with the agreement of the parties or the standard practice referred to in section 5-108(e)~~

§46-5-116. Choice of law and forum.

1 (a) The liability of an issuer, nominated person, or adviser for action or omission is
2 governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or
3 ~~otherwise authenticated~~ by the affected parties ~~in the manner provided in section 5-104~~ or by a
4 provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose
5 law is chosen need not bear any relation to the transaction.

6 (b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for

7 action or omission is governed by the law of the jurisdiction in which the person is located. The
8 person is considered to be located at the address indicated in the person's undertaking. If more
9 than one address is indicated, the person is considered to be located at the address from which
10 the person's undertaking was issued.

11 (c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of
12 credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical
13 entities and a bank is considered to be located at the place where its relevant branch is considered
14 to be located under ~~this~~ subsection (d).

15 (d) A branch of a bank is considered to be located at the address indicated in the branch's
16 undertaking. If more than one address is indicated, the branch is considered to be located at the
17 address from which the undertaking was issued.

18 ~~(e)~~ (e) Except as otherwise provided in this subsection, the liability of an issuer, nominated
19 person, or adviser is governed by any rules of custom or practice, such as the uniform customs
20 and practice for documentary credits, to which the letter of credit, confirmation, or other
21 undertaking is expressly made subject. If (i) this article would govern the liability of an issuer,
22 nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates
23 rules of custom or practice, and (iii) there is conflict between this article and those rules as applied
24 to that undertaking, those rules govern except to the extent of any conflict with the nonvariable
25 provisions specified in section 5-103(c).

26 ~~(d)~~ (f) If there is conflict between this article and articles 3, 4, 4A, or 9, this article governs.

27 ~~(e)~~ (g) The forum for settling disputes arising out of an undertaking within this article may
28 be chosen in the manner and with the binding effect that governing law may be chosen in
29 accordance with subsection (a).

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

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

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

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

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

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

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

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

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

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

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

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

25 (10) "~~Record" means information that is inscribed on a tangible medium or that is stored in~~

26 ~~an electronic or other medium and is retrievable in perceivable form.~~

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

28 (A) ~~To execute or adopt a tangible symbol; or~~

29 (B) ~~To attach to or logically associate with the record an electronic sound, symbol, or~~
30 ~~process.~~ [Reserved.]

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) If the authoritative copy indicates that the document has been transferred, the person

12 to which the document was most recently transferred;

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

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

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

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

21 (c) A system satisfies subsection (a) and a person has control of an electronic document of
22 title, if an authoritative electronic copy of the document, a record attached to or logically associated
23 with the electronic copy, or a system in which the electronic copy is recorded;

24 (1) Enables the person readily to identify each electronic copy as either an authoritative
25 copy or a nonauthoritative copy;

26 (2) Enables the person readily to identify itself in any way, including by name, identifying
27 number, cryptographic key, office, or account number, as the person to which each authoritative
28 electronic copy was issued or transferred; and

29 (3) Gives the person exclusive power, subject to subsection (d) to:

30 (A) Prevent others from adding or changing the person to which each authoritative
31 electronic copy has been issued or transferred; and

32 (B) Transfer control of each authoritative electronic copy;

33 (d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even
34 if:

35 (1) The authoritative electronic copy, a record attached to or logically associated with the
36 authoritative electronic copy, or a system in which the authoritative electronic copy is recorded
37 limits the use of the document of title or has a protocol that is programmed to cause a change,

38 including a transfer or loss of control; or

39 (2) The power is shared with another person.

40 (e) A power of a person is not shared with another person under subsection (d)(2) and the
41 person’s power is not exclusive if:

42 (1) The person can exercise the power only if the power also is exercised by the other
43 person; and

44 (2) The other person;

45 (A) Can exercise the power without exercise of the power by the person; or

46 (B) Is the transferor to the person of an interest in the document of title.

47 (f) If a person has the power specified in subsection (c)(3)(A) and (B), the powers are
48 presumed to be exclusive.

49 (g) A person has control of an electronic document of title if another person, other than the
50 transferor to the person of an interest in the document:

51 (1) Has control of the document and acknowledges that it has control on behalf of the
52 person; or

53 (2) Obtains control of the document after having acknowledged that it will obtain control of
54 the document on behalf of the person.

55 (h) A person that has control under this section is not required to acknowledge that it has
56 control on behalf of another person

57 (i) If a person acknowledges that is has or will obtain control on behalf of another person,
58 unless the person otherwise agrees or law other than this article or Article 9 or otherwise provides,
59 the person does not owe any duty to the other person and is not required to confirm the
60 acknowledgment to any other person.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8-110. Applicability; choice of law.

1 (a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section

2 governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect to registration of transfer;

5 (3) The effectiveness of registration of transfer by the issuer;

6 (4) Whether the issuer owes any duties to an adverse claimant to a security; and

7 (5) Whether an adverse claim can be asserted against a person to whom transfer of a
8 certificated or uncertificated security is registered or a person who obtains control of an
9 uncertificated security.

10 (b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e)
11 of this section, governs:

12 (1) Acquisition of a security entitlement from the securities intermediary;

13 (2) The rights and duties of the securities intermediary and entitlement holder arising out of
14 a security entitlement;

15 (3) Whether the securities intermediary owes any duties to an adverse claimant to a
16 security entitlement; and

17 (4) Whether an adverse claim can be asserted against a person who acquires a security
18 entitlement from the securities intermediary or a person who purchases a security entitlement or
19 interest therein from an entitlement holder.

20 (c) The local law of the jurisdiction in which a security certificate is located at the time of
21 delivery governs whether an adverse claim can be asserted against a person to whom the security
22 certificate is delivered.

23 (d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is
24 organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by
25 the issuer. An issuer organized under the law of this state may specify the law of another
26 jurisdiction as the law governing the matters specified in subdivisions (2) through (5), inclusive,
27 subsection (a) of this section.

28 (e) The following rules determine a "securities intermediary's jurisdiction" for purposes of
29 this section:

30 (1) If an agreement between the securities intermediary and its entitlement holder
31 governing the securities account expressly provides that a particular jurisdiction is the securities
32 intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is
33 the securities intermediary's jurisdiction.

34 (2) If subdivision (1) does not apply and an agreement between the securities intermediary
35 and its entitlement holder governing the securities account expressly provides that the agreement
36 is governed by the law of a particular jurisdiction, the jurisdiction is the securities intermediary's
37 jurisdiction.

38 (3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an
39 agreement between the securities intermediary and its entitlement holder governing the securities
40 account expressly provides that the securities account is maintained at an office in a particular
41 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

42 (4) If none of the preceding subdivisions apply, the securities intermediary's jurisdiction is
43 the jurisdiction in which the office identified in an account statement as the office serving the
44 entitlement holder's account is located.

45 (5) If an agreement between the securities intermediary and its entitlement holder does not
46 specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account
47 statement does not identify an office serving the entitlement holder's account as provided in
48 subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in
49 which is located the chief executive office of the securities intermediary.

50 (f) A securities intermediary's jurisdiction is not determined by the physical location of
51 certificates representing financial assets, or by the jurisdiction in which is organized the issuer of
52 the financial asset with respect to which an entitlement holder has a security entitlement or by the
53 location of facilities for data processing or other record keeping concerning the account.

54 (g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction
 55 governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction
 56 does not bear any relation to the jurisdiction.

§46-8-303. Protected purchaser.

1 (a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or
 2 of an interest therein, who:

3 (1) Gives value;

4 (2) Does not have notice of any adverse claim to the security; and

5 (3) Obtains control of the certificated or uncertificated security.

6 (b) ~~In addition to acquiring the rights of a purchaser, a~~ A protected purchaser also acquires
 7 its interest in the security free of any adverse claim.

**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 with other goods in such a manner
 3 that the identity of the original goods is not lost.

4 (2) "Account", except as used in "account for", account statement", account to",
 5 "commodity account" in paragraph (14), "customer's account", "deposit account" in paragraph
 6 (29), "on account of", and "statement of account" means a right to payment of a monetary
 7 obligation, whether or not earned by performance: (i) For property that has been or is to be sold,
 8 leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered;
 9 (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be
 10 incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a
 11 charter or other contract; (vii) arising out of the use of a credit or charge card or information

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

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

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

25 (A) ~~Authenticated~~ signed by a secured party;

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

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

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

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

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

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

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

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

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

37 (C) Whose effectiveness does not depend on the person's possession of the personal

38 property.

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

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

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

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

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

45 (7) "Authenticate" means:

46 (A) To sign; or

47 ~~(B), To attach to or logically associate with the record an electronic sound, symbol or
48 process, with present intent to adopt or accept a record. [Reserved.]~~

49 (7A) "Assignee", except as used in assignee for benefit of creditors", means as person (i) in
50 whose favor a security interest that secures an obligation is created or provided for under a
51 security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel
52 paper, payment intangible, or promissory note has been sold. The terms includes a person to
53 which a security interest has been transferred by a security party.

54 (7B) "Assignor" means a person that (i) under a security agreement creates or provides for
55 a security interest that secures an obligation or (ii) sells an account, chattel paper, payment
56 intangible, or promissory note. The term includes a secured party that has transferred a security
57 interest to another person.

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

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

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

64 The term includes another record maintained as an alternative to a certificate of title by the
65 governmental unit that issues certificates of title if a statute permits the security interest in question
66 to be indicated on the record as a condition or result of the security interest's obtaining priority over
67 the rights of a lien creditor with respect to the collateral.

68 ~~(11) "Chattel paper" means a record or records that evidence both a monetary obligation~~
69 ~~and a security interest in specific goods, a security interest in specific goods and software used in~~
70 ~~the goods, a security interest in specific goods and license of software used in the goods, a lease~~
71 ~~of specific goods or a lease of specific goods and license of software used in the goods. In this~~
72 ~~paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed~~
73 ~~under a lease of the goods and includes a monetary obligation with respect to software used in the~~
74 ~~goods. The term does not include: (i) Charters or other contracts involving the use or hire of a~~
75 ~~vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge~~
76 ~~card or information contained on or for use with the card. If a transaction is evidenced by records~~
77 ~~that include an instrument or series of instruments, the group of records taken together constitutes~~
78 ~~chattel paper. "Chattel paper" means:~~

79 (A) A right to payment of a monetary obligation secured by specific goods, if the right to
80 payment and security agreement are evidenced by a record; or

81 (B) A right to payment of a monetary obligation owned by a lessee under a lease with
82 respect to specific goods and monetary obligation owed by the lessee in connection with the
83 transaction giving rise to the lease, if:

84 (i) The right to payment and lease agreement are evidenced by a record; and

85 (ii) The predominant purpose of the transaction giving rise to the lease was to give the
86 lessee the right to possession and use of the goods. The term does not include a right to payment
87 arising out of a charter or other contract involving the use or hire of a vessel or a right to payment
88 arising out of the use or a credit or charge card or information contained on or for use with the card.

89 (12) "Collateral" means the property subject to a security interest or agricultural lien. The

90 term includes:

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

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

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

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

96 (A) The claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

114 (18) "Communicate" means:

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

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

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

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

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

123 (A) The merchant:

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

126 (ii) Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

139 and

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

141 (25) "Consumer obligor" means an obligor who is an individual and who incurred the

142 obligation as part of a transaction entered into primarily for personal, family or household
143 purposes.

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

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

149 (27A) "Controllable account" means an account evidenced by a controllable electronic
150 record that provides that the account debtor undertakes to pay the person that has control under
151 Section 12-105 of the controllable electronic record.

152 (27B) "Controllable payment intangible" means a payment intangible evidenced by a
153 controllable electronic record that provides that the account debtor undertakes to pay the person
154 that has control under Section 12-105 of the controllable electronic record.

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

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

158 (28) "Debtor" means:

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

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

162 (C) A consignee.

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

166 (30) "Document" means a document of title or a receipt of the type described in section 7-
167 201(b).

168 ~~(31) "Electronic chattel paper" means chattel paper evidenced by a record or records~~
169 ~~consisting of information stored in an electronic medium. [Reserved.]~~

170 (31A) "Electronic money" means money in electronic form.

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

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

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

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

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

178 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

185 (36) "File number" means the number assigned to an initial financing statement pursuant to
186 section 9-519(a).

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

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

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

192 (40) "Fixture filing" means the filing of a financing statement covering goods that are or are
193 to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a

194 financing statement covering goods of a transmitting utility which are or are to become fixtures.

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

197 (42) "General intangible" means any personal property, including things in action, other
198 than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,
199 instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or
200 other minerals before extraction. The term includes controllable electronic records, payment
201 intangibles and software.

202 (43) ~~[reserved]~~. "Good faith means honesty in fact and the observance of reasonable
203 commercial standards of fair dealing.

204 (44) "Goods" means all things that are movable when a security interest attaches. The
205 term includes: (i) Fixtures; (ii) standing timber that is to be cut and removed under a conveyance or
206 contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing or to be grown, even if
207 the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also
208 includes a computer program embedded in goods and any supporting information provided in
209 connection with a transaction relating to the program if: (i) The program is associated with the
210 goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the
211 owner of the goods, a person acquires a right to use the program in connection with the goods.
212 The term does not include a computer program embedded in goods that consist solely of the
213 medium in which the program is embedded. The term also does not include accounts, chattel
214 paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments,
215 investment property, letter-of-credit rights, letters of credit, money or oil, gas, or other minerals
216 before extraction.

217 (45) "Governmental unit" means a subdivision, agency, department, county, parish,
218 municipality or other unit of the government of the United States, a state or a foreign country. The
219 term includes an organization having a separate corporate existence if the organization is eligible

220 to issue debt on which interest is exempt from income taxation under the laws of the United States.

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

224 (47) "Instrument" means a negotiable instrument or any other writing that evidences a right
225 to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type
226 that in ordinary course of business is transferred by delivery with any necessary indorsement or
227 assignment. The term does not include: (i) Investment property; (ii) letters of credit; or (iii) writings
228 that evidence a right to payment arising out of the use of a credit or charge card or information
229 contained on or for use with the card, or (iv) writings that evidence chattel paper.

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

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

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

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

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

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

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

239 (51) "Letter-of-credit right" means a right to payment or performance under a letter of
240 credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment
241 or performance. The term does not include the right of a beneficiary to demand payment or
242 performance under a letter of credit.

243 (52) "Lien creditor" means:

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

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

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

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

249 (53) "Manufactured home" means a structure, transportable in one or more sections,
250 which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length,
251 or, when erected on site, is three hundred twenty or more square feet, and which is built on a
252 permanent chassis and designed to be used as a dwelling with or without a permanent foundation
253 when connected to the required utilities, and includes the plumbing, heating, air-conditioning and
254 electrical systems contained therein. The term includes any structure that meets all of the
255 requirements of this paragraph except the size requirements and with respect to which the
256 manufacturer voluntarily files a certification required by the United States secretary of housing and
257 urban development and complies with the standards established under Title 42 of the United
258 States Code.

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

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

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

264 (54A) "Money" has the meaning in Section 1-201(b)(24), but does not include (i) a deposit
265 account or (ii) money in a electronic form that cannot be subjected to control under Section 9-
266 105A.

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

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

271 (57) "New value" means: (i) Money; (ii) money's worth in property, services or new credit;

272 or (iii) release by a transferee of an interest in property previously transferred to the transferee.

273 The term does not include an obligation substituted for another obligation.

274 (58) "Noncash proceeds" means proceeds other than cash proceeds.

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

281 (60) "Original debtor" except as used in section 9-310(c), means a person that, as debtor,
282 entered into a security agreement to which a new debtor has become bound under section 9-
283 203(d).

284 (61) "Payment intangible" means a general intangible under which the account debtor's
285 principal obligation is a monetary obligation. The terms includes a controllable payment intangible.

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

287 (A) The spouse of the individual;

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

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

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

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

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

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

297 (C) An officer or director of, or a person performing similar functions with respect to, a

298 person described in subparagraph (A);

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

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

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

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

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

306 (C) Rights arising out of collateral;

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

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

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

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

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

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

323 (69) "Proposal" means a record ~~authenticated~~ signed by a secured party which includes

324 the terms on which the secured party is willing to accept collateral in full or partial satisfaction of
325 the obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

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

327 (A) Debt securities are issued;

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

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

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

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

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

341 (C) A record consisting of legislation enacted by the Legislature of a state or the Congress
342 of the United States which forms or organizes an organization, any record amending the
343 legislation, and any record filed with or issued by the state or the United States which amends or
344 restates the name of the organization.

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

349 (73) "Record", except as used in "for record", "of record", "record or legal title" and "record

350 owner", means information that is inscribed on a tangible medium or which is stored in an
351 electronic or other medium and is retrievable in perceivable form.

352 (74) "Registered organization" means an organization formed or organized solely under
353 the law of a single state or the United States by the filing of a public organic record with, the
354 issuance of a public organic record by, or the enactment of legislation by the state or the United
355 States. The term includes a business trust that is formed or organized under the law of a single
356 state if a statute of the state governing business trusts requires that the business trust's organic
357 record be filed with the state.

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

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

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

362 (76) "Secured party" means:

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

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

366 (C) A consignor;

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

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

371 (F) A person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-
372 508(5), 4-210 or 5-118.

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

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

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

379 ~~(B) To cause the record or notification to be received within the time that it would have been~~
380 ~~received if properly sent under paragraph (A). [Reserved.]~~

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

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

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

390 ~~(82) "Tangible chattel paper" means chattel paper evidenced by a record or records~~
391 ~~consisting of information that is inscribed on a tangible medium. [Reserved.]~~

392 (82A) "Tangible money" means money in any tangible form.

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

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

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

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

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

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

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

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

402	(b) Definitions in other articles. "Control" as provided in section 7-106 and the following	
403	definitions in other articles apply to this article:	
404	"Applicant" Section 5-102.	
405	"Beneficiary" Section 5-102.	
406	"Broker" Section 8-102.	
407	"Certificated security" Section 8-102.	
408	"Check" Section 3-104.	
409	"Clearing corporation" Section 8-102.	
410	"Contract for sale" Section 2-106.	
411	<u>"Controllable electronic record",</u>	<u>Section 12-102.</u>
412	"Customer"	Section 4-104.
413	"Entitlement holder"	Section 8-102.
414	"Financial asset"	Section 8-102.
415	"Holder in due course"	Section 3-302.
416	"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5-102.
417	"Issuer" (with respect to a security)	Section 8-201.
418	"Issuer" (with respect to a document of title)	Section 7-102.
419	"Lease"	Section 2A-103.
420	"Lease agreement"	Section 2A-103.
421	"Lease contract"	Section 2A-103.
422	"Leasehold interest"	Section 2A-103.
423	"Lessee"	Section 2A-103.
424	"Lessee in ordinary course of business"	Section 2A-103.
425	"Lessor"	Section 2A-103.
426	"Lessor's residual interest"	Section 2A-103.
427	"Letter of credit"	Section 5-102.

428	"Merchant"	Section 2-104.
429	"Negotiable instrument"	Section 3-104.
430	"Nominated person"	Section 5-102.
431	"Note"	Section 3-104.
432	"Proceeds of a letter of credit"	Section 5-114.
433	<u>"Protected purchaser",</u>	<u>Section 8-303.</u>
434	"Prove"	Section 3-103.
435	<u>"Qualifying purchaser",</u>	<u>Section 12-102.</u>
436	"Sale"	Section 2-106.
437	"Securities account"	Section 8-501.
438	"Securities intermediary"	Section 8-102.
439	"Security"	Section 8-102.
440	"Security certificate"	Section 8-102.
441	"Security entitlement"	Section 8-102.
442	"Uncertificated security"	Section 8-102.
443	(c) Article 1 definitions and principles. Article 1 contains general definitions and principles	
444	of construction and interpretation applicable throughout this article.	

§46-9-104. Control of deposit account.

1 (a) **Requirements for control.** A secured party has control of a deposit account if:

2 (1) The secured party is the bank with which the deposit account is maintained;

3 (2) The debtor, secured party and bank have agreed in ~~an authenticated~~ a signed record
4 that the bank will comply with instructions originated by the secured party directing disposition of
5 the funds in the deposit account without further consent by the debtor; ~~or~~

6 (3) The secured party becomes the bank's customer with respect to the deposit account; or

7 (4) another person, other than the debtor:

8 (A) has control of the deposit account and acknowledges that it has control on behalf of the

9 secured party; or

10 (B) obtains control of the deposit account after having acknowledged that it will obtain
11 control of the deposit account on behalf of the secured party.

12 (b) **Debtor's right to direct disposition.** A secured party that has satisfied subsection (a)
13 has control, even if the debtor retains the right to direct the disposition of funds from the deposit
14 account.

§46-9-105. Control of electronic chattel paper. Control of Electronic Copy of Record

Evidencing Chattel Paper.

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

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

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

10 ~~(2) The authoritative copy identifies the secured party as the assignee of the record or~~
11 ~~records;~~

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

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

16 ~~(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a~~
17 ~~copy that is not the authoritative copy; and~~

18 ~~(6) Any amendment of the authoritative copy is readily identifiable as an authorized or~~

19 ~~unauthorized revision.~~

20 (a) **General Rule: control of electronic copy of record evidencing chattel paper.** A
21 purchaser has control of an authoritative copy of a record evidencing chattel paper if a system
22 employed for evidencing the assignment of interests in the chattel paper reliably establishes the
23 purchaser as the person to which the authoritative electronic copy was assigned.

24 (b) **Single authoritative copy.** A system satisfies subsection (a) if the record or records
25 evidencing the chattel paper are created, stored, and assigned in a manner that:

26 (1) a single authoritative copy of the record or records exists which is unique, identifiable,
27 and except as otherwise provide in paragraphs (4), (5) and (6) unalterable;

28 (2) the authoritative copy identifies the purchaser as the assignee of the record or records;

29 (3) the authoritative copy is communicated to and maintained by the purchaser or its
30 designated custodian;

31 (4) copies or amendments that add or change an identified assignee of the authoritative
32 copy can be made only with consent of the purchaser;

33 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a
34 copy that is not the authoritative copy; and

35 (6) any amendment of the authoritative copy is readily identifiable as authorized or
36 unauthorized.

37 (c) **One or more authoritative copies.** A system satisfies subsection (a), and a purchaser
38 has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic
39 copy, a record attached to or logically associated with the electronic copy, or a system in which the
40 electronic copy is recorded:

41 (1) enables the purchaser readily to identify each electronic copy as either an authoritative
42 copy of a nonauthoritative copy;

43 (2) enables the purchaser readily to identify itself in any way, including by name, identifying
44 number, cryptographic key, office, or account number, as the assignee of the authoritative

45 electronic copy; and

46 (3) gives the purchaser exclusive power, subject to subsection (d), to:

47 (A) prevent others from adding or changing an identified assignee of the authoritative

48 electronic copy; and

49 (B) transfer control of the authoritative electronic copy.

50 (d) **Meaning of exclusive.** Subject to subsection (e), a power is exclusive under

51 subsection (c)(3)(A) and (B) even if:

52 (1) the authoritative electronic copy, a record attached to or logically associated with the

53 authoritative electronic copy, or a system in which the authoritative electronic copy is recorded

54 limits the use of the authoritative electronic copy or has a protocol programmed to cause a change,

55 including a transfer or loss of control; or

56 (2) the power is shared with another person.

57 (e) **When power not shared with another person.** A power of a purchaser is not shared

58 with another person under subsection (d)(2) and the purchaser's power is not exclusive if:

59 (1) the purchaser can exercise the power only if the power is exercised by the other

60 person; and

61 (2) the other person:

62 (A) can exercise the power without exercise of the power by the by the purchaser; or

63 (B) is the transferor to the purchaser of an interest in the chattel paper.

64 (f) **Presumption of exclusivity of certain powers.** If a purchaser has the power specified

65 in (c)(3)(A) and (B), the powers are presumed to be exclusive.

66 (g) Obtaining control through another person. A purchaser has control of an authoritative

67 electronic copy of a record evidencing chattel paper if another person, other than the transferor to

68 the purchaser of an interest in the chattel paper:

69 (1) has control of the authoritative electronic copy and acknowledges that it has control on

70 behalf of the purchaser; or

71 (2) obtains control of the authoritative electronic copy after having acknowledged that it will
72 obtain control of the electronic copy on behalf of the purchaser.

§46-9-105A. Control of Electronic Money.

1 (a) **General rule: control of electronic money.** A person has control of electronic money

2 if:

3 (1) the electronic money, a record attached to or logically associated with the electronic
4 money, or a system in which the electronic money is recorded gives the person:

5 (A) power to avail itself of substantially all the benefits from the electronic money; and

6 (B) exclusive power, subject to subsection (b), to:

7 (i) prevent other from availing themselves of substantially all the benefit from the electronic
8 money; and

9 (ii) transfer control of the electronic money to another person or cause another person to
10 obtain control of other electronic money as a result of the transfer of the electronic money; and

11 (2) the electronic money, a record attached to or logically associated with the electronic
12 money, or a system in which the electronic money is recorded enables the person readily to
13 identify itself in any way, including by name, identifying number, cryptographic key, office, or
14 account number, as having the powers, under paragraph (1).

15 (b) **Meaning of exclusive.** Subject to subsection (c), a power is exclusive under
16 subsection (a)(1)(B)(i) and (ii) even if:

17 (1) the electronic money, a record attached to or logically associated with the electronic
18 money, or a system in which the electronic money is recorded limits the use of the electronic
19 money or has a protocol programmed to cause a change, including a transfer or loss of control; or

20 (2) the power is shared with another person.

21 (c) **When power not shared with another person.** A power of a person is not shared with
22 another person under subsection (b)(2) and the person's power is not exclusive if:

23 (1) the person can exercise the power only if the power is exercise by the other person; and

24 (2) the other person:

25 (A) can exercise the power without exercise of the power by the person; or

26 (B) is the transferor to the person of an interest in the electronic money.

27 (d) **Presumption of exclusive of certain powers.** If a person has the powers specified in
28 subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

29 (e) **Control through another person.** A person has control of electronic money if another
30 person, other than the transferor to the person of an interest in the electronic money:

31 (1) has control of the electronic money and acknowledges that it has control on behalf of
32 the person; or

33 (2) obtains control of the electronic money after having acknowledges that it will obtain
34 control of the electronic money on behalf of the person.

§46-9-107A. Control of Controllable Electronic Record, Controllable Account, or
Controllable Payment Intangible.

1 (a) **Control under Section 12-105.** A secured party has control of a controllable electronic
2 record as provided in Section 12-105.

3 (b) **Control of controllable account and controllable payment intangible.** A secured
4 party has control of a controllable account or controllable payment intangible if the secured party
5 has control of the controllable electronic record that evidences the controllable account or
6 controllable payment intangible.

§46-9-107B. No Requirement to Acknowledge or Confirm; No Duties.

1 (a) **No requirement to acknowledge.** A person that has control under Section 9-104, 9-
2 104, or 9-105A, is not required to acknowledge that it has control on behalf of another person.

3 (b) **No duties or confirmation.** If a person acknowledges that it has or will obtain control
4 on behalf of another person, unless the person otherwise agrees or law other than this article
5 otherwise provides, the person does not owe any duty to the other person and is not required to
6 confirm the acknowledgment to any other person.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

1 (a) **Attachment.** A security interest attaches to collateral when it becomes enforceable
2 against the debtor with respect to the collateral, unless an agreement expressly postpones the
3 time of attachment.

4 (b) **Enforceability.** Except as otherwise provided in subsections (c) through (i), inclusive,
5 of this section, a security interest is enforceable against the debtor and third parties with respect to
6 the collateral only if:

7 (1) Value has been given;

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

10 (3) One of the following conditions is met:

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

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

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

19 (D) The collateral is ~~deposit~~ controllable accounts, controllable electronic records,
20 controllable payment intangibles, deposit accounts, ~~electronic chattel paper,~~ electronic
21 documents, electronic money, investment property, or letter-of-credit rights, ~~or electronic~~
22 ~~documents,~~ and the secured party has control under section 7-106, 9-104, 9-105, 9-105A, 9-106
23 ~~or 9-107,~~ or 9-107A pursuant to the debtor's security agreement; or

24 (E) the collateral is chattel paper and the secured party has possession and control under

25 Section 9-314a pursuant to the debtor's security agreement.

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

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

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

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

38 (e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by
39 a security agreement entered into by another person:

40 (1) The agreement satisfies subsection (b)(3) of this section with respect to existing or
41 after-acquired property of the new debtor to the extent the property is described in the agreement;
42 and

43 (2) Another agreement is not necessary to make a security interest in the property
44 enforceable.

45 (f) **Proceeds and supporting obligations.** The attachment of a security interest in
46 collateral gives the secured party the rights to proceeds provided by section 9-315 and is also
47 attachment of a security interest in a supporting obligation for the collateral.

48 (g) **Lien securing right to payment.** The attachment of a security interest in a right to
49 payment or performance secured by a security interest or other lien on personal or real property is
50 also attachment of a security interest in the security interest, mortgage or other lien.

51 (h) **Security entitlement carried in securities account.** The attachment of a security
 52 interest in a securities account is also attachment of a security interest in the security entitlements
 53 carried in the securities account.

54 (i) **Commodity contracts carried in commodity account.** The attachment of a security
 55 interest in a commodity account is also attachment of a security interest in the commodity
 56 contracts carried in the commodity account.

§46-9-204. After-acquired property; future advances.

1 (a) **After-acquired collateral.** Except as otherwise provided in subsection (b), a security
 2 agreement may create or provide for a security interest in after-acquired collateral.

3 (b) **When after-acquired property clause not effective.** A Subject to subsection (b.1.) a
 4 security interest does not attach under a term constituting an after-acquired property clause to:

5 (1) Consumer goods, other than an accession when given as additional security, unless
 6 the debtor acquires rights in them within ten days after the secured party gives value; or

7 (2) A commercial tort claim.

8 (b.1.) Subsection (b) does not prevent a security interest from attaching:

9 (1) To consumer goods as proceeds under Section 9-315 or commingled goods under
 10 Section 9-336(c);

11 (2) To a commercial tort claims as proceeds under Section 9-315; or

12 (3) Under an after-acquire property clause to property that is proceeds of consumer goods
 13 or a commercial tort claim.

14 (c) **Future advances and other value.** A security agreement may provide that collateral
 15 secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in
 16 connection with, future advances or other value, whether or not the advances or value are given
 17 pursuant to commitment.

§46-9-207. Rights and duties of secured party having possession or control of collateral.

1 (a) **Duty of care when secured party in possession.** Except as otherwise provided in

2 subsection (d), a secured party shall use reasonable care in the custody and preservation of
3 collateral in the secured party's possession. In the case of chattel paper or an instrument,
4 reasonable care includes taking necessary steps to preserve rights against prior parties unless
5 otherwise agreed.

6 (b) **Expenses, risks, duties and rights when secured party in possession.** Except as
7 otherwise provided in subsection (d), if a secured party has possession of collateral:

8 (1) Reasonable expenses, including the cost of insurance and payment of taxes or other
9 charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to
10 the debtor and are secured by the collateral;

11 (2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any
12 effective insurance coverage;

13 (3) The secured party shall keep the collateral identifiable, but fungible collateral may be
14 commingled; and

15 (4) The secured party may use or operate the collateral:

16 (A) For the purpose of preserving the collateral or its value;

17 (B) As permitted by an order of a court having competent jurisdiction; or

18 (C) Except in the case of consumer goods, in the manner and to the extent agreed by the
19 debtor.

20 (c) **Duties and rights when secured party in possession or control.** Except as
21 otherwise provided in subsection (d) of this section, a secured party having possession of
22 collateral or control of collateral under section 7-106, 9-104, 9-105A, 9-105, 9-106 or 9-107, or, 9-
23 107A :

24 (1) May hold as additional security any proceeds, except money or funds, received from
25 the collateral;

26 (2) Shall apply money or funds received from the collateral to reduce the secured
27 obligation, unless remitted to the debtor; and

28 (3) May create a security interest in the collateral.

29 (d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel
30 paper, payment intangibles, or promissory notes or a consignor:

31 (1) Subsection (a) of this section does not apply unless the secured party is entitled under
32 an agreement:

33 (A) To charge back uncollected collateral; or

34 (B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on
35 the nonpayment or other default of an account debtor or other obligor on the collateral; and

36 (2) Subsections (b) and (c) of this section do not apply.

§46-9-208. Additional duties of secured party having control of collateral.

1 (a) **Applicability of section.** This section applies to cases in which there is no outstanding
2 secured obligation and the secured party is not committed to make advances, incur obligations, or
3 otherwise give value.

4 (b) **Duties of secured party after receiving demand from debtor.** Within ten days after
5 receiving ~~an authenticated~~ a signed demand by the debtor:

6 (1) A secured party having control of a deposit account under section 9-104(a)(2) shall
7 send to the bank with which the deposit account is maintained an authenticated statement that
8 releases the bank from any further obligation to comply with instructions originated by the secured
9 party;

10 (2) A secured party having control of a deposit account under section 9-104(a)(3) shall:

11 (A) Pay the debtor the balance on deposit in the deposit account; or

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

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

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

17 ~~(B) If the debtor designates a custodian that is the designated custodian with which the~~
18 ~~authoritative copy of the electronic chattel paper is maintained for the secured party, communicate~~
19 ~~to the custodian an authenticated record releasing the designated custodian from any further~~
20 ~~obligation to comply with instructions originated by the secured party and instructing the custodian~~
21 ~~to comply with instructions originated by the debtor; and~~

22 ~~(C) Take appropriate action to enable the debtor or its designated custodian to make~~
23 ~~copies of or revisions to the authoritative copy which add or change an identified assignee of the~~
24 ~~authoritative copy without the consent of the secured party;~~

25 (3) A secured party, other than a buyer, having control under Section 9-105 of an
26 authoritative copy of a record evidencing chattel paper shall transfer control of the electronic copy
27 to the debtor or a person designated by the debtor;

28 (4) A secured party having control of investment property under section 8-106(d)(2) or 9-
29 106(b) shall send to the securities intermediary or commodity intermediary with which the security
30 entitlement or commodity contract is maintained ~~an authenticated~~ a signed record that releases
31 the securities intermediary or commodity intermediary from any further obligation to comply with
32 entitlement orders or directions originated by the secured party;

33 (5) A secured party having control of a letter-of-credit right under section 9-107 shall send
34 to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to
35 the secured party ~~an authenticated~~ a signed release from any further obligation to pay or deliver
36 proceeds of the letter of credit to the secured party; and

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

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

39 ~~(B) If the debtor designates a custodian that is the designated custodian with which the~~
40 ~~authoritative copy of the electronic document is maintained for the secured party, communicate to~~
41 ~~the custodian an authenticated record releasing the designated custodian from any further~~
42 ~~obligation to comply with instructions originated by the secured party and instructing the custodian~~

43 ~~to comply with instructions originated by the debtor; and~~

44 ~~(C) Take appropriate action to enable the debtor or its designated custodian to make~~
45 ~~copies of or revisions to the authoritative copy which add or change an identified assignee of the~~
46 ~~authoritative copy without the consent of the secured party.~~

47 (6) A secured party having control under Section 7-106 of an authoritative electronic copy
48 of an electronic document of title shall transfer control of the electronic copy to the debtor or a
49 person designated by the debtor;

50 (7) A secured party having control under Section 9-105A of the electronic money shall
51 transfer control of the electronic money to the debtor or a person designated by the debtor; and

52 (8) A secured party having control under Section 12-105 of a controllable electronic record,
53 other than a buyer of a controllable account or controllable payment intangible evidenced by the
54 controllable electronic record, shall transfer control of the controllable electronic record to the
55 debtor or a person designated by the debtor.

§46-9-209. Duties of secured party if account debtor has been notified of assignment.

1 (a) **Applicability of section.** Except as otherwise provided in subsection (c), this section
2 applies if:

- 3 (1) There is no outstanding secured obligation; and
- 4 (2) The secured party is not committed to make advances, incur obligations or otherwise
5 give value.

6 (b) **Duties of secured party after receiving demand from debtor.** Within ten days after
7 receiving an ~~authenticated~~ a signed demand by the debtor, a secured party shall send to an
8 account debtor that has received notification under Section 9-406(a) or 12-106(b) of an
9 assignment to the secured party as assignee ~~under section 9-406(a) an authenticated~~ a signed
10 record that releases the account debtor from any further obligation to the secured party.

11 (c) **Inapplicability to sales.** This section does not apply to an assignment constituting the
12 sale of an account, chattel paper or payment intangible.

§46-9-210. Request for accounting; request regarding list of collateral or statement of account.

1 (a) **Definitions.** In this section:

2 (1) "Request" means a record of a type described in paragraph (2), (3) or (4) of this
3 subsection.

4 (2) "Request for an accounting" means a record ~~authenticated~~ signed by a debtor
5 requesting that the recipient provide an accounting of the unpaid obligations secured by collateral
6 and reasonably identifying the transaction or relationship that is the subject of the request.

7 (3) "Request regarding a list of collateral" means a record ~~authenticated~~ signed by a debtor
8 requesting that the recipient approve or correct a list of what the debtor believes to be the collateral
9 securing an obligation and reasonably identifying the transaction or relationship that is the subject
10 of the request.

11 (4) "Request regarding a statement of account" means a record ~~authenticated~~ signed by a
12 debtor requesting that the recipient approve or correct a statement indicating what the debtor
13 believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified
14 date and reasonably identifying the transaction or relationship that is the subject of the request.

15 (b) **Duty to respond to requests.** Subject to subsections (c), (d), (e) and (f) of this section,
16 a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory
17 notes or a consignor, shall comply with a request within fourteen days after receipt:

18 (1) In the case of a request for an accounting, by ~~authenticating~~ signing and sending to the
19 debtor an accounting; and

20 (2) In the case of a request regarding a list of collateral or a request regarding a statement
21 of account, by ~~authenticating~~ signing and sending to the debtor an approval or correction.

22 (c) **Request regarding list of collateral; statement concerning type of collateral.** A
23 secured party that claims a security interest in all of a particular type of collateral owned by the
24 debtor may comply with a request regarding a list of collateral by sending to the debtor an

25 ~~authenticated~~ a signed record including a statement to that effect within fourteen days after
26 receipt.

27 (d) **Request regarding list of collateral; no interest claimed.** A person that receives a
28 request regarding a list of collateral, claims no interest in the collateral when it receives the request
29 and claimed an interest in the collateral at an earlier time shall comply with the request within
30 fourteen days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

31 (1) Disclaiming any interest in the collateral; and

32 (2) If known to the recipient, providing the name and mailing address of any assignee of or
33 successor to the recipient's interest in the collateral.

34 (e) **Request for accounting or regarding statement of account; no interest in**
35 **obligation claimed.** A person that receives a request for an accounting or a request regarding a
36 statement of account, claims no interest in the obligations when it receives the request and
37 claimed an interest in the obligations at an earlier time shall comply with the request within
38 fourteen days after receipt by sending to the debtor ~~an authenticated~~ a signed record:

39 (1) Disclaiming any interest in the obligations; and

40 (2) If known to the recipient, providing the name and mailing address of any assignee of or
41 successor to the recipient's interest in the obligations.

42 (f) **Charges for responses.** A debtor is entitled without charge to one response to a
43 request under this section during any six-month period. The secured party may require payment of
44 a charge not exceeding twenty-five dollars for each additional response.

Part 3. Perfection and Priority

Subpart 1. Law Governing Perfection and Priority

§46-9-301. Law governing perfection and priority of security interests.

1 Except as otherwise provided in sections 9-303 through ~~9-306~~ 9-306B, the following rules
2 determine the law governing perfection, the effect of perfection or nonperfection and the priority of

3 a security interest in collateral:

4 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction,
5 the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and
6 the priority of a security interest in collateral.

7 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs
8 perfection, the effect of perfection or nonperfection, and the priority of a possessory security
9 interest in that collateral.

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

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

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

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

17 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs
18 perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-
19 extracted collateral.

§46-9-304. Law governing perfection and priority of security interests in deposit accounts.

1 (a) **Law of bank's jurisdiction governs.** The local law of a bank's jurisdiction governs
2 perfection, the effect of perfection or nonperfection, and the priority of a security interest in a
3 deposit account maintained with that bank even if the transaction does not bear any relation to the
4 bank's jurisdiction.

5 (b) **Bank's jurisdiction.** The following rules determine a bank's jurisdiction for purposes of
6 this part:

7 (1) If an agreement between the bank and the debtor governing the deposit account
8 expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part,

9 this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

10 (2) If paragraph (1) of this subsection does not apply and an agreement between the bank
11 and its customer governing the deposit account expressly provides that the agreement is
12 governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

13 (3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement
14 between the bank and its customer governing the deposit account expressly provides that the
15 deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's
16 jurisdiction.

17 (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in
18 which the office identified in an account statement as the office serving the customer's account is
19 located.

20 (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in
21 which the chief executive office of the bank is located.

§46-9-305. Law governing perfection and priority of security interests in investment property.

1 (a) **Governing law: general rules.** Except as otherwise provided in subsection (c) of this
2 section, the following rules apply:

3 (1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction
4 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in
5 the certificated security represented thereby.

6 (2) The local law of the issuer's jurisdiction as specified in section 8-110(d) governs
7 perfection, the effect of perfection or nonperfection, and the priority of a security interest in an
8 uncertificated security.

9 (3) The local law of the securities intermediary's jurisdiction as specified in section 8-110(e)
10 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in
11 a security entitlement or securities account.

12 (4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect
13 of perfection or nonperfection, and the priority of a security interest in a commodity contract or
14 commodity account.

15 (5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to
16 the jurisdiction.

17 (b) **Commodity intermediary's jurisdiction.** The following rules determine a commodity
18 intermediary's jurisdiction for purposes of this part:

19 (1) If an agreement between the commodity intermediary and commodity customer
20 governing the commodity account expressly provides that a particular jurisdiction is the
21 commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform
22 Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

23 (2) If paragraph (1) of this subsection does not apply and an agreement between the
24 commodity intermediary and commodity customer governing the commodity account expressly
25 provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is
26 the commodity intermediary's jurisdiction.

27 (3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement
28 between the commodity intermediary and commodity customer governing the commodity account
29 expressly provides that the commodity account is maintained at an office in a particular
30 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

31 (4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction
32 is the jurisdiction in which the office identified in an account statement as the office serving the
33 commodity customer's account is located.

34 (5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction
35 is the jurisdiction in which the chief executive office of the commodity intermediary is located.

36 (c) **When perfection governed by law of jurisdiction when debtor located.** The local
37 law of the jurisdiction in which the debtor is located governs:

- 38 (1) Perfection of a security interest in investment property by filing;
- 39 (2) Automatic perfection of a security interest in investment property created by a broker or
- 40 securities intermediary; and
- 41 (3) Automatic perfection of a security interest in a commodity contract or commodity
- 42 account created by a commodity intermediary.

§46-9-306A. Law Governing Perfection and Priority of Security Interests in Chattel Paper.

1 (a) Chattel paper evidenced by authoritative electronic copy. Except as provided in
 2 subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel
 3 paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the
 4 local law of the chattel paper’s jurisdiction governs perfection, the effect of perfection or
 5 nonperfection, and the priority of a security interest in the chattel paper, even if the transaction
 6 does not bear any relation to the chattel paper’s jurisdiction.

7 (b) Chattel paper’s jurisdiction. The following rules determine the chattel paper’s
 8 jurisdiction under this section:

9 (1) If the authoritative electronic copy of the record evidencing chattel paper, or a record
 10 attached to or logically associated with the electronic copy and readily available for review,
 11 expressly provides that a particular jurisdiction is the chattel paper’s jurisdiction for purposes of
 12 this part, this article or the Uniform Commercial Code, that jurisdiction is the chattel paper’s
 13 jurisdiction.

14 (2) If paragraph (1) does not apply and the rules of the system in which the authoritative
 15 electronic copy is recorded are readily available for review and expressly provide that a particular
 16 jurisdiction is the chattel paper’s jurisdiction for purposes of this part, this article, or the Uniform
 17 Commercial Code, that the jurisdiction.

18 (3) If paragraph (1) and (2) do not apply and the authoritative electronic copy, or a record
 19 attached to or logically associated with the electronic copy and readily available for review,
 20 expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that

21 jurisdiction is the chattel paper's jurisdiction.

22 (4) If paragraph's (1), (2), and (3) do not apply and the rules of the system in which the
23 authoritative electronic copy is recorded are readily available for review and expressly provide that
24 the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is
25 the chattel paper's jurisdiction.

26 (5) If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is the
27 jurisdiction in which the debtor is located.

28 **(c) Chattel paper evidenced by authoritative tangible copy.** If an authoritative tangible
29 copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative
30 electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is
31 located in a jurisdiction, the local law of that jurisdiction governs:

32 (1) perfection of a security interest in the chattel paper by possession under Section 9-
33 314a; and

34 (2) the effect of perfection or nonperfection and the priority of a security interest in the
35 chattel paper.

36 **(d) When perfection governed by law of jurisdiction where debtor located.** The local
37 law of the jurisdiction in which the debtor is located governs perfection of a security interest in
38 chattel paper by filing.

§46-9-306B. Law Governing Perfection and Priority of Security Interests in Controllable
Accounts, Controllable Electronic Records, and Controllable Payment Intangibles.

1 (a) Governing law: general rules: Except as provided in subsection (b), the local law of
2 the controllable electronic record's jurisdiction specified in Section 12-107(c) and (d) governs
3 perfection, the effect of perfection or nonperfection, and the priority of a security interest in a
4 controllable electronic record and a security interest in a controllable account or controllable
5 payment intangible evidenced by the controllable record.

6 **(b) When perfection governed by law of jurisdiction where debtor located.** The local

7 law of the jurisdiction in which the debtor is located governs:

8 (1) perfection of a security interest in a controllable account, controllable electronic record,
9 or controllable payment intangible by filing; and

10 (2) automatic perfection of a security interest in a controllable payment intangible created
11 by a sale of the controllable payment intangible.

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

1 (a) **General rule: Perfection by filing.** Except as otherwise provided in subsection (b) of
2 this section and section 9-312(b), a financing statement must be filed to perfect all security
3 interests and agricultural liens.

4 (b) **Exceptions: Filing not necessary.** The filing of a financing statement is not necessary
5 to perfect a security interest:

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

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

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

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

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

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

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

15 (8) In controllable accounts, controllable electronic records, controllable payment
16 intangibles, deposit accounts, ~~electronic chattel paper,~~ electronic documents, investment property
17 or letter-of-credit rights which is perfected by control under section 9-314;

18 (8.1) in chattel paper which is perfected by possession and control under Section 9-314a.

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

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

21 (c) **Assignment of perfected security interest.** If a secured party assigns a perfected
22 security interest or agricultural lien, a filing under this article is not required to continue the
23 perfected status of the security interest against creditors of and transferees from the original
24 debtor.

§46-9-312. Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

1 (a) **Perfection by filing permitted.** A security interest in chattel paper, ~~negotiable~~
2 ~~documents,~~ controllable accounts, controllable electronic records, controllable payment
3 intangibles, instruments or investment property or negotiable documents may be perfected by
4 filing.

5 (b) **Control or possession of certain collateral.** Except as otherwise provided in section
6 9-315(c) and (d) for proceeds:

7 (1) A security interest in a deposit account may be perfected only by control under section
8 9-314; and

9 (2) Except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit
10 right may be perfected only by control under section 9-314; ~~and~~

11 (3) A security interest in money may be perfected only by the secured party's taking
12 possession under section 9-313; and

13 (4) A security interest in electronic money may be perfected only by control under Section
14 9-314.

15 (c) **Goods covered by negotiable document.** While goods are in the possession of a
16 bailee that has issued a negotiable document covering the goods:

17 (1) A security interest in the goods may be perfected by perfecting a security interest in the
18 document; and

19 (2) A security interest perfected in the document has priority over any security interest that
20 becomes perfected in the goods by another method during that time.

21 (d) **Goods covered by nonnegotiable document.** While goods are in the possession of a
22 bailee that has issued a nonnegotiable document covering the goods, a security interest in the
23 goods may be perfected by:

24 (1) Issuance of a document in the name of the secured party;

25 (2) The bailee's receipt of notification of the secured party's interest; or

26 (3) Filing as to the goods.

27 (e) **Temporary perfection: New value.** A security interest in certificated securities,
28 negotiable documents or instruments is perfected without filing or the taking of possession or
29 control for a period of twenty days from the time it attaches to the extent that it arises for new value
30 given under an ~~authenticated~~ a signed security agreement.

31 (f) **Temporary perfection: Goods or documents made available to debtor.** A perfected
32 security interest in a negotiable document or goods in possession of a bailee, other than one that
33 has issued a negotiable document for the goods, remains perfected for twenty days without filing if
34 the secured party makes available to the debtor the goods or documents representing the goods
35 for the purpose of:

36 (1) Ultimate sale or exchange; or

37 (2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or
38 otherwise dealing with them in a manner preliminary to their sale or exchange.

39 (g) **Temporary perfection: Delivery of security certificate or instrument to debtor.** A
40 perfected security interest in a certificated security or instrument remains perfected for twenty
41 days without filing if the secured party delivers the security certificate or instrument to the debtor
42 for the purpose of:

43 (1) Ultimate sale or exchange; or

44 (2) Presentation, collection, enforcement, renewal or registration of transfer.

45 (h) **Expiration of temporary perfection.** After the twenty-day period specified in
46 subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this
47 article.

**§46-9-313. When possession by or delivery to secured party perfects security interest
without filing.**

1 (a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b)
2 of this section, a secured party may perfect a security interest in ~~tangible negotiable documents,~~
3 goods, instruments, negotiable tangible documents, or tangible money or tangible chattel paper by
4 taking possession of the collateral. A secured party may perfect a security interest in certificated
5 securities by taking delivery of the certificated securities under section 8-301.

6 (b) **Goods covered by certificate of title.** With respect to goods covered by a certificate
7 of title issued by this state, a secured party may perfect a security interest in the goods by taking
8 possession of the goods only in the circumstances described in section 9-316(d).

9 (c) **Collateral in possession of person other than debtor.** With respect to collateral
10 other than certificated securities and goods covered by a document, a secured party takes
11 possession of collateral in the possession of a person other than the debtor, the secured party or a
12 lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

13 (1) The person in possession ~~authenticates~~ signs a record acknowledging that it holds
14 possession of the collateral for the secured party's benefit; or

15 (2) The person takes possession of the collateral after having ~~authenticated~~ signed a
16 record acknowledging that it will hold possession of collateral for the secured party's benefit.

17 (d) **Time of perfection by possession; continuation of perfection.** If perfection of a
18 security interest depends upon possession of the collateral by a secured party, perfection occurs
19 ~~no~~ not earlier than the time the secured party takes possession and continues only while the

20 secured party retains possession.

21 (e) **Time of perfection by delivery; continuation of perfection.** A security interest in a
22 certificated security in registered form is perfected by delivery when delivery of the certificated
23 security occurs under section 8-301 and remains perfected by delivery until the debtor obtains
24 possession of the security certificate.

25 (f) **Acknowledgment not required.** A person in possession of collateral is not required to
26 acknowledge that it holds possession for a secured party's benefit.

27 (g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person
28 acknowledges that it holds possession for the secured party's benefit:

29 (1) The acknowledgment is effective under subsection (c) of this section or section 8-
30 301(a), even if the acknowledgment violates the rights of a debtor; and

31 (2) Unless the person otherwise agrees or law other than this article otherwise provides,
32 the person does not owe any duty to the secured party and is not required to confirm the
33 acknowledgment to another person.

34 (h) **Secured party's delivery to person other than debtor.** A secured party having
35 possession of collateral does not relinquish possession by delivering the collateral to a person
36 other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the
37 debtor's business if the person was instructed before the delivery or is instructed
38 contemporaneously with the delivery:

39 (1) Effect of delivery under subsection (h); no duties or confirmation. To hold possession of
40 the collateral for the secured party's benefit; or

41 (2) To redeliver the collateral to the secured party.

42 (i) **A secured party does not relinquish possession, even if a delivery under**
43 **subsection (h) of this section violates the rights of a debtor.** A person to which collateral is
44 delivered under subsection (h) of this section does not owe any duty to the secured party and is not
45 required to confirm the delivery to another person unless the person otherwise agrees or law other

46 than this article otherwise provides.

§46-9-314. Perfection by control.

1 (a) **Perfection by control.** A security interest in ~~investment property, deposit accounts,~~
 2 ~~letter-of-credit rights, electronic chattel paper, or electronic documents~~ controllable accounts,
 3 controllable electronic records, controllable payment intangibles, deposit accounts, electronic
 4 documents, electronic money, investment property, or letter-of-credit rights may be perfected by
 5 control of the collateral under section 7-106, 9-104, ~~9-105,~~ 9-105A, 9-106 ~~or~~ 9-107, or 9-107A.

6 (b) **Specified collateral: Time of perfection by control; continuation of perfection.** A
 7 security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic~~
 8 ~~documents~~ controllable accounts, controllable electronic records, controllable payment
 9 intangibles ~~deposit accounts, electronic documents, electronic money, or letter-of credit rights~~ is
 10 perfected by control under section 7-106, 9-104, ~~9-105 or~~ 9-107, or 9-107A ~~when not earlier than~~
 11 the time the secured party obtains control and remains perfected by control only while the secured
 12 party retains control.

13 (c) **Investment property: Time of perfection by control; continuation of perfection.** A
 14 security interest in investment property is perfected by control under section 9-106 ~~from~~ not earlier
 15 than the time the secured party obtains control and remains perfected by control until:

16 (1) The secured party does not have control; and

17 (2) One of the following occurs:

18 (A) If the collateral is a certificated security, the debtor has or acquires possession of the
 19 security certificate;

20 (B) If the collateral is an uncertificated security, the issuer has registered or registers the
 21 debtor as the registered owner; or

22 (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement
 23 holder.

§46-9-314A. Perfection by Possession and Control of Chattel Paper.

1 (a) Perfection by possession and control. A secured party may perfect a security
 2 interest in chattel paper by taking possession of each authoritative tangible copy of the record
 3 evidencing the chattel paper and obtaining control of each authoritative electronic copy of the
 4 electronic record evidencing the chattel paper.

5 (b) Time of perfection; continuation of perfection. A security interest is perfected under
 6 subsection (a) not earlier than the time the secured party takes possession and obtains control
 7 and remains perfected under subsection (a) only while the secured party retains possession and
 8 control.

9 (c) Application of Section 9-313 to perfection by possession of chattel paper. Section
 10 9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of
 11 a record evidencing chattel paper.

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

1 (a) *General rule: effect on perfection of change in governing law.* -- A security interest
 2 perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c), 9-
 3 306A(d), 9-306B(b) remains perfected until the earliest of:

- 4 (1) The time perfection would have ceased under the law of that jurisdiction;
 5 (2) The expiration of four months after a change of the debtor's location to another
 6 jurisdiction; or
 7 (3) The expiration of one year after a transfer of collateral to a person that thereby
 8 becomes a debtor and is located in another jurisdiction.

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

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

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

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

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

23 (d) *Goods covered by certificate of title from this state.*-- Except as otherwise provided in
24 subsection (e) of this section, a security interest in goods covered by a certificate of title which is
25 perfected by any method under the law of another jurisdiction when the goods become covered by
26 a certificate of title from this state remains perfected until the security interest would have become
27 unperfected under the law of the other jurisdiction had the goods not become so covered.

28 (e) *When subsection (d) security interest becomes unperfected against purchasers.* -- A
29 security interest described in subsection (d) of this section becomes unperfected as against a
30 purchaser of the goods for value and is deemed never to have been perfected as against a
31 purchaser of the goods for value if the applicable requirements for perfection under section 9-
32 311(b) or 9-313 are not satisfied before the earlier of:

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

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

36 (f) *Change in jurisdiction of chattel paper, controllable electronic record, bank, issuer,*
37 *nominated person, securities intermediary or commodity intermediary.*-- A security interest in
38 chattel paper, controllable accounts, controllable records, controllable payment intangibles,
39 deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of
40 the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's

41 jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities
42 intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains
43 perfected until the earlier of:

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

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

48 (g) *Subsection (f) security interest perfected or unperfected under law of new jurisdiction.* --

49 If a security interest described in subsection (f) of this section becomes perfected under the law of
50 the other jurisdiction before the earlier of the time or the end of the period described in that
51 subsection, it remains perfected thereafter. If the security interest does not become perfected
52 under the law of the other jurisdiction before the earlier of that time or the end of that period, it
53 becomes unperfected and is deemed never to have been perfected as against a purchaser of the
54 collateral for value.

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

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

62 (2) If a security interest perfected by a financing statement that is effective under
63 paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the
64 time the financing statement would have become ineffective under the law of the jurisdiction
65 designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains
66 perfected thereafter. If the security interest does not become perfected under the law of the other

67 jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have
68 been perfected as against a purchaser of the collateral for value.

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

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

77 (2) A security interest perfected by the financing statement and which becomes perfected
78 under the law of the other jurisdiction before the earlier of the time the financing statement would
79 have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-
80 305(c) or the expiration of the four-month period remains perfected thereafter. A security interest
81 that is perfected by the financing statement but which does not become perfected under the law of
82 the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to
83 have been perfected as against a purchaser of the collateral for value.

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

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

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

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

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

13 **(c) Lessees that receive delivery.** – Except as otherwise provided in subsection (e) of
14 this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives
15 value and receives delivery of the collateral without knowledge of the security interest or
16 agricultural lien and before it is perfected.

17 **(d) Licensees and buyers of certain collateral.** – A Subject to subsections (f) through (i),
18 a licensee of a general intangible or a buyer, other than a secured party, of collateral other than
19 tangible chattel paper, electronic money, tangible documents, goods, instruments, tangible
20 documents, or a certificated security takes free of a security interest if the licensee or buyer gives
21 value without knowledge of the security interest and before it is perfected.

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

27 **(f) Buyers of chattel paper.** A buyer, other than a secured party, of chattel paper takes
28 free of a security interest if, without knowledge of the security interest and before it is perfected,
29 the buyer gives value and:

30 (1) Receives delivery of each authoritative tangible copy of the record evidencing the
31 chattel paper; and

32 (2) If each authoritative electronic copy of the record evidencing the chattel paper can be
33 subjected to control under Section 9-105, obtains control of each authoritative electronic copy.

34 (g) **Buyers of electronic documents.** A buyer of an electronic document takes free of a
 35 security interest if, without knowledge of the security interest and before it is perfected, the buyer
 36 gives value and, if each authoritative electronic copy of the document can be subjected to control
 37 under Section 7-106, obtains control of each authoritative electronic copy.

38 (h) **Buyers of controllable electronic records.** A buyer of a controllable electronic record
 39 takes free of a security interest if, without knowledge of the security interest and before it is
 40 perfected, the buyer gives value and obtains control of the controllable electronic record.

41 (i) **Buyers of controllable accounts and controllable payment intangibles.** A buyer other
 42 than a secured party, of a controllable account or a controllable payment intangible takes free of a
 43 security interest if, without knowledge of the security interest and before it is perfected, the buyer
 44 gives value and obtains control of the controllable account or controllable payment intangible.

§46-9-323. Future advances.

1 (a) **When priority based on time of advance.** Except as otherwise provided in subsection
 2 (c) of this section, for purposes of determining the priority of a perfected security interest under
 3 section 9-322(a)(1), perfection of the security interest dates from the time an advance is made to
 4 the extent that the security interest secures an advance that:

- 5 (1) Is made while the security interest is perfected only:
 6 (A) Under section 9-309 when it attaches; or
 7 (B) Temporarily under section 9-312(e), (f) or (g); and
 8 (2) Is not made pursuant to a commitment entered into before or while the security interest
 9 is perfected by a method other than under section 9-309 or 9-312(e), (f) or (g).

10 (b) **Lien creditor.** Except as otherwise provided in subsection (c) of this section, a security
 11 interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the
 12 security interest secures an advance made more than forty-five days after the person becomes a
 13 lien creditor unless the advance is made:

- 14 (1) Without knowledge of the lien; or

15 (2) Pursuant to a commitment entered into without knowledge of the lien.

16 (c) **Buyer of receivables.** Subsections (a) and (b) of this section do not apply to a security
17 interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or
18 promissory notes or a consignor.

19 (d) **Buyer of goods.** Except as otherwise provided in subsection (e) of this section, a buyer
20 of goods ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the
21 extent that it secures advances made after the earlier of:

22 (1) The time the secured party acquires knowledge of the buyer's purchase; or

23 (2) Forty-five days after the purchase.

24 (e) **Advances made pursuant to commitment: priority of buyer of goods.** Subsection
25 (d) of this section does not apply if the advance is made pursuant to a commitment entered into
26 without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

27 (f) **Lessee of goods.** Except as otherwise provided in subsection (g) of this section, a
28 lessee of goods, ~~other than a lessee in ordinary course of business,~~ takes the leasehold interest
29 free of a security interest to the extent that it secures advances made after the earlier of:

30 (1) The time the secured party acquires knowledge of the lease; or

31 (2) Forty-five days after the lease contract becomes enforceable.

32 (g) **Advances made pursuant to commitment: priority of lessee of goods.** Subsection
33 (f) of this section does not apply if the advance is made pursuant to a commitment entered into
34 without knowledge of the lease and before the expiration of the forty-five-day period.

§46-9-324. Priority of purchase-money security interests.

1 (a) **General rule: purchase-money priority.** Except as otherwise provided in subsection
2 (g) of this section, a perfected purchase-money security interest in goods other than inventory or
3 livestock has priority over a conflicting security interest in the same goods, and, except as
4 otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also
5 has priority, if the purchase-money security interest is perfected when the debtor receives

6 possession of the collateral or within twenty days thereafter.

7 **(b) Inventory purchase-money priority.** Subject to subsection (c) and except as
8 otherwise provided in subsection (g) of this section, a perfected purchase-money security interest
9 in inventory has priority over a conflicting security interest in the same inventory, has priority over a
10 conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory
11 and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise
12 provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the
13 extent the identifiable cash proceeds are received on or before the delivery of the inventory to a
14 buyer, if:

15 (1) The purchase-money security interest is perfected when the debtor receives
16 possession of the inventory;

17 (2) The purchase-money secured party sends an ~~authenticated~~ a signed notification to the
18 holder of the conflicting security interest;

19 (3) The holder of the conflicting security interest receives the notification within five years
20 before the debtor receives possession of the inventory; and

21 (4) The notification states that the person sending the notification has or expects to acquire
22 a purchase-money security interest in inventory of the debtor and describes the inventory.

23 **(c) Holders of conflicting inventory security interests to be notified.** Subsection (b)(2)
24 through (4), inclusive, of this section apply only if the holder of the conflicting security interest had
25 filed a financing statement covering the same types of inventory:

26 (1) If the purchase-money security interest is perfected by filing, before the date of the
27 filing; or

28 (2) If the purchase-money security interest is temporarily perfected without filing or
29 possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

30 **(d) Livestock purchase-money priority.** Subject to subsection (e) of this section and
31 except as otherwise provided in subsection (g) of this section, a perfected purchase-money

32 security interest in livestock that are farm products has priority over a conflicting security interest in
33 the same livestock, and, except as otherwise provided in section 9-327, a perfected security
34 interest in their identifiable proceeds and identifiable products in their unmanufactured states also
35 has priority, if:

36 (1) The purchase-money security interest is perfected when the debtor receives
37 possession of the livestock;

38 (2) The purchase-money secured party sends ~~an authenticated~~ a signed notification to the
39 holder of the conflicting security interest;

40 (3) The holder of the conflicting security interest receives the notification within six months
41 before the debtor receives possession of the livestock; and

42 (4) The notification states that the person sending the notification has or expects to acquire
43 a purchase-money security interest in livestock of the debtor and describes the livestock.

44 (e) **Holders of conflicting livestock security interests to be notified.** Subsection (d)(2)
45 through (4), inclusive, of this section apply only if the holder of the conflicting security interest had
46 filed a financing statement covering the same types of livestock:

47 (1) If the purchase-money security interest is perfected by filing, before the date of the
48 filing; or

49 (2) If the purchase-money security interest is temporarily perfected without filing or
50 possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

51 (f) **Software purchase-money priority.** Except as otherwise provided in subsection (g) of
52 this section, a perfected purchase-money security interest in software has priority over a
53 conflicting security interest in the same collateral, and, except as otherwise provided in section 9-
54 327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the
55 purchase-money security interest in the goods in which the software was acquired for use has
56 priority in the goods and proceeds of the goods under this section.

57 (g) **Conflicting purchase-money security interests.** If more than one security interest

58 qualifies for priority in the same collateral under subsection (a), (b), (d) or (f) of this section:

59 (1) A security interest securing an obligation incurred as all or part of the price of the
60 collateral has priority over a security interest securing an obligation incurred for value given to
61 enable the debtor to acquire rights in or the use of collateral; and

62 (2) In all other cases, section 9-322(a) applies to the qualifying security interests.

§46-9-326A. Priority of Security Interest in Controllable Account, Controllable Electronic Record, and Controllable Payment Intangible.

1 A security interest in a controllable account, controllable electronic record, or controllable
2 payment intangible held by a secured party having control of the account, electronic record, or
3 payment intangible has priority over a conflicting security interest held by a secured party that
4 does not have control.

§46-9-330. Priority of purchaser of chattel paper or instrument.

1 (a) **Purchaser's priority: security interest claimed merely as proceeds.** A purchaser of
2 chattel paper has priority over a security interest in the chattel paper which is claimed merely as
3 proceeds of inventory subject to a security interest if:

4 (1) In good faith and in the ordinary course of the purchaser's business, the purchaser
5 gives new value, ~~and~~ takes possession of each authoritative tangible copy of the record
6 evidencing the chattel paper, or and obtains control of under Section 9-105 of each authoritative
7 electronic copy of the record evidencing the chattel paper under section 9-105; and

8 (2) ~~The chattel paper does~~ authoritative copies of the record evidencing the chattel paper
9 do not indicate that it the chattel paper has been assigned to an identified assignee other than the
10 purchaser.

11 (b) **Purchaser's priority: other security interests.** A purchaser of chattel paper has
12 priority over a security interest in the chattel paper which is claimed other than merely as proceeds
13 of inventory subject to a security interest if the purchaser gives new value, ~~and~~ takes possession of
14 each authoritative tangible copy of the record evidencing the chattel paper, or and obtains control

15 of under Section 9-105 of each authoritative electronic copy of the record evidencing the chattel
16 paper under section 9-105 in good faith, in the ordinary course of the purchaser's business, and
17 without knowledge that the purchase violates the rights of the secured party.

18 (c) **Chattel paper purchaser's priority in proceeds.** Except as otherwise provided in
19 section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this
20 section also has priority in proceeds of the chattel paper to the extent that:

21 (1) Section 9-322 provides for priority in the proceeds; or

22 (2) The proceeds consist of the specific goods covered by the chattel paper or cash
23 proceeds of the specific goods, even if the purchaser's security interest in the proceeds is
24 unperfected.

25 (d) **Instrument purchaser's priority.** Except as otherwise provided in section 9-331(a), a
26 purchaser of an instrument has priority over a security interest in the instrument perfected by a
27 method other than possession if the purchaser gives value and takes possession of the instrument
28 in good faith and without knowledge that the purchase violates the rights of the secured party.

29 (e) **Holder of purchase-money security interest gives new value.** For purposes of
30 subsections (a) and (b) of this section, the holder of a purchase-money security interest in
31 inventory gives new value for chattel paper constituting proceeds of the inventory.

32 (f) **Indication of assignment gives knowledge.** For purposes of subsections (b) and (d)
33 of this section, if the authoritative copies of the record evidencing chattel paper or an instrument
34 ~~indicates~~ indicate that it the chattel paper or instrument has been assigned to an identified secured
35 party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that
36 the purchase violates the rights of the secured party.

PART 3. PERFECTION AND PRIORITY

**§46-9-331. Priority of rights of purchasers of Controllable Accounts, Controllable
Electronic Records, Controllable Payment Intangibles, instruments, documents,
Instruments, and securities under other articles; priority of interests in financial**

assets and security entitlements under articles Articles 8 and 12.

1 (a) **Rights under articles 3, 7, and 8, and 12 not limited.** This article does not limit the
2 rights of a holder in due course of a negotiable instrument, a holder to which a negotiable
3 document of title has been duly negotiated or a protected purchaser of a security, or a qualifying
4 purchaser of a controllable account, controllable electronic record, or a controllable payment
5 intangible. These holders or purchasers take priority over an earlier security interest, even if
6 perfected, to the extent provided in articles 3, 7, and 8 and 12.

7 (b) **Protection under ~~article eight~~ Articles 8 and 12.** This article does not limit the rights
8 of or impose liability on a person to the extent that the person is protected against the assertion of
9 a claim under ~~article~~ Articles 8 and 12.

10 (c) **Filing not notice.** Filing under this article does not constitute notice of a claim or
11 defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this
12 section.

§46-9-332. Transfer of money; transfer of funds from deposit account.

1 (a) **Transferee of tangible money.** A transferee of tangible money takes the money free of
2 a security interest ~~unless the transferee acts~~ if the transferee receives possession of the money
3 without acting in collusion with the debtor in violating the rights of the secured party.

4 (b) **Transferee of funds from deposit account.** A transferee of funds from a deposit
5 account takes the funds free of a security interest in the deposit account unless the transferee acts
6 in collusion with the debtor in violating the rights of the secured party.

7 (c) **Transferee of electronic money.** A transferee of electronic money takes the money
8 free of a security interest if the transferee obtains control of the money without acting in collusion
9 with the debtor in violating the rights of the secured party.

§46-9-334. Priority of security interests in fixtures and crops.

1 (a) **Security interest in fixtures under this article.** A security interest under this article
2 may be created in goods that are fixtures or may continue in goods that become fixtures. A

3 security interest does not exist under this article in ordinary building materials incorporated into an
4 improvement on land.

5 (b) **Security interest in fixtures under real-property law.** This article does not prevent
6 creation of an encumbrance upon fixtures under real property law.

7 (c) **General rule: subordination of security interest in fixtures.** In cases not governed
8 by subsections (d) through (h), inclusive, of this section, a security interest in fixtures is
9 subordinate to a conflicting interest of an encumbrancer or owner of the related real property other
10 than the debtor.

11 (d) **Fixtures purchase-money priority.** Except as otherwise provided in subsection (h) of
12 this section, a perfected security interest in fixtures has priority over a conflicting interest of an
13 encumbrancer or owner of the real property if the debtor has an interest of record in or is in
14 possession of the real property and:

15 (1) The security interest is a purchase-money security interest;

16 (2) The interest of the encumbrancer or owner arises before the goods become fixtures;

17 and

18 (3) The security interest is perfected by a fixture filing before the goods become fixtures or
19 within twenty days thereafter.

20 (e) **Priority of security interest in fixtures over interests in real property.** A perfected
21 security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of
22 the real property if:

23 (1) The debtor has an interest of record in the real property or is in possession of the real
24 property and the security interest:

25 (A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of
26 record; and

27 (B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or
28 owner;

29 (2) Before the goods become fixtures, the security interest is perfected by any method
30 permitted by this article and the fixtures are readily removable:

31 (A) Factory or office machines;

32 (B) Equipment that is not primarily used or leased for use in the operation of the real
33 property; or

34 (C) Replacements of domestic appliances that are consumer goods;

35 (3) The conflicting interest is a lien on the real property obtained by legal or equitable
36 proceedings after the security interest was perfected by any method permitted by this article; or

37 (4) The security interest is:

38 (A) Created in a manufactured home in a manufactured-home transaction; and

39 (B) Perfected pursuant to a statute described in section 9-311(a)(2).

40 (f) **Priority based on consent, disclaimer or right to remove.** A security interest in
41 fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or
42 owner of the real property if:

43 (1) The encumbrancer or owner has, in ~~an authenticated~~ a signed record, consented to the
44 security interest or disclaimed an interest in the goods as fixtures; or

45 (2) The debtor has a right to remove the goods as against the encumbrancer or owner.

46 (g) **Continuation of subsection (f)(2) priority.** The priority of the security interest under
47 subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the
48 goods as against the encumbrancer or owner terminates.

49 (h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the
50 extent that it secures an obligation incurred for the construction of an improvement on land,
51 including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except
52 as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is
53 subordinate to a construction mortgage if a record of the mortgage is recorded before the goods
54 become fixtures and the goods become fixtures before the completion of the construction. A

55 mortgage has this priority to the same extent as a construction mortgage to the extent that it is
 56 given to refinance a construction mortgage.

57 (i) **Priority of security interest in crops.** A perfected security interest in crops growing on
 58 real property has priority over a conflicting interest of an encumbrancer or owner of the real
 59 property if the debtor has an interest of record in or is in possession of the real property.

60 (j) **Subsection (i) prevails.** Subsection (i) of this section prevails over any inconsistent
 61 provision of an existing or future statute, rule or regulation of this state unless the provision is
 62 contained in a statute of this state, refers expressly to this section and states that the provision
 63 prevails over this section.

§46-9-341. Bank's rights and duties with respect to deposit account.

1 Except as otherwise provided in section 9-340(c), and unless the bank otherwise agrees in
 2 ~~an authenticated~~ a signed record, a bank's rights and duties with respect to a deposit account
 3 maintained with the bank are not terminated, suspended or modified by:

- 4 (1) The creation, attachment or perfection of a security interest in the deposit account;
 5 (2) The bank's knowledge of the security interest; or
 6 (3) The bank's receipt of instructions from the secured party.

§46-9-404. Rights acquired by assignee; claims and defenses against assignee.

1 (a) **Assignee's rights subject to terms, claims and defenses; exceptions.** Unless an
 2 account debtor has made an enforceable agreement not to assert defenses or claims, and subject
 3 to subsections (b) through (e), inclusive, of this section, the rights of an assignee are subject to:

- 4 (1) All terms of the agreement between the account debtor and assignor and any defense
 5 or claim in recoupment arising from the transaction that gave rise to the contract; and
 6 (2) Any other defense or claim of the account debtor against the assignor which accrues
 7 before the account debtor receives a notification of the assignment ~~authenticated~~ signed by the
 8 assignor or the assignee.

9 (b) **Account debtor's claim reduces amount owed to assignee.** Subject to subsection

10 (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an
11 account debtor against an assignor may be asserted against an assignee under subsection (a) of
12 this section only to reduce the amount the account debtor owes.

13 (c) **Rule for individual under other law.** This section is subject to law other than this
14 article which establishes a different rule for an account debtor who is an individual and who
15 incurred the obligation primarily for personal, family or household purposes.

16 (d) **Omission of required statement in consumer transaction.** In a consumer
17 transaction, if a record evidences the account debtor's obligation, law other than this article
18 requires that the record include a statement to the effect that the account debtor's recovery against
19 an assignee with respect to claims and defenses against the assignor may not exceed amounts
20 paid by the account debtor under the record, and the record does not include such a statement, the
21 extent to which a claim of an account debtor against the assignor may be asserted against an
22 assignee is determined as if the record included such a statement.

23 (e) **Inapplicability to health-care-insurance receivable.** This section does not apply to
24 an assignment of a health-care-insurance receivable.

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

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

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

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

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

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

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

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

20 (c) Proof of assignment. Subject to ~~subsection~~ subsections (h) and k of this section, if
21 requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the
22 assignment has been made. Unless the assignee complies, the account debtor may discharge its
23 obligation by paying the assignor, even if the account debtor has received a notification under
24 subsection (a) of this section.

25 **(d) Term restricting assignment generally ineffective.** – In this subsection, "promissory
26 note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided
27 in ~~subsection~~ subsections (e) and (k) of this section and sections 2A-303 and 9-407, and subject to
28 subsection (h) of this section, a term in an agreement between an account debtor and an assignor
29 or in a promissory note is ineffective to the extent that it:

30 (1) Prohibits, restricts or requires the consent of the account debtor or person obligated on
31 the promissory note to the assignment or transfer of, or the creation, attachment, perfection or
32 enforcement of a security interest in, the account, chattel paper, payment intangible or promissory
33 note; or

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

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

41 (f) **Legal restrictions on assignment generally ineffective.**— Except as otherwise
42 provided in subsection (k) and sections 2A-303 and 9-407 and subject to subsections (h) and (i) of
43 this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a
44 government, governmental body or official, or account debtor to the assignment or transfer of, or
45 creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule
46 of law, statute or regulation:

47 (1) Prohibits, restricts or requires the consent of the government, governmental body or
48 official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection
49 or enforcement of a security interest in the account or chattel paper; or

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

53 (g) **Subsection (b)(3) not waivable.** — Subject to ~~subsection~~ subsections (h) and (k) of
54 this section, an account debtor may not waive or vary its option under subsection (b)(3) of this
55 section.

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

59 (i) **Inapplicability.** — This section does not apply to an assignment of a health-care-

60 insurance receivable. Subsection (f) does not apply to an assignment or transfer of, or the
 61 creation, attachment, perfection or enforcement of a security interest in, a right the transfer of
 62 which is prohibited or restricted by any of the following statutes to the extent that the statute is
 63 inconsistent with subsection (f): Chapter twenty-three, article four, section eighteen, Chapter forty-
 64 six-a, article six-h, and a claim or right to receive benefits under a special needs trust as described
 65 in 42 U.S.C. §1396p(d)(4).

66 (j) **Section prevails over specified inconsistent law.** -- This section prevails over any
 67 inconsistent provision of an existing or future statute, rule or regulation of this state unless the
 68 provision is contained in a statute of this state, refers expressly to this section and states that the
 69 provision prevails over this section.

70 (k) Inapplicability to interests certain entities. Subsections (d), (f), and (i) do not apply
 71 to a security interest in an ownership interest in a general partnership, limited partnership, or
 72 limited liability company.

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

- 9 (1) Would impair the creation, attachment or perfection of a security interest; or
 10 (2) Provides that the assignment or transfer or the creation, attachment or perfection of the
 11 security interest may give rise to a default, breach, right of recoupment, claim, defense,

12 termination, right of termination or remedy under the promissory note, health-care-insurance
13 receivable or general intangible.

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

18 (c) **Legal restrictions on assignment generally ineffective.**-- A rule of law, statute or
19 regulation that prohibits, restricts or requires the consent of a government, governmental body or
20 official, person obligated on a promissory note, or account debtor to the assignment or transfer of,
21 or creation of a security interest in, a promissory note, health-care-insurance receivable or general
22 intangible, including a contract, permit, license or franchise between an account debtor and a
23 debtor, is ineffective to the extent that the rule of law, statute or regulation:

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

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

29 (d) **Limitation on ineffectiveness under subsections (a) and (c).** -- To the extent that a
30 term in a promissory note or in an agreement between an account debtor and a debtor which
31 relates to a health-care-insurance receivable or general intangible or a rule of law, statute or
32 regulation described in subsection (c) of this section would be effective under law other than this
33 article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or
34 perfection of a security interest in the promissory note, health-care-insurance receivable or
35 general intangible:

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

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

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

43 (4) Does not entitle the secured party to use or assign the debtor's rights under the
44 promissory note, health-care-insurance receivable or general intangible, including any related
45 information or materials furnished to the debtor in the transaction giving rise to the promissory
46 note, health-care-insurance receivable or general intangible;

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

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

52 (e) **Section prevails over specified inconsistent law.** — This section prevails over any
53 inconsistent provisions of an existing or future statute, rule or regulation of this state unless the
54 provision is contained in a statute of this state, refers expressly to this section and states that the
55 provision prevails over this section.

56 (f) **Inapplicability.** — ~~Subsection (c) of this section does not apply to an assignment or~~
57 ~~transfer of or the creation, attachment, perfection, or enforcement of a security interest in, a right~~
58 ~~the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the~~
59 ~~statute is inconsistent with said subsection: Chapter twenty-three, article four, section eighteen;~~
60 ~~chapter forty-six-a, article six-h; and a claim or right to receive benefits under a special needs trust~~
61 ~~as described in 42 U.S.C. §1396(d)(4).~~ **Inapplicability to interests in certain entities.** This
62 section does not apply to a security interest in an ownership interest in a general partnership,
63 limited partnership, or limited company.

64 (g) **Promissory note.** In this section, "promissory note" includes a negotiable instrument
65 that evidences chattel paper.

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

§46-9-509. Persons entitled to file a record.

1 (a) **Person entitled to file record.** A person may file an initial financing statement,
2 amendment that adds collateral covered by a financing statement, or amendment that adds a
3 debtor to a financing statement only if:

4 (1) The debtor authorizes the filing in an authenticated a signed record or pursuant to
5 subsection (b) or (c) of this section; or

6 (2) The person holds an agricultural lien that has become effective at the time of filing and
7 the financing statement covers only collateral in which the person holds an agricultural lien.

8 (b) **Security agreement as authorization.** By authenticating signing or becoming bound
9 as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial
10 financing statement, and an amendment, covering:

11 (1) The collateral described in the security agreement; and

12 (2) Property that becomes collateral under section 9-315(a)(2), whether or not the security
13 agreement expressly covers proceeds.

14 (c) **Acquisition of collateral as authorization.** By acquiring collateral in which a security
15 interest or agricultural lien continues under section 9-315(a)(1), a debtor authorizes the filing of an
16 initial financing statement, and an amendment, covering the collateral and property that becomes
17 collateral under section 9-315(a)(2).

18 (d) **Person entitled to file certain amendments.** A person may file an amendment other
19 than an amendment that adds collateral covered by a financing statement or an amendment that
20 adds a debtor to a financing statement only if:

21 (1) The secured party of record authorizes the filing; or

22 (2) The amendment is a termination statement for a financing statement as to which the
23 secured party of record has failed to file or send a termination statement as required by section 9-
24 513(a) or (c), the debtor authorizes the filing and the termination statement indicates that the
25 debtor authorized it to be filed.

26 (e) **Multiple secured parties of record.** If there is more than one secured party of record
27 for a financing statement, each secured party of record may authorize the filing of an amendment
28 under subsection (d) of this section.

§46-9-513. Termination statement.

1 (a) **Consumer goods.** A secured party shall cause the secured party of record for a
2 financing statement to file a termination statement for the financing statement if the financing
3 statement covers consumer goods and:

4 (1) There is no obligation secured by the collateral covered by the financing statement and
5 no commitment to make an advance, incur an obligation or otherwise give value; or

6 (2) The debtor did not authorize the filing of the initial financing statement.

7 (b) **Time for compliance with subsection (a).** To comply with subsection (a) of this
8 section, a secured party shall cause the secured party of record to file the termination statement:

9 (1) Within one month after there is no obligation secured by the collateral covered by the
10 financing statement and no commitment to make an advance, incur an obligation or otherwise give
11 value; or

12 (2) If earlier, within twenty days after the secured party receives ~~an authenticated~~ a signed
13 demand from a debtor.

14 (c) **Other collateral.** In cases not governed by subsection (a), within twenty days after a

15 secured party receives an ~~authenticated~~ signed demand from a debtor, the secured party shall
16 cause the secured party of record for a financing statement to send to the debtor a termination
17 statement for the financing statement or file the termination statement in the filing office if:

18 (1) Except in the case of a financing statement covering accounts or chattel paper that has
19 been sold or goods that are the subject of a consignment, there is no obligation secured by the
20 collateral covered by the financing statement and no commitment to make an advance, incur an
21 obligation, or otherwise give value;

22 (2) The financing statement covers accounts or chattel paper that has been sold but as to
23 which the account debtor or other person obligated has discharged its obligation;

24 (3) The financing statement covers goods that were the subject of a consignment to the
25 debtor but are not in the debtor's possession; or

26 (4) The debtor did not authorize the filing of the initial financing statement.

27 (d) **Effect of filing termination statement.** Except as otherwise provided in section 9-510,
28 upon the filing of a termination statement with the filing office, the financing statement to which the
29 termination statement relates ceases to be effective. Except as otherwise provided in section 9-
30 510, for purposes of section 9-519 (g), 9-522 (a), and 9-523 (c), the filing with the filing office of a
31 termination statement relating to a financing statement that indicates that the debtor is a
32 transmitting utility also causes the effectiveness of the financing statement to lapse.

**§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts,
chattel paper, payment intangibles or promissory notes.**

1 (a) **Rights of secured party after default.** After default, a secured party has the rights
2 provided in this part and, except as otherwise provided in section 9-602, those provided by
3 agreement of the parties. A secured party:

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

6 (2) If the collateral is documents, may proceed either as to the documents or as to the

7 goods they cover.

8 (b) **Rights and duties of secured party in possession or control.** A secured party in
9 possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-105A, 9-106
10 or 9-107, or 9-107A has the rights and duties provided in section 9-207.

11 (c) **Rights cumulative; simultaneous exercise.** The rights under subsections (a) and (b)
12 of this section are cumulative and may be exercised simultaneously.

13 (d) **Rights of debtor and obligor.** Except as otherwise provided in subsection (g) of this
14 section and section 9-605, after default, a debtor and an obligor have the rights provided in this
15 part and by agreement of the parties.

16 (e) **Lien of levy after judgment.** If a secured party has reduced its claim to judgment, the
17 lien of any levy that may be made upon the collateral by virtue of an execution based upon the
18 judgment relates back to the earliest of:

19 (1) The date of perfection of the security interest or agricultural lien in the collateral;

20 (2) The date of filing a financing statement covering the collateral; or

21 (3) Any date specified in a statute under which the agricultural lien was created.

22 (f) **Execution sale.** A sale pursuant to an execution is a foreclosure of the security interest
23 or agricultural lien by judicial procedure within the meaning of this section. A secured party may
24 purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

25 (g) Consignor or buyer of certain rights to payment. Except as otherwise provided in
26 section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer
27 of accounts, chattel paper, payment intangibles or promissory notes.

§46-9-605. Unknown debtor or secondary obligor.

1 A (a) In general: No duty owed by secured party. Except as provided in subsection (b), a
2 secured party does not owe a duty based on its status as secured party:

3 (1) To a person that is a debtor or obligor, unless the secured party knows:

4 (A) That the person is a debtor or obligor;

5 (B) The identity of the person; and

6 (C) How to communicate with the person; or

7 (2) To a secured party or lienholder that has filed a financing statement against a person,
8 unless the secured party knows:

9 (A) That the person is a debtor; and

10 (B) The identity of the person.

11 **(b) Exception: Secured party owes duty to debtor or obligor.** A secured party owes a
12 duty based on its status as a secured party to a person if, at the time the secured party obtain
13 control of collateral that is a controllable account, controllable electronic record, or controllable
14 payment intangible or at the time the security interest attaches to the collateral, whichever is later:

15 (1) the person is a debtor or obligor; and

16 (2) the secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating
17 to the person is not provided by the collateral, a record attached to or logically associated with the
18 collateral, or the system in which the collateral is recorded.

**§46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and
right to surplus.**

1 (a) Application of proceeds, surplus and deficiency if obligation secured. If a security
2 interest or agricultural lien secures payment or performance of an obligation, the following rules
3 apply:

4 (1) A secured party shall apply or pay over for application the cash proceeds of collection
5 or enforcement under section 9-607 in the following order to:

6 (A) The reasonable expenses of collection and enforcement and, to the extent provided for
7 by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred
8 by the secured party;

9 (B) The satisfaction of obligations secured by the security interest or agricultural lien under
10 which the collection or enforcement is made; and

11 (C) The satisfaction of obligations secured by any subordinate security interest in or other
12 lien on the collateral subject to the security interest or agricultural lien under which the collection or
13 enforcement is made if the secured party receives ~~an authenticated~~ a signed demand for proceeds
14 before distribution of the proceeds is completed.

15 (2) If requested by a secured party, a holder of a subordinate security interest or other lien
16 shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder
17 complies, the secured party need not comply with the holder's demand under paragraph (1)(C) of
18 this subsection.

19 (3) A secured party need not apply or pay over for application noncash proceeds of
20 collection and enforcement under section 9-607 unless the failure to do so would be commercially
21 unreasonable. A secured party that applies or pays over for application noncash proceeds shall do
22 so in a commercially reasonable manner.

23 (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is
24 liable for any deficiency.

25 (b) **No surplus or deficiency in sales of certain rights to payment.** If the underlying
26 transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the
27 debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

§46-9-611. Notification before disposition of collateral.

1 (a) **"Notification date."** In this section, "notification date" means the earlier of the date on
2 which:

3 (1) A secured party sends to the debtor and any secondary obligor ~~an authenticated~~ a
4 signed notification of disposition; or

5 (2) The debtor and any secondary obligor waive the right to notification.

6 (b) **Notification of disposition required.** Except as otherwise provided in subsection (d)
7 of this section, a secured party that disposes of collateral under section 9-610 shall send to the
8 persons specified in subsection (c) of this section a reasonable ~~authenticated~~ signed notification of

9 disposition.

10 (c) **Persons to be notified.** To comply with subsection (b), the secured party shall send an
11 ~~authenticated~~ a signed notification of disposition to:

12 (1) The debtor;

13 (2) Any secondary obligor; and

14 (3) If the collateral is other than consumer goods:

15 (A) Any other person from which the secured party has received, before the notification
16 date, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;

17 (B) Any other secured party or lienholder that, ten days before the notification date, held a
18 security interest in or other lien on the collateral perfected by the filing of a financing statement
19 that:

20 (i) Identified the collateral;

21 (ii) Was indexed under the debtor's name as of that date; and

22 (iii) Was filed in the office in which to file a financing statement against the debtor covering
23 the collateral as of that date; and

24 (C) Any other secured party that, ten days before the notification date, held a security
25 interest in the collateral perfected by compliance with a statute, regulation, or treaty described in
26 section 9-311(a).

27 (d) **Subsection (b) inapplicable: perishable collateral; recognized market.** Subsection
28 (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in
29 value or is of a type customarily sold on a recognized market.

30 (e) **Compliance with subsection (c)(3)(B).** A secured party complies with the
31 requirement for notification prescribed by subsection (c)(3)(B) of this section if:

32 (1) Not later than twenty days or earlier than thirty days before the notification date, the
33 secured party requests, in a commercially reasonable manner, information concerning financing
34 statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B) of this

35 section; and

36 (2) Before the notification date, the secured party:

37 (A) Did not receive a response to the request for information; or

38 (B) Received a response to the request for information and sent ~~an authenticated~~ a signed
39 notification of disposition to each secured party or other lienholder named in that response whose
40 financing statement covered the collateral.

§46-9-613. Contents and form of notification before disposition of collateral: general.

1 Except in a consumer-goods transaction, the following rules apply:

2 (1) The contents of a notification of disposition are sufficient if the notification:

3 (A) Describes the debtor and the secured party;

4 (B) Describes the collateral that is the subject of the intended disposition;

5 (C) States the method of intended disposition;

6 (D) States that the debtor is entitled to an accounting of the unpaid indebtedness and
7 states the charge, if any, for an accounting; and

8 (E) States the time and place of a public disposition or the time after which any other
9 disposition is to be made.

10 (2) Whether the contents of a notification that lacks any of the information specified in
11 paragraph (1) of this section are nevertheless sufficient is a question of fact.

12 (3) The contents of a notification providing substantially the information specified in
13 paragraph (1) of this section are sufficient, even if the notification includes:

14 (A) Information not specified by that paragraph; or

15 (B) Minor errors that are not seriously misleading.

16 (4) A particular phrasing of the notification is not required.

17 (5) The following form of notification and the form appearing in section ~~9-614(3)~~ 9-
18 614(a)(3), when completed in accordance with the instructions in subsection (b) and Section 9-
19 614(b), each provides sufficient information:

20 ~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~

21 ~~To: [Name of debtor, obligor, or other person to which the notification is sent]~~

22 ~~From: [Name, address, and telephone number of secured party]~~

23 ~~Name of Debtor(s): [Include only if debtor(s) are not an addressee]~~

24 ~~For a public disposition:~~

25 ~~We will sell or [lease or license, as applicable] the [describe collateral] to the highest~~
26 ~~qualified bidder in public as follows:~~

27 ~~Day and Date: _____~~

28 ~~Time: _____~~

29 ~~Place: _____~~

30 ~~For a private disposition:~~

31 ~~We will sell [or lease or license, as applicable] the [describe collateral] privately sometime~~
32 ~~after [day and date].~~

33 ~~You are entitled to an accounting of the unpaid indebtedness secured by the property that~~
34 ~~we intend to sell [or lease or license, as applicable] for a charge of \$ _____.~~ You may
35 ~~request an accounting by calling us at [telephone number].~~

36 ~~[End of Form]~~

37 **NOTIFICATION OF DISPOSITION OF COLLATERAL**

38 To: (Name of debtor, obligor, or other person to which the notification is sent)

39 From: (Name, address, and telephone number of secured party)

40 {1} Name of any debtor that is not an addressee: Name of each debtor

41 {2} We will sell (describe collateral) (to the highest qualified bidder) at a public sale. A sale
42 could include a lease or license. The sale will be held as follows:

43

44 (Date)

45 (Time)

46 (Place)

47 {3} We will sell (describe collateral at private sale sometime after (date). A sale could
48 include a lease or license.

49 {4} You are entitled to an accounting of the unpaid indebtedness secured by the property
50 that we intend to sell, or as applicable, lease, or license.

51 {5} If you request an accounting, you must pay a charge of \$ (amount).

52 {6} You may request an accounting by calling us at (telephone number).

53 **[End of form]**

54 (b) Instructions for form of notification. The following instructions apply to the form of
55 notification in subsection (a)(5).

56 (1) The instructions in this subsection refer to the numbers in braces in the notification. The
57 numbers and braces are used only for purposes of these instructions.

58 (2) Include and complete item {1} only if there is a debtor that is not an addressee of the
59 notification and list the name or names.

60 (3) Include and complete either item {2}, if the notification relates to a public disposition of
61 the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item
62 {2} is included, include the words "to the highest qualified bidder" only if applicable.

63 (4) Include and complete items {4} and {6}.

64 (5) Include and complete item {5} only if the sender will charge the recipient for an
65 accounting.

§46-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

1 **(a) Contents and form of notification.** In a consumer-goods transaction, the following
2 rules apply:

3 (1) A notification of disposition must provide the following information:

4 (A) The information specified in section ~~9-613(1)~~ 9-613(a)(1);

5 (B) A description of any liability for a deficiency of the person to which the notification is
6 sent;

7 (C) A telephone number from which the amount that must be paid to the secured party to
8 redeem the collateral under section 9-623 is available; and

9 (D) A telephone number or mailing address from which additional information concerning
10 the disposition and the obligation secured is available.

11 (2) A particular phrasing of the notification is not required.

12 (3) The following form of notification, when completed, provides sufficient information in
13 accordance with the instructions in subsection (b):

14 [Name and address of secured party]

15 [Date]

16 **NOTICE OF OUR PLAN TO SELL PROPERTY**

17 [Name and address of any obligor who is also a debtor]

18 Subject: [Identification of Transaction]

19 We have your [describe collateral], because you broke promises in our agreement.

20

21 *For a public disposition:*

22 We will sell [describe collateral] at public sale. A sale could include a lease or license.

23 The sale will be held as follows:

24 Date: _____

25 Time: _____

26 Place: _____

27 You may attend the sale and bring bidders if you want.

28 *For a private disposition:*

29 We will sell [describe collateral] at private sale sometime after [date]. A sale could

30 include a lease or license.

31 ~~The money that we get from the sale (after paying our costs) will reduce the amount you~~
 32 ~~owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the~~
 33 ~~difference. If we get more money than you owe, you will get the extra money, unless we must pay it~~
 34 ~~to someone else.~~

35 ~~You can get the property back at any time before we sell it by paying us the full amount you~~
 36 ~~owe (not just the past due payments), including our expenses. To learn the exact amount you must~~
 37 ~~pay, call us at [telephone number].~~

38 ~~If you want us to explain to you in writing how we have figured the amount that you owe us,~~
 39 ~~you may call us at [telephone number] or write us at [secured party's address] and request a~~
 40 ~~written explanation.~~

41 ~~If you need more information about the sale call us at [telephone number] or write us at~~
 42 ~~[secured party's address].~~

43 ~~We are sending this notice to the following other people who have an interest in [describe~~
 44 ~~collateral] or who owe money under your agreement:~~

45 ~~[Names of all other debtors and obligors, if any]~~

46 **[End of Form]**

47 (Name and address of secured party)

48 (Date)

49 **NOTICE OF OUR PLAN TO SELL PROPERTY**

50 (Name and address of any obligor who is also the debtor)

51 Subject: (Identify transaction)

52 {1} We will sell describe collateral at a public sale. A sale could include a lease or license.

53 The sale will be held as follows:

54 (Date)

55 (Time)

56 (Place)

57 You might attend the sale and bring bidders if you want.

58 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could
59 include a lease or license.

60 {3} The money that we get from the sale, after paying our costs, will reduce the amount you
61 owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the
62 difference. If we get more money than you owe, you will get the extra money, unless we must pay it
63 to someone else.

64 {4} You can get the property back at any time before we sell it by paying us the full amount
65 you owe, not just the past due payments, including our expenses. To learn the exact amount you
66 must pay, call us at (telephone number).

67 {5} If you want us explain to you in (writing) (writing or in (description of electronic record)
68 (description of electronic record) how we have figured the amount that you owe us, {6} call us at
69 (telephone number (or) (write us at (secured party's address)) (or contact us by (description of
70 electronic communication method)) {7} and request (a written explanation) (a written explanation
71 of an explanation in (description of electronic record)) (an explanation in (description of electronic
72 record)).

73 {8} We will charge you \$ (amount) for the explanation if we sent you another written
74 explanation of the amount you owe us within the last six months.

75 {9} If you need more information about the sale (call us at (telephone number)) (or) (write
76 us at (secured party's address)) (or contact us by (description of electronic communication
77 method)).

78 {10} We are sending this notice to the following other people who have an interest in
79 (describe collateral) or who owe money under your agreement:
80 (Names of all other debtors and obligors, if any)

81 **[End of form]**

82 (4) A notification in the form of paragraph (3) of this section is sufficient, even if additional

83 information appears at the end of the form.

84 (5) A notification in the form of paragraph (3) of this section is sufficient, even if it includes
85 errors in information not required by paragraph (1) of this section, unless the error is misleading
86 with respect to rights arising under this article.

87 (6) If a notification under this section is not in the form of paragraph (3) of this section, law
88 other than this article determines the effect of including information not required by paragraph (1)
89 of _____ this _____ section.

1 (b) **Instructions for form of notification.** The following instructions apply to the form of
2 notification in subsection (a)(3):

3 (1) The instructions in this subsection refer to the numbers in braces before items in the
4 form of notification in subsection (a)(3). Do not include the numbers or braces in the notification.
5 The numbers and braces are used only for the purpose of these instructions.

6 (2) Include and complete either item {1}, if the notification relates to a public disposition of
7 the collateral, or item {2}, if the notification relates to a private disposition of the collateral.

8 (3) Include and complete items {3}, {4}, {5}, {6}, and {7}.

9 (4) In item {5}, include and complete any one of the three alternative methods for the
10 explanation—writing, writing or electronic record, or electronic record.

11 (5) In item {6}, include the telephone number. In addition, the sender may include and
12 complete either or both of the two additional alternative methods of communication—writing or
13 electronic communication—for the recipient of the notification to communicate with the sender.
14 Neither of the two additional methods of communication is required to be included.

15 (6) In item {7}, include and complete the method or methods for the explanation—writing,
16 writing or electronic record, or electronic record—included in item {5}.

17 (7) Include and complete {8} only if a written explanation is included in item {5} as a method
18 for communicating the explanation and the sender will charge the recipient for another written
19 explanation.

20 (8) In item {9}, include either the telephone number or the address or both the telephone
 21 number and the address. In addition, the sender may include and complete the additional method
 22 of communication—electronic communication—for the recipient of the notification to communicate
 23 with the sender. The additional method of electronic communication is not required to be included.

24 (9) If item {10} does not apply, insert "None" after "agreement;".

25 ~~(4) A notification in the form of paragraph (3) of this section is sufficient, even if additional~~
 26 ~~information appears at the end of the form.~~

27 ~~(5) A notification in the form of paragraph (3) of this section is sufficient, even if it includes~~
 28 ~~errors in information not required by paragraph (1) of this section, unless the error is misleading~~
 29 ~~with respect to rights arising under this article.~~

30 ~~(6) If a notification under this section is not in the form of paragraph (3) of this section, law~~
 31 ~~other than this article determines the effect of including information not required by paragraph (1)~~
 32 ~~of _____ this _____ section.~~

§46-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

1 (a) **Application of proceeds.** A secured party shall apply or pay over for application the
 2 cash proceeds of disposition under section 9-610 in the following order to:

3 (1) The reasonable expenses of retaking, holding, preparing for disposition, processing
 4 and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable
 5 attorney's fees and legal expenses incurred by the secured party;

6 (2) The satisfaction of obligations secured by the security interest or agricultural lien under
 7 which the disposition is made;

8 (3) The satisfaction of obligations secured by any subordinate security interest in or other
 9 subordinate lien on the collateral if:

10 (A) The secured party receives from the holder of the subordinate security interest or other
 11 lien an ~~authenticated~~ a signed demand for proceeds before distribution of the proceeds is

12 completed; and

13 (B) In a case in which a consignor has an interest in the collateral, the subordinate security
14 interest or other lien is senior to the interest of the consignor; and

15 (4) A secured party that is a consignor of the collateral if the secured party receives from
16 the consignor ~~an authenticated~~ a signed demand for proceeds before distribution of the proceeds
17 is completed.

18 (b) **Proof of subordinate interest.** If requested by a secured party, a holder of a
19 subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within
20 a reasonable time. Unless the holder does so, the secured party need not comply with the holder's
21 demand under subsection (a)(3).

22 (c) **Application of noncash proceeds.** A secured party need not apply or pay over for
23 application noncash proceeds of disposition under section 9-610 unless the failure to do so would
24 be commercially unreasonable. A secured party that applies or pays over for application noncash
25 proceeds shall do so in a commercially reasonable manner.

26 (d) **Surplus or deficiency if obligation secured.** If the security interest under which a
27 disposition is made secures payment or performance of an obligation, after making the payments
28 and applications required by subsection (a) of this section and permitted by subsection (c) of this
29 section:

30 (1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over
31 cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus;
32 and

33 (2) The obligor is liable for any deficiency.

34 (e) **No surplus or deficiency in sales of certain rights to payment.** If the underlying
35 transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

36 (1) The debtor is not entitled to any surplus; and

37 (2) The obligor is not liable for any deficiency.

38 (f) **Calculation of surplus or deficiency in disposition to person related to secured**
39 **party.** The surplus or deficiency following a disposition is calculated based on the amount of
40 proceeds that would have been realized in a disposition complying with this part to a transferee
41 other than the secured party, a person related to the secured party, or a secondary obligor if:

42 (1) The transferee in the disposition is the secured party, a person related to the secured
43 party, or a secondary obligor; and

44 (2) The amount of proceeds of the disposition is significantly below the range of proceeds
45 that a complying disposition to a person other than the secured party, a person related to the
46 secured party, or a secondary obligor would have brought.

47 (g) **Cash proceeds received by junior secured party.** A secured party that receives cash
48 proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of
49 the holder of a security interest or other lien that is not subordinate to the security interest or
50 agricultural lien under which the disposition is made:

51 (1) Takes the cash proceeds free of the security interest or other lien;

52 (2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations
53 secured by the security interest or other lien; and

54 (3) Is not obligated to account to or pay the holder of the security interest or other lien for
55 any surplus.

§46-9-616. Explanation of calculation of surplus or deficiency.

1 (a) **Definitions.** In this section:

2 (1) "Explanation" means a writing record that:

3 (A) States the amount of the surplus or deficiency;

4 (B) Provides an explanation in accordance with subsection (c) of this section of how the
5 secured party calculated the surplus or deficiency;

6 (C) States, if applicable, that future debits, credits, charges, including additional credit
7 service charges or interest, rebates, and expenses may affect the amount of the surplus or

8 deficiency; and

9 (D) Provides a telephone number or mailing address from which additional information
10 concerning the transaction is available.

11 (2) "Request" means a record:

12 (A) ~~Authenticated~~ Signed by a debtor or consumer obligor;

13 (B) Requesting that the recipient provide an explanation; and

14 (C) Sent after disposition of the collateral under section 9-610.

15 (b) **Explanation of calculation.** In a consumer-goods transaction in which the debtor is
16 entitled to a surplus or a consumer obligor is liable for a deficiency under section 9-615, the
17 secured party shall:

18 (1) Send an explanation to the debtor or consumer obligor, as applicable, after the
19 disposition and:

20 (A) Before or when the secured party accounts to the debtor and pays any surplus or first
21 makes ~~written~~ demand in a record on the consumer obligor after the disposition for payment of the
22 deficiency; and

23 (B) Within fourteen days after receipt of a request; or

24 (2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days
25 after receipt of a request, send to the consumer obligor a record waiving the secured party's right
26 to a deficiency.

27 (c) **Required information.** To comply with subsection (a)(1)(B) of this section, ~~a writing~~ an
28 explanation must provide the following information in the following order:

29 (1) The aggregate amount of obligations secured by the security interest under which the
30 disposition was made, and, if the amount reflects a rebate of unearned interest or credit service
31 charge, an indication of that fact, calculated as of a specified date:

32 (A) If the secured party takes or receives possession of the collateral after default, not
33 more than thirty-five days before the secured party takes or receives possession; or

34 (B) If the secured party takes or receives possession of the collateral before default or does
35 not take possession of the collateral, not more than thirty-five days before the disposition;

36 (2) The amount of proceeds of the disposition;

37 (3) The aggregate amount of the obligations after deducting the amount of proceeds;

38 (4) The amount, in the aggregate or by type, and types of expenses, including expenses of
39 retaking, holding, preparing for disposition, processing, and disposing of the collateral, and
40 attorney's fees secured by the collateral which are known to the secured party and relate to the
41 current disposition;

42 (5) The amount, in the aggregate or by type, and types of credits, including rebates of
43 interest or credit service charges, to which the obligor is known to be entitled and which are not
44 reflected in the amount in paragraph (1) of this subsection; and

45 (6) The amount of the surplus or deficiency.

46 (d) **Substantial compliance.** A particular phrasing of the explanation is not required. An
47 explanation complying substantially with the requirements of subsection (a) of this section is
48 sufficient, even if it includes minor errors that are not seriously misleading.

49 (e) **Charges for responses.** A debtor or consumer obligor is entitled without charge to one
50 response to a request under this section during any six-month period in which the secured party
51 did not send to the debtor or consumer obligor an explanation pursuant to subdivision (1),
52 subsection (b) of this section. The secured party may require payment of a charge not exceeding
53 \$25 for each additional response.

§46-9-619. Transfer of record or legal title.

1 (a) **"Transfer statement."** In this section, "transfer statement" means a record
2 authenticated signed by a secured party stating:

3 (1) That the debtor has defaulted in connection with an obligation secured by specified
4 collateral;

5 (2) That the secured party has exercised its post-default remedies with respect to the

6 collateral;

7 (3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the
8 collateral; and

9 (4) The name and mailing address of the secured party, debtor and transferee.

10 (b) **Effect of transfer statement.** A transfer statement entitles the transferee to the
11 transfer of record of all rights of the debtor in the collateral specified in the statement in any official
12 filing, recording, registration or certificate-of-title system covering the collateral. If a transfer
13 statement is presented with the applicable fee and request form to the official or office responsible
14 for maintaining the system, the official or office shall:

15 (1) Accept the transfer statement;

16 (2) Promptly amend its records to reflect the transfer; and

17 (3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

18 (c) **Transfer not a disposition; no relief of secured party's duties.** A transfer of the
19 record or legal title to collateral to a secured party under subsection (b) of this section or otherwise
20 is not of itself a disposition of collateral under this article and does not of itself relieve the secured
21 party of its duties under this article.

**§46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory
disposition of collateral.**

1 (a) **Conditions to acceptance in satisfaction.** Except as otherwise provided in
2 subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of
3 the obligation it secures only if:

4 (1) The debtor consents to the acceptance under subsection (c) of this section;

5 (2) The secured party does not receive, within the time set forth in subsection (d) of this
6 section, a notification of objection to the proposal ~~authenticated~~ signed by:

7 (A) A person to which the secured party was required to send a proposal under section 9-
8 621; or

9 (B) Any other person, other than the debtor, holding an interest in the collateral subordinate
10 to the security interest that is the subject of the proposal;

11 (3) If the collateral is consumer goods, the collateral is not in the possession of the debtor
12 when the debtor consents to the acceptance; and

13 (4) Subsection (e) of this section does not require the secured party to dispose of the
14 collateral or the debtor waives the requirement pursuant to section 9-624.

15 (b) **Purported acceptance ineffective.** A purported or apparent acceptance of collateral
16 under this section is ineffective unless:

17 (1) The secured party consents to the acceptance in ~~an authenticated~~ a signed record or
18 sends a proposal to the debtor; and

19 (2) The conditions of subsection (a) of this section are met.

20 (c) **Debtor's consent.** For purposes of this section:

21 (1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it
22 secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed
23 after default; and

24 (2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it
25 secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~ signed
26 after default or the secured party:

27 (A) Sends to the debtor after default a proposal that is unconditional or subject only to a
28 condition that collateral not in the possession of the secured party be preserved or maintained;

29 (B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it
30 secures; and

31 (C) Does not receive a notification of objection ~~authenticated~~ signed by the debtor within
32 twenty days after the proposal is sent.

33 (d) **Effectiveness of notification.** To be effective under subsection (a)(2) of this section, a
34 notification of objection must be received by the secured party:

35 (1) In the case of a person to which the proposal was sent pursuant to section 9-621, within
36 twenty days after notification was sent to that person; and

37 (2) In other cases:

38 (A) Within twenty days after the last notification was sent pursuant to section 9-621; or

39 (B) If a notification was not sent, before the debtor consents to the acceptance under
40 subsection (c) of this section.

41 (e) **Mandatory disposition of consumer goods.** A secured party that has taken
42 possession of collateral shall dispose of the collateral pursuant to section 9-610 within the time
43 specified in subsection (f) of this section if:

44 (1) Sixty percent of the cash price has been paid in the case of a purchase-money security
45 interest in consumer goods; or

46 (2) Sixty percent of the principal amount of the obligation secured has been paid in the
47 case of a nonpurchase-money security interest in consumer goods.

48 (f) **Compliance with mandatory disposition requirement.** To comply with subsection (e)
49 of this section, the secured party shall dispose of the collateral:

50 (1) Within ninety days after taking possession; or

51 (2) Within any longer period to which the debtor and all secondary obligors have agreed in
52 an agreement to that effect entered into and ~~authenticated~~ signed after default.

53 (g) **No partial satisfaction in consumer transaction.** In a consumer transaction, a
54 secured party may not accept collateral in partial satisfaction of the obligation it secures.

§46-9-621. Notification of proposal to accept collateral.

1 (a) **Persons to which proposal to be sent.** A secured party that desires to accept
2 collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

3 (1) Any person from which the secured party has received, before the debtor consented to
4 the acceptance, ~~an authenticated~~ a signed notification of a claim of an interest in the collateral;

5 (2) Any other secured party or lienholder that, ten days before the debtor consented to the

6 acceptance, held a security interest in or other lien on the collateral perfected by the filing of a
7 financing statement that:

8 (A) Identified the collateral;

9 (B) Was indexed under the debtor's name as of that date; and

10 (C) Was filed in the office or offices in which to file a financing statement against the debtor
11 covering the collateral as of that date; and

12 (3) Any other secured party that, ten days before the debtor consented to the acceptance,
13 held a security interest in the collateral perfected by compliance with a statute, regulation or treaty
14 described in section 9-311(a).

15 (b) **Proposal to be sent to secondary obligor in partial satisfaction.** A secured party
16 that desires to accept collateral in partial satisfaction of the obligation it secures shall send its
17 proposal to any secondary obligor in addition to the persons described in subsection (a) of this
18 section.

§46-9-624. Waiver.

1 (a) **Waiver of disposition notification.** A debtor or secondary obligor may waive the right
2 to notification of disposition of collateral under section 9-611 only by an agreement to that effect
3 entered into and ~~authenticated~~ signed after default.

4 (b) **Waiver of mandatory disposition.** A debtor may waive the right to require disposition
5 of collateral under section 9-620(e) only by an agreement to that effect entered into and
6 ~~authenticated~~ signed after default.

7 (c) **Waiver of redemption right.** Except in a consumer-goods transaction, a debtor or
8 secondary obligor may waive the right to redeem collateral under section 9-623 only by an
9 agreement to that effect entered into and ~~authenticated~~ signed after default.

**§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary
obligor.**

1 (a) **Limitation of liability of secured party for noncompliance with article.** Unless

2 Subject to subsection (f), unless a secured party knows that a person is a debtor or obligor, knows
3 the identity of the person and knows how to communicate with the person:

4 (1) The secured party is not liable to the person, or to a secured party or lienholder that has
5 filed a financing statement against the person, for failure to comply with this article; and

6 (2) The secured party's failure to comply with this article does not affect the liability of the
7 person for a deficiency.

8 (b) **Limitation of liability based on status as secured party.** A Subject to subsection (f),
9 a secured party is not liable because of its status as secured party:

10 (1) To a person that is a debtor or obligor, unless the secured party knows:

11 (A) That the person is a debtor or obligor;

12 (B) The identity of the person; and

13 (C) How to communicate with the person; or

14 (2) To a secured party or lienholder that has filed a financing statement against a person,
15 unless the secured party knows:

16 (A) That the person is a debtor; and

17 (B) The identity of the person.

18 (c) **Limitation of liability if reasonable belief that transaction not a consumer-goods**
19 **transaction or consumer transaction.** A secured party is not liable to any person, and a person's
20 liability for a deficiency is not affected, because of any act or omission arising out of the secured
21 party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer
22 transaction or that goods are not consumer goods, if the secured party's belief is based on its
23 reasonable reliance on:

24 (1) A debtor's representation concerning the purpose for which collateral was to be used,
25 acquired or held; or

26 (2) An obligor's representation concerning the purpose for which a secured obligation was
27 incurred.

28 (d) **Limitation of liability for statutory damages.** A secured party is not liable to any
29 person under section 9-625(c)(2) for its failure to comply with section 9-616.

30 (e) **Limitation of multiple liability for statutory damages.** A secured party is not liable
31 under section 9-625(c)(2) more than once with respect to any one secured obligation.

32 (f) **Exception: Limitation of liability under subsections (a) and (b) does not apply.**
33 Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time
34 the secured party obtains control of the collateral that is a controllable account, controllable
35 electronic record, or controllable payment intangible or at the time the security interest attaches to
36 the collateral, which is later:

37 (1) the person is a debtor or obligor; and

38 (2) the secured party knows that the information in subsection (b)(1)(A), (B), or (C), relating
39 to the person is not provided by the collateral, a record attached to or logically associated with the
40 collateral, or the system in which the collateral is recorded.

ARTICLE 12. CONTROLLABLE ELECTRONIC RECORDS.

§46-12-101. Title.

1 This article may be cited at the Uniform Commercial Code—Controllable Electronic
2 Records.

§46-12-102.

Definitions.

1 (a) Article 12 definitions.

2 In this article:

3 (1) "Controllable electronic record" means a record stored in a electronic medium that can
4 be subjected to control under Section 12-105. The term does not include a controllable account, a
5 controllable payment intangible, a deposit account, an electronic copy of a record evidencing
6 chattel paper, an electronic document of title, electronic money, investment property, or a
7 transferrable record.

8 (2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an

9 interest in a controllable electronic record that obtains control of the controllable electronic record
10 for value, in good faith, and without notice of a claim of a property right in the controllable electronic
11 record.

12 (3) "Transferrable record" has the meaning provided for that term in:

13 (A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act,
14 15 U.S.C. Section 7021(a)(1); or

15 (B) §39A-1-16(a) of this code.

16 (4) "Value" has the meaning provided in Section 3-303(a), as if references in this
17 subsection to an "instrument" were references to a controllable account, controllable electronic
18 record, or controllable payment intangible.

19 (b) Definitions in Article 9. The definitions in Article 9 of "account debtor", "controllable
20 account", "controllable payment intangible", "chattel paper", "deposit account", "electronic
21 money", and "investment property" apply to this article.

22 (c) Article 1 definitions and principles. The definitions in Article 9 of "account debtor",
23 "controllable account", "controllable payment intangible", "chattel paper", "deposit account",
24 "electronic money", and "investment property" apply to this article.

§46-12-103. Relation to Article 9 and Consumer Laws.

1 (a) **Article 9 governs in the case of conflict.** If there is conflict between this article and
2 Article 9, Article 9 governs.

3 (b) **Applicable consumer law and other laws.** A transaction subject to this article is
4 subject to any applicable rule of law that establishes a different rule for consumers and (i) §46A-1-
5 101 et seq., §46A-3-101 et seq., §46A-4-101 et seq., §46A-6-101 et seq., §46A-6A-101 et seq.,
6 §46-6B-1-1 et seq., §46A-6C-101 et seq., §46A-6C-101 et seq., §46A-6E-101 et seq., §46A-6H-
7 101 et seq. of this code and (ii) §46A-2-101 et seq. of this code.

§46-12-104. Rights in Controllable Account, Controllable Electronic Record, and
Controllable Payment Intangible.

1 (a) **Applicability of section to controllable account and controllable payment**
2 **intangible.** This section applies to the acquisition and purchase of rights in a controllable account
3 or controllable payment intangible, including the rights and benefits under subsections (c), (d),
4 (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to
5 a controllable electronic record.

6 (b) **Control of controllable account and controllable payment intangible.** To
7 determine whether a purchaser of a controllable account or a controllable payment intangible is a
8 qualifying purchaser, the purchaser obtains control of the account or payment intangible if it
9 obtains control of the controllable electronic record the evidences the account or payment
10 intangible.

11 (c) **Applicability of other law to acquisition of rights.** Except as provided in this section,
12 law other than this article determines whether a person acquires a right in a controllable electronic
13 record and the right the person acquires.

14 (d) **Shelter principle and purchase of limited interest.** A purchaser of a controllable
15 electronic record acquires all rights in the controllable electronic record that the transferor had or
16 had power to transferor, except that a purchaser of a limited interest in a controllable electronic
17 record acquires rights only to the extent of the interest purchased.

18 (e) **Rights of qualifying purchaser.** A qualifying purchaser acquires its rights in the
19 controllable electronic record free of a claim of a property right in the controllable electronic record.

20 (f) **Limitation of rights of qualifying purchaser in other property.** Except as provided in
21 subsection (a) and (c) for a controllable account and a controllable payment intangible or law other
22 than this article, a qualifying purchaser takes a right to payment, right to performance, or other
23 interest in property evidenced by the controllable electronic record subject to a claim of a property
24 right in the right to payment, right to performance, other interest in the property.

25 (g) **No-action protection for qualifying purchaser.** An action may not be asserted
26 against a qualifying purchaser based on both a purchase by the qualifying purchaser of a

27 controllable electronic record and a claim of a property right in another controllable electronic
28 record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or
29 other theory.

30 (h) Filing not notice. Filing of financing statement under Article 9 is not notice of a claim of a
31 property right in a controllable electronic record.

§46-12-105. Control of Controllable Electronic Record.

1 (a) General rule: control of controllable electronic record. A person has control of a
2 controllable electronic record if the electronic record, a record attached to or logically associated
3 with the electronic record, or a system in which the electronic record is recorded;

4 (1) gives the person:

5 (A) power to avail itself of substantially all the benefit from the electronic record; and

6 (B) exclusive power, subject to subsection (b), to:

7 (i) prevent others from availing themselves of substantially all the benefit from the
8 electronic record; and

9 (ii) transfer control of the electronic record to another person or cause another person to
10 obtain control of another controllable record as a result of the transfer of the electronic record; and

11 (2) enables the person readily to identify itself in any way, including by name, identifying
12 number, cryptographic key, office, or account number, as having the powers specified in
13 paragraph (1).

14 (b) Meaning of exclusive. Subject to subsection (c), a power is exclusive under
15 subsection (a)(1)(B)(i) and (ii) even if:

16 (1) the controllable electronic record, a record attached to or logically associated with the
17 electronic record, or a system in which the electronic record is recorded limits the use of the
18 electronic record of has a protocol programmed to cause a change, including a transfer or loss of
19 control or a modification of benefits afforded by the electronic record; or

20 (2) the power is shared with another person.

21 (c) **When power is not shared with another person.** A power of a person is not shared
22 with another person under subsection (b)(2) and the person's power is not exclusive if:

23 (1) the person can exercise the power only if the power also is exercised by the other
24 person; and

25 (2) the other person:

26 (A) can exercise the power without exercise of the power by the person; or

27 (B) is the transferor to the person of an interest in the controllable electronic record or a
28 controllable account or controllable payment intangible evidenced by the controllable electronic
29 record.

30 (d) **Presumption of exclusivity of certain powers.** If a person has the powers specified
31 in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

32 (e) **Control through another person.** A person has control of a controllable electronic
33 record if another person, other than the transferor to the person of an interest in the controllable
34 electronic record or a controllable account or controllable payment intangible evidenced by the
35 controllable electronic record:

36 (1) has control of the electronic record and acknowledges that it has control on behalf of
37 the person; or

38 (2) obtains control of the electronic record after having acknowledged that it will obtain
39 control of the electronic record on behalf of the person.

40 (f) **No requirement to acknowledge.** A person that has control under this section is not
41 required to acknowledge that it has control on behalf of another person.

42 (g) **No duties or confirmation.** If a person acknowledges that it has or will obtain control
43 on behalf of another person, unless the person otherwise agrees or law other than this article or
44 Article 9 otherwise provides, the person does not owe any duty to the other person and is not
45 required to confirm the acknowledgement to any other person.

§46-12-106. Discharge of Account Debtor on Controllable Account or Controllable Payment

Intangible.

1 (a) Discharge of account debtor. An account debtor on a controllable account or
2 controllable payment intangible may discharge its obligation by paying:

3 (1) the person having control of the controllable electronic record that evidences the
4 controllable account or controllable payment intangible; or

5 (2) except as provided in subsection (b), a person that formerly had control of the
6 controllable electronic record.

7 (b) Content and effect of notification. Subject to subsection (d), the account debtor may
8 not discharge its obligation by paying a person that formerly had control of the controllable
9 electronic record if the account debtor received a notification that:

10 (1) is signed by a person that formerly had control or the person to which control was
11 transferred;

12 (2) reasonably identifies the controllable account or controllable payment intangible;

13 (3) notifies the account debtor that control of the controllable electronic record that
14 evidences the controllable account or controllable payment intangible was transferred;

15 (4) identifies the transferee, in any reasonable way, including by name, identifying number,
16 cryptographic key, office, or account number; and

17 (5) provides a commercially reasonable method by which the account debtor is to pay the
18 transferee.

19 (c) Discharge following effective notification. After receipt of a notification that complies
20 with subsection (b), the account debtor may discharge its obligation by paying in accordance with
21 the notification and may not discharge the obligation by paying a person that formerly had control.

22 (d) When notification ineffective. Subject to subsection (h), notification is ineffective
23 under subsection (b):

24 (1) unless, before the notification is sent, the account debtor and the person that, at that
25 time, had control of the controllable electronic record that evidences the controllable account or

26 controllable payment intangible agree in a signed record to a commercially reasonable method by
27 which a person may furnish reasonable proof that control has been transferred;

28 (2) to the extent an agreement between the account debtor and seller of a payment
29 intangible limits the account debtor's duty to pay a person other than the seller and the limitation is
30 effective under law other than this article; or

31 (3) at the option of the account debtor, if the notification notifies the account debtor to:

32 (A) divide a payment;

33 (B) make less than the full payment of an installment or other periodic payment; or

34 (C) pay any part of a payment by more than one method or to more than one person.

35 (e) **Proof of transfer of control.** Subject to subsection (h), if requested by the account
36 debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonably
37 proof, using the method in the agreement referred to in subsection (d)(1), that control of the
38 controllable electronic record has been transferred. Unless the person complies with the request,
39 the account debtor may discharge its obligation by paying a person that formerly had control, even
40 if the account debtor has received a notification under subsection (b).

41 (f) **What constitutes reasonable proof.** A person furnishes reasonable proof under
42 subsection (e) that control has been transferred if the person demonstrates, using the method in
43 the agreement referred to in subsection (d)(1), that the transferee has the power to:

44 (1) avail itself of substantially all the benefit from the controllable electronic record;

45 (2) prevent others from availing themselves of substantially all the benefit from the
46 controllable electronic record; and

47 (3) transfer the powers specified in paragraphs (1) and (2) to another person.

48 (g) **Rights not waivable.** Subject to subsection (h), an account debtor may not waive or
49 vary its rights under subsections (d)(1) and (e) or its option subsection (d)(3).

50 (h) **Rule for individual under other law.** This section is subject to law other than this
51 article which establishes a different rule for an account debtor who is an individual and who

52 incurred the obligation primarily for personal, family, or household items.

53 (i) **Rule for individual under other law.** This section is subject to law other than this article
 54 which establishes a different rule for an account debtor who is an individual and who incurred the
 55 obligation primarily for personal, family, or household purposes.

§46-12-107. Governing Law.

1 (a) **Governing law: general rule.** Except as provided in subsection (b), the local law of a
 2 controllable electronic record's jurisdiction governs a matter covered by this article.

3 (b) **Governing law: Section 12-106.** For a controllable electronic record that evidences a
 4 controllable account or controllable payment intangible, the local law of the controllable electronic
 5 record's jurisdiction governs a matter covered by Section 12-106 unless an effective agreement
 6 determines that the local law of another jurisdiction governs.

7 (c) **Controllable electronic record's jurisdiction.** The following rules determine a controllable
 8 electronic record's jurisdiction under this section:

9 (1) If the controllable electronic record, or a record attached to or logically associated with
 10 the controllable electronic record and readily available for review, expressly provides that a
 11 particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or
 12 the Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

13 (2) If paragraph (1) does not apply and the rules of the system in which the controllable
 14 electronic record is recorded are readily available for review and expressly provide that a particular
 15 jurisdiction is the controllable electronic record's jurisdiction for purposes of this article or the
 16 Uniform Commercial Code, that jurisdiction is the controllable electronic record's jurisdiction.

17 (3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record
 18 attached to or logically associated with the controllable electronic record and readily available for
 19 review, expressly provides that the controllable electronic record is governed by the law of a
 20 particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

21 (4) If paragraph (1), (2), and (3) do not apply and the rules of the system in which the

22 controllable electronic record is recorded are readily available for review and expressly provide
23 that the controllable electronic record or the system is governed by the law of a particular
24 jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

25 (5) If paragraphs (1) through (4) do not apply, the rules of the system in which the
26 controllable electronic record is recorded are readily available for review and expressly provide
27 that the controllable electronic record or the system is governed by the law of a particular
28 jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

29 (5) If paragraphs (1) through (4) do not apply, the controllable electronic record's
30 jurisdiction is the District of Columbia.

31 (d) **Applicability of Article 12.** If subsection (c)(5) applies and Article 12 is not in effect in
32 the District of Columbia without material modification, the governing law for a matter covered by
33 this article is the law of the District of Columbia as though Article 12 were in effect in the District of
34 Columbia without material modification. In this subsection, "Article 12" means Article 12 of the
35 Uniform Commercial Code Amendments (2022).

36 (e) **Relation of matter or transaction to controllable electronic record's jurisdiction**
37 **not necessary.** To the extent subsection (a) and (b) provide that the local law of the controllable
38 electronic record's jurisdiction governs a matter covered by this article, that law governs even if the
39 matter or a transaction to which the matter relates does not bear any relation to the controllable
40 electronic record's jurisdiction.

41 (f) Rights of purchaser determined at time of purchase. The rights acquired under Section
42 12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this
43 section at the time of purchase.

ARTICLE 12A. TRANSITIONAL PROVISIONS FOR UNIFORM COMMERCIAL CODE
AMENDMENTS (2022).

PART 1

GENERAL PROVISIONS AND DEFINITIONS

§46-12A-101. **Title.**

1 This article may be cited as Transitional Provisions for Uniform Commercial Code
 2 Amendments (2022).

§46-12A-102. **Definitions.**

1 (a) Article 12A Definitions. In this article:

2 (1) "Adjustment date" means July 1, 2025, or the date that is one year after the effective
 3 date of this act, whichever is later.

4 (2) "Article 12" means Article 12 of the Uniform Commercial Code.

5 (3) "Article 12 property" means a controllable account, controllable electronic record, or
 6 controllable payment intangible.

7 (b) Definitions in other articles. The following definitions in other articles of the Uniform
 8 Commercial Code apply to this article.

9 "Controllable account", Section 9-102.

10 "Controllable electronic record, Section 12-102.

11 "Controllable payment intangible", Section 9-102.

12 "Electronic money", 9-102.

13 "Financing statement," Section 9-102.

14 (c) Article 1 definition and principles. Article 1 contains general definitions and principles of
 15 construction and interpretation applicable throughout this article.

PART 2

GENERAL TRANSITIONAL PROVISION

§46-12A-201. **Saving** **Clause.**

1 Except as provided in Part 3, a transaction validly entered into before July 1, 2024, and the
 2 rights, duties, and interests flowing from the transaction remain valid thereafter and may be

3 terminated, completed, consummated, or enforced, as required or permitted by law other than the
 4 Uniform Commercial Code or, if applicable, the Uniform Commercial Code, as though this act had
 5 not taken effect.

PART 3

TRANSITIONAL PROVISIONS FOR ARTICLES 9 AND 12

§46-12A-301. Saving Clause.

1 (a) Pre-effective-date transaction, lien, or interest. Except as provided in this part,
 2 Article 9 as amended by this act and Article 12 apply to a transaction, lien or other interest in
 3 property, even if the transaction, lien, or interest was entered into, created, or acquired before July
 4 1, 2024.

5 (b) Continuing validity. Except as provided in subsection (c) and Sections 12A-3-2 through
 6 12A-306:

7 (1) a transaction, lien, or interest in property that was validly entered into, created, or
 8 transferred before July 1, 2024 and was not governed by the Uniform Commercial Code, but would
 9 be subject to Article 9 as amended by this act or Article 12 if it had been entered into, created, or
 10 transferred on or after July 1, 2024, including the rights, duties, and interests flowing from the
 11 transaction, lien, or interest, remains valid on and after July 1, 2024.

12 (c) Pre-effective date proceeding. This act does not affect an action, case, or proceeding
 13 commenced before July 1, 2024.

§46-12A-302. Security Interest Perfected Before Effective Date.

1 (a) Continuing perfection: perfection requirements satisfied. A security interest that is
 2 enforceable and perfected immediately before July 1, 2024, is a perfected security interest under
 3 this act if, on July 1, 2024, the requirements for enforceability and perfection under this act are
 4 satisfied without further action.

5 (b) Continuing perfection: enforceability or perfection requirements not satisfied. If

6 a security interest is enforceable and perfected immediately before July 1, 2024, but the
7 requirements for enforceability or perfection under this act are not satisfied on July 1, 2024, the
8 security interest:

9 (1) is a perfected security interest until the earlier of the time perfection would have ceased
10 under the law in effect immediately before July 1, 2024, or the adjustment date;

11 (2) remains enforceable thereafter only if the security interest satisfies the requirements for
12 enforceability under Section 9-203, as amended by this act, before the adjustment date; and

13 (3) remains perfected thereafter only if the requirements for perfection under this act are
14 satisfied before the time specified in paragraph (1).

§46-12A-303. Security Interest Unperfected Before Effective Date.

1 A security interest that is enforceable immediately before July 1, 2024, but is unperfected
2 at that time:

3 (1) remains an enforceable security interest until the adjustment date;

4 (2) remains enforceable thereafter if the security interest becomes enforceable under
5 Section 9-203, as amended by this act, on July 1, 2024, or before the adjustment date; and

6 (3) becomes perfected:

7 (A) without further action, on July 1, 2024, if the requirements for perfection under this act
8 are satisfied before or at that time; or

9 (B) when the requirements are satisfied if the requirements are satisfied after that time.

§46-12A-304. Effectiveness of Actions Taken Before Effective Date.

1 (a) **Pre-effective-date action: attachment and perfection before adjustment date.** If
2 action, other than the filing of a financing statement, is taken before July 1, 2024, and the action
3 would have resulted in perfection of the security interest had the security interest become
4 enforceable before July 1, 2024, the action is effective to perfect a security interest that attaches
5 under this act before the adjustment date. An attached security interest becomes unperfected on
6 the adjustment date unless the security interest becomes a perfected security interest under this

7 act before the adjustment date.

8 (b) **Pre-effective-date filing.** The filing of a financing statement before July 1, 2024, is
9 effective to perfect a security interest on July 1, 2024, to the extent the filing would satisfy the
10 requirements for perfection under this act.

11 (c) **Pre-effective-date enforceability action.** The taking of an action before July 1, 2024,
12 is sufficient for the enforceability of a security interest on July 1, 2024, if the action would satisfy the
13 requirements for enforceability under this act.

§46-12A-305. Priority.

1 (a) **Determination of priority.** Subject to subsections (b) and (c), this act determines the
2 priority of conflicting claims to collateral.

3 (b) **Established priorities.** Subject to subsection (c), if the priorities of claims to collateral
4 were established before July 1, 2024, Article 9 as in effect before July 1, 2024, determines priority.

5 (c) **Determination of certain priorities on adjustment date.** On the adjustment date, to
6 the extent the priorities determined by Article 9 as amended by this act modify the priorities
7 established before July 1, 2024, the priorities of claims to Article 12 property and electronic money
8 established before July 1, 2024, cease to apply.

§46-12A-306. Priority of Claims When Priority Rules of Article 9 Do Not Apply.

1 (a) **Determination of priority.** Subject to subsections (b) and (c), Article 12 determines the
2 priority of conflicting claims to Article 12 property when the priority rules of Article 9 as amended by
3 this act do not apply.

4 (b) **Established priorities.** Subject to subsection (c), when the priority of Article 9 as
5 amended by this act do not apply and the priorities of claims to Article 12 property were
6 established before July 1, 2024, law other than Article 12 determines priority.

7 (c) **Determination of certain priorities on adjustment date.** When the priority rules of
8 Article 9 as amended by this act do not apply, to the extent the priorities determined by this act
9 modify the priorities established before July 1, 2024, the priorities of claims to Article 12 property

10 established before July 1, 2024, cease to apply on the adjustment date.

PART 4

EFFECTIVE DATE

§46-12A-401. Effective Date.

1 This act takes effect on July 1, 2024.

NOTE: The purpose of this bill is to update the provisions of the Uniform Commercial Code.

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