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2 83rd General Assembly
3 Regular Session, 2001

A Bill

Act 1439 of 2001
HOUSE BILL 1147

4
5 By: Representative Napper
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For An Act To Be Entitled

9 AN ACT TO REVISE UCC CHAPTER 9 - SECURED
10 TRANSACTIONS, AND TO MAKE CONFORMING AMENDMENTS
11 TO OTHER CHAPTERS OF THE UNIFORM COMMERCIAL CODE.
12

Subtitle

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Chapter 9 of Title 4 of the Arkansas Code is amended to read
23 as follows:

24 CHAPTER 9 – SECURED TRANSACTIONS

25 PART 1

26 GENERAL PROVISIONS

27 SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS
28

29 4-9-101. SHORT TITLE. This chapter may be cited as Uniform Commercial
30 Code–Secured Transactions.
31

32 4-9-102. DEFINITIONS AND INDEX OF DEFINITIONS.

33 (a) In this chapter:

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

36 (2) “Account”, except as used in “account for”, means a right to

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

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

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

24 (A) authenticated by a secured party;

25 (B) indicating the aggregate unpaid secured obligations as
26 of a date not more than thirty-five (35) days earlier or thirty-five (35) days
27 later than the date of the record; and

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

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

32 (A) which secures payment or performance of an obligation
33 for:

34 (i) goods or services furnished in connection with a
35 debtor's farming operation; or

36 (ii) rent on real property leased by a debtor in

1 connection with its farming operation;

2 (B) which is created by statute in favor of a person that:

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

6 (ii) leased real property to a debtor in connection
7 with the debtor's farming operation; and

8 (C) whose effectiveness does not depend on the person's
9 possession of the personal property.

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

11 (A) oil, gas, or other minerals that are subject to a
12 security interest that:

13 (i) is created by a debtor having an interest in the
14 minerals before extraction; and

15 (ii) attaches to the minerals as extracted; or

16 (B) accounts arising out of the sale at the wellhead or
17 minehead of oil, gas, or other minerals in which the debtor had an interest
18 before extraction.

19 (7) "Authenticate" means:

20 (A) to sign; or

21 (B) to execute or otherwise adopt a symbol, or encrypt or
22 similarly process a record in whole or in part, with the present intent of the
23 authenticating person to identify the person and adopt or accept a record.

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

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

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

34 (11) "Chattel paper" means a record or records that evidence both
35 a monetary obligation and a security interest in specific goods, a security
36 interest in specific goods and software used in the goods, a security interest

1 in specific goods and license of software used in the goods, a lease of
2 specific goods, or a lease of specific goods and license of software used in
3 the goods. In this paragraph, "monetary obligation" means a monetary
4 obligation secured by the goods or owed under a lease of the goods and
5 includes a monetary obligation with respect to software used in the goods.
6 The term does not include (i) charters or other contracts involving the use or
7 hire of a vessel or (ii) records that evidence a right to payment arising out
8 of the use of a credit or charge card or information contained on or for use
9 with the card. If a transaction is evidenced by records that include an
10 instrument or series of instruments, the group of records taken together
11 constitutes chattel paper.

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

- 14 (A) proceeds to which a security interest attaches;
15 (B) accounts, chattel paper, payment intangibles, and
16 promissory notes that have been sold; and
17 (C) goods that are the subject of a consignment.

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

- 20 (A) the claimant is an organization; or
21 (B) the claimant is an individual and the claim:
22 (i) arose in the course of the claimant's business or
23 profession; and
24 (ii) does not include damages arising out of personal
25 injury to or the death of an individual.

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

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

- 32 (A) traded on or subject to the rules of a board of trade
33 that has been designated as a contract market for such a contract pursuant to
34 federal commodities laws; or

35 (B) traded on a foreign commodity board of trade, exchange,
36 or market, and is carried on the books of a commodity intermediary for a

1 commodity customer.

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

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

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

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

10 (18) "Communicate" means:

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

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

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

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

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

21 (A) the merchant:

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

24 (ii) is not an auctioneer; and

25 (iii) is not generally known by its creditors to be
26 substantially engaged in selling the goods of others;

27 (B) with respect to each delivery, the aggregate value of
28 the goods is \$1,000 or more at the time of delivery;

29 (C) the goods are not consumer goods immediately before
30 delivery; and

31 (D) the transaction does not create a security interest that
32 secures an obligation.

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

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

36 (23) "Consumer goods" means goods that are used or bought for use

1 primarily for personal, family, or household purposes.

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

4 (A) an individual incurs an obligation primarily for
5 personal, family, or household purposes; and

6 (B) a security interest in consumer goods secures the
7 obligation.

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

11 (26) "Consumer transaction" means a transaction in which (i) an
12 individual incurs an obligation primarily for personal, family, or household
13 purposes, (ii) a security interest secures the obligation, and (iii) the
14 collateral is held or acquired primarily for personal, family, or household
15 purposes. The term includes consumer-goods transactions.

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

18 (A) identifies, by its file number, the initial financing
19 statement to which it relates; and

20 (B) indicates that it is a continuation statement for, or
21 that it is filed to continue the effectiveness of, the identified financing
22 statement.

23 (28) "Debtor" means:

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

27 (B) a seller of accounts, chattel paper, payment
28 intangibles, or promissory notes; or

29 (C) a consignee.

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

33 (30) "Document" means a document of title or a receipt of the
34 type described in § 4-7-201(2).

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

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

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

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

9 (A) crops grown, growing, or to be grown, including:

10 (i) crops produced on trees, vines, and bushes; and

11 (ii) aquatic goods produced in aquacultural
12 operations;

13 (B) livestock, born or unborn, including aquatic goods
14 produced in aquacultural operations;

15 (C) supplies used or produced in a farming operation; or

16 (D) products of crops or livestock in their unmanufactured
17 states.

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

21 (36) "File number" means the number assigned to an initial
22 financing statement pursuant to § 4-9-519(a).

23 (37) "Filing office" means an office designated in § 4-9-501 as
24 the place to file a financing statement.

25 (38) "Filing office rule" means a rule adopted pursuant to § 4-9-
26 526.

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

30 (40) "Fixture filing" means the filing of a financing statement
31 covering goods that are or are to become fixtures and satisfying § 4-9-502(a)
32 and (b). The term includes the filing of a financing statement covering goods
33 of a transmitting utility which are or are to become fixtures.

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

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

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

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

24 (45) "Governmental unit" means a subdivision, agency, department,
25 county, parish, municipality, or other unit of the government of the United
26 States, a State, or a foreign country. The term includes an organization
27 having a separate corporate existence if the organization is eligible to issue
28 debt on which interest is exempt from income taxation under the laws of the
29 United States.

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

33 (47) "Instrument" means a negotiable instrument or any other
34 writing that evidences a right to the payment of a monetary obligation, is not
35 itself a security agreement or lease, and is of a type that in ordinary course
36 of business is transferred by delivery with any necessary indorsement or

1 assignment. The term does not include (i) investment property, (ii) letters
2 of credit, or (iii) writings that evidence a right to payment arising out of
3 the use of a credit or charge card or information contained on or for use with
4 the card.

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

6 (A) are leased by a person as lessor;

7 (B) are held by a person for sale or lease or to be

8 furnished under a contract of service;

9 (C) are furnished by a person under a contract of service;

10 or

11 (D) consist of raw materials, work in process, or materials
12 used or consumed in a business.

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

16 (50) "Jurisdiction of organization", with respect to a registered
17 organization, means the jurisdiction under whose law the organization is
18 organized.

19 (51) "Letter-of-credit right" means a right to payment or
20 performance under a letter of credit, whether or not the beneficiary has
21 demanded or is at the time entitled to demand payment or performance. The
22 term does not include the right of a beneficiary to demand payment or
23 performance under a letter of credit.

24 (52) "Lien creditor" means:

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

27 (B) an assignee for benefit of creditors from the time of
28 assignment;

29 (C) a trustee in bankruptcy from the date of the filing of
30 the petition; or

31 (D) a receiver in equity from the time of appointment.

32 (53) "Manufactured home" means a structure, transportable in one
33 or more sections, which, in the traveling mode, is eight (8) body feet or more
34 in width or forty (40) body feet or more in length, or, when erected on site,
35 is three hundred twenty (320) or more square feet, and which is built on a
36 permanent chassis and designed to be used as a dwelling with or without a

1 permanent foundation when connected to the required utilities, and includes
2 the plumbing, heating, air-conditioning, and electrical systems contained
3 therein. The term includes any structure that meets all of the requirements of
4 this paragraph except the size requirements and with respect to which the
5 manufacturer voluntarily files a certification required by the United States
6 Secretary of Housing and Urban Development and complies with the standards
7 established under Title 42 of the United States Code.

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

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

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

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

15 (56) "New debtor" means a person that becomes bound as debtor
16 under § 4-9-203(d) by a security agreement previously entered into by another
17 person.

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

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

23 (59) "Obligor" means a person that, with respect to an obligation
24 secured by a security interest in or an agricultural lien on the collateral,
25 (i) owes payment or other performance of the obligation, (ii) has provided
26 property other than the collateral to secure payment or other performance of
27 the obligation, or (iii) is otherwise accountable in whole or in part for
28 payment or other performance of the obligation. The term does not include
29 issuers or nominated persons under a letter of credit.

30 (60) "Original debtor", except as used in § 4-9-310(c), means a
31 person that, as debtor, entered into a security agreement to which a new
32 debtor has become bound under § 4-9-203(d).

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

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

36 (A) the spouse of the individual;

1 (B) a brother, brother-in-law, sister, or sister-in-law of
2 the individual;

3 (C) an ancestor or lineal descendant of the individual or
4 the individual's spouse; or

5 (D) any other relative, by blood or marriage, of the
6 individual or the individual's spouse who shares the same home with the
7 individual.

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

9 (A) a person directly or indirectly controlling, controlled
10 by, or under common control with the organization;

11 (B) an officer or director of, or a person performing
12 similar functions with respect to, the organization;

13 (C) an officer or director of, or a person performing
14 similar functions with respect to, a person described in subparagraph (A);

15 (D) the spouse of an individual described in subparagraph
16 (A), (B), or (C); or

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

20 (64) "Proceeds", except as used in § 4-9-609(b), means the
21 following property:

22 (A) whatever is acquired upon the sale, lease, license,
23 exchange, or other disposition of collateral;

24 (B) whatever is collected on, or distributed on account of,
25 collateral;

26 (C) rights arising out of collateral;

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

30 (E) to the extent of the value of collateral and to the
31 extent payable to the debtor or the secured party, insurance payable by reason
32 of the loss or nonconformity of, defects or infringement of rights in, or
33 damage to, the collateral.

34 (65) "Promissory note" means an instrument that evidences a
35 promise to pay a monetary obligation, does not evidence an order to pay, and
36 does not contain an acknowledgment by a bank that the bank has received for

1 deposit a sum of money or funds.

2 (66) "Proposal" means a record authenticated by a secured party
3 which includes the terms on which the secured party is willing to accept
4 collateral in full or partial satisfaction of the obligation it secures
5 pursuant to §§ 4-9-620, 4-9-621, and 4-9-622.

6 (67) "Public-finance transaction" means a secured transaction in
7 connection with which:

8 (A) debt securities are issued;

9 (B) all or a portion of the securities issued have an
10 initial stated maturity of at least twenty (20) years; and

11 (C) the debtor, obligor, secured party, account debtor or
12 other person obligated on collateral, assignor or assignee of a secured
13 obligation, or assignor or assignee of a security interest is a State or a
14 governmental unit of a State.

15 (68) "Pursuant to commitment", with respect to an advance made or
16 other value given by a secured party, means pursuant to the secured party's
17 obligation, whether or not a subsequent event of default or other event not
18 within the secured party's control has relieved or may relieve the secured
19 party from its obligation.

20 (69) *'Qualified intangible property' means a fully vested*
21 *property right consisting of the irrevocable right of an electric utility or*
22 *an assignee to charge, collect, receive, and be paid from collections of*
23 *qualified intangible charges in the amount necessary to recover fully the*
24 *qualified costs which are determined to be recoverable by the commission*
25 *pursuant to the electric Consumer Choice Act of 1999 (§ 23-19-101 et seq.),*
26 *all right, title, and interest of the electric utility or assignee in and to*
27 *the qualified rate order pursuant to which such qualified intangible charges*
28 *are authorized, including, without limitation, the right to obtain periodic*
29 *adjustment of such qualified intangible charges pursuant to § 23-19-605(d),*
30 *and all revenues, collections, claims, payments, money or proceeds of, or*
31 *arising from, qualified intangible charges pursuant to such qualified rate*
32 *order, whether or not the revenues and proceeds arising with respect thereto*
33 *have accrued. Qualified intangible property shall constitute a contract*
34 *right; it is not an account or general intangible.*

35 (70) "Record", except as used in "for record", "of record",
36 "record or legal title", and "record owner", means information that is

1 inscribed on a tangible medium or which is stored in an electronic or other
2 medium and is retrievable in perceivable form.

3 (71) "Registered organization" means an organization organized
4 solely under the law of a single State or the United States and as to which
5 the State or the United States must maintain a public record showing the
6 organization to have been organized.

7 (72) "Secondary obligor" means an obligor to the extent that:

8 (A) the obligor's obligation is secondary; or

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

12 (73) "Secured party" means:

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

16 (B) a person that holds an agricultural lien;

17 (C) a consignor;

18 (D) a person to which accounts, chattel paper, payment
19 intangibles, or promissory notes have been sold;

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

23 (F) a person that holds a security interest arising under
24 § 4-2-401, 4-2-505, 4-2-711(3), 4-2A-508(5), 4-4-210, or 4-5-118.

25 (74) "Security agreement" means an agreement that creates or
26 provides for a security interest.

27 (75) "Send", in connection with a record or notification, means:

28 (A) to deposit in the mail, deliver for transmission, or
29 transmit by any other usual means of communication, with postage or cost of
30 transmission provided for, addressed to any address reasonable under the
31 circumstances; or

32 (B) to cause the record or notification to be received
33 within the time that it would have been received if properly sent under
34 subparagraph (A).

35 (76) "Software" means a computer program and any supporting
36 information provided in connection with a transaction relating to the program.

1 The term does not include a computer program that is included in the
2 definition of goods.

3 (77) "State" means a State of the United States, the District of
4 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
5 insular possession subject to the jurisdiction of the United States.

6 (78) "Supporting obligation" means a letter-of-credit right or
7 secondary obligation that supports the payment or performance of an account,
8 chattel paper, a document, a general intangible, an instrument, or investment
9 property.

10 (79) "Tangible chattel paper" means chattel paper evidenced by a
11 record or records consisting of information that is inscribed on a tangible
12 medium.

13 (80) "Termination statement" means an amendment of a financing
14 statement which:

15 (A) identifies, by its file number, the initial financing
16 statement to which it relates; and

17 (B) indicates either that it is a termination statement or
18 that the identified financing statement is no longer effective.

19 (81) "Transmitting utility" means a person primarily engaged in
20 the business of:

21 (A) operating a railroad, subway, street railway, or trolley
22 bus;

23 (B) transmitting communications electrically,
24 electromagnetically, or by light;

25 (C) transmitting goods by pipeline or sewer; or

26 (D) *producing or transmitting electricity, steam, gas, or*
27 *water.*

28 (b) The following definitions in other chapters apply to this chapter:

29 "Applicant" § 4-5-102.

30 "Beneficiary" § 4-5-102.

31 "Broker" § 4-8-102.

32 "Certificated security" § 4-8-102.

33 "Check" § 4-3-104.

34 "Clearing corporation" § 4-8-102.

35 "Contract for sale" § 4-2-106.

36 "Customer" § 4-4-104.

1	"Entitlement holder"	§ 4-8-102.
2	"Financial asset"	§ 4-8-102.
3	"Holder in due course"	§ 4-3-302.
4	"Issuer" (with respect to a letter of	
5	credit or letter-of-credit right)	§ 4-5-102.
6	"Issuer" (with respect to a security)	§ 4-8-201.
7	"Lease"	§ 4-2A-103.
8	"Lease agreement"	§ 4-2A-103.
9	"Lease contract"	§ 4-2A-103.
10	"Leasehold interest"	§ 4-2A-103.
11	"Lessee"	§ 4-2A-103.
12	"Lessee in ordinary course of business"	§ 4-2A-103.
13	"Lessor"	§ 4-2A-103.
14	"Lessor's residual interest"	§ 4-2A-103.
15	"Letter of credit"	§ 4-5-102.
16	"Merchant"	§ 4-2-104.
17	"Negotiable instrument"	§ 4-3-104.
18	"Nominated person"	§ 4-5-102.
19	"Note"	§ 4-3-104.
20	"Proceeds of a letter of credit"	§ 4-5-114.
21	"Prove"	§ 4-3-103.
22	"Sale"	§ 4-2-106.
23	"Securities account"	§ 4-8-501.
24	"Securities intermediary"	§ 4-8-102.
25	"Security"	§ 4-8-102.
26	"Security certificate"	§ 4-8-102.
27	"Security entitlement"	§ 4-8-102.
28	"Uncertificated security"	§ 4-8-102.

29 (c) Chapter 1 contains general definitions and principles of
30 construction and interpretation applicable throughout this chapter.

31

32 4-9-103. PURCHASE-MONEY SECURITY INTEREST; APPLICATION OF PAYMENTS;
33 BURDEN OF ESTABLISHING.

34 (a) In this section:

35 (1) "purchase-money collateral" means goods or software that
36 secures a purchase-money obligation incurred with respect to that collateral;

1 and

2 (2) "purchase-money obligation" means an obligation of an obligor
3 incurred as all or part of the price of the collateral or for value given to
4 enable the debtor to acquire rights in or the use of the collateral if the
5 value is in fact so used.

6 (b) A security interest in goods is a purchase-money security interest:

7 (1) to the extent that the goods are purchase-money collateral
8 with respect to that security interest;

9 (2) if the security interest is in inventory that is or was
10 purchase-money collateral, also to the extent that the security interest
11 secures a purchase-money obligation incurred with respect to other inventory
12 in which the secured party holds or held a purchase-money security interest;
13 and

14 (3) also to the extent that the security interest secures a
15 purchase-money obligation incurred with respect to software in which the
16 secured party holds or held a purchase-money security interest.

17 (c) A security interest in software is a purchase-money security
18 interest to the extent that the security interest also secures a purchase-
19 money obligation incurred with respect to goods in which the secured party
20 holds or held a purchase-money security interest if:

21 (1) the debtor acquired its interest in the software in an
22 integrated transaction in which it acquired an interest in the goods; and

23 (2) the debtor acquired its interest in the software for the
24 principal purpose of using the software in the goods.

25 (d) The security interest of a consignor in goods that are the subject
26 of a consignment is a purchase-money security interest in inventory.

27 (e) In a transaction other than a consumer-goods transaction, if the
28 extent to which a security interest is a purchase-money security interest
29 depends on the application of a payment to a particular obligation, the
30 payment must be applied:

31 (1) in accordance with any reasonable method of application to
32 which the parties agree;

33 (2) in the absence of the parties' agreement to a reasonable
34 method, in accordance with any intention of the obligor manifested at or
35 before the time of payment; or

36 (3) in the absence of an agreement to a reasonable method and a

1 timely manifestation of the obligor's intention, in the following order:

2 (A) to obligations that are not secured; and

3 (B) if more than one obligation is secured, to obligations
4 secured by purchase-money security interests in the order in which those
5 obligations were incurred.

6 (f) In a transaction other than a consumer-goods transaction, a
7 purchase-money security interest does not lose its status as such, even if:

8 (1) the purchase-money collateral also secures an obligation that
9 is not a purchase-money obligation;

10 (2) collateral that is not purchase-money collateral also secures
11 the purchase-money obligation; or

12 (3) the purchase-money obligation has been renewed, refinanced,
13 consolidated, or restructured.

14 (g) In a transaction other than a consumer-goods transaction, a secured
15 party claiming a purchase-money security interest has the burden of
16 establishing the extent to which the security interest is a purchase-money
17 security interest.

18 (h) The limitation of the rules in subsections (e), (f), and (g) to
19 transactions other than consumer-goods transactions is intended to leave to
20 the court the determination of the proper rules in consumer-goods
21 transactions. The court may not infer from that limitation the nature of the
22 proper rule in consumer-goods transactions and may continue to apply
23 established approaches.

24

25 4-9-104. CONTROL OF DEPOSIT ACCOUNT.

26 (a) A secured party has control of a deposit account if:

27 (1) the secured party is the bank with which the deposit account
28 is maintained;

29 (2) the debtor, secured party, and bank have agreed in an
30 authenticated record that the bank will comply with instructions originated by
31 the secured party directing disposition of the funds in the deposit account
32 without further consent by the debtor; or

33 (3) the secured party becomes the bank's customer with respect to
34 the deposit account.

35 (b) A secured party that has satisfied subsection (a) has control, even
36 if the debtor retains the right to direct the disposition of funds from the

1 deposit account.

2

3 4-9-105. CONTROL OF ELECTRONIC CHATTEL PAPER. A secured party has
4 control of electronic chattel paper if the record or records comprising the
5 chattel paper are created, stored, and assigned in such a manner that:

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

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

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

13 (4) copies or revisions that add or change an identified assignee of the
14 authoritative copy can be made only with the participation of the secured
15 party;

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

18 (6) any revision of the authoritative copy is readily identifiable as an
19 authorized or unauthorized revision.

20

21 4-9-106. CONTROL OF INVESTMENT PROPERTY.

22 (a) A person has control of a certificated security, uncertificated
23 security, or security entitlement as provided in § 4-8-106.

24 (b) A secured party has control of a commodity contract if:

25 (1) the secured party is the commodity intermediary with which the
26 commodity contract is carried; or

27 (2) the commodity customer, secured party, and commodity
28 intermediary have agreed that the commodity intermediary will apply any value
29 distributed on account of the commodity contract as directed by the secured
30 party without further consent by the commodity customer.

31 (c) A secured party having control of all security entitlements or
32 commodity contracts carried in a securities account or commodity account has
33 control over the securities account or commodity account.

34

35 4-9-107. CONTROL OF LETTER-OF-CREDIT RIGHT. A secured party has
36 control of a letter-of-credit right to the extent of any right to payment or

1 performance by the issuer or any nominated person if the issuer or nominated
2 person has consented to an assignment of proceeds of the letter of credit
3 under § 4-5-114(c) or otherwise applicable law or practice.

4
5 4-9-108. SUFFICIENCY OF DESCRIPTION.

6 (a) Except as otherwise provided in subsections (c), (d), and (e), a
7 description of personal or real property is sufficient, whether or not it is
8 specific, if it reasonably identifies what is described.

9 (b) Except as otherwise provided in subsection (d), a description of
10 collateral reasonably identifies the collateral if it identifies the
11 collateral by:

- 12 (1) specific listing;
- 13 (2) category;
- 14 (3) except as otherwise provided in subsection (e), a type of
15 collateral defined in the Uniform Commercial Code;
- 16 (4) quantity;
- 17 (5) computational or allocational formula or procedure; or
- 18 (6) except as otherwise provided in subsection (c), any other
19 method, if the identity of the collateral is objectively determinable.

20 (c) A description of collateral as "all the debtor's assets" or "all
21 the debtor's personal property" or using words of similar import does not
22 reasonably identify the collateral.

23 (d) Except as otherwise provided in subsection (e), a description of a
24 security entitlement, securities account, or commodity account is sufficient
25 if it describes:

- 26 (1) the collateral by those terms or as investment property; or
- 27 (2) the underlying financial asset or commodity contract.

28 (e) A description only by type of collateral defined in the Uniform
29 Commercial Code is an insufficient description of:

- 30 (1) a commercial tort claim; or
- 31 (2) in a consumer transaction, consumer goods, a security
32 entitlement, a securities account, or a commodity account.

33
34 SUBPART 2. APPLICABILITY OF CHAPTER

35
36 4-9-109. SCOPE.

1 (a) Except as otherwise provided in subsections (c) and (d), this
2 chapter applies to:

3 (1) a transaction, regardless of its form, that creates a security
4 interest in personal property or fixtures by contract;

5 (2) an agricultural lien;

6 (3) a sale of accounts, chattel paper, payment *intangibles*,
7 *qualified intangible property*, or promissory notes;

8 (4) a consignment;

9 (5) a security interest arising under §4-2-401, 4-2-505, 4-2-
10 711(3), or 4-2A-508(5), as provided in § 4-9-110; and

11 (6) a security interest arising under § 4-4-210 or 4-5-118.

12 (b) The application of this chapter to a security interest in a secured
13 obligation is not affected by the fact that the obligation is itself secured
14 by a transaction or interest to which this chapter does not apply.

15 (c) This chapter does not apply to the extent that:

16 (1) a statute, regulation, or treaty of the United States preempts
17 *this chapter*; or

18 (2) *the rights of a transferee beneficiary or nominated person* under a
19 letter of credit are independent and superior under § 4-5-114.

20 (d) This chapter does not apply to:

21 (1) a landlord's lien, other than an agricultural lien;

22 (2) a lien, other than an agricultural lien, given by statute or
23 other rule of law for services or materials, but § 4-9-333 applies with
24 respect to priority of the lien;

25 (3) an assignment of a claim for wages, salary, or other
26 compensation of an employee;

27 (4) a sale of accounts, chattel paper, payment *intangibles*, or
28 promissory notes as part of a sale of the business out of which they arose;

29 (5) an assignment of accounts, chattel paper, payment *intangibles*,
30 or promissory notes which is for the purpose of collection only;

31 (6) an assignment of a right to payment under a contract to an
32 assignee that is also obligated to perform under the contract;

33 (7) an assignment of a single account, payment *intangible*, or
34 promissory note to an assignee in full or partial satisfaction of a
35 preexisting indebtedness;

36 (8) a transfer of an interest in or an assignment of a claim

1 under a policy of insurance, other than an assignment by or to a health-care
 2 provider of a health-care-insurance receivable and any subsequent assignment
 3 of the right to payment, but §§ 4-9-315 and 4-9-322 apply with respect to
 4 proceeds and priorities in proceeds;

5 (9) an assignment of a right represented by a judgment, other than
 6 a judgment taken on a right to payment that was collateral;

7 (10) a right of recoupment or set-off, but:

8 (A) § 4-9-340 applies with respect to the effectiveness of
 9 rights of recoupment or set-off against deposit accounts; and

10 (B) § 4-9-404 applies with respect to defenses or claims of
 11 an account debtor;

12 (11) the creation or transfer of an interest in or lien on real
 13 property, including a lease or rents thereunder, except to the extent that
 14 provision is made for:

15 (A) liens on real property in §§ 4-9-203 and 4-9-308;

16 (B) fixtures in § 4-9-334;

17 (C) fixture filings in §§ 4-9-501, 4-9-502, 4-9-512, 4-9-
 18 516, and 4-9-519; and

19 (D) security agreements covering personal and real property
 20 in § 4-9-604;

21 (12) an assignment of a claim arising in tort, other than a
 22 commercial tort claim, but §§ 4-9-315 and 4-9-322 apply with respect to
 23 proceeds and priorities in proceeds;

24 (13) an assignment of a deposit account in a consumer transaction, but §§ 4-9-
 25 315 and 4-9-322 apply with respect to proceeds and priorities in *proceeds*; or

26 (14) *a transfer by a government or governmental unit.*

27
 28 4-9-110. SECURITY INTERESTS ARISING UNDER CHAPTER 2 OR 2A. A security
 29 interest arising under § 4-2-401, 4-2-505, 4-2-711(3), or 4-2A-508(5) is
 30 subject to this chapter. However, until the debtor obtains possession of the
 31 goods:

32 (1) the security interest is enforceable, even if § 4-9-203(b)(3)
 33 has not been satisfied;

34 (2) filing is not required to perfect the security interest;

35 (3) the rights of the secured party after default by the debtor
 36 are governed by Chapter 2 or 2A; and

1 (4) the security interest has priority over a conflicting security
2 interest created by the debtor.

3
4 PART 2

5 EFFECTIVENESS OF SECURITY AGREEMENT;

6 ATTACHMENT OF SECURITY INTEREST;

7 RIGHTS OF PARTIES TO SECURITY AGREEMENT

8 SUBPART 1. EFFECTIVENESS AND ATTACHMENT

9
10 4-9-201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT.

11 (a) Except as otherwise provided in the Uniform Commercial Code, a
12 security agreement is effective according to its terms between the parties,
13 against purchasers of the collateral, and against creditors.

14 (b) A transaction subject to this chapter is subject to any applicable
15 rule of law which establishes a different rule for consumers; to any other
16 statute or regulation of this State that regulates the rates, charges,
17 agreements, and practices for loans, credit sales, or other extensions of
18 credit; to rights for workers compensation as provided in § 11-9-110(a); and
19 to any consumer-protection statute or regulation of this State.

20 (c) In case of conflict between this chapter and a rule of law,
21 statute, or regulation described in subsection (b), the rule of law, statute,
22 or regulation controls. Failure to comply with a statute or regulation
23 described in subsection (b) has only the effect the statute or regulation
24 specifies.

25 (d) This chapter does not:

26 (1) validate any rate, charge, agreement, or practice that
27 violates a rule of law, statute, or regulation described in subsection (b); or

28 (2) extend the application of the rule of law, statute, or
29 regulation to a transaction not otherwise subject to it.

30
31 4-9-202. TITLE TO COLLATERAL IMMATERIAL. Except as otherwise provided
32 with respect to consignments or sales of accounts, chattel paper, payment
33 intangibles, or promissory notes, the provisions of this chapter with regard
34 to rights and obligations apply whether title to collateral is in the secured
35 party or the debtor.

36

1 4-9-203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS;
2 SUPPORTING OBLIGATIONS; FORMAL REQUIREMENTS.

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

6 (b) Except as otherwise provided in subsections (c) through (i), a
7 security interest is enforceable against the debtor and third parties with
8 respect to the collateral only if:

9 (1) value has been given;

10 (2) the debtor has rights in the collateral or the power to
11 transfer rights in the collateral to a secured party; and

12 (3) one of the following conditions is met:

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

16 (B) the collateral is not a certificated security and is in
17 the possession of the secured party under § 4-9-313 pursuant to the debtor's
18 security agreement;

19 (C) the collateral is a certificated security in registered
20 form and the security certificate has been delivered to the secured party
21 under § 4-8-301 pursuant to the debtor's security agreement; or

22 (D) the collateral is deposit accounts, electronic chattel
23 paper, investment property, or letter-of-credit rights, and the secured party
24 has control under § 4-9-104, 4-9-105, 4-9-106, or 4-9-107 pursuant to the
25 debtor's security agreement.

26 (c) Subsection (b) is subject to § 4-4-210 on the security interest of
27 a collecting bank, § 4-5-118 on the security interest of a letter-of-credit
28 issuer or nominated person, § 4-9-110 on a security interest arising under
29 Chapter 2 or 2A, and § 4-9-206 on security interests in investment property.

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

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

35 (2) the person becomes generally obligated for the obligations of
36 the other person, including the obligation secured under the security

1 agreement, and acquires or succeeds to all or substantially all of the assets
2 of the other person.

3 (e) If a new debtor becomes bound as debtor by a security agreement
4 entered into by another person:

5 (1) the agreement satisfies subsection (b)(3) with respect to
6 existing or after-acquired property of the new debtor to the extent the
7 property is described in the agreement; and

8 (2) another agreement is not necessary to make a security interest
9 in the property enforceable.

10 (f) The attachment of a security interest in collateral gives the
11 secured party the rights to proceeds provided by § 4-9-315 and is also
12 attachment of a security interest in a supporting obligation for the
13 collateral.

14 (g) The attachment of a security interest in a right to payment or
15 performance secured by a security interest or other lien on personal or real
16 property is also attachment of a security interest in the security interest,
17 mortgage, or other lien.

18 (h) The attachment of a security interest in a securities account is
19 also attachment of a security interest in the security entitlements carried in
20 the securities account.

21 (i) The attachment of a security interest in a commodity account is
22 also attachment of a security interest in the commodity contracts carried in
23 the commodity account.

24

25 4-9-204. AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES.

26 (a) Except as otherwise provided in subsection (b), a security
27 agreement may create or provide for a security interest in after-acquired
28 collateral.

29 (b) A security interest does not attach under a term constituting an
30 after-acquired property clause to:

31 (1) consumer goods, other than an accession when given as
32 additional security, unless the debtor acquires rights in them within ten (10)
33 days after the secured party gives value; or

34 (2) a commercial tort claim.

35 (c) A security agreement may provide that collateral secures, or that
36 accounts, chattel paper, payment intangibles, or promissory notes are sold in

1 connection with, future advances or other value, whether or not the advances
2 or value are given pursuant to commitment.

3
4 4-9-205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE.

5 (a) A security interest is not invalid or fraudulent against creditors
6 solely because:

7 (1) the debtor has the right or ability to:

8 (A) use, commingle, or dispose of all or part of the
9 collateral, including returned or repossessed goods;

10 (B) collect, compromise, enforce, or otherwise deal with
11 collateral;

12 (C) accept the return of collateral or make repossessions;
13 or

14 (D) use, commingle, or dispose of proceeds; or

15 (2) the secured party fails to require the debtor to account for
16 proceeds or replace collateral.

17 (b) This section does not relax the requirements of possession if
18 attachment, perfection, or enforcement of a security interest depends upon
19 possession of the collateral by the secured party.

20
21 4-9-206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL
22 ASSET.

23 (a) A security interest in favor of a securities intermediary attaches
24 to a person's security entitlement if:

25 (1) the person buys a financial asset through the securities
26 intermediary in a transaction in which the person is obligated to pay the
27 purchase price to the securities intermediary at the time of the purchase; and

28 (2) the securities intermediary credits the financial asset to the
29 buyer's securities account before the buyer pays the securities intermediary.

30 (b) The security interest described in subsection (a) secures the
31 person's obligation to pay for the financial asset.

32 (c) A security interest in favor of a person that delivers a
33 certificated security or other financial asset represented by a writing
34 attaches to the security or other financial asset if:

35 (1) the security or other financial asset:

36 (A) in the ordinary course of business is transferred by

1 delivery with any necessary indorsement or assignment; and

2 (B) is delivered under an agreement between persons in the
3 business of dealing with such securities or financial assets; and

4 (2) the agreement calls for delivery against payment.

5 (d) The security interest described in subsection (c) secures the
6 obligation to make payment for the delivery.

7 SUBPART 2. RIGHTS AND DUTIES

8 4-9-207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR
9 CONTROL OF COLLATERAL.

10 (a) Except as otherwise provided in subsection (d), a secured party
11 shall use reasonable care in the custody and preservation of collateral in the
12 secured party's possession. In the case of chattel paper or an instrument,
13 reasonable care includes taking necessary steps to preserve rights against
14 prior parties unless otherwise agreed.

15 (b) Except as otherwise provided in subsection (d), if a secured party
16 has possession of collateral:

17 (1) reasonable expenses, including the cost of insurance and
18 payment of taxes or other charges, incurred in the custody, preservation, use,
19 or operation of the collateral are chargeable to the debtor and are secured by
20 the collateral;

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

23 (3) the secured party shall keep the collateral identifiable, but
24 fungible collateral may be commingled; and

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

26 (A) for the purpose of preserving the collateral or its
27 value;

28 (B) as permitted by an order of a court having competent
29 jurisdiction; or

30 (C) except in the case of consumer goods, in the manner and
31 to the extent agreed by the debtor.

32 (c) Except as otherwise provided in subsection (d), a secured party
33 having possession of collateral or control of collateral under § 4-9-104, 4-9-
34 105, 4-9-106, or 4-9-107:

35 (1) may hold as additional security any proceeds, except money or
36 funds, received from the collateral;

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

3 (3) may create a security interest in the collateral.

4 (d) If the secured party is a buyer of accounts, chattel paper, payment
5 intangibles, or promissory notes or a consignor:

6 (1) subsection (a) does not apply unless the secured party is
7 entitled under an agreement:

8 (A) to charge back uncollected collateral; or

9 (B) otherwise to full or limited recourse against the debtor
10 or a secondary obligor based on the nonpayment or other default of an account
11 debtor or other obligor on the collateral; and

12 (2) subsections (b) and (c) do not apply.

13
14 4-9-208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF
15 COLLATERAL.

16 (a) This section applies to cases in which there is no outstanding
17 secured obligation and the secured party is not committed to make advances,
18 incur obligations, or otherwise give value.

19 (b) Within ten (10) days after receiving an authenticated demand by the
20 debtor:

21 (1) a secured party having control of a deposit account under § 4-
22 9-104(a)(2) shall send to the bank with which the deposit account is
23 maintained an authenticated statement that releases the bank from any further
24 obligation to comply with instructions originated by the secured party;

25 (2) a secured party having control of a deposit account under § 4-
26 9-104(a)(3) shall:

27 (A) pay the debtor the balance on deposit in the deposit
28 account; or

29 (B) transfer the balance on deposit into a deposit account
30 in the debtor's name;

31 (3) a secured party, other than a buyer, having control of
32 electronic chattel paper under § 4-9-105 shall:

33 (A) communicate the authoritative copy of the electronic
34 chattel paper to the debtor or its designated custodian;

35 (B) if the debtor designates a custodian that is the
36 designated custodian with which the authoritative copy of the electronic

1 chattel paper is maintained for the secured party, communicate to the
2 custodian an authenticated record releasing the designated custodian from any
3 further obligation to comply with instructions originated by the secured party
4 and instructing the custodian to comply with instructions originated by the
5 debtor; and

6 (C) take appropriate action to enable the debtor or its
7 designated custodian to make copies of or revisions to the authoritative copy
8 which add or change an identified assignee of the authoritative copy without
9 the consent of the secured party;

10 (4) a secured party having control of investment property under
11 § 4-8-106(d)(2) or 4-9-106(b) shall send to the securities intermediary or
12 commodity intermediary with which the security entitlement or commodity
13 contract is maintained an authenticated record that releases the securities
14 intermediary or commodity intermediary from any further obligation to comply
15 with entitlement orders or directions originated by the secured party; and

16 (5) a secured party having control of a letter-of-credit right
17 under § 4-9-107 shall send to each person having an unfulfilled obligation to
18 pay or deliver proceeds of the letter of credit to the secured party an
19 authenticated release from any further obligation to pay or deliver proceeds
20 of the letter of credit to the secured party.

21
22 4-9-209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS BEEN NOTIFIED OF
23 ASSIGNMENT.

24 (a) Except as otherwise provided in subsection (c), this section
25 applies if:

26 (1) there is no outstanding secured obligation; and

27 (2) the secured party is not committed to make advances, incur
28 obligations, or otherwise give value.

29 (b) Within ten (10) days after receiving an authenticated demand by the
30 debtor, a secured party shall send to an account debtor that has received
31 notification of an assignment to the secured party as assignee under § 4-9-
32 406(a) an authenticated record that releases the account debtor from any
33 further obligation to the secured party.

34 (c) This section does not apply to an assignment constituting the sale
35 of an account, chattel paper, or payment intangible.

36

1 4-9-210. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST OF COLLATERAL
2 OR STATEMENT OF ACCOUNT.

3 (a) In this section:

4 (1) "Request" means a record of a type described in paragraph
5 (2), (3), or (4).

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

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

15 (4) "Request regarding a statement of account" means a record
16 authenticated by a debtor requesting that the recipient approve or correct a
17 statement indicating what the debtor believes to be the aggregate amount of
18 unpaid obligations secured by collateral as of a specified date and reasonably
19 identifying the transaction or relationship that is the subject of the
20 request.

21 (b) Subject to subsections (c), (d), (e), and (f), a secured party,
22 other than a buyer of accounts, chattel paper, payment intangibles, or
23 promissory notes or a consignor, shall comply with a request within fourteen
24 (14) days after receipt:

25 (1) in the case of a request for an accounting, by authenticating
26 and sending to the debtor an accounting; and

27 (2) in the case of a request regarding a list of collateral or a
28 request regarding a statement of account, by authenticating and sending to the
29 debtor an approval or correction.

30 (c) A secured party that claims a security interest in all of a
31 particular type of collateral owned by the debtor may comply with a request
32 regarding a list of collateral by sending to the debtor an authenticated
33 record including a statement to that effect within fourteen (14) days after
34 receipt.

35 (d) A person that receives a request regarding a list of collateral,
36 claims no interest in the collateral when it receives the request, and claimed

1 an interest in the collateral at an earlier time shall comply with the request
2 within fourteen (14) days after receipt by sending to the debtor an
3 authenticated record:

4 (1) disclaiming any interest in the collateral; and

5 (2) if known to the recipient, providing the name and mailing
6 address of any assignee of or successor to the recipient's interest in the
7 collateral.

8 (e) A person that receives a request for an accounting or a request
9 regarding a statement of account, claims no interest in the obligations when
10 it receives the request, and claimed an interest in the obligations at an
11 earlier time shall comply with the request within fourteen (14) days after
12 receipt by sending to the debtor an authenticated record:

13 (1) disclaiming any interest in the obligations; and

14 (2) if known to the recipient, providing the name and mailing
15 address of any assignee of or successor to the recipient's interest in the
16 obligations.

17 (f) A debtor is entitled without charge to one response to a request
18 under this section during any six-month period. The secured party may require
19 payment of a charge not exceeding twenty-five dollars (\$25) for each
20 additional response.

21

22 PART 3

23 PERFECTION AND PRIORITY

24 SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

25

26 4-9-301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS.

27 *Except as otherwise provided in §§ 4-9-303 through 4-9-306, and except for the*
28 *perfection, the effect of perfection or nonperfection, and the priority of a*
29 *security interest in qualified intangible property, which shall be governed by*
30 *the law of this State, the following rules determine the law governing*
31 *perfection, the effect of perfection or nonperfection, and the priority of a*
32 *security interest in collateral:*

33 (1) Except as otherwise provided in this section, while a debtor is
34 located in a jurisdiction, the local law of that jurisdiction governs

35 perfection, the effect of perfection or nonperfection, and the priority of a
36 security interest in collateral.

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

5 (3) Except as otherwise provided in paragraph (4), while negotiable
6 documents, goods, instruments, money, or tangible chattel paper is located in
7 a jurisdiction, the local law of that jurisdiction governs:

8 (A) perfection of a security interest in the goods by filing a
9 fixture filing;

10 (B) perfection of a security interest in timber to be cut; and

11 (C) the effect of perfection or nonperfection and the priority of
12 a nonpossessory security interest in the collateral.

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

16
17 4-9-302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS.
18 While farm products are located in a jurisdiction, the local law of that
19 jurisdiction governs perfection, the effect of perfection or nonperfection,
20 and the priority of an agricultural lien on the farm products.

21
22 4-9-303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN
23 GOODS COVERED BY A CERTIFICATE OF TITLE.

24 (a) This section applies to goods covered by a certificate of title,
25 even if there is no other relationship between the jurisdiction under whose
26 certificate of title the goods are covered and the goods or the debtor.

27 (b) Goods become covered by a certificate of title when a valid
28 application for the certificate of title and the applicable fee are delivered
29 to the appropriate authority. Goods cease to be covered by a certificate of
30 title at the earlier of the time the certificate of title ceases to be
31 effective under the law of the issuing jurisdiction or the time the goods
32 become covered subsequently by a certificate of title issued by another
33 jurisdiction.

34 (c) The local law of the jurisdiction under whose certificate of title
35 the goods are covered governs perfection, the effect of perfection or
36 nonperfection, and the priority of a security interest in goods covered by a

1 certificate of title from the time the goods become covered by the certificate
2 of title until the goods cease to be covered by the certificate of title.

3
4 4-9-304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN
5 DEPOSIT ACCOUNTS.

6 (a) The local law of a bank's jurisdiction governs perfection, the
7 effect of perfection or nonperfection, and the priority of a security interest
8 in a deposit account maintained with that bank.

9 (b) The following rules determine a bank's jurisdiction for purposes of
10 this part:

11 (1) If an agreement between the bank and the debtor governing the
12 deposit account expressly provides that a particular jurisdiction is the
13 bank's jurisdiction for purposes of this part, this chapter, or the Uniform
14 Commercial Code, that jurisdiction is the bank's jurisdiction.

15 (2) If paragraph (1) does not apply and an agreement between the
16 bank and its customer governing the deposit account expressly provides that
17 the agreement is governed by the law of a particular jurisdiction, that
18 jurisdiction is the bank's jurisdiction.

19 (3) If neither paragraph (1) nor paragraph (2) applies and an
20 agreement between the bank and its customer governing the deposit account
21 expressly provides that the deposit account is maintained at an office in a
22 particular jurisdiction, that jurisdiction is the bank's jurisdiction.

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

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

29
30 4-9-305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN
31 INVESTMENT PROPERTY.

32 (a) Except as otherwise provided in subsection (c), the following rules
33 apply:

34 (1) While a security certificate is located in a jurisdiction,
35 the local law of that jurisdiction governs perfection, the effect of
36 perfection or nonperfection, and the priority of a security interest in the

1 certified security represented thereby.

2 (2) The local law of the issuer's jurisdiction as specified in
3 §4-8-110(d) governs perfection, the effect of perfection or nonperfection, and
4 the priority of a security interest in an uncertificated security.

5 (3) The local law of the securities intermediary's jurisdiction
6 as specified in § 4-8-110(e) governs perfection, the effect of perfection or
7 nonperfection, and the priority of a security interest in a security
8 entitlement or securities account.

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

12 (b) The following rules determine a commodity intermediary's
13 jurisdiction for purposes of this part:

14 (1) If an agreement between the commodity intermediary and
15 commodity customer governing the commodity account expressly provides that a
16 particular jurisdiction is the commodity intermediary's jurisdiction for
17 purposes of this part, this chapter, or the Uniform Commercial Code, that
18 jurisdiction is the commodity intermediary's jurisdiction.

19 (2) If paragraph (1) does not apply and an agreement between the
20 commodity intermediary and commodity customer governing the commodity account
21 expressly provides that the agreement is governed by the law of a particular
22 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

23 (3) If neither paragraph (1) nor paragraph (2) applies and an
24 agreement between the commodity intermediary and commodity customer governing
25 the commodity account expressly provides that the commodity account is
26 maintained at an office in a particular jurisdiction, that jurisdiction is the
27 commodity intermediary's jurisdiction.

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

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

35 (c) The local law of the jurisdiction in which the debtor is located
36 governs:

1 (1) perfection of a security interest in investment property by
2 filing;

3 (2) automatic perfection of a security interest in investment
4 property created by a broker or securities intermediary; and

5 (3) automatic perfection of a security interest in a commodity
6 contract or commodity account created by a commodity intermediary.

7

8 4-9-306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN
9 LETTER-OF-CREDIT RIGHTS.

10 (a) Subject to subsection (c), the local law of the issuer's
11 jurisdiction or a nominated person's jurisdiction governs perfection, the
12 effect of perfection or nonperfection, and the priority of a security interest
13 in a letter-of-credit right if the issuer's jurisdiction or nominated person's
14 jurisdiction is a State.

15 (b) For purposes of this part, an issuer's jurisdiction or nominated
16 person's jurisdiction is the jurisdiction whose law governs the liability of
17 the issuer or nominated person with respect to the letter-of-credit right as
18 provided in § 4-5-116.

19 (c) This section does not apply to a security interest that is
20 perfected only under § 4-9-308(d).

21

22 4-9-307. LOCATION OF DEBTOR.

23 (a) In this section, "place of business" means a place where a debtor
24 conducts its affairs.

25 (b) Except as otherwise provided in this section, the following rules
26 determine a debtor's location:

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

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

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

33 (c) Subsection (b) applies only if a debtor's residence, place of
34 business, or chief executive office, as applicable, is located in a
35 jurisdiction whose law generally requires information concerning the existence
36 of a nonpossessory security interest to be made generally available in a

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

5 (d) A person that ceases to exist, have a residence, or have a place of
6 business continues to be located in the jurisdiction specified by subsections
7 (b) and (c).

8 (e) A registered organization that is organized under the law of a
9 State is located in that State.

10 (f) Except as otherwise provided in subsection (i), a registered
11 organization that is organized under the law of the United States and a branch
12 or agency of a bank that is not organized under the law of the United States
13 or a State are located:

14 (1) in the State that the law of the United States designates, if
15 the law designates a State of location;

16 (2) in the State that the registered organization, branch, or
17 agency designates, if the law of the United States authorizes the registered
18 organization, branch, or agency to designate its State of location; or

19 (3) in the District of Columbia, if neither paragraph (1) nor
20 paragraph (2) applies.

21 (g) A registered organization continues to be located in the
22 jurisdiction specified by subsection (e) or (f) notwithstanding:

23 (1) the suspension, revocation, forfeiture, or lapse of the
24 registered organization's status as such in its jurisdiction of organization;
25 or

26 (2) the dissolution, winding up, or cancellation of the existence
27 of the registered organization.

28 (h) The United States is located in the District of Columbia.

29 (i) A branch or agency of a bank that is not organized under the law of
30 the United States or a State is located in the State in which the branch or
31 agency is licensed, if all branches and agencies of the bank are licensed in
32 only one State.

33 (j) A foreign air carrier under the Federal Aviation Act of 1958, as
34 amended, is located at the designated office of the agent upon which service
35 of process may be made on behalf of the carrier.

36 (k) This section applies only for purposes of this part.

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SUBPART 2. PERFECTION

4-9-308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED;
CONTINUITY OF PERFECTION.

(a) Except as otherwise provided in this section and § 4-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in §§ 4-9-310 through 4-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in § 4-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

4-9-309. SECURITY INTEREST PERFECTED UPON ATTACHMENT. The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in § 4-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in § 4-9-311(a);

1 (2) an assignment of accounts or payment intangibles which does not by
2 itself or in conjunction with other assignments to the same assignee transfer
3 a significant part of the assignor's outstanding accounts or payment
4 intangibles;

5 (3) a sale of a payment intangible;

6 (4) a sale of a promissory note;

7 (5) a security interest created by the assignment of a health-care-
8 insurance receivable to the provider of the health-care goods or services;

9 (6) a security interest arising under §4-2-401, 4-2-505, 4-2-711(3), or
10 4-2A-508(5), until the debtor obtains possession of the collateral;

11 (7) a security interest of a collecting bank arising under § 4-4-210;

12 (8) a security interest of an issuer or nominated person arising under §
13 4-5-118;

14 (9) a security interest arising in the delivery of a financial asset
15 under § 4-9-206(c);

16 (10) a security interest in investment property created by a broker or
17 securities intermediary;

18 (11) a security interest in a commodity contract or a commodity account
19 created by a commodity intermediary;

20 (12) an assignment for the benefit of all creditors of the transferor
21 and subsequent transfers by the assignee thereunder; and

22 (13) a security interest created by an assignment of a beneficial
23 interest in a decedent's estate.

24
25 4-9-310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR
26 AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO WHICH FILING
27 PROVISIONS DO NOT APPLY.

28 (a) Except as otherwise provided in subsection (b) and § 4-9-312(b), a
29 financing statement must be filed to perfect all security interests and
30 agricultural liens.

31 (b) The filing of a financing statement is not necessary to perfect a
32 security interest:

33 (1) that is perfected under § 4-9-308(d), (e), (f), or (g);

34 (2) that is perfected under § 4-9-309 when it attaches;

35 (3) in property subject to a statute, regulation, or treaty
36 described in § 4-9-311(a);

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

3 (5) in certificated securities, documents, goods, or instruments
4 which is perfected without filing or possession under § 4-9-312(e), (f), or
5 (g);

6 (6) in collateral in the secured party's possession under
7 § 4-9-313;

8 (7) in a certificated security which is perfected by delivery of
9 the security certificate to the secured party under § 4-9-313;

10 (8) in deposit accounts, electronic chattel paper, investment
11 property, or letter-of-credit rights which is perfected by control under § 4-
12 9-314;

13 (9) in proceeds which is perfected under § 4-9-315; or

14 (10) that is perfected under § 4-9-316.

15 (c) If a secured party assigns a perfected security interest or
16 agricultural lien, a filing under this chapter is not required to continue the
17 perfected status of the security interest against creditors of and transferees
18 from the original debtor.

19
20 4-9-311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO
21 CERTAIN STATUTES, REGULATIONS, AND TREATIES.

22 (a) Except as otherwise provided in subsection (d), the filing of a
23 financing statement is not necessary or effective to perfect a security
24 interest in property subject to:

25 (1) a statute, regulation, or treaty of the United States whose
26 requirements for a security interest's obtaining priority over the rights of a
27 lien creditor with respect to the property preempt § 4-9-310(a);

28 (2) any other laws of this State which provide for central filing
29 of security interests or which require indication on a certificate of title to
30 property of such interest, including but not limited to §§ 27-14-801 – 27-14-
31 807; or

32 (3) a certificate-of-title statute of another jurisdiction which
33 provides for a security interest to be indicated on the certificate as a
34 condition or result of the security interest's obtaining priority over the
35 rights of a lien creditor with respect to the property.

36 (b) Compliance with the requirements of a statute, regulation, or

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

9 (c) Except as otherwise provided in subsection (d) and § 4-9-316(d) and
10 (e), duration and renewal of perfection of a security interest perfected by
11 compliance with the requirements prescribed by a statute, regulation, or
12 treaty described in subsection (a) are governed by the statute, regulation, or
13 treaty. In other respects, the security interest is subject to this chapter.

14 (d) During any period in which collateral subject to a statute
15 specified in subsection (a)(2) is inventory held for sale or lease by a person
16 or leased by that person as lessor and that person is in the business of
17 selling goods of that kind, this section does not apply to a security interest
18 in that collateral created by that person.

19
20 4-9-312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT
21 ACCOUNTS, DOCUMENTS, GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT
22 PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING;
23 TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION.

24 (a) A security interest in chattel paper, negotiable documents,
25 instruments, or investment property may be perfected by filing.

26 (b) Except as otherwise provided in § 4-9-315(c) and (d) for proceeds:

27 (1) a security interest in a deposit account may be perfected only
28 by control under § 4-9-314;

29 (2) and except as otherwise provided in § 4-9-308(d), a security
30 interest in a letter-of-credit right may be perfected only by control under §
31 4-9-314; and

32 (3) a security interest in money may be perfected only by the
33 secured party's taking possession under § 4-9-313.

34 (c) While goods are in the possession of a bailee that has issued a
35 negotiable document covering the goods:

36 (1) a security interest in the goods may be perfected by

1 perfecting a security interest in the document; and

2 (2) a security interest perfected in the document has priority
3 over any security interest that becomes perfected in the goods by another
4 method during that time.

5 (d) While goods are in the possession of a bailee that has issued a
6 nonnegotiable document covering the goods, a security interest in the goods
7 may be perfected by:

8 (1) issuance of a document in the name of the secured party;

9 (2) the bailee's receipt of notification of the secured party's
10 interest; or

11 (3) filing as to the goods.

12 (e) A security interest in certificated securities, negotiable
13 documents, or instruments is perfected without filing or the taking of
14 possession for a period of twenty (20) days from the time it attaches to the
15 extent that it arises for new value given under an authenticated security
16 agreement.

17 (f) A perfected security interest in a negotiable document or goods in
18 possession of a bailee, other than one that has issued a negotiable document
19 for the goods, remains perfected for twenty (20) days without filing if the
20 secured party makes available to the debtor the goods or documents
21 representing the goods for the purpose of:

22 (1) ultimate sale or exchange; or

23 (2) loading, unloading, storing, shipping, transshipping,
24 manufacturing, processing, or otherwise dealing with them in a manner
25 preliminary to their sale or exchange.

26 (g) A perfected security interest in a certificated security or
27 instrument remains perfected for twenty (20) days without filing if the
28 secured party delivers the security certificate or instrument to the debtor
29 for the purpose of:

30 (1) ultimate sale or exchange; or

31 (2) presentation, collection, enforcement, renewal, or
32 registration of transfer.

33 (h) After the 20-day period specified in subsection (e), (f), or (g)
34 expires, perfection depends upon compliance with this chapter.

35

36 4-9-313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS

1 SECURITY INTEREST WITHOUT FILING.

2 (a) Except as otherwise provided in subsection (b), a secured party may
3 perfect a security interest in negotiable documents, goods, instruments,
4 money, or tangible chattel paper by taking possession of the collateral. A
5 secured party may perfect a security interest in certificated securities by
6 taking delivery of the certificated securities under § 4-8-301.

7 (b) With respect to goods covered by a certificate of title issued by
8 this State, a secured party may perfect a security interest in the goods by
9 taking possession of the goods only in the circumstances described in § 4-9-
10 316(d).

11 (c) With respect to collateral other than certificated securities and
12 goods covered by a document, a secured party takes possession of collateral in
13 the possession of a person other than the debtor, the secured party, or a
14 lessee of the collateral from the debtor in the ordinary course of the
15 debtor's business, when:

16 (1) the person in possession authenticates a record acknowledging
17 that it holds possession of the collateral for the secured party's benefit; or

18 (2) the person takes possession of the collateral after having
19 authenticated a record acknowledging that it will hold possession of
20 collateral for the secured party's benefit.

21 (d) If perfection of a security interest depends upon possession of the
22 collateral by a secured party, perfection occurs no earlier than the time the
23 secured party takes possession and continues only while the secured party
24 retains possession.

25 (e) A security interest in a certificated security in registered form
26 is perfected by delivery when delivery of the certificated security occurs
27 under § 4-8-301 and remains perfected by delivery until the debtor obtains
28 possession of the security certificate.

29 (f) A person in possession of collateral is not required to acknowledge
30 that it holds possession for a secured party's benefit.

31 (g) If a person acknowledges that it holds possession for the secured
32 party's benefit:

33 (1) the acknowledgment is effective under subsection (c) or § 4-8-
34 301(a), even if the acknowledgment violates the rights of a debtor; and

35 (2) unless the person otherwise agrees or law other than this
36 chapter otherwise provides, the person does not owe any duty to the secured

1 party and is not required to confirm the acknowledgment to another person.

2 (h) A secured party having possession of collateral does not relinquish
3 possession by delivering the collateral to a person other than the debtor or a
4 lessee of the collateral from the debtor in the ordinary course of the
5 debtor's business if the person was instructed before the delivery or is
6 instructed contemporaneously with the delivery:

7 (1) to hold possession of the collateral for the secured party's
8 benefit; or

9 (2) to redeliver the collateral to the secured party.

10 (i) A secured party does not relinquish possession, even if a delivery
11 under subsection (h) violates the rights of a debtor. A person to which
12 collateral is delivered under subsection (h) does not owe any duty to the
13 secured party and is not required to confirm the delivery to another person
14 unless the person otherwise agrees or law other than this chapter otherwise
15 provides.

16

17 4-9-314. PERFECTION BY CONTROL.

18 (a) A security interest in investment property, deposit accounts,
19 letter-of-credit rights, or electronic chattel paper may be perfected by
20 control of the collateral under §§ 4-9-104, 4-9-105, 4-9-106, or 4-9-107.

21 (b) A security interest in deposit accounts, electronic chattel paper,
22 or letter-of-credit rights is perfected by control under §§ 4-9-104, 4-9-105,
23 or 4-9-107 when the secured party obtains control and remains perfected by
24 control only while the secured party retains control.

25 (c) A security interest in investment property is perfected by control under
26 § 4-9-106 from the time the secured party obtains control and remains
27 perfected by control until:

28 (1) the secured party does not have control; and

29 (2) one of the following occurs:

30 (A) if the collateral is a certificated security, the debtor
31 has or acquires possession of the security certificate;

32 (B) if the collateral is an uncertificated security, the
33 issuer has registered or registers the debtor as the registered owner; or

34 (C) if the collateral is a security entitlement, the debtor
35 is or becomes the entitlement holder.

36

1 4-9-315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN
2 PROCEEDS.

3 (a) Except as otherwise provided in this chapter and in § 4-2-403(2):

4 (1) a security interest or agricultural lien continues in
5 collateral notwithstanding sale, lease, license, exchange, or other
6 disposition thereof unless the secured party authorized the disposition free
7 of the security interest or agricultural lien; and

8 (2) a security interest attaches to any identifiable proceeds of
9 collateral.

10 (b) Proceeds that are commingled with other property are identifiable
11 proceeds:

12 (1) if the proceeds are goods, to the extent provided by
13 § 4-9-336; and

14 (2) if the proceeds are not goods, to the extent that the secured
15 party identifies the proceeds by a method of tracing, including application of
16 equitable principles, that is permitted under law other than this chapter with
17 respect to commingled property of the type involved.

18 (c) A security interest in proceeds is a perfected security interest if
19 the security interest in the original collateral was perfected.

20 (d) A perfected security interest in proceeds becomes unperfected on
21 the 21st day after the security interest attaches to the proceeds unless:

22 (1) the following conditions are satisfied:

23 (A) a filed financing statement covers the original
24 collateral;

25 (B) the proceeds are collateral in which a security interest
26 may be perfected by filing in the office in which the financing statement has
27 been filed; and

28 (C) the proceeds are not acquired with cash proceeds;

29 (2) the proceeds are identifiable cash proceeds; or

30 (3) the security interest in the proceeds is perfected other than
31 under subsection (c) when the security interest attaches to the proceeds or
32 within twenty (20) days thereafter.

33 (e) If a filed financing statement covers the original collateral, a
34 security interest in proceeds which remains perfected under subsection (d)(1)
35 becomes unperfected at the later of:

36 (1) when the effectiveness of the filed financing statement lapses

1 under § 4-9-515 or is terminated under § 4-9-513; or
2 (2) the twenty-first (21st) day after the security interest
3 attaches to the proceeds.

4

5 4-9-316. CONTINUED PERFECTION OF SECURITY INTEREST FOLLOWING CHANGE IN
6 GOVERNING LAW.

7 (a) A security interest perfected pursuant to the law of the
8 jurisdiction designated in § 4-9-301(1) or 4-9-305(c) remains perfected until
9 the earliest of:

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

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

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

16 (b) If a security interest described in subsection (a) becomes
17 perfected under the law of the other jurisdiction before the earliest time or
18 event described in that subsection, it remains perfected thereafter. If the
19 security interest does not become perfected under the law of the other
20 jurisdiction before the earliest time or event, it becomes unperfected and is
21 deemed never to have been perfected as against a purchaser of the collateral
22 for value.

23 (c) A possessory security interest in collateral, other than goods
24 covered by a certificate of title and as-extracted collateral consisting of
25 goods, remains continuously perfected if:

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

28 (2) thereafter the collateral is brought into another
29 jurisdiction; and

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

32 (d) Except as otherwise provided in subsection (e), a security interest
33 in goods covered by a certificate of title which is perfected by any method
34 under the law of another jurisdiction when the goods become covered by a
35 certificate of title from this State remains perfected until the security
36 interest would have become unperfected under the law of the other jurisdiction

1 had the goods not become so covered.

2 (e) A security interest described in subsection (d) becomes unperfected
3 as against a purchaser of the goods for value and is deemed never to have been
4 perfected as against a purchaser of the goods for value if the applicable
5 requirements for perfection under § 4-9-311(b) or 4-9-313 are not satisfied
6 before the earlier of:

7 (1) the time the security interest would have become unperfected
8 under the law of the other jurisdiction had the goods not become covered by a
9 certificate of title from this State; or

10 (2) the expiration of four months after the goods had become so
11 covered.

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

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

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

21 (g) If a security interest described in subsection (f) becomes
22 perfected under the law of the other jurisdiction before the earlier of the
23 time or the end of the period described in that subsection, it remains
24 perfected thereafter. If the security interest does not become perfected
25 under the law of the other jurisdiction before the earlier of that time or the
26 end of that period, it becomes unperfected and is deemed never to have been
27 perfected as against a purchaser of the collateral for value.

28

29 SUBPART 3. PRIORITY

30

31 4-9-317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY
32 INTEREST OR AGRICULTURAL LIEN.

33 (a) A security interest or agricultural lien is subordinate to the
34 rights of:

35 (1) a person entitled to priority under § 4-9-322; and

36 (2) except as otherwise provided in subsection (e), a person that

1 becomes a lien creditor before the earlier of the time:

2 (A) the security interest or agricultural lien is
3 perfected; or

4 (B) one of the conditions specified in § 4-9-203(b)(3) is
5 met and a financing statement covering the collateral is filed.

6 (b) Except as otherwise provided in subsection (e), a buyer, other than
7 a secured party, of tangible chattel paper, documents, goods, instruments, or
8 a security certificate takes free of a security interest or agricultural lien
9 if the buyer gives value and receives delivery of the collateral without
10 knowledge of the security interest or agricultural lien and before it is
11 perfected.

12 (c) Except as otherwise provided in subsection (e), a lessee of goods
13 takes free of a security interest or agricultural lien if the lessee gives
14 value and receives delivery of the collateral without knowledge of the
15 security interest or agricultural lien and before it is perfected.

16 (d) A licensee of a general intangible or a buyer, other than a secured
17 party, of accounts, electronic chattel paper, general intangibles, or
18 investment property other than a certificated security takes free of a
19 security interest if the licensee or buyer gives value without knowledge of
20 the security interest and before it is perfected.

21 (e) Except as otherwise provided in §§ 4-9-320 and 4-9-321, if a person
22 files a financing statement with respect to a purchase-money security interest
23 before or within twenty (20) days after the debtor receives delivery of the
24 collateral, the security interest takes priority over the rights of a buyer,
25 lessee, or lien creditor which arise between the time the security interest
26 attaches and the time of filing.

27

28 4-9-318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD; RIGHTS
29 AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND
30 PURCHASERS.

31 (a) A debtor that has sold an account, chattel paper, payment
32 intangible, or promissory note does not retain a legal or equitable interest
33 in the collateral sold.

34 (b) For purposes of determining the rights of creditors of, and
35 purchasers for value of an account or chattel paper from, a debtor that has
36 sold an account or chattel paper, while the buyer's security interest is

1 unperfected, the debtor is deemed to have rights and title to the account or
2 chattel paper identical to those the debtor sold.

3
4 4-9-319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND
5 PURCHASERS.

6 (a) Except as otherwise provided in subsection (b), for purposes of
7 determining the rights of creditors of, and purchasers for value of goods
8 from, a consignee, while the goods are in the possession of the consignee, the
9 consignee is deemed to have rights and title to the goods identical to those
10 the consignor had or had power to transfer.

11 (b) For purposes of determining the rights of a creditor of a
12 consignee, law other than this chapter determines the rights and title of a
13 consignee while goods are in the consignee's possession if, under this part, a
14 perfected security interest held by the consignor would have priority over the
15 rights of the creditor.

16
17 4-9-320. BUYER OF GOODS.

18 (a) Except as otherwise provided in subsection (e), a buyer in ordinary
19 course of business, other than a person buying farm products from a person
20 engaged in farming operations, takes free of a security interest created by
21 the buyer's seller, even if the security interest is perfected and the buyer
22 knows of its existence.

23 (b) Except as otherwise provided in subsection (e), a buyer of goods
24 from a person who used or bought the goods for use primarily for personal,
25 family, or household purposes takes free of a security interest, even if
26 perfected, if the buyer buys:

27 (1) without knowledge of the security interest;

28 (2) for value;

29 (3) primarily for the buyer's personal, family, or household
30 purposes; and

31 (4) before the filing of a financing statement covering the goods.

32 (c) To the extent that it affects the priority of a security interest
33 over a buyer of goods under subsection (b), the period of effectiveness of a
34 filing made in the jurisdiction in which the seller is located is governed by
35 § 4-9-316(a) and (b).

36 (d) A buyer in ordinary course of business buying oil, gas, or other

1 minerals at the wellhead or minehead or after extraction takes free of an
2 interest arising out of an encumbrance.

3 (e) Subsections (a) and (b) do not affect a security interest in goods
4 in the possession of the secured party under § 4-9-313.

5

6 4-9-321. LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY
7 COURSE OF BUSINESS.

8 (a) In this section, "licensee in ordinary course of business" means a
9 person that becomes a licensee of a general intangible in good faith, without
10 knowledge that the license violates the rights of another person in the
11 general intangible, and in the ordinary course from a person in the business
12 of licensing general intangibles of that kind. A person becomes a licensee in
13 the ordinary course if the license to the person comports with the usual or
14 customary practices in the kind of business in which the licensor is engaged
15 or with the licensor's own usual or customary practices.

16 (b) A licensee in ordinary course of business takes its rights under a
17 nonexclusive license free of a security interest in the general intangible
18 created by the licensor, even if the security interest is perfected and the
19 licensee knows of its existence.

20 (c) A lessee in ordinary course of business takes its leasehold
21 interest free of a security interest in the goods created by the lessor, even
22 if the security interest is perfected and the lessee knows of its existence.

23

24 4-9-322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND
25 AGRICULTURAL LIENS ON SAME COLLATERAL.

26 (a) Except as otherwise provided in this section, priority among
27 conflicting security interests and agricultural liens in the same collateral
28 is determined according to the following rules:

29 (1) Conflicting perfected security interests and agricultural
30 liens rank according to priority in time of filing or perfection. Priority
31 dates from the earlier of the time a filing covering the collateral is first
32 made or the security interest or agricultural lien is first perfected, if
33 there is no period thereafter when there is neither filing nor perfection.

34 (2) A perfected security interest or agricultural lien has
35 priority over a conflicting unperfected security interest or agricultural
36 lien.

1 (3) The first security interest or agricultural lien to attach or
2 become effective has priority if conflicting security interests and
3 agricultural liens are unperfected.

4 (b) For the purposes of subsection (a)(1):

5 (1) the time of filing or perfection as to a security interest in
6 collateral is also the time of filing or perfection as to a security interest
7 in proceeds; and

8 (2) the time of filing or perfection as to a security interest in
9 collateral supported by a supporting obligation is also the time of filing or
10 perfection as to a security interest in the supporting obligation.

11 (c) Except as otherwise provided in subsection (f), a security interest
12 in collateral which qualifies for priority over a conflicting security
13 interest under § 4-9-327, 4-9-328, 4-9-329, 4-9-330, or 4-9-331 also has
14 priority over a conflicting security interest in:

15 (1) any supporting obligation for the collateral; and

16 (2) proceeds of the collateral if:

17 (A) the security interest in proceeds is perfected;

18 (B) the proceeds are cash proceeds or of the same type as
19 the collateral; and

20 (C) in the case of proceeds that are proceeds of proceeds,
21 all intervening proceeds are cash proceeds, proceeds of the same type as the
22 collateral, or an account relating to the collateral.

23 (d) Subject to subsection (e) and except as otherwise provided in
24 subsection (f), if a security interest in chattel paper, deposit accounts,
25 negotiable documents, instruments, investment property, or letter-of-credit
26 rights is perfected by a method other than filing, conflicting perfected
27 security interests in proceeds of the collateral rank according to priority in
28 time of filing.

29 (e) Subsection (d) applies only if the proceeds of the collateral are
30 not cash proceeds, chattel paper, negotiable documents, instruments,
31 investment property, or letter-of-credit rights.

32 (f) Subsections (a) through (e) are subject to:

33 (1) subsection (g) and the other provisions of this part;

34 (2) § 4-4-210 with respect to a security interest of a collecting
35 bank;

36 (3) § 4-5-118 with respect to a security interest of an issuer or

1 nominated person; and

2 (4) § 4-9-110 with respect to a security interest arising under
3 Chapter 2 or 2A.

4 (g) A perfected agricultural lien on collateral has priority over a
5 conflicting security interest in or agricultural lien on the same collateral
6 if the statute creating the agricultural lien so provides.

7

8 4-9-323. FUTURE ADVANCES.

9 (a) Except as otherwise provided in subsection (c), for purposes of
10 determining the priority of a perfected security interest under § 4-9-
11 322(a)(1), perfection of the security interest dates from the time an advance
12 is made to the extent that the security interest secures an advance that:

13 (1) is made while the security interest is perfected only:

14 (A) under § 4-9-309 when it attaches; or

15 (B) temporarily under § 4-9-312(e), (f), or (g); and

16 (2) is not made pursuant to a commitment entered into before or
17 while the security interest is perfected by a method other than under § 4-9-
18 309 or 4-9-312(e), (f), or (g).

19 (b) Except as otherwise provided in subsection (c), a security interest
20 is subordinate to the rights of a person that becomes a lien creditor to the
21 extent that the security interest secures an advance made more than forty-five
22 (45) days after the person becomes a lien creditor unless the advance is made:

23 (1) without knowledge of the lien; or

24 (2) pursuant to a commitment entered into without knowledge of the
25 lien.

26 (c) Subsections (a) and (b) do not apply to a security interest held by
27 a secured party that is a buyer of accounts, chattel paper, payment
28 intangibles, or promissory notes or a consignor.

29 (d) Except as otherwise provided in subsection (e), a buyer of goods
30 other than a buyer in ordinary course of business takes free of a security
31 interest to the extent that it secures advances made after the earlier of:

32 (1) the time the secured party acquires knowledge of the buyer's
33 purchase; or

34 (2) forty-five (45) days after the purchase.

35 (e) Subsection (d) does not apply if the advance is made pursuant to a
36 commitment entered into without knowledge of the buyer's purchase and before

1 the expiration of the 45-day period.

2 (f) Except as otherwise provided in subsection (g), a lessee of goods,
3 other than a lessee in ordinary course of business, takes the leasehold
4 interest free of a security interest to the extent that it secures advances
5 made after the earlier of:

6 (1) the time the secured party acquires knowledge of the lease; or

7 (2) forty-five (45) days after the lease contract becomes
8 enforceable.

9 (g) Subsection (f) does not apply if the advance is made pursuant to a
10 commitment entered into without knowledge of the lease and before the
11 expiration of the 45-day period.

12

13 4-9-324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS.

14 (a) Except as otherwise provided in subsection (g), a perfected
15 purchase-money security interest in goods other than inventory or livestock
16 has priority over a conflicting security interest in the same goods, and,
17 except as otherwise provided in § 4-9-327, a perfected security interest in
18 its identifiable proceeds also has priority, if the purchase-money security
19 interest is perfected when the debtor receives possession of the collateral or
20 within twenty (20) days thereafter.

21 (b) Subject to subsection (c) and except as otherwise provided in
22 subsection (g), a perfected purchase-money security interest in inventory has
23 priority over a conflicting security interest in the same inventory, has
24 priority over a conflicting security interest in chattel paper or an
25 instrument constituting proceeds of the inventory and in proceeds of the
26 chattel paper, if so provided in § 4-9-330, and, except as otherwise provided
27 in § 4-9-327, also has priority in identifiable cash proceeds of the inventory
28 to the extent the identifiable cash proceeds are received on or before the
29 delivery of the inventory to a buyer, if:

30 (1) the purchase-money security interest is perfected when the
31 debtor receives possession of the inventory;

32 (2) the purchase-money secured party sends an authenticated
33 notification to the holder of the conflicting security interest;

34 (3) the holder of the conflicting security interest receives the
35 notification within five years before the debtor receives possession of the
36 inventory; and

1 (4) the notification states that the person sending the
2 notification has or expects to acquire a purchase-money security interest in
3 inventory of the debtor and describes the inventory.

4 (c) Subsections (b)(2) through (4) apply only if the holder of the
5 conflicting security interest had filed a financing statement covering the
6 same types of inventory:

7 (1) if the purchase-money security interest is perfected by
8 filing, before the date of the filing; or

9 (2) if the purchase-money security interest is temporarily
10 perfected without filing or possession under § 4-9-312(f), before the
11 beginning of the 20-day period thereunder.

12 (d) Subject to subsection (e) and except as otherwise provided in
13 subsection (g), a perfected purchase-money security interest in livestock that
14 are farm products has priority over a conflicting security interest in the
15 same livestock, and, except as otherwise provided in § 4-9-327, a perfected
16 security interest in their identifiable proceeds and identifiable products in
17 their unmanufactured states also has priority, if:

18 (1) the purchase-money security interest is perfected when the
19 debtor receives possession of the livestock;

20 (2) the purchase-money secured party sends an authenticated
21 notification to the holder of the conflicting security interest;

22 (3) the holder of the conflicting security interest receives the
23 notification within six months before the debtor receives possession of the
24 livestock; and

25 (4) the notification states that the person sending the
26 notification has or expects to acquire a purchase-money security interest in
27 livestock of the debtor and describes the livestock.

28 (e) Subsections (d)(2) through (4) apply only if the holder of the
29 conflicting security interest had filed a financing statement covering the
30 same types of livestock:

31 (1) if the purchase-money security interest is perfected by
32 filing, before the date of the filing; or

33 (2) if the purchase-money security interest is temporarily
34 perfected without filing or possession under § 4-9-312(f), before the
35 beginning of the 20-day period thereunder.

36 (f) Except as otherwise provided in subsection (g), a perfected

1 purchase-money security interest in software has priority over a conflicting
2 security interest in the same collateral, and, except as otherwise provided in
3 § 4-9-327, a perfected security interest in its identifiable proceeds also has
4 priority, to the extent that the purchase-money security interest in the goods
5 in which the software was acquired for use has priority in the goods and
6 proceeds of the goods under this section.

7 (g) If more than one security interest qualifies for priority in the
8 same collateral under subsection (a), (b), (d), or (f):

9 (1) a security interest securing an obligation incurred as all or
10 part of the price of the collateral has priority over a security interest
11 securing an obligation incurred for value given to enable the debtor to
12 acquire rights in or the use of collateral; and

13 (2) in all other cases, § 4-9-322(a) applies to the qualifying
14 security interests.

15

16 4-9-325. PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL.

17 (a) Except as otherwise provided in subsection (b), a security interest
18 created by a debtor is subordinate to a security interest in the same
19 collateral created by another person if:

20 (1) the debtor acquired the collateral subject to the security
21 interest created by the other person;

22 (2) the security interest created by the other person was
23 perfected when the debtor acquired the collateral; and

24 (3) there is no period thereafter when the security interest is
25 unperfected.

26 (b) Subsection (a) subordinates a security interest only if the
27 security interest:

28 (1) otherwise would have priority solely under § 4-9-322(a) or 4-
29 9-324; or

30 (2) arose solely under § 4-2-711(3) or 4-2A-508(5).

31

32 4-9-326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR.

33 (a) Subject to subsection (b), a security interest created by a new
34 debtor which is perfected by a filed financing statement that is effective
35 solely under § 4-9-508 in collateral in which a new debtor has or acquires
36 rights is subordinate to a security interest in the same collateral which is

1 perfected other than by a filed financing statement that is effective solely
2 under § 4-9-508.

3 (b) The other provisions of this part determine the priority among
4 conflicting security interests in the same collateral perfected by filed
5 financing statements that are effective solely under § 4-9-508. However, if
6 the security agreements to which a new debtor became bound as debtor were not
7 entered into by the same original debtor, the conflicting security interests
8 rank according to priority in time of the new debtor's having become bound.

9

10 4-9-327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT. The
11 following rules govern priority among conflicting security interests in the
12 same deposit account:

13 (1) A security interest held by a secured party having control of the
14 deposit account under § 4-9-104 has priority over a conflicting security
15 interest held by a secured party that does not have control.

16 (2) Except as otherwise provided in paragraphs (3) and (4), security
17 interests perfected by control under § 4-9-314 rank according to priority in
18 time of obtaining control.

19 (3) Except as otherwise provided in paragraph (4), a security interest
20 held by the bank with which the deposit account is maintained has priority
21 over a conflicting security interest held by another secured party.

22 (4) A security interest perfected by control under § 4-9-104(a)(3) has
23 priority over a security interest held by the bank with which the deposit
24 account is maintained.

25

26 4-9-328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. The
27 following rules govern priority among conflicting security interests in the
28 same investment property:

29 (1) A security interest held by a secured party having control of
30 investment property under § 4-9-106 has priority over a security interest held
31 by a secured party that does not have control of the investment property.

32 (2) Except as otherwise provided in paragraphs (3) and (4), conflicting
33 security interests held by secured parties each of which has control under §
34 4-9-106 rank according to priority in time of:

35 (A) if the collateral is a security, obtaining control;

36 (B) if the collateral is a security entitlement carried in a

1 securities account and:

2 (i) if the secured party obtained control under § 4-8-
3 106(d)(1), the secured party's becoming the person for which the securities
4 account is maintained;

5 (ii) if the secured party obtained control under § 4-8-
6 106(d)(2), the securities intermediary's agreement to comply with the secured
7 party's entitlement orders with respect to security entitlements carried or to
8 be carried in the securities account; or

9 (iii) if the secured party obtained control through another
10 person under § 4-8-106(d)(3), the time on which priority would be based under
11 this paragraph if the other person were the secured party; or

12 (C) if the collateral is a commodity contract carried with a
13 commodity intermediary, the satisfaction of the requirement for control
14 specified in § 4-9-106(b)(2) with respect to commodity contracts carried or to
15 be carried with the commodity intermediary.

16 (3) A security interest held by a securities intermediary in a security
17 entitlement or a securities account maintained with the securities
18 intermediary has priority over a conflicting security interest held by another
19 secured party.

20 (4) A security interest held by a commodity intermediary in a commodity
21 contract or a commodity account maintained with the commodity intermediary has
22 priority over a conflicting security interest held by another secured party.

23 (5) A security interest in a certificated security in registered form
24 which is perfected by taking delivery under § 4-9-313(a) and not by control
25 under § 4-9-314 has priority over a conflicting security interest perfected by
26 a method other than control.

27 (6) Conflicting security interests created by a broker, securities
28 intermediary, or commodity intermediary which are perfected without control
29 under § 4-9-106 rank equally.

30 (7) In all other cases, priority among conflicting security interests
31 in investment property is governed by §§ 4-9-322 and 4-9-323.

32

33 4-9-329. PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHT. The
34 following rules govern priority among conflicting security interests in the
35 same letter-of-credit right:

36 (1) A security interest held by a secured party having control of the

1 letter-of-credit right under § 4-9-107 has priority to the extent of its
2 control over a conflicting security interest held by a secured party that does
3 not have control.

4 (2) Security interests perfected by control under § 4-9-314 rank
5 according to priority in time of obtaining control.

6

7 4-9-330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT.

8 (a) A purchaser of chattel paper has priority over a security interest
9 in the chattel paper which is claimed merely as proceeds of inventory subject
10 to a security interest if:

11 (1) in good faith and in the ordinary course of the purchaser's
12 business, the purchaser gives new value and takes possession of the chattel
13 paper or obtains control of the chattel paper under § 4-9-105; and

14 (2) the chattel paper does not indicate that it has been assigned
15 to an identified assignee other than the purchaser.

16 (b) A purchaser of chattel paper has priority over a security interest
17 in the chattel paper which is claimed other than merely as proceeds of
18 inventory subject to a security interest if the purchaser gives new value and
19 takes possession of the chattel paper or obtains control of the chattel paper
20 under § 4-9-105 in good faith, in the ordinary course of the purchaser's
21 business, and without knowledge that the purchase violates the rights of the
22 secured party.

23 (c) Except as otherwise provided in § 4-9-327, a purchaser having
24 priority in chattel paper under subsection (a) or (b) also has priority in
25 proceeds of the chattel paper to the extent that:

26 (1) § 4-9-322 provides for priority in the proceeds; or

27 (2) the proceeds consist of the specific goods covered by the
28 chattel paper or cash proceeds of the specific goods, even if the purchaser's
29 security interest in the proceeds is unperfected.

30 (d) Except as otherwise provided in § 4-9-331(a), a purchaser of an
31 instrument has priority over a security interest in the instrument perfected
32 by a method other than possession if the purchaser gives value and takes
33 possession of the instrument in good faith and without knowledge that the
34 purchase violates the rights of the secured party.

35 (e) For purposes of subsections (a) and (b), the holder of a purchase-
36 money security interest in inventory gives new value for chattel paper

1 constituting proceeds of the inventory.

2 (f) For purposes of subsections (b) and (d), if chattel paper or an
3 instrument indicates that it has been assigned to an identified secured party
4 other than the purchaser, a purchaser of the chattel paper or instrument has
5 knowledge that the purchase violates the rights of the secured party.

6

7 4-9-331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS,
8 AND SECURITIES UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS
9 AND SECURITY ENTITLEMENTS UNDER CHAPTER 8.

10 (a) This chapter does not limit the rights of a holder in due course of
11 a negotiable instrument, a holder to which a negotiable document of title has
12 been duly negotiated, or a protected purchaser of a security. These holders
13 or purchasers take priority over an earlier security interest, even if
14 perfected, to the extent provided in Chapters 3, 7, and 8.

15 (b) This chapter does not limit the rights of or impose liability on a
16 person to the extent that the person is protected against the assertion of a
17 claim under Chapter 8.

18 (c) Filing under this chapter does not constitute notice of a claim or
19 defense to the holders, or purchasers, or persons described in subsections (a)
20 and (b).

21

22 4-9-332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT.

23 (a) A transferee of money takes the money free of a security interest
24 unless the transferee acts in collusion with the debtor in violating the
25 rights of the secured party.

26 (b) A transferee of funds from a deposit account takes the funds free
27 of a security interest in the deposit account unless the transferee acts in
28 collusion with the debtor in violating the rights of the secured party.

29

30 4-9-333. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW.

31 (a) In this section, "possessory lien" means an interest, other than a
32 security interest or an agricultural lien:

33 (1) which secures payment or performance of an obligation for
34 services or materials furnished with respect to goods by a person in the
35 ordinary course of the person's business;

36 (2) which is created by statute or rule of law in favor of the

1 person; and

2 (3) whose effectiveness depends on the person's possession of the
3 goods.

4 (b) A possessory lien on goods has priority over a security interest in
5 the goods unless the lien is created by a statute that expressly provides
6 otherwise.

7

8 4-9-334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS.

9 (a) A security interest under this chapter may be created in goods that
10 are fixtures or may continue in goods that become fixtures. A security
11 interest does not exist under this chapter in ordinary building materials
12 incorporated into an improvement on land.

13 (b) This chapter does not prevent creation of an encumbrance upon
14 fixtures under real property law.

15 (c) In cases not governed by subsections (d) through (h), a security
16 interest in fixtures is subordinate to a conflicting interest of an
17 encumbrancer or owner of the related real property other than the debtor.

18 (d) Except as otherwise provided in subsection (h), a perfected
19 security interest in fixtures has priority over a conflicting interest of an
20 encumbrancer or owner of the real property if the debtor has an interest of
21 record in or is in possession of the real property and:

22 (1) the security interest is a purchase-money security interest;

23 (2) the interest of the encumbrancer or owner arises before the
24 goods become fixtures; and

25 (3) the security interest is perfected by a fixture filing before
26 the goods become fixtures or within twenty (20) days thereafter.

27 (e) A perfected security interest in fixtures has priority over a
28 conflicting interest of an encumbrancer or owner of the real property if:

29 (1) the debtor has an interest of record in the real property or
30 is in possession of the real property and the security interest:

31 (A) is perfected by a fixture filing before the interest of
32 the encumbrancer or owner is of record; and

33 (B) has priority over any conflicting interest of a
34 predecessor in title of the encumbrancer or owner;

35 (2) before the goods become fixtures, the security interest is
36 perfected by any method permitted by this chapter and the fixtures are readily

1 removable:

2 (A) factory or office machines;

3 (B) equipment that is not primarily used or leased for use
4 in the operation of the real property; or

5 (C) replacements of domestic appliances that are consumer
6 goods;

7 (3) the conflicting interest is a lien on the real property
8 obtained by legal or equitable proceedings after the security interest was
9 perfected by any method permitted by this chapter; or

10 (4) the security interest is:

11 (A) created in a manufactured home in a manufactured-home
12 transaction; and

13 (B) perfected pursuant to a statute described in § 4-9-
14 311(a)(2).

15 (f) A security interest in fixtures, whether or not perfected, has
16 priority over a conflicting interest of an encumbrancer or owner of the real
17 property if:

18 (1) the encumbrancer or owner has, in an authenticated record,
19 consented to the security interest or disclaimed an interest in the goods as
20 fixtures; or

21 (2) the debtor has a right to remove the goods as against the
22 encumbrancer or owner.

23 (g) The priority of the security interest under paragraph (f)(2)
24 continues for a reasonable time if the debtor's right to remove the goods as
25 against the encumbrancer or owner terminates.

26 (h) A mortgage is a construction mortgage to the extent that it secures
27 an obligation incurred for the construction of an improvement on land,
28 including the acquisition cost of the land, if a recorded record of the
29 mortgage so indicates. Except as otherwise provided in subsections (e) and
30 (f), a security interest in fixtures is subordinate to a construction mortgage
31 if a record of the mortgage is recorded before the goods become fixtures and
32 the goods become fixtures before the completion of the construction. A
33 mortgage has this priority to the same extent as a construction mortgage to
34 the extent that it is given to refinance a construction mortgage.

35 (i) A perfected security interest in crops growing on real property has
36 priority over a conflicting interest of an encumbrancer or owner of the real

1 property if the debtor has an interest of record in or is in possession of the
2 real property.

3

4 4-9-335. ACCESSIONS.

5 (a) A security interest may be created in an accession and continues in
6 collateral that becomes an accession.

7 (b) If a security interest is perfected when the collateral becomes an
8 accession, the security interest remains perfected in the collateral.

9 (c) Except as otherwise provided in subsection (d), the other
10 provisions of this part determine the priority of a security interest in an
11 accession.

12 (d) A security interest in an accession is subordinate to a security
13 interest in the whole which is perfected by compliance with the requirements
14 of a certificate-of-title statute under § 4-9-311(b).

15 (e) After default, subject to Part 6, a secured party may remove an
16 accession from other goods if the security interest in the accession has
17 priority over the claims of every person having an interest in the whole.

18 (f) A secured party that removes an accession from other goods under
19 subsection (e) shall promptly reimburse any holder of a security interest or
20 other lien on, or owner of, the whole or of the other goods, other than the
21 debtor, for the cost of repair of any physical injury to the whole or the
22 other goods. The secured party need not reimburse the holder or owner for any
23 diminution in value of the whole or the other goods caused by the absence of
24 the accession removed or by any necessity for replacing it. A person entitled
25 to reimbursement may refuse permission to remove until the secured party gives
26 adequate assurance for the performance of the obligation to reimburse.

27

28 4-9-336. COMMINGLED GOODS.

29 (a) In this section, "commingled goods" means goods that are physically
30 united with other goods in such a manner that their identity is lost in a
31 product or mass.

32 (b) A security interest does not exist in commingled goods as such.
33 However, a security interest may attach to a product or mass that results when
34 goods become commingled goods.

35 (c) If collateral becomes commingled goods, a security interest
36 attaches to the product or mass.

1 (d) If a security interest in collateral is perfected before the
2 collateral becomes commingled goods, the security interest that attaches to
3 the product or mass under subsection (c) is perfected.

4 (e) Except as otherwise provided in subsection (f), the other
5 provisions of this part determine the priority of a security interest that
6 attaches to the product or mass under subsection (c).

7 (f) If more than one security interest attaches to the product or mass
8 under subsection (c), the following rules determine priority:

9 (1) A security interest that is perfected under subsection (d)
10 has priority over a security interest that is unperfected at the time the
11 collateral becomes commingled goods.

12 (2) If more than one security interest is perfected under
13 subsection (d), the security interests rank equally in proportion to the value
14 of the collateral at the time it became commingled goods.

15
16 4-9-337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE
17 OF TITLE. If, while a security interest in goods is perfected by any method
18 under the law of another jurisdiction, this State issues a certificate of
19 title that does not show that the goods are subject to the security interest
20 or contain a statement that they may be subject to security interests not
21 shown on the certificate:

22 (1) a buyer of the goods, other than a person in the business of selling
23 goods of that kind, takes free of the security interest if the buyer gives
24 value and receives delivery of the goods after issuance of the certificate and
25 without knowledge of the security interest; and

26 (2) the security interest is subordinate to a conflicting security
27 interest in the goods that attaches, and is perfected under § 4-9-311(b),
28 after issuance of the certificate and without the conflicting secured party's
29 knowledge of the security interest.

30
31 4-9-338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED
32 BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a
33 security interest or agricultural lien is perfected by a filed financing
34 statement providing information described in § 4-9-516(b)(5) which is
35 incorrect at the time the financing statement is filed:

36 (1) the security interest or agricultural lien is subordinate to a

1 conflicting perfected security interest in the collateral to the extent that
2 the holder of the conflicting security interest gives value in reasonable
3 reliance upon the incorrect information; and

4 (2) a purchaser, other than a secured party, of the collateral takes
5 free of the security interest or agricultural lien to the extent that, in
6 reasonable reliance upon the incorrect information, the purchaser gives value
7 and, in the case of chattel paper, documents, goods, instruments, or a
8 security certificate, receives delivery of the collateral.

9
10 4-9-339. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not
11 preclude subordination by agreement by a person entitled to priority.

12
13 SUBPART 4. RIGHTS OF BANK

14
15 4-9-340. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST
16 DEPOSIT ACCOUNT.

17 (a) Except as otherwise provided in subsection (c), a bank with which a
18 deposit account is maintained may exercise any right of recoupment or set-off
19 against a secured party that holds a security interest in the deposit account.

20 (b) Except as otherwise provided in subsection (c), the application of
21 this chapter to a security interest in a deposit account does not affect a
22 right of recoupment or set-off of the secured party as to a deposit account
23 maintained with the secured party.

24 (c) The exercise by a bank of a set-off against a deposit account is
25 ineffective against a secured party that holds a security interest in the
26 deposit account which is perfected by control under § 4-9-104(a)(3), if the
27 set-off is based on a claim against the debtor.

28
29 4-9-341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT.

30 Except as otherwise provided in § 4-9-340(c), and unless the bank otherwise
31 agrees in an authenticated record, a bank's rights and duties with respect to
32 a deposit account maintained with the bank are not terminated, suspended, or
33 modified by:

34 (1) the creation, attachment, or perfection of a security interest in
35 the deposit account;

36 (2) the bank's knowledge of the security interest; or

1 (3) the bank's receipt of instructions from the secured party.

2
3 4-9-342. BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF
4 CONTROL AGREEMENT. This chapter does not require a bank to enter into an
5 agreement of the kind described in § 4-9-104(a)(2), even if its customer so
6 requests or directs. A bank that has entered into such an agreement is not
7 required to confirm the existence of the agreement to another person unless
8 requested to do so by its customer.

9
10 PART 4
11 RIGHTS OF THIRD PARTIES

12
13 4-9-401. ALIENABILITY OF DEBTOR'S RIGHTS.

14 (a) Except as otherwise provided in subsection (b) and §§ 4-9-406, 4-9-
15 407, 4-9-408, and 4-9-409, whether a debtor's rights in collateral may be
16 voluntarily or involuntarily transferred is governed by law other than this
17 chapter.

18 (b) An agreement between the debtor and secured party which prohibits a
19 transfer of the debtor's rights in collateral or makes the transfer a default
20 does not prevent the transfer from taking effect.

21
22 4-9-402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR OR IN TORT.
23 The existence of a security interest, agricultural lien, or authority given to
24 a debtor to dispose of or use collateral, without more, does not subject a
25 secured party to liability in contract or tort for the debtor's acts or
26 omissions.

27
28 4-9-403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE.

29 (a) In this section, "value" has the meaning provided in § 4-3-303(a).

30 (b) Except as otherwise provided in this section, an agreement between
31 an account debtor and an assignor not to assert against an assignee any claim
32 or defense that the account debtor may have against the assignor is
33 enforceable by an assignee that takes an assignment:

34 (1) for value;

35 (2) in good faith;

36 (3) without notice of a claim of a property or possessory right to

1 the property assigned; and

2 (4) without notice of a defense or claim in recoupment of the type
3 that may be asserted against a person entitled to enforce a negotiable
4 instrument under § 4-3-305(a).

5 (c) Subsection (b) does not apply to defenses of a type that may be
6 asserted against a holder in due course of a negotiable instrument under
7 § 4-3-305(b).

8 (d) In a consumer transaction, if a record evidences the account
9 debtor's obligation, law other than this chapter requires that the record
10 include a statement to the effect that the rights of an assignee are subject
11 to claims or defenses that the account debtor could assert against the
12 original obligee, and the record does not include such a statement:

13 (1) the record has the same effect as if the record included such
14 a statement; and

15 (2) the account debtor may assert against an assignee those claims
16 and defenses that would have been available if the record included such a
17 statement.

18 (e) This section is subject to law other than this chapter which
19 establishes a different rule for an account debtor who is an individual and
20 who incurred the obligation primarily for personal, family, or household
21 purposes.

22 (f) Except as otherwise provided in subsection (d), this section does
23 not displace law other than this chapter which gives effect to an agreement by
24 an account debtor not to assert a claim or defense against an assignee.

25

26 4-9-404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND DEFENSES AGAINST
27 ASSIGNEE.

28 (a) Unless an account debtor has made an enforceable agreement not to
29 assert defenses or claims, and subject to subsections (b) through (e), the
30 rights of an assignee are subject to:

31 (1) all terms of the agreement between the account debtor and
32 assignor and any defense or claim in recoupment arising from the transaction
33 that gave rise to the contract; and

34 (2) any other defense or claim of the account debtor against the
35 assignor which accrues before the account debtor receives a notification of
36 the assignment authenticated by the assignor or the assignee.

1 (b) Subject to subsection (c) and except as otherwise provided in
2 subsection (d), the claim of an account debtor against an assignor may be
3 asserted against an assignee under subsection (a) only to reduce the amount
4 the account debtor owes.

5 (c) This section is subject to law other than this chapter which
6 establishes a different rule for an account debtor who is an individual and
7 who incurred the obligation primarily for personal, family, or household
8 purposes.

9 (d) In a consumer transaction, if a record evidences the account
10 debtor's obligation, law other than this chapter requires that the record
11 include a statement to the effect that the account debtor's recovery against
12 an assignee with respect to claims and defenses against the assignor may not
13 exceed amounts paid by the account debtor under the record, and the record
14 does not include such a statement, the extent to which a claim of an account
15 debtor against the assignor may be asserted against an assignee is determined
16 as if the record included such a statement.

17 (e) This section does not apply to an assignment of a health-care-
18 insurance receivable.

19

20 4-9-405. MODIFICATION OF ASSIGNED CONTRACT.

21 (a) A modification of or substitution for an assigned contract is
22 effective against an assignee if made in good faith. The assignee acquires
23 corresponding rights under the modified or substituted contract. The
24 assignment may provide that the modification or substitution is a breach of
25 contract by the assignor. This subsection is subject to subsections (b)
26 through (d).

27 (b) Subsection (a) applies to the extent that:

28 (1) the right to payment or a part thereof under an assigned
29 contract has not been fully earned by performance; or

30 (2) the right to payment or a part thereof has been fully earned
31 by performance and the account debtor has not received notification of the
32 assignment under § 4-9-406(a).

33 (c) This section is subject to law other than this chapter which
34 establishes a different rule for an account debtor who is an individual and
35 who incurred the obligation primarily for personal, family, or household
36 purposes.

1 (d) This section does not apply to an assignment of a health-care-
2 insurance receivable.

3
4 4-9-406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT;
5 IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF
6 ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES
7 INEFFECTIVE.

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

16 (b) Subject to subsection (h), notification is ineffective under
17 subsection (a):

18 (1) if it does not reasonably identify the rights assigned;

19 (2) to the extent that an agreement between an account debtor and
20 a seller of a payment intangible limits the account debtor's duty to pay a
21 person other than the seller and the limitation is effective under law other
22 than this chapter; or

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

26 (A) only a portion of the account, chattel paper, or payment
27 intangible has been assigned to that assignee;

28 (B) a portion has been assigned to another assignee; or

29 (C) the account debtor knows that the assignment to that
30 assignee is limited.

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

36 (d) Except as otherwise provided in subsection (e) and §§ 4-2A-303 and

1 4-9-407, and subject to subsection (h), a term in an agreement between an
2 account debtor and an assignor or in a promissory note is ineffective to the
3 extent that it:

4 (1) prohibits, restricts, or requires the consent of the account
5 debtor or person obligated on the promissory note to the assignment or
6 transfer of, or the creation, attachment, perfection, or enforcement of a
7 security interest in, the account, chattel paper, payment intangible, or
8 promissory note; or

9 (2) provides that the assignment or transfer or the creation,
10 attachment, perfection, or enforcement of the security interest may give rise
11 to a default, breach, right of recoupment, claim, defense, termination, right
12 of termination, or remedy under the account, chattel paper, payment
13 intangible, or promissory note.

14 (e) Subsection (d) does not apply to the sale of a payment intangible
15 or promissory note.

16 (f) Except as otherwise provided in §§4-2A-303 and 4-9-407 and subject
17 to subsections (h) and (i), a rule of law, statute, or regulation that
18 prohibits, restricts, or requires the consent of a government, governmental
19 body or official, or account debtor to the assignment or transfer of, or
20 creation of a security interest in, an account or chattel paper is ineffective
21 to the extent that the rule of law, statute, or regulation:

22 (1) prohibits, restricts, or requires the consent of the
23 government, governmental body or official, or account debtor to the assignment
24 or transfer of, or the creation, attachment, perfection, or enforcement of a
25 security interest in the account or chattel paper; or

26 (2) provides that the assignment or transfer or the creation,
27 attachment, perfection, or enforcement of the security interest may give rise
28 to a default, breach, right of recoupment, claim, defense, termination, right
29 of termination, or remedy under the account or chattel paper.

30 (g) Subject to subsection (h), an account debtor may not waive or vary
31 its option under subsection (b)(3).

32 (h) This section is subject to law other than this chapter which
33 establishes a different rule for an account debtor who is an individual and
34 who incurred the obligation primarily for personal, family, or household
35 purposes.

36 (i) This section does not apply to an assignment of a health-care-

1 *insurance receivable. Subsections (d) and (f) do not apply to assignment or*
2 *transfer of, or the creation, attachment, perfection, or enforcement of a*
3 *security interest in:*

4 (1) *a right the assignment or transfer of which is prohibited or*
5 *restricted by § 11-9-110(a).*

6 (2) *a claim or right to receive amounts (whether by suit or agreement*
7 *and whether as lump sums or as periodic payments) as damages (other than*
8 *punitive damages) on account of personal physical injuries or physical*
9 *sickness.*

10 (3) *a claim or right to receive benefits under a special needs trust as*
11 *described in 42 USC § 1396p(d)(4).*

12 (j) Except to the extent otherwise provided in subsection (i), this
13 section prevails over any inconsistent provision of an existing or future
14 statute, rule or regulation of this State unless the provision is contained in
15 a statute of this State, refers expressly to this section and states that the
16 provision prevails over this section.

17

18 4-9-407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST
19 IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST.

20 (a) Except as otherwise provided in subsection (b), a term in a lease
21 agreement is ineffective to the extent that it:

22 (1) prohibits, restricts, or requires the consent of a party to
23 the lease to the assignment or transfer of, or the creation, attachment,
24 perfection, or enforcement of a security interest in, an interest of a party
25 under the lease contract or in the lessor's residual interest in the goods; or

26 (2) provides that the assignment or transfer or the creation,
27 attachment, perfection, or enforcement of the security interest may give rise
28 to a default, breach, right of recoupment, claim, defense, termination, right
29 of termination, or remedy under the lease.

30 (b) Except as otherwise provided in § 4-2A-303(7), a term described in
31 subsection (a)(2) is effective to the extent that there is:

32 (1) a transfer by the lessee of the lessee's right of possession
33 or use of the goods in violation of the term; or

34 (2) a delegation of a material performance of either party to the
35 lease contract in violation of the term.

36 (c) The creation, attachment, perfection, or enforcement of a security

1 interest in the lessor's interest under the lease contract or the lessor's
2 residual interest in the goods is not a transfer that materially impairs the
3 lessee's prospect of obtaining return performance or materially changes the
4 duty of or materially increases the burden or risk imposed on the lessee
5 within the purview of § 4-2A-303(4) unless, and then only to the extent that,
6 enforcement actually results in a delegation of material performance of the
7 lessor.

8

9 4-9-408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES, HEALTH-CARE-
10 INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE.

11 (a) Except as otherwise provided in subsection (b), a term in a
12 promissory note or in an agreement between an account debtor and a debtor
13 which relates to a health-care-insurance receivable or a general intangible,
14 including a contract, permit, license, or franchise, and which term prohibits,
15 restricts, or requires the consent of the person obligated on the promissory
16 note or the account debtor to, the assignment or transfer of, or creation,
17 attachment, or perfection of a security interest in, the promissory note,
18 health-care-insurance receivable, or general intangible, is ineffective to the
19 extent that the term:

20 (1) would impair the creation, attachment, or perfection of a
21 security interest; or

22 (2) provides that the assignment or transfer or the creation,
23 attachment, or perfection of the security interest may give rise to a default,
24 breach, right of recoupment, claim, defense, termination, right of
25 termination, or remedy under the promissory note, health-care-insurance
26 receivable, or general intangible.

27 (b) Subsection (a) applies to a security interest in a payment
28 intangible or promissory note only if the security interest arises out of a
29 sale of the payment intangible or promissory note.

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

1 (1) would impair the creation, attachment, or perfection of a
2 security interest; or

3 (2) provides that the assignment or transfer or the creation,
4 attachment, or perfection of the security interest may give rise to a default,
5 breach, right of recoupment, claim, defense, termination, right of
6 termination, or remedy under the promissory note, health-care-insurance
7 receivable, or general intangible.

8 (d) To the extent that a term in a promissory note or in an agreement
9 between an account debtor and a debtor which relates to a health-care-
10 insurance receivable or general intangible or a rule of law, statute, or
11 regulation described in subsection (c) would be effective under law other than
12 this chapter but is ineffective under subsection (a) or (c), the creation,
13 attachment, or perfection of a security interest in the promissory note,
14 health-care-insurance receivable, or general intangible:

15 (1) is not enforceable against the person obligated on the
16 promissory note or the account debtor;

17 (2) does not impose a duty or obligation on the person obligated
18 on the promissory note or the account debtor;

19 (3) does not require the person obligated on the promissory note
20 or the account debtor to recognize the security interest, pay or render
21 performance to the secured party, or accept payment or performance from the
22 secured party;

23 (4) does not entitle the secured party to use or assign the
24 debtor's rights under the promissory note, health-care-insurance receivable,
25 or general intangible, including any related information or materials
26 furnished to the debtor in the transaction giving rise to the promissory note,
27 health-care-insurance receivable, or general intangible;

28 (5) does not entitle the secured party to use, assign, possess, or
29 have access to any trade secrets or confidential information of the person
30 obligated on the promissory note or the account debtor; and

31 (6) does not entitle the secured party to enforce the security
32 interest in the promissory note, health-care-insurance receivable, or general
33 intangible.

34 (e) Except to the extent otherwise provided in subsection (f), this
35 section prevails over any inconsistent provision of an existing or future
36 statute, rule or regulation of this State unless the provision is contained in

1 a statute of this State, refers expressly to this section and states that the
2 provision prevails over this section.

3 (f) Subsections (a) and (c) do not apply to an assignment or transfer
4 of, or the creation, attachment, perfection, or enforcement of a security
5 interest in:

6 (1) a right the assignment or transfer of which is prohibited or
7 restricted by § 11-9-110(a).

8 (2) a claim or right to receive amounts (whether by suit or agreement
9 and whether as lump sums or as periodic payments) as damages (other than
10 punitive damages) on account of personal physical injuries or physical
11 sickness.

12 (3) a claim or right to receive benefits under a special needs trust as
13 described on 42 USC § 1396p(d)(4).

14

15 4-9-409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT RIGHTS
16 INEFFECTIVE.

17 (a) A term in a letter of credit or a rule of law, statute, regulation,
18 custom, or practice applicable to the letter of credit which prohibits,
19 restricts, or requires the consent of an applicant, issuer, or nominated
20 person to a beneficiary's assignment of or creation of a security interest in
21 a letter-of-credit right is ineffective to the extent that the term or rule of
22 law, statute, regulation, custom, or practice:

23 (1) would impair the creation, attachment, or perfection of a
24 security interest in the letter-of-credit right; or

25 (2) provides that the assignment or the creation, attachment, or
26 perfection of the security interest may give rise to a default, breach, right
27 of recoupment, claim, defense, termination, right of termination, or remedy
28 under the letter-of-credit right.

29 (b) To the extent that a term in a letter of credit is ineffective
30 under subsection (a) but would be effective under law other than this chapter
31 or a custom or practice applicable to the letter of credit, to the transfer of
32 a right to draw or otherwise demand performance under the letter of credit, or
33 to the assignment of a right to proceeds of the letter of credit, the
34 creation, attachment, or perfection of a security interest in the letter-of-
35 credit right:

36 (1) is not enforceable against the applicant, issuer, nominated

1 person, or transferee beneficiary;

2 (2) imposes no duties or obligations on the applicant, issuer,
3 nominated person, or transferee beneficiary; and

4 (3) does not require the applicant, issuer, nominated person, or
5 transferee beneficiary to recognize the security interest, pay or render
6 performance to the secured party, or accept payment or other performance from
7 the secured party.

8 PART 5

9 FILING

10 SUBPART 1. FILING OFFICE; CONTENTS AND
11 EFFECTIVENESS OF FINANCING STATEMENT

12
13 4-9-501. FILING OFFICE.

14 (a) Except as otherwise provided in subsection (b), if the local law of
15 this State governs perfection of a security interest or agricultural lien, the
16 office in which to file a financing statement to perfect the security interest
17 or agricultural lien is:

18 (1) the office designated for the filing or recording of a record
19 of a mortgage on the related real property, if:

20 (A) the collateral is as-extracted collateral or timber to
21 be cut; or

22 (B) the financing statement is filed as a fixture filing and
23 the collateral is goods that are or are to become fixtures; or

24 (2) *the Office of the Circuit Clerk in the county in which the*
25 *debtor is located in this state if the debtor is engaged in farming operations*
26 *and the collateral is equipment used in farming operations, or farm products,*
27 *or accounts arising from the sale of farm products; or*

28 (3) *the Office of the Secretary of State, in all other cases,*
29 including a case in which the collateral is goods that are or are to become
30 fixtures and the financing statement is not filed as a fixture filing.

31 (b) The office in which to file a financing statement to perfect a
32 security interest in collateral, including fixtures, of a transmitting utility
33 is the office of the Secretary of State. The financing statement also
34 constitutes a fixture filing as to the collateral indicated in the financing
35 statement which is or is to become fixtures.

36

1 4-9-502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS
2 FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT.

3 (a) Subject to subsection (b), a financing statement is sufficient only
4 if it:

5 (1) provides the name of the debtor;

6 (2) provides the name of the secured party or a representative of
7 the secured party; and

8 (3) indicates the collateral covered by the financing statement.

9 (b) Except as otherwise provided in § 4-9-501(b), to be sufficient, a
10 financing statement that covers as-extracted collateral or timber to be cut,
11 or which is filed as a fixture filing and covers goods that are or are to
12 become fixtures, must satisfy subsection (a) and also:

13 (1) indicate that it covers this type of collateral;

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

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

20 (4) if the debtor does not have an interest of record in the real
21 property, provide the name of a record owner.

22 (c) A record of a mortgage is effective, from the date of recording, as
23 a financing statement filed as a fixture filing or as a financing statement
24 covering as-extracted collateral or timber to be cut only if:

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

26 (2) the goods are or are to become fixtures related to the real
27 property described in the record or the collateral is related to the real
28 property described in the record and is as-extracted collateral or timber to
29 be cut;

30 (3) the record satisfies the requirements for a financing
31 statement in this section other than an indication that it is to be filed in
32 the real property records; and

33 (4) the record is recorded.

34 (d) A financing statement may be filed before a security agreement is
35 made or a security interest otherwise attaches.

36

1 4-9-503. NAME OF DEBTOR AND SECURED PARTY.

2 (a) A financing statement sufficiently provides the name of the debtor:

3 (1) if the debtor is a registered organization, only if the
4 financing statement provides the name of the debtor indicated on the public
5 record of the debtor's jurisdiction of organization which shows the debtor to
6 have been organized;

7 (2) if the debtor is a decedent's estate, only if the financing
8 statement provides the name of the decedent and indicates that the debtor is
9 an estate;

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

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

16 (B) indicates, in the debtor's name or otherwise, that the
17 debtor is a trust or is a trustee acting with respect to property held in
18 trust; and

19 (4) in other cases:

20 (A) if the debtor has a name, only if it provides the
21 individual or organizational name of the debtor; and

22 (B) if the debtor does not have a name, only if it provides
23 the names of the partners, members, associates, or other persons comprising
24 the debtor.

25 (b) A financing statement that provides the name of the debtor in
26 accordance with subsection (a) is not rendered ineffective by the absence of:

27 (1) a trade name or other name of the debtor; or

28 (2) unless required under subsection (a)(4)(B), names of partners,
29 members, associates, or other persons comprising the debtor.

30 (c) A financing statement that provides only the debtor's trade name
31 does not sufficiently provide the name of the debtor.

32 (d) Failure to indicate the representative capacity of a secured party
33 or representative of a secured party does not affect the sufficiency of a
34 financing statement.

35 (e) A financing statement may provide the name of more than one debtor
36 and the name of more than one secured party.

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4-9-504. INDICATION OF COLLATERAL. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to § 4-9-108; or
- (2) an indication that the financing statement covers all assets or all personal property.

4-9-505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS.

(a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in § 4-9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under § 4-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

4-9-506. EFFECT OF ERRORS OR OMISSIONS.

(a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 4-9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 4-9-503(a), the name provided does not make

1 the financing statement seriously misleading.

2 (d) For purposes of § 4-9-508(b), the "debtor's correct name" in
3 subsection (c) means the correct name of the new debtor.

4

5 4-9-507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING
6 STATEMENT.

7 (a) A filed financing statement remains effective with respect to
8 collateral that is sold, exchanged, leased, licensed, or otherwise disposed of
9 and in which a security interest or agricultural lien continues, even if the
10 secured party knows of or consents to the disposition.

11 (b) Except as otherwise provided in subsection (c) and § 4-9-508, a
12 financing statement is not rendered ineffective if, after the financing
13 statement is filed, the information provided in the financing statement
14 becomes seriously misleading under § 4-9-506.

15 (c) If a debtor so changes its name that a filed financing statement
16 becomes seriously misleading under § 4-9-506:

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

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

25

26 4-9-508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES
27 BOUND BY SECURITY AGREEMENT.

28 (a) Except as otherwise provided in this section, a filed financing
29 statement naming an original debtor is effective to perfect a security
30 interest in collateral in which a new debtor has or acquires rights to the
31 extent that the financing statement would have been effective had the original
32 debtor acquired rights in the collateral.

33 (b) If the difference between the name of the original debtor and that
34 of the new debtor causes a filed financing statement that is effective under
35 subsection (a) to be seriously misleading under § 4-9-506:

36 (1) the financing statement is effective to perfect a security

1 interest in collateral acquired by the new debtor before, and within four
2 months after, the new debtor becomes bound under § 4-9-203(d); and

3 (2) the financing statement is not effective to perfect a
4 security interest in collateral acquired by the new debtor more than four
5 months after the new debtor becomes bound under § 4-9-203(d) unless an initial
6 financing statement providing the name of the new debtor is filed before the
7 expiration of that time.

8 (c) This section does not apply to collateral as to which a filed
9 financing statement remains effective against the new debtor under § 4-9-
10 507(a).

11

12 4-9-509. PERSONS ENTITLED TO FILE A RECORD.

13 (a) A person may file an initial financing statement, amendment that
14 adds collateral covered by a financing statement, or amendment that adds a
15 debtor to a financing statement only if:

16 (1) the debtor authorizes the filing in an authenticated record or
17 pursuant to subsection (b) or (c); or

18 (2) the person holds an agricultural lien that has become
19 effective at the time of filing and the financing statement covers only
20 collateral in which the person holds an agricultural lien.

21 (b) By authenticating or becoming bound as debtor by a security
22 agreement, a debtor or new debtor authorizes the filing of an initial
23 financing statement, and an amendment, covering:

24 (1) the collateral described in the security agreement; and

25 (2) property that becomes collateral under § 4-9-315(a)(2),
26 whether or not the security agreement expressly covers proceeds.

27 (c) By acquiring collateral in which a security interest or
28 agricultural lien continues under § 4-9-315(a)(1), a debtor authorizes the
29 filing of an initial financing statement, and an amendment, covering the
30 collateral and property that becomes collateral under § 4-9-315(a)(2).

31 (d) A person may file an amendment other than an amendment that adds
32 collateral covered by a financing statement or an amendment that adds a debtor
33 to a financing statement only if:

34 (1) the secured party of record authorizes the filing; or

35 (2) the amendment is a termination statement for a financing
36 statement as to which the secured party of record has failed to file or send a

1 termination statement as required by § 4-9-513(a) or (c), the debtor
2 authorizes the filing, and the termination statement indicates that the debtor
3 authorized it to be filed.

4 (e) If there is more than one secured party of record for a financing
5 statement, each secured party of record may authorize the filing of an
6 amendment under subsection (d).

7

8 4-9-510. EFFECTIVENESS OF FILED RECORD.

9 (a) A filed record is effective only to the extent that it was filed by
10 a person that may file it under § 4-9-509.

11 (b) A record authorized by one secured party of record does not affect
12 the financing statement with respect to another secured party of record.

13 (c) A continuation statement that is not filed within the six-month
14 period prescribed by § 4-9-515(d) is ineffective.

15

16 4-9-511. SECURED PARTY OF RECORD.

17 (a) A secured party of record with respect to a financing statement is
18 a person whose name is provided as the name of the secured party or a
19 representative of the secured party in an initial financing statement that has
20 been filed. If an initial financing statement is filed under § 4-9-514(a),
21 the assignee named in the initial financing statement is the secured party of
22 record with respect to the financing statement.

23 (b) If an amendment of a financing statement which provides the name of
24 a person as a secured party or a representative of a secured party is filed,
25 the person named in the amendment is a secured party of record. If an
26 amendment is filed under § 4-9-514(b), the assignee named in the amendment is
27 a secured party of record.

28 (c) A person remains a secured party of record until the filing of an
29 amendment of the financing statement which deletes the person.

30

31 4-9-512. AMENDMENT OF FINANCING STATEMENT.

32 (a) Subject to § 4-9-509, a person may add or delete collateral covered
33 by, continue or terminate the effectiveness of, or, subject to subsection (e),
34 otherwise amend the information provided in, a financing statement by filing
35 an amendment that:

36 (1) identifies, by its file number, the initial financing

1 statement to which the amendment relates; and

2 (2) if the amendment relates to an initial financing statement
3 filed in a filing office described in § 4-9-501(a)(1), provides the date and
4 time that the initial financing statement was filed and the information
5 specified in § 4-9-502(b).

6 (b) Except as otherwise provided in § 4-9-515, the filing of an
7 amendment does not extend the period of effectiveness of the financing
8 statement.

9 (c) A financing statement that is amended by an amendment that adds
10 collateral is effective as to the added collateral only from the date of the
11 filing of the amendment.

12 (d) A financing statement that is amended by an amendment that adds a
13 debtor is effective as to the added debtor only from the date of the filing of
14 the amendment.

15 (e) An amendment is ineffective to the extent it:

16 (1) purports to delete all debtors and fails to provide the name
17 of a debtor to be covered by the financing statement; or

18 (2) purports to delete all secured parties of record and fails to
19 provide the name of a new secured party of record.

20

21 4-9-513. TERMINATION STATEMENT.

22 (a) A secured party shall cause the secured party of record for a
23 financing statement to file a termination statement for the financing
24 statement if the financing statement covers consumer goods and:

25 (1) there is no obligation secured by the collateral covered by
26 the financing statement and no commitment to make an advance, incur an
27 obligation, or otherwise give value; or

28 (2) the debtor did not authorize the filing of the initial
29 financing statement.

30 (b) To comply with subsection (a), a secured party shall cause the
31 secured party of record to file the termination statement:

32 (1) within one month after there is no obligation secured by the
33 collateral covered by the financing statement and no commitment to make an
34 advance, incur an obligation, or otherwise give value; or

35 (2) if earlier, within twenty (20) days after the secured party
36 receives an authenticated demand from a debtor.

1 (c) In cases not governed by subsection (a), within twenty (20) days
2 after a secured party receives an authenticated demand from a debtor, the
3 secured party shall cause the secured party of record for a financing
4 statement to send to the debtor a termination statement for the financing
5 statement or file the termination statement in the filing office if:

6 (1) except in the case of a financing statement covering accounts
7 or chattel paper that has been sold or goods that are the subject of a
8 consignment, there is no obligation secured by the collateral covered by the
9 financing statement and no commitment to make an advance, incur an obligation,
10 or otherwise give value;

11 (2) the financing statement covers accounts or chattel paper that
12 has been sold but as to which the account debtor or other person obligated has
13 discharged its obligation;

14 (3) the financing statement covers goods that were the subject of
15 a consignment to the debtor but are not in the debtor's possession; or

16 (4) the debtor did not authorize the filing of the initial
17 financing statement.

18 (d) Except as otherwise provided in § 4-9-510, upon the filing of a
19 termination statement with the filing office, the financing statement to which
20 the termination statement relates ceases to be effective. Except as otherwise
21 provided in § 4-9-510, for purposes of §§ 4-9-519(g), 4-9-522(a), and 4-9-
22 523(c), the filing with the filing office of a termination statement relating
23 to a financing statement that indicates that the debtor is a transmitting
24 utility also causes the effectiveness of the financing statement to lapse.
25

26 4-9-514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD.

27 (a) Except as otherwise provided in subsection (c), an initial
28 financing statement may reflect an assignment of all of the secured party's
29 power to authorize an amendment to the financing statement by providing the
30 name and mailing address of the assignee as the name and address of the
31 secured party.

32 (b) Except as otherwise provided in subsection (c), a secured party of
33 record may assign of record all or part of its power to authorize an amendment
34 to a financing statement by filing in the filing office an amendment of the
35 financing statement which:

36 (1) identifies, by its file number, the initial financing

1 statement to which it relates;

2 (2) provides the name of the assignor; and

3 (3) provides the name and mailing address of the assignee.

4 (c) An assignment of record of a security interest in a fixture covered
5 by a record of a mortgage which is effective as a financing statement filed as
6 a fixture filing under § 4-9-502(c) may be made only by an assignment of
7 record of the mortgage in the manner provided by law of this State other than
8 the Uniform Commercial Code.

9

10 4-9-515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF
11 LAPSED FINANCING STATEMENT.

12 (a) Except as otherwise provided in subsections (b), (e), (f), and (g),
13 a filed financing statement is effective for a period of five years after the
14 date of filing.

15 (b) Except as otherwise provided in subsections (e), (f), and (g), an
16 initial financing statement filed in connection with a public-finance
17 transaction or manufactured-home transaction is effective for a period of
18 thirty (30) years after the date of filing if it indicates that it is filed in
19 connection with a public-finance transaction or manufactured-home transaction.

20 (c) The effectiveness of a filed financing statement lapses on the
21 expiration of the period of its effectiveness unless before the lapse a
22 continuation statement is filed pursuant to subsection (d). Upon lapse, a
23 financing statement ceases to be effective and any security interest or
24 agricultural lien that was perfected by the financing statement becomes
25 unperfected, unless the security interest is perfected otherwise. If the
26 security interest or agricultural lien becomes unperfected upon lapse, it is
27 deemed never to have been perfected as against a purchaser of the collateral
28 for value.

29 (d) A continuation statement may be filed only within six months before
30 the expiration of the five-year period specified in subsection (a) or the 30-
31 year period specified in subsection (b), whichever is applicable.

32 (e) Except as otherwise provided in § 4-9-510, upon timely filing of a
33 continuation statement, the effectiveness of the initial financing statement
34 continues for a period of five years commencing on the day on which the
35 financing statement would have become ineffective in the absence of the
36 filing. Upon the expiration of the five-year period, the financing statement

1 lapses in the same manner as provided in subsection (c), unless, before the
2 lapse, another continuation statement is filed pursuant to subsection (d).
3 Succeeding continuation statements may be filed in the same manner to continue
4 the effectiveness of the initial financing statement.

5 (f) If a debtor is a transmitting utility and a filed financing
6 statement so indicates, the financing statement is effective until a
7 termination statement is filed.

8 (g) A record of a mortgage that is effective as a financing statement
9 filed as a fixture filing under § 4-9-502(c) remains effective as a financing
10 statement filed as a fixture filing until the mortgage is released or
11 satisfied of record or its effectiveness otherwise terminates as to the real
12 property.

13

14 4-9-516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING.

15 (a) Except as otherwise provided in subsection (b), communication of a
16 record to a filing office and tender of the filing fee or acceptance of the
17 record by the filing office constitutes filing.

18 (b) Filing does not occur with respect to a record that a filing office
19 refuses to accept because:

20 (1) the record is not communicated by a method or medium of
21 communication authorized by the filing office;

22 (2) an amount equal to or greater than the applicable filing fee
23 is not tendered;

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

25 (A) in the case of an initial financing statement, the
26 record does not provide a name for the debtor;

27 (B) in the case of an amendment or correction statement, the
28 record:

29 (i) does not identify the initial financing statement
30 as required by § 4-9-512 or 4-9-518, as applicable; or

31 (ii) identifies an initial financing statement whose
32 effectiveness has lapsed under § 4-9-515;

33 (C) in the case of an initial financing statement that
34 provides the name of a debtor identified as an individual or an amendment that
35 provides a name of a debtor identified as an individual which was not
36 previously provided in the financing statement to which the record relates,

1 the record does not identify the debtor's last name; or

2 (D) in the case of a record filed in the filing office
3 described in § 4-9-501(a)(1), the record does not provide a sufficient
4 description of the real property to which it relates;

5 (4) in the case of an initial financing statement or an amendment
6 that adds a secured party of record, the record does not provide a name and
7 mailing address for the secured party of record;

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

11 (A) provide a mailing address for the debtor;

12 (B) indicate whether the debtor is an individual or an
13 organization; or

14 (C) if the financing statement indicates that the debtor is
15 an organization, provide:

16 (i) a type of organization for the debtor;

17 (ii) a jurisdiction of organization for the debtor; or

18 (iii) an organizational identification number for the
19 debtor or indicate that the debtor has none;

20 (6) in the case of an assignment reflected in an initial financing
21 statement under § 4-9-514(a) or an amendment filed under § 4-9-514(b), the
22 record does not provide a name and mailing address for the assignee; or

23 (7) in the case of a continuation statement, the record is not
24 filed within the six-month period prescribed by § 4-9-515(d).

25 (c) For purposes of subsection (b):

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

28 (2) a record that does not indicate that it is an amendment or
29 identify an initial financing statement to which it relates, as required by
30 § 4-9-512, 4-9-514, or 4-9-518, is an initial financing statement.

31 (d) A record that is communicated to the filing office with tender of
32 the filing fee, but which the filing office refuses to accept for a reason
33 other than one set forth in subsection (b), is effective as a filed record
34 except as against a purchaser of the collateral which gives value in
35 reasonable reliance upon the absence of the record from the files.

36

1 4-9-517. EFFECT OF INDEXING ERRORS. The failure of the filing office
2 to index a record correctly does not affect the effectiveness of the filed
3 record.

4
5 4-9-518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD.

6 (a) A person may file in the filing office a correction statement with
7 respect to a record indexed there under the person's name if the person
8 believes that the record is inaccurate or was wrongfully filed.

9 (b) A correction statement must:

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

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

13 (B) if the correction statement relates to a record filed in
14 a filing office described in § 4-9-501(a)(1), the date that the initial
15 financing statement was filed and the information specified in § 4-9-502(b);

16 (2) indicate that it is a correction statement; and

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

21 (c) The filing of a correction statement does not affect the
22 effectiveness of an initial financing statement or other filed record.

23
24 SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE

25
26 4-9-519. NUMBERING, MAINTAINING, AND INDEXING RECORDS; COMMUNICATING
27 INFORMATION PROVIDED IN RECORDS.

28 (a) For each record filed in a filing office, the filing office shall:

29 (1) assign a unique number to the filed record;

30 (2) create a record that bears the number assigned to the filed
31 record and the date and time of filing;

32 (3) maintain the filed record for public inspection; and

33 (4) index the filed record in accordance with subsections (c),
34 (d), and (e).

35 (b) Except as provided in subsection (i), a file number must include a
36 digit that:

1 (1) is mathematically derived from or related to the other digits
2 of the file number; and

3 (2) aids the filing office in determining whether a number
4 communicated as the file number includes a single-digit or transpositional
5 error.

6 (c) Except as otherwise provided in subsections (d) and (e), the filing
7 office shall:

8 (1) index an initial financing statement according to the name of
9 the debtor and index all filed records relating to the initial financing
10 statement in a manner that associates with one another an initial financing
11 statement and all filed records relating to the initial financing statement;
12 and

13 (2) index a record that provides a name of a debtor which was not
14 previously provided in the financing statement to which the record relates
15 also according to the name that was not previously provided.

16 (d) If a financing statement is filed as a fixture filing or covers as-
17 extracted collateral or timber to be cut, it must be filed for record and the
18 filing office shall index it:

19 (1) under the names of the debtor and of each owner of record
20 shown on the financing statement as if they were the mortgagors under a
21 mortgage of the real property described; and

22 (2) to the extent that the law of this State provides for indexing
23 of records of mortgages under the name of the mortgagee, under the name of the
24 secured party as if the secured party were the mortgagee thereunder, or, if
25 indexing is by description, as if the financing statement were a record of a
26 mortgage of the real property described.

27 (e) If a financing statement is filed as a fixture filing or covers as-
28 extracted collateral or timber to be cut, the filing office shall index an
29 assignment filed under § 4-9-514(a) or an amendment filed under § 4-9-514(b):

30 (1) under the name of the assignor as grantor; and

31 (2) to the extent that the law of this State provides for indexing
32 a record of the assignment of a mortgage under the name of the assignee, under
33 the name of the assignee.

34 (f) The filing office shall maintain a capability:

35 (1) to retrieve a record by the name of the debtor and:

36 (A) if the filing office is described in § 4-9-501(a)(1), by

1 the file number assigned to the initial financing statement to which the
2 record relates and the date and time that the record was filed; or

3 (B) if the filing office is described in § 4-9-501(a)(2), by
4 the file number assigned to the initial financing statement to which the
5 record relates; and

6 (2) to associate and retrieve with one another an initial
7 financing statement and each filed record relating to the initial financing
8 statement.

9 (g) The filing office may not remove a debtor's name from the index
10 until one year after the effectiveness of a financing statement naming the
11 debtor lapses under § 4-9-515 with respect to all secured parties of record.

12 (h) Except as provided in subsection (i) the filing office shall
13 perform the acts required by subsections (a) through (e) at the time and in
14 the manner prescribed by filing office rule, but not later than two business
15 days after the filing office receives the record in question.

16 (i) Subsections (b) and (h) do not apply to a filing office described
17 in § 4-9-501(a)(1).

18

19 4-9-520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD.

20 (a) A filing office shall refuse to accept a record for filing for a
21 reason set forth in § 4-9-516(b) and may refuse to accept a record for filing
22 only for a reason set forth in § 4-9-516(b).

23 (b) If a filing office refuses to accept a record for filing, it shall
24 communicate to the person that presented the record the fact of and reason for
25 the refusal and the date and time the record would have been filed had the
26 filing office accepted it. The communication must be made at the time and in
27 the manner prescribed by filing office rule but, in the case of a filing
28 office described in § 4-9-501(a)(2), in no event more than two (2) business
29 days after the filing office receives the record.

30 (c) A filed financing statement satisfying § 4-9-502(a) and (b) is
31 effective, even if the filing office is required to refuse to accept it for
32 filing under subsection (a). However, § 4-9-338 applies to a filed financing
33 statement providing information described in § 4-9-516(b)(5) which is
34 incorrect at the time the financing statement is filed.

35 (d) If a record communicated to a filing office provides information
36 that relates to more than one debtor, this part applies as to each debtor

1 separately.

3 4-9-521. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT.

4 (a) A filing office that accepts written records may not refuse to
5 accept a written initial financing statement in the following form and format
6 except for a reason set forth in § 4-9-516(b):



11 **UCC FINANCING STATEMENT**

12 FOLLOW INSTRUCTIONS (front and back) CAREFULLY

13 A. NAME & PHONE OF CONTACT AT FILER [optional]

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B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME OF TOTAL ASSIGNEE OF ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION (if applicable): LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) All Debtors Debtor 1 Debtor 2

8. OPTIONAL FILER REFERENCE DATA

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UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME		
OR		
9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR				
11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME				
OR				
12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

13. This FINANCING STATEMENT covers timber to be cut or as-extracted collateral, or is filed as a fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a Trust or Trustee acting with respect to property held in trust or Decedent's Estate

18. Check only if applicable and check only one box.

- Debtor is a TRANSMITTING UTILITY
- Filed in connection with a Manufactured-Home Transaction — effective 30 years
- Filed in connection with a Public-Finance Transaction — effective 30 years

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in § 4-9-516(b):



UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #	1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.
--	--

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects Debtor or Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. DELETE name: Give record name to be deleted in item 6a or 6b. ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
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7d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
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NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral deleted or added, or give entire restated collateral description, or describe collateral assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

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UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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4-9-522. MAINTENANCE AND DESTRUCTION OF RECORDS.

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under § 4-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(1) if the record was filed in the filing office described in § 4-9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed; or

(2) if the record was filed in the filing office described in § 4-9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

4-9-523. INFORMATION FROM FILING OFFICE; SALE OR LICENSE OF RECORDS.

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to § 4-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to § 4-9-519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

1 (2) the number assigned to the record pursuant to § 4-9-519(a)(1);
2 and

3 (3) the date and time of the filing of the record.

4 (c) The filing office shall communicate or otherwise make available in
5 a record the following information to any person that requests it:

6 (1) whether there is on file on a date and time specified by the
7 filing office, but not a date earlier than three business days before the
8 filing office receives the request, any financing statement that:

9 (A) designates a particular debtor or, if the request so
10 states, designates a particular debtor at the address specified in the
11 request;

12 (B) has not lapsed under § 4-9-515 with respect to all
13 secured parties of record; and

14 (C) if the request so states, has lapsed under § 4-9-515 and
15 a record of which is maintained by the filing office under § 4-9-522(a);

16 (2) the date and time of filing of each financing statement; and

17 (3) the information provided in each financing statement.

18 (d) In complying with its duty under subsection (c), the filing office
19 may communicate information in any medium. However, if requested, the filing
20 office shall communicate information by issuing a record that can be admitted
21 into evidence in the courts of this State without extrinsic evidence of its
22 authenticity.

23 (e) The filing office shall perform the acts required by subsections
24 (a) through (d) at the time and in the manner prescribed by filing office
25 rule, but not later than two business days after the filing office receives
26 the request.

27 (f) At least weekly, the Secretary of State shall offer to sell or
28 license to the public on a nonexclusive basis, in bulk, copies of all records
29 filed in it under this part, in every medium from time to time available to
30 the filing office. This subsection shall apply only to records filed in a
31 filing office described in § 4-9-501(a)(2).

32

33 4-9-524. DELAY BY FILING OFFICE. Delay by the filing office beyond a
34 time limit prescribed by this part is excused if:

35 (1) the delay is caused by interruption of communication or computer
36 facilities, war, emergency conditions, failure of equipment, or other

1 circumstances beyond control of the filing office; and

2 (2) the filing office exercises reasonable diligence under the
3 circumstances.

4
5 4-9-525. FEES.

6 (a) Except as otherwise provided in subsection (e), the fee for filing
7 and indexing a record, whether by paper or electronically, under this part,
8 other than an initial financing statement of the kind described in § 4-9-
9 502(c), is:

10 (1) Records filed only with the Secretary of State pursuant to §
11 4-9-501(a)(3), from July 1, 2001 through June 30, 2013 - \$16.00, for filing
12 and indexing the initial financing statement and termination statements, if
13 the record consists of one page. On and after July 1, 2013 - \$12.00, for
14 filing and indexing the initial financing statement and termination
15 statements, if the record consists of one page;

16 (2) Records filed with Circuit Clerks pursuant to § 4-9-501(a)(2)
17 - \$12.00, for filing and indexing the initial financing statement and
18 termination statements, if the record consists of one page;

19 (3) \$0.50 per page up to a maximum of \$100 if the record consists
20 of more than one page.

21 (b)(1) The fee for filing a continuation, whether with the
22 Secretary of State or a Circuit Clerk, is \$6.00.

23 (2) The fee for filing a termination statement, whether with the
24 Secretary of State or a Circuit Clerk, is \$6.00 if it pertains to the filing
25 of a financing statement before July 28, 1995.

26 (3) The fee for each separate search, whether by the Secretary of
27 State or a Circuit Clerk, is \$6.00.

28 (4) The fee for filing an assignment, whether with the Secretary
29 of State or a Circuit Clerk, is \$6.00.

30 (5) The fee for filing a release, whether with the Secretary of
31 State or a Circuit Clerk, is \$6.00.

32 (6) The fee for filing an amendment, whether with the Secretary
33 of State or a Circuit Clerk, is \$6.00.

34 (c) The number of names required to be indexed does not affect the
35 amount of the fee in subsection (a).

36 (d) The fee for issuing a certificate or for furnishing a copy of any

1 record on file naming a particular debtor, is:

2 (1) \$6.00 if the record consists of one page; and

3 (2) \$0.50 per page for each page up to a maximum of \$100 if the
4 records supplied consist of more than one page.

5 (e) This section does not fix the fee with respect to a record of a
6 mortgage which is effective as a financing statement filed as a fixture filing
7 or as a financing statement covering as-extracted collateral or timber to be
8 cut under § 4-9-502(c). However, the recording and satisfaction fees that
9 otherwise would be applicable to the record of the mortgage apply.

10 (f) *The Secretary of State shall report periodically to the Treasurer*
11 *of State the number of filing and indexing fees collected under subdivision*
12 *(a)(1) during the period from July 1, 2001 through June 30, 2013, and the*
13 *Treasurer of State shall deposit \$12.00 of every such fee in a separate*
14 *account for the benefit of those Circuit Clerks who qualify under this*
15 *subsection. The proceeds in the account shall be distributed by the Treasurer*
16 *of State at least quarterly to the County Recorder Cost Fund of the counties*
17 *of qualifying Circuit Clerks in the proportion that the total of the filing*
18 *and indexing fees (other than fees charged solely for filing records related*
19 *to collateral which is equipment used in farming operations, or farm products,*
20 *or accounts or general intangibles arising from or relating to the sale of*
21 *farm products by a farmer or crops growing or to be grown) collected by each*
22 *qualifying clerk in calendar year 1999 under former Chapter 9 of the Uniform*
23 *Commercial Code bears to the total of those same filing and indexing fees*
24 *collected by all qualified distributees. Said calculations shall be*
25 *determined in a reasonable manner. The clerks qualified to share in these*
26 *distributions shall be the Circuit Clerks of the counties who file with the*
27 *Treasurer of State no later than September 1, 2001 a sworn record stating the*
28 *total amount of the relevant indexing and filing fees of the kind described in*
29 *this subsection collected by said clerks in 1999, and the Treasurer of State*
30 *shall use these sworn records in computing the pro rata share of each*
31 *qualified distributee.*

32

33 4-9-526. FILING OFFICE RULES.

34 (a) The Secretary of State shall adopt and publish rules to implement
35 this chapter. The filing office rules must be:

36 (1) consistent with this chapter; and

1 (2) adopted and published in accordance with the Arkansas
2 Administrative Procedure Act.

3 (b) To keep the filing office rules and practices of the filing office
4 in harmony with the rules and practices of filing offices in other
5 jurisdictions that enact substantially this part, and to keep the technology
6 used by the filing office compatible with the technology used by filing
7 offices in other jurisdictions that enact substantially this part, the
8 Secretary of State, so far as is consistent with the purposes, policies, and
9 provisions of this chapter, in adopting, amending, and repealing filing office
10 rules, shall:

11 (1) consult with filing offices in other jurisdictions that enact
12 substantially this part; and

13 (2) consult the most recent version of the Model Rules promulgated
14 by the International Association of Corporate Administrators or any successor
15 organization; and

16 (3) take into consideration the rules and practices of, and the
17 technology used by, filing offices in other jurisdictions that enact
18 substantially this part.

19
20 4-9-527. DUTY TO REPORT. The Secretary of State shall report annually
21 on or before October 1 to the Governor and Legislature on the operation of the
22 filing office. The report must contain a statement of the extent to which:

23 (1) the filing office rules are not in harmony with the rules of
24 filing offices in other jurisdictions that enact substantially this part and
25 the reasons for these variations; and

26 (2) the filing office rules are not in harmony with the most
27 recent version of the Model Rules promulgated by the International Association
28 of Corporate Administrators, or any successor organization, and the reasons
29 for these variations.

30
31 PART 6

32 DEFAULT

33 SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

34
35 4-9-601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER
36 OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES.

1 (a) After default, a secured party has the rights provided in this part
2 and, except as otherwise provided in § 4-9-602, those provided by agreement of
3 the parties. A secured party:

4 (1) may reduce a claim to judgment, foreclose, or otherwise
5 enforce the claim, security interest, or agricultural lien by any available
6 judicial procedure; and

7 (2) if the collateral is documents, may proceed either as to the
8 documents or as to the goods they cover.

9 (b) A secured party in possession of collateral or control of
10 collateral under § 4-9-104, 4-9-105, 4-9-106, or 4-9-107 has the rights and
11 duties provided in § 4-9-207.

12 (c) The rights under subsections (a) and (b) are cumulative and may be
13 exercised simultaneously.

14 (d) Except as otherwise provided in subsection (g) and § 4-9-605, after
15 default, a debtor and an obligor have the rights provided in this part and by
16 agreement of the parties.

17 (e) If a secured party has reduced its claim to judgment, the lien of
18 any levy that may be made upon the collateral by virtue of an execution based
19 upon the judgment relates back to the earliest of:

20 (1) the date of perfection of the security interest or
21 agricultural lien in the collateral;

22 (2) the date of filing a financing statement covering the
23 collateral; or

24 (3) any date specified in a statute under which the agricultural
25 lien was created.

26 (f) A sale pursuant to an execution is a foreclosure of the security
27 interest or agricultural lien by judicial procedure within the meaning of this
28 section. A secured party may purchase at the sale and thereafter hold the
29 collateral free of any other requirements of this chapter.

30 (g) Except as otherwise provided in § 4-9-607(c), this part imposes no
31 duties upon a secured party that is a consignor or is a buyer of accounts,
32 chattel paper, payment intangibles, or promissory notes.

33
34 4-9-602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES. Except as otherwise
35 provided in § 4-9-624, to the extent that they give rights to a debtor or
36 obligor and impose duties on a secured party, the debtor or obligor may not

1 waive or vary the rules stated in the following listed sections:

2 (1) § 4-9-207(b)(4)(C), which deals with use and operation of the
3 collateral by the secured party;

4 (2) § 4-9-210, which deals with requests for an accounting and requests
5 concerning a list of collateral and statement of account;

6 (3) § 4-9-607(c), which deals with collection and enforcement of
7 collateral;

8 (4) §§ 4-9-608(a) and 4-9-615(c) to the extent that they deal with
9 application or payment of noncash proceeds of collection, enforcement, or
10 disposition;

11 (5) §§ 4-9-608(a) and 4-9-615(d) to the extent that they require
12 accounting for or payment of surplus proceeds of collateral;

13 (6) § 4-9-609 to the extent that it imposes upon a secured party that
14 takes possession of collateral without judicial process the duty to do so
15 without breach of the peace;

16 (7) §§ 4-9-610(b), 4-9-611, 4-9-613, and 4-9-614, which deal with
17 disposition of collateral;

18 (8) § 4-9-615(f), which deals with calculation of a deficiency or
19 surplus when a disposition is made to the secured party, a person related to
20 the secured party, or a secondary obligor;

21 (9) § 4-9-616, which deals with explanation of the calculation of a
22 surplus or deficiency;

23 (10) §§ 4-9-620, 4-9-621, and 4-9-622, which deal with acceptance of
24 collateral in satisfaction of obligation;

25 (11) § 4-9-623, which deals with redemption of collateral;

26 (12) § 4-9-624, which deals with permissible waivers; and

27 (13) §§ 4-9-625 and 4-9-626, which deal with the secured party's
28 liability for failure to comply with this chapter.

29

30 4-9-603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES.

31 (a) The parties may determine by agreement the standards measuring the
32 fulfillment of the rights of a debtor or obligor and the duties of a secured
33 party under a rule stated in § 4-9-602 if the standards are not manifestly
34 unreasonable.

35 (b) Subsection (a) does not apply to the duty under § 4-9-609 to refrain
36 from breaching the peace.

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4-9-604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR
FIXTURES.

(a) If a security agreement covers both personal and real property, a
secured party may proceed:

(1) under this part as to the personal property without
prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in
accordance with the rights with respect to the real property, in which case
the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods
that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property,
in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party
holding a security interest in fixtures has priority over all owners and
encumbrancers of the real property, the secured party, after default, may
remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse
any encumbrancer or owner of the real property, other than the debtor, for the
cost of repair of any physical injury caused by the removal. The secured
party need not reimburse the encumbrancer or owner for any diminution in value
of the real property caused by the absence of the goods removed or by any
necessity of replacing them. A person entitled to reimbursement may refuse
permission to remove until the secured party gives adequate assurance for the
performance of the obligation to reimburse.

4-9-605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR. A secured party does not
owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party
knows:

- (A) that the person is a debtor or obligor;
- (B) the identity of the person; and
- (C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing

1 statement against a person, unless the secured party knows:

2 (A) that the person is a debtor; and

3 (B) the identity of the person.

4

5 4-9-606. TIME OF DEFAULT FOR AGRICULTURAL LIEN. For purposes of this
6 part, a default occurs in connection with an agricultural lien at the time the
7 secured party becomes entitled to enforce the lien in accordance with the
8 statute under which it was created.

9

10 4-9-607. COLLECTION AND ENFORCEMENT BY SECURED PARTY.

11 (a) If so agreed, and in any event after default, a secured party:

12 (1) may notify an account debtor or other person obligated on
13 collateral to make payment or otherwise render performance to or for the
14 benefit of the secured party;

15 (2) may take any proceeds to which the secured party is entitled
16 under § 4-9-315;

17 (3) may enforce the obligations of an account debtor or other
18 person obligated on collateral and exercise the rights of the debtor with
19 respect to the obligation of the account debtor or other person obligated on
20 collateral to make payment or otherwise render performance to the debtor, and
21 with respect to any property that secures the obligations of the account
22 debtor or other person obligated on the collateral;

23 (4) if it holds a security interest in a deposit account perfected
24 by control under § 4-9-104(a)(1), may apply the balance of the deposit account
25 to the obligation secured by the deposit account; and

26 (5) if it holds a security interest in a deposit account perfected
27 by control under § 4-9-104(a)(2) or (3), may instruct the bank to pay the
28 balance of the deposit account to or for the benefit of the secured party.

29 (b) If necessary to enable a secured party to exercise under subsection
30 (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured
31 party may record in the office in which a record of the mortgage is recorded:

32 (1) a copy of the security agreement that creates or provides for
33 a security interest in the obligation secured by the mortgage; and

34 (2) the secured party's sworn affidavit in recordable form stating
35 that:

36 (A) a default has occurred; and

1 (B) the secured party is entitled to enforce the mortgage
2 nonjudicially.

3 (c) A secured party shall proceed in a commercially reasonable manner
4 if the secured party:

5 (1) undertakes to collect from or enforce an obligation of an
6 account debtor or other person obligated on collateral; and

7 (2) is entitled to charge back uncollected collateral or otherwise
8 to full or limited recourse against the debtor or a secondary obligor.

9 (d) A secured party may deduct from the collections made pursuant to
10 subsection (c) reasonable expenses of collection and enforcement, including
11 reasonable attorney's fees and legal expenses incurred by the secured party.

12 (e) This section does not determine whether an account debtor, bank, or
13 other person obligated on collateral owes a duty to a secured party.

14
15 4-9-608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT;
16 LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS.

17 (a) If a security interest or agricultural lien secures payment or
18 performance of an obligation, the following rules apply:

19 (1) A secured party shall apply or pay over for application the
20 cash proceeds of collection or enforcement under § 4-9-607 in the following
21 order to:

22 (A) the reasonable expenses of collection and enforcement
23 and, to the extent provided for by agreement and not prohibited by law,
24 reasonable attorney's fees and legal expenses incurred by the secured party;

25 (B) the satisfaction of obligations secured by the security
26 interest or agricultural lien under which the collection or enforcement is
27 made; and

28 (C) the satisfaction of obligations secured by any
29 subordinate security interest in or other lien on the collateral subject to
30 the security interest or agricultural lien under which the collection or
31 enforcement is made if the secured party receives an authenticated demand for
32 proceeds before distribution of the proceeds is completed.

33 (2) If requested by a secured party, a holder of a subordinate
34 security interest or other lien shall furnish reasonable proof of the interest
35 or lien within a reasonable time. Unless the holder complies, the secured
36 party need not comply with the holder's demand under paragraph (1)(C).

1 (3) A secured party need not apply or pay over for application
2 noncash proceeds of collection and enforcement under § 4-9-607 unless the
3 failure to do so would be commercially unreasonable. A secured party that
4 applies or pays over for application noncash proceeds shall do so in a
5 commercially reasonable manner.

6 (4) A secured party shall account to and pay a debtor for any
7 surplus, and the obligor is liable for any deficiency.

8 (b) If the underlying transaction is a sale of accounts, chattel paper,
9 payment intangibles, or promissory notes, the debtor is not entitled to any
10 surplus, and the obligor is not liable for any deficiency.

11

12 4-9-609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT.

13 (a) After default, a secured party:

14 (1) may take possession of the collateral; and

15 (2) without removal, may render equipment unusable and dispose of
16 collateral on a debtor's premises under § 4-9-610.

17 (b) A secured party may proceed under subsection (a):

18 (1) pursuant to judicial process; or

19 (2) without judicial process, if it proceeds without breach of the
20 peace.

21 (c) If so agreed, and in any event after default, a secured party may
22 require the debtor to assemble the collateral and make it available to the
23 secured party at a place to be designated by the secured party which is
24 reasonably convenient to both parties.

25

26 4-9-610. DISPOSITION OF COLLATERAL AFTER DEFAULT.

27 (a) After default, a secured party may sell, lease, license, or
28 otherwise dispose of any or all of the collateral in its present condition or
29 following any commercially reasonable preparation or processing.

30 (b) Every aspect of a disposition of collateral, including the method,
31 manner, time, place, and other terms, must be commercially reasonable. If
32 commercially reasonable, a secured party may dispose of collateral by public
33 or private proceedings, by one or more contracts, as a unit or in parcels, and
34 at any time and place and on any terms.

35 (c) A secured party may purchase collateral:

36 (1) at a public disposition; or

1 (2) at a private disposition only if the collateral is of a kind
2 that is customarily sold on a recognized market or the subject of widely
3 distributed standard price quotations.

4 (d) A contract for sale, lease, license, or other disposition includes
5 the warranties relating to title, possession, quiet enjoyment, and the like
6 which by operation of law accompany a voluntary disposition of property of the
7 kind subject to the contract.

8 (e) A secured party may disclaim or modify warranties under subsection
9 (d):

10 (1) in a manner that would be effective to disclaim or modify the
11 warranties in a voluntary disposition of property of the kind subject to the
12 contract of disposition; or

13 (2) by communicating to the purchaser a record evidencing the
14 contract for disposition and including an express disclaimer or modification
15 of the warranties.

16 (f) A record is sufficient to disclaim warranties under subsection (e)
17 if it indicates "There is no warranty relating to title, possession, quiet
18 enjoyment, or the like in this disposition" or uses words of similar import.

19
20 4-9-611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

21 (a) In this section, "notification date" means the earlier of the date
22 on which:

23 (1) a secured party sends to the debtor and any secondary obligor
24 an authenticated notification of disposition; or

25 (2) the debtor and any secondary obligor waive the right to
26 notification.

27 (b) Except as otherwise provided in subsection (d), a secured party
28 that disposes of collateral under § 4-9-610 shall send to the persons
29 specified in subsection (c) a reasonable authenticated notification of
30 disposition.

31 (c) To comply with subsection (b), the secured party shall send an
32 authenticated notification of disposition to:

33 (1) the debtor;

34 (2) any secondary obligor; and

35 (3) if the collateral is other than consumer goods:

36 (A) any other person from which the secured party has

1 received, before the notification date, an authenticated notification of a
2 claim of an interest in the collateral;

3 (B) any other secured party or lienholder that, 10 days
4 before the notification date, held a security interest in or other lien on the
5 collateral perfected by the filing of a financing statement that:

6 (i) identified the collateral;

7 (ii) was indexed under the debtor's name as of that
8 date; and

9 (iii) was filed in the office in which to file a
10 financing statement against the debtor covering the collateral as of that
11 date; and

12 (C) any other secured party that, ten (10) days before the
13 notification date, held a security interest in the collateral perfected by
14 compliance with a statute, regulation, or treaty described in § 4-9-311(a).

15 (d) Subsection (b) does not apply if the collateral is perishable or
16 threatens to decline speedily in value or is of a type customarily sold on a
17 recognized market.

18 (e) A secured party complies with the requirement for notification
19 prescribed by subsection (c)(3)(B) if:

20 (1) not later than twenty (20) days or earlier than thirty (30)
21 days before the notification date, the secured party requests, in a
22 commercially reasonable manner, information concerning financing statements
23 indexed under the debtor's name in the office indicated in subsection
24 (c)(3)(B); and

25 (2) before the notification date, the secured party:

26 (A) did not receive a response to the request for
27 information; or

28 (B) received a response to the request for information and
29 sent an authenticated notification of disposition to each secured party or
30 other lienholder named in that response whose financing statement covered the
31 collateral.

32

33 4-9-612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL.

34 (a) Except as otherwise provided in subsection (b), whether a
35 notification is sent within a reasonable time is a question of fact.

36 (b) In a transaction other than a consumer transaction, a notification

1 of disposition sent after default and ten (10) days or more before the
 2 earliest time of disposition set forth in the notification is sent within a
 3 reasonable time before the disposition.

4

5 4-9-613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF
 6 COLLATERAL: GENERAL. Except in a consumer-goods transaction, the following
 7 rules apply:

8 (1) The contents of a notification of disposition are sufficient if the
 9 notification:

10 (A) describes the debtor and the secured party;

11 (B) describes the collateral that is the subject of the intended
 12 disposition;

13 (C) states the method of intended disposition;

14 (D) states that the debtor is entitled to an accounting of the
 15 unpaid indebtedness and states the charge, if any, for an accounting; and

16 (E) states the time and place of a public disposition or the time
 17 after which any other disposition is to be made.

18 (2) Whether the contents of a notification that lacks any of the
 19 information specified in paragraph (1) are nevertheless sufficient is a
 20 question of fact.

21 (3) The contents of a notification providing substantially the
 22 information specified in paragraph (1) are sufficient, even if the
 23 notification includes:

24 (A) information not specified by that paragraph; or

25 (B) minor errors that are not seriously misleading.

26 (4) A particular phrasing of the notification is not required.

27 (5) The following form of notification and the form appearing in § 4-9-
 28 614(3), when completed, each provides sufficient information:

29 NOTIFICATION OF DISPOSITION OF COLLATERAL

30 To: [Name of debtor, obligor, or other person to which the
 31 notification is sent]

32 From: [Name, address, and telephone number of secured
 33 party]

34 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

35 [For a public disposition:]

36 We will sell [or lease or license, as applicable] the [describe

1 collateral] [to the highest qualified bidder] in public as follows:

2 Day and Date: _____

3 Time: _____

4 Place: _____

5 [For a private disposition:]

6 We will sell [or lease or license, as applicable] the [describe
7 collateral] privately sometime after [day and date].

8 You are entitled to an accounting of the unpaid indebtedness secured by
9 the property that we intend to sell [or lease or license, as applicable] [for
10 a charge of \$_____]. You may request an accounting by calling us at
11 [telephone number]

12

13 4-9-614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF
14 COLLATERAL: CONSUMER-GOODS TRANSACTION. In a consumer-goods transaction, the
15 following rules apply:

16 (1) A notification of disposition must provide the following
17 information:

18 (A) the information specified in § 4-9-613(1);

19 (B) a description of any liability for a deficiency of the person
20 to which the notification is sent;

21 (C) a telephone number from which the amount that must be paid to
22 the secured party to redeem the collateral under § 4-9-623 is available; and

23 (D) a telephone number or mailing address from which additional
24 information concerning the disposition and the obligation secured is
25 available.

26 (2) A particular phrasing of the notification is not required.

27 (3) The following form of notification, when completed, provides
28 sufficient information:

29 [Name and address of secured party]

30 [Date]

31 NOTICE OF OUR PLAN TO SELL PROPERTY

32 [Name and address of any obligor who is also a debtor]

33 Subject: [Identification of Transaction]

34

35 We have your [describe collateral], because you broke promises in our
36 agreement.

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[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:
[Names of all other debtors and obligors, if any]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

1 (5) A notification in the form of paragraph (3) is sufficient, even if
2 it includes errors in information not required by paragraph (1), unless the
3 error is misleading with respect to rights arising under this chapter.

4 (6) If a notification under this section is not in the form of
5 paragraph (3), law other than this chapter determines the effect of including
6 information not required by paragraph (1).

7
8 4-9-615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY FOR
9 DEFICIENCY AND RIGHT TO SURPLUS.

10 (a) A secured party shall apply or pay over for application the cash
11 proceeds of disposition under § 4-9-610 in the following order to:

12 (1) the reasonable expenses of retaking, holding, preparing for
13 disposition, processing, and disposing, and, to the extent provided for by
14 agreement and not prohibited by law, reasonable attorney's fees and legal
15 expenses incurred by the secured party;

16 (2) the satisfaction of obligations secured by the security
17 interest or agricultural lien under which the disposition is made;

18 (3) the satisfaction of obligations secured by any subordinate
19 security interest in or other subordinate lien on the collateral if:

20 (A) the secured party receives from the holder of the
21 subordinate security interest or other lien an authenticated demand for
22 proceeds before distribution of the proceeds is completed; and

23 (B) in a case in which a consignor has an interest in the
24 collateral, the subordinate security interest or other lien is senior to the
25 interest of the consignor; and

26 (4) a secured party that is a consignor of the collateral if the
27 secured party receives from the consignor an authenticated demand for proceeds
28 before distribution of the proceeds is completed.

29 (b) If requested by a secured party, a holder of a subordinate security
30 interest or other lien shall furnish reasonable proof of the interest or lien
31 within a reasonable time. Unless the holder does so, the secured party need
32 not comply with the holder's demand under subsection (a)(3).

33 (c) A secured party need not apply or pay over for application noncash
34 proceeds of disposition under § 4-9-610 unless the failure to do so would be
35 commercially unreasonable. A secured party that applies or pays over for
36 application noncash proceeds shall do so in a commercially reasonable manner.

1 (d) If the security interest under which a disposition is made secures
2 payment or performance of an obligation, after making the payments and
3 applications required by subsection (a) and permitted by subsection (c):

4 (1) unless subsection (a)(4) requires the secured party to apply
5 or pay over cash proceeds to a consignor, the secured party shall account to
6 and pay a debtor for any surplus; and

7 (2) the obligor is liable for any deficiency.

8 (e) If the underlying transaction is a sale of accounts, chattel paper,
9 payment intangibles, or promissory notes:

10 (1) the debtor is not entitled to any surplus; and

11 (2) the obligor is not liable for any deficiency.

12 (f) The surplus or deficiency following a disposition is calculated
13 based on the amount of proceeds that would have been realized in a disposition
14 complying with this part to a transferee other than the secured party, a
15 person related to the secured party, or a secondary obligor if:

16 (1) the transferee in the disposition is the secured party, a
17 person related to the secured party, or a secondary obligor; and

18 (2) the amount of proceeds of the disposition is significantly
19 below the range of proceeds that a complying disposition to a person other
20 than the secured party, a person related to the secured party, or a secondary
21 obligor would have brought.

22 (g) A secured party that receives cash proceeds of a disposition in
23 good faith and without knowledge that the receipt violates the rights of the
24 holder of a security interest or other lien that is not subordinate to the
25 security interest or agricultural lien under which the disposition is made:

26 (1) takes the cash proceeds free of the security interest or other
27 lien;

28 (2) is not obligated to apply the proceeds of the disposition to
29 the satisfaction of obligations secured by the security interest or other
30 lien; and

31 (3) is not obligated to account to or pay the holder of the
32 security interest or other lien for any surplus.

33
34 4-9-616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY.

35 (a) In this section:

36 (1) "Explanation" means a writing that:

- 1 (A) states the amount of the surplus or deficiency;
- 2 (B) provides an explanation in accordance with subsection
- 3 (c) of how the secured party calculated the surplus or deficiency;
- 4 (C) states, if applicable, that future debits, credits,
- 5 charges, including additional credit service charges or interest, rebates, and
- 6 expenses may affect the amount of the surplus or deficiency; and
- 7 (D) provides a telephone number or mailing address from
- 8 which additional information concerning the transaction is available.

9 (2) "Request" means a record:

- 10 (A) authenticated by a debtor or consumer obligor;
- 11 (B) requesting that the recipient provide an explanation;
- 12 and
- 13 (C) sent after disposition of the collateral under § 4-9-
- 14 610.

15 (b) In a consumer-goods transaction in which the debtor is entitled to

16 a surplus or a consumer obligor is liable for a deficiency under § 4-9-615,

17 the secured party shall:

18 (1) send an explanation to the debtor or consumer obligor, as

19 applicable, after the disposition and:

- 20 (A) before or when the secured party accounts to the debtor
- 21 and pays any surplus or first makes written demand on the consumer obligor
- 22 after the disposition for payment of the deficiency; and
- 23 (B) within fourteen (14) days after receipt of a request;

24 or

25 (2) in the case of a consumer obligor who is liable for a

26 deficiency, within fourteen (14) days after receipt of a request, send to the

27 consumer obligor a record waiving the secured party's right to a deficiency.

28 (c) To comply with subsection (a)(1)(B), a writing must provide the

29 following information in the following order:

30 (1) the aggregate amount of obligations secured by the security

31 interest under which the disposition was made, and, if the amount reflects a

32 rebate of unearned interest or credit service charge, an indication of that

33 fact, calculated as of a specified date:

- 34 (A) if the secured party takes or receives possession of the
- 35 collateral after default, not more than thirty-five (35) days before the
- 36 secured party takes or receives possession; or

1 (B) if the secured party takes or receives possession of the
2 collateral before default or does not take possession of the collateral, not
3 more than thirty-five (35) days before the disposition;

4 (2) the amount of proceeds of the disposition;

5 (3) the aggregate amount of the obligations after deducting the
6 amount of proceeds;

7 (4) the amount, in the aggregate or by type, and types of
8 expenses, including expenses of retaking, holding, preparing for disposition,
9 processing, and disposing of the collateral, and attorney's fees secured by
10 the collateral which are known to the secured party and relate to the current
11 disposition;

12 (5) the amount, in the aggregate or by type, and types of credits,
13 including rebates of interest or credit service charges, to which the obligor
14 is known to be entitled and which are not reflected in the amount in paragraph
15 (1); and

16 (6) the amount of the surplus or deficiency.

17 (d) A particular phrasing of the explanation is not required. An
18 explanation complying substantially with the requirements of subsection (a) is
19 sufficient, even if it includes minor errors that are not seriously
20 misleading.

21 (e) A debtor or consumer obligor is entitled without charge to one
22 response to a request under this section during any six-month period in which
23 the secured party did not send to the debtor or consumer obligor an
24 explanation pursuant to subsection (b)(1). The secured party may require
25 payment of a charge not exceeding twenty-five dollars (\$25) for each
26 additional response.

27
28 4-9-617. RIGHTS OF TRANSFEREE OF COLLATERAL.

29 (a) A secured party's disposition of collateral after default:

30 (1) transfers to a transferee for value all of the debtor's rights
31 in the collateral;

32 (2) discharges the security interest under which the disposition
33 is made; and

34 (3) discharges any subordinate security interest or other
35 subordinate lien.

36 (b) A transferee that acts in good faith takes free of the rights and

1 interests described in subsection (a), even if the secured party fails to
2 comply with this chapter or the requirements of any judicial proceeding.

3 (c) If a transferee does not take free of the rights and interests
4 described in subsection (a), the transferee takes the collateral subject to:

5 (1) the debtor's rights in the collateral;

6 (2) the security interest or agricultural lien under which the
7 disposition is made; and

8 (3) any other security interest or other lien.
9

10 4-9-618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS.

11 (a) A secondary obligor acquires the rights and becomes obligated to
12 perform the duties of the secured party after the secondary obligor:

13 (1) receives an assignment of a secured obligation from the
14 secured party;

15 (2) receives a transfer of collateral from the secured party and
16 agrees to accept the rights and assume the duties of the secured party; or

17 (3) is subrogated to the rights of a secured party with respect to
18 collateral.

19 (b) An assignment, transfer, or subrogation described in subsection
20 (a):

21 (1) is not a disposition of collateral under § 4-9-610; and

22 (2) relieves the secured party of further duties under this
23 chapter.
24

25 4-9-619. TRANSFER OF RECORD OR LEGAL TITLE.

26 (a) In this section, "transfer statement" means a record authenticated
27 by a secured party stating:

28 (1) that the debtor has defaulted in connection with an obligation
29 secured by specified collateral;

30 (2) that the secured party has exercised its post-default remedies
31 with respect to the collateral;

32 (3) that, by reason of the exercise, a transferee has acquired the
33 rights of the debtor in the collateral; and

34 (4) the name and mailing address of the secured party, debtor, and
35 transferee.

36 (b) A transfer statement entitles the transferee to the transfer of

1 record of all rights of the debtor in the collateral specified in the
2 statement in any official filing, recording, registration, or certificate-of-
3 title system covering the collateral. If a transfer statement is presented
4 with the applicable fee and request form to the official or office responsible
5 for maintaining the system, the official or office shall:

6 (1) accept the transfer statement;

7 (2) promptly amend its records to reflect the transfer; and

8 (3) if applicable, issue a new appropriate certificate of title in
9 the name of the transferee.

10 (c) A transfer of the record or legal title to collateral to a secured
11 party under subsection (b) or otherwise is not of itself a disposition of
12 collateral under this chapter and does not of itself relieve the secured party
13 of its duties under this chapter.

14
15 4-9-620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF
16 OBLIGATION; COMPULSORY DISPOSITION OF COLLATERAL.

17 (a) Except as otherwise provided in subsection (g), a secured party may
18 accept collateral in full or partial satisfaction of the obligation it secures
19 only if:

20 (1) the debtor consents to the acceptance under subsection (c);

21 (2) the secured party does not receive, within the time set forth
22 in subsection (d), a notification of objection to the proposal authenticated
23 by:

24 (A) a person to which the secured party was required to send
25 a proposal under § 4-9-621; or

26 (B) any other person, other than the debtor, holding an
27 interest in the collateral subordinate to the security interest that is the
28 subject of the proposal;

29 (3) if the collateral is consumer goods, the collateral is not in
30 the possession of the debtor when the debtor consents to the acceptance; and

31 (4) subsection (e) does not require the secured party to dispose
32 of the collateral or the debtor waives the requirement pursuant to
33 § 4-9-624.

34 (b) A purported or apparent acceptance of collateral under this section
35 is ineffective unless:

36 (1) the secured party consents to the acceptance in an

1 authenticated record or sends a proposal to the debtor; and

2 (2) the conditions of subsection (a) are met.

3 (c) For purposes of this section:

4 (1) a debtor consents to an acceptance of collateral in partial
5 satisfaction of the obligation it secures only if the debtor agrees to the
6 terms of the acceptance in a record authenticated after default; and

7 (2) a debtor consents to an acceptance of collateral in full
8 satisfaction of the obligation it secures only if the debtor agrees to the
9 terms of the acceptance in a record authenticated after default or the secured
10 party:

11 (A) sends to the debtor after default a proposal that is
12 unconditional or subject only to a condition that collateral not in the
13 possession of the secured party be preserved or maintained;

14 (B) in the proposal, proposes to accept collateral in full
15 satisfaction of the obligation it secures; and

16 (C) does not receive a notification of objection
17 authenticated by the debtor within twenty (20) days after the proposal is
18 sent.

19 (d) To be effective under subsection (a)(2), a notification of
20 objection must be received by the secured party:

21 (1) in the case of a person to which the proposal was sent
22 pursuant to § 4-9-621, within twenty (20) days after notification was sent to
23 that person; and

24 (2) in other cases:

25 (A) within twenty (20) days after the last notification was
26 sent pursuant to § 4-9-621; or

27 (B) if a notification was not sent, before the debtor
28 consents to the acceptance under subsection (c).

29 (e) A secured party that has taken possession of collateral shall
30 dispose of the collateral pursuant to § 4-9-610 within the time specified in
31 subsection (f) if:

32 (1) sixty percent (60%) of the cash price has been paid in the
33 case of a purchase-money security interest in consumer goods; or

34 (2) sixty percent (60%) of the principal amount of the obligation
35 secured has been paid in the case of a non-purchase-money security interest in
36 consumer goods.

1 (f) To comply with subsection (e), the secured party shall dispose of
2 the collateral:

- 3 (1) within ninety (90) days after taking possession; or
- 4 (2) within any longer period to which the debtor and all secondary
5 obligors have agreed in an agreement to that effect entered into and
6 authenticated after default.

7 (g) In a consumer transaction, a secured party may not accept
8 collateral in partial satisfaction of the obligation it secures.

9

10 4-9-621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL.

11 (a) A secured party that desires to accept collateral in full or
12 partial satisfaction of the obligation it secures shall send its proposal to:

- 13 (1) any person from which the secured party has received, before
14 the debtor consented to the acceptance, an authenticated notification of a
15 claim of an interest in the collateral;
- 16 (2) any other secured party or lienholder that, ten (10) days
17 before the debtor consented to the acceptance, held a security interest in or
18 other lien on the collateral perfected by the filing of a financing statement
19 that:

- 20 (A) identified the collateral;
- 21 (B) was indexed under the debtor's name as of that date; and
- 22 (C) was filed in the office or offices in which to file a
23 financing statement against the debtor covering the collateral as of that
24 date; and

25 (3) any other secured party that, ten (10) days before the debtor
26 consented to the acceptance, held a security interest in the collateral
27 perfected by compliance with a statute, regulation, or treaty described in
28 § 4-9-311(a).

29 (b) A secured party that desires to accept collateral in partial
30 satisfaction of the obligation it secures shall send its proposal to any
31 secondary obligor in addition to the persons described in subsection (a).

32

33 4-9-622. EFFECT OF ACCEPTANCE OF COLLATERAL.

34 (a) A secured party's acceptance of collateral in full or partial
35 satisfaction of the obligation it secures:

- 36 (1) discharges the obligation to the extent consented to by the

1 debtor;

2 (2) transfers to the secured party all of a debtor's rights in the
3 collateral;

4 (3) discharges the security interest or agricultural lien that is
5 the subject of the debtor's consent and any subordinate security interest or
6 other subordinate lien; and

7 (4) terminates any other subordinate interest.

8 (b) A subordinate interest is discharged or terminated under subsection
9 (a), even if the secured party fails to comply with this chapter.

10

11 4-9-623. RIGHT TO REDEEM COLLATERAL.

12 (a) A debtor, any secondary obligor, or any other secured party or
13 lienholder may redeem collateral.

14 (b) To redeem collateral, a person shall tender:

15 (1) fulfillment of all obligations secured by the collateral; and

16 (2) the reasonable expenses and attorney's fees described in § 4-
17 9-615(a)(1).

18 (c) A redemption may occur at any time before a secured party:

19 (1) has collected collateral under § 4-9-607;

20 (2) has disposed of collateral or entered into a contract for its
21 disposition under § 4-9-610; or

22 (3) has accepted collateral in full or partial satisfaction of the
23 obligation it secures under § 4-9-622.

24

25 4-9-624. WAIVER.

26 (a) A debtor or secondary obligor may waive the right to notification
27 of disposition of collateral under § 4-9-611 only by an agreement to that
28 effect entered into and authenticated after default.

29 (b) A debtor may waive the right to require disposition of collateral
30 under § 4-9-620(e) only by an agreement to that effect entered into and
31 authenticated after default.

32 (c) Except in a consumer-goods transaction, a debtor or secondary
33 obligor may waive the right to redeem collateral under § 4-9-623 only by an
34 agreement to that effect entered into and authenticated after default.

35

36 SUBPART 2. NONCOMPLIANCE WITH CHAPTER

1

2 4-9-625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH CHAPTER.

3 (a) If it is established that a secured party is not proceeding in
4 accordance with this chapter, a court may order or restrain collection,
5 enforcement, or disposition of collateral on appropriate terms and conditions.

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

11 (c) Except as otherwise provided in § 4-9-628:

12 (1) a person that, at the time of the failure, was a debtor, was
13 an obligor, or held a security interest in or other lien on the collateral may
14 recover damages under subsection (b) for its loss; and

15 (2) if the collateral is consumer goods, a person that was a
16 debtor or a secondary obligor at the time a secured party failed to comply
17 with this part may recover for that failure in any event an amount not less
18 than the credit service charge plus ten percent (10%) of the principal amount
19 of the obligation or the time-price differential plus ten percent (10%) of the
20 cash price.

21 (d) A debtor whose deficiency is eliminated under § 4-9-626 may recover
22 damages for the loss of any surplus. However, a debtor or secondary obligor
23 whose deficiency is eliminated or reduced under § 4-9-626 may not otherwise
24 recover under subsection (b) for noncompliance with the provisions of this
25 part relating to collection, enforcement, disposition, or acceptance.

26 (e) In addition to any damages recoverable under subsection (b), the
27 debtor, consumer obligor, or person named as a debtor in a filed record, as
28 applicable, may recover five hundred dollars (\$500) in each case from a person
29 that:

30 (1) fails to comply with § 4-9-208;

31 (2) fails to comply with § 4-9-209;

32 (3) files a record that the person is not entitled to file under
33 § 4-9-509(a);

34 (4) fails to cause the secured party of record to file or send a
35 termination statement as required by § 4-9-513(a) or (c);

36 (5) fails to comply with § 4-9-616(b)(1) and whose failure is part

1 of a pattern, or consistent with a practice, of noncompliance; or

2 (6) fails to comply with § 4-9-616(b)(2).

3 (f) A debtor or consumer obligor may recover damages under subsection
4 (b) and, in addition, five hundred dollars (\$500) in each case from a person
5 that, without reasonable cause, fails to comply with a request under § 4-9-
6 210. A recipient of a request under § 4-9-210 which never claimed an interest
7 in the collateral or obligations that are the subject of a request under that
8 section has a reasonable excuse for failure to comply with the request within
9 the meaning of this subsection.

10 (g) If a secured party fails to comply with a request regarding a list
11 of collateral or a statement of account under § 4-9-210, the secured party may
12 claim a security interest only as shown in the list or statement included in
13 the request as against a person that is reasonably misled by the failure.

14

15 4-9-626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE.

16 (a) In an action arising from a transaction, other than a consumer
17 transaction, in which the amount of a deficiency or surplus is in issue, the
18 following rules apply:

19 (1) A secured party need not prove compliance with the provisions
20 of this part relating to collection, enforcement, disposition, or acceptance
21 unless the debtor or a secondary obligor places the secured party's compliance
22 in issue.

23 (2) If the secured party's compliance is placed in issue, the
24 secured party has the burden of establishing that the collection, enforcement,
25 disposition, or acceptance was conducted in accordance with this part.

26 (3) Except as otherwise provided in § 4-9-628, if a secured party
27 fails to prove that the collection, enforcement, disposition, or acceptance
28 was conducted in accordance with the provisions of this part relating to
29 collection, enforcement, disposition, or acceptance, the liability of a debtor
30 or a secondary obligor for a deficiency is limited to an amount by which the
31 sum of the secured obligation, expenses, and attorney's fees exceeds the
32 greater of:

33 (A) the proceeds of the collection, enforcement,
34 disposition, or acceptance; or

35 (B) the amount of proceeds that would have been realized had
36 the noncomplying secured party proceeded in accordance with the provisions of

1 this part relating to collection, enforcement, disposition, or acceptance.

2 (4) For purposes of paragraph (3)(B), the amount of proceeds that
3 would have been realized is equal to the sum of the secured obligation,
4 expenses, and attorney's fees unless the secured party proves that the amount
5 is less than that sum.

6 (5) If a deficiency or surplus is calculated under § 4-9-615(f),
7 the debtor or obligor has the burden of establishing that the amount of
8 proceeds of the disposition is significantly below the range of prices that a
9 complying disposition to a person other than the secured party, a person
10 related to the secured party, or a secondary obligor would have brought.

11 (b) The limitation of the rules in subsection (a) to transactions other
12 than consumer transactions is intended to leave to the court the determination
13 of the proper rules in consumer transactions. The court may not infer from
14 that limitation the nature of the proper rule in consumer transactions and may
15 continue to apply established approaches.

16

17 4-9-627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALY REASONABLE.

18 (a) The fact that a greater amount could have been obtained by a
19 collection, enforcement, disposition, or acceptance at a different time or in
20 a different method from that selected by the secured party is not of itself
21 sufficient to preclude the secured party from establishing that the
22 collection, enforcement, disposition, or acceptance was made in a commercially
23 reasonable manner.

24 (b) A disposition of collateral is made in a commercially reasonable
25 manner if the disposition is made:

26 (1) in the usual manner on any recognized market;

27 (2) at the price current in any recognized market at the time of
28 the disposition; or

29 (3) otherwise in conformity with reasonable commercial practices
30 among dealers in the type of property that was the subject of the disposition.

31 (c) A collection, enforcement, disposition, or acceptance is
32 commercially reasonable if it has been approved:

33 (1) in a judicial proceeding;

34 (2) by a bona fide creditors' committee;

35 (3) by a representative of creditors; or

36 (4) by an assignee for the benefit of creditors.

1 (d) Approval under subsection (c) need not be obtained, and lack of
2 approval does not mean that the collection, enforcement, disposition, or
3 acceptance is not commercially reasonable.

4
5 4-9-628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY;
6 LIABILITY OF SECONDARY OBLIGOR.

7 (a) Unless a secured party knows that a person is a debtor or obligor,
8 knows the identity of the person, and knows how to communicate with the
9 person:

10 (1) the secured party is not liable to the person, or to a secured
11 party or lienholder that has filed a financing statement against the person,
12 for failure to comply with this chapter; and

13 (2) the secured party's failure to comply with this chapter does
14 not affect the liability of the person for a deficiency.

15 (b) A secured party is not liable because of its status as secured
16 party:

17 (1) to a person that is a debtor or obligor, unless the secured
18 party knows:

19 (A) that the person is a debtor or obligor;

20 (B) the identity of the person; and

21 (C) how to communicate with the person; or

22 (2) to a secured party or lienholder that has filed a financing
23 statement against a person, unless the secured party knows:

24 (A) that the person is a debtor; and

25 (B) the identity of the person.

26 (c) A secured party is not liable to any person, and a person's
27 liability for a deficiency is not affected, because of any act or omission
28 arising out of the secured party's reasonable belief that a transaction is not
29 a consumer-goods transaction or a consumer transaction or that goods are not
30 consumer goods, if the secured party's belief is based on its reasonable
31 reliance on:

32 (1) a debtor's representation concerning the purpose for which
33 collateral was to be used, acquired, or held; or

34 (2) an obligor's representation concerning the purpose for which a
35 secured obligation was incurred.

36 (d) A secured party is not liable to any person under § 4-9-625(c)(2)

1 for its failure to comply with § 4-9-616.

2 (e) A secured party is not liable under § 4-9-625(c)(2) more than once
3 with respect to any one secured obligation.

4

5 PART 7

6 TRANSITION

7 4-9-701. This act takes effect on July 1, 2001.

8

9 4-9-702. SAVINGS CLAUSE.

10 (a) Except as otherwise provided in this part, this Act applies to a
11 transaction or lien within its scope, even if the transaction or lien was
12 entered into or created before this Act takes effect.

13 (b) Except as otherwise provided in subsection (c) and §§ 4-9-703
14 through 4-9-709:

15 (1) transactions and liens that were not governed by former
16 Chapter 9, were validly entered into or created before this Act takes effect,
17 and would be subject to this Act if they had been entered into or created
18 after this Act takes effect, and the rights, duties, and interests flowing
19 from those transactions and liens remain valid after this Act takes effect;
20 and

21 (2) the transactions and liens may be terminated, completed,
22 consummated, and enforced as required or permitted by this Act or by the law
23 that otherwise would apply if this Act had not taken effect.

24 (c) This Act does not affect an action, case, or proceeding commenced
25 before this Act takes effect.

26

27 4-9-703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE.

28 (a) A security interest that is enforceable immediately before this Act
29 takes effect and would have priority over the rights of a person that becomes
30 a lien creditor at that time is a perfected security interest under this Act
31 if, when this Act takes effect, the applicable requirements for enforceability
32 and perfection under this Act are satisfied without further action.

33 (b) Except as otherwise provided in § 4-9-705, if, immediately before
34 this Act takes effect, a security interest is enforceable and would have
35 priority over the rights of a person that becomes a lien creditor at that
36 time, but the applicable requirements for enforceability or perfection under

1 this Act are not satisfied when this Act takes effect, the security interest:

2 (1) is a perfected security interest for one (1) year after this
3 Act takes effect;

4 (2) remains enforceable thereafter only if the security interest
5 becomes enforceable under § 4-9-203 before the year expires; and

6 (3) remains perfected thereafter only if the applicable
7 requirements for perfection under this Act are satisfied before the year
8 expires.

9 (c) *Notwithstanding any provision of this Act, any financing statement*
10 *referencing a transmitting utility as the debtor, which was sufficient for*
11 *perfection of a security interest under former Chapter 9 of the Uniform*
12 *Commercial Code or under § 4-19-101, et seq., and which was deemed a*
13 *continuous filing before the effective date of this Act, shall be sufficient*
14 *for perfection of a security interest and maintain such continuously perfected*
15 *status after the effective date of this Act.*

16

17 4-9-704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A
18 security interest that is enforceable immediately before this Act takes effect
19 but which would be subordinate to the rights of a person that becomes a lien
20 creditor at that time:

21 (1) remains an enforceable security interest for one year after
22 this Act takes effect;

23 (2) remains enforceable thereafter if the security interest
24 becomes enforceable under § 4-9-203 when this Act takes effect or within one
25 year thereafter; and

26 (3) becomes perfected:

27 (A) without further action, when this Act takes effect if
28 the applicable requirements for perfection under this Act are satisfied before
29 or at that time; or

30 (B) when the applicable requirements for perfection are
31 satisfied if the requirements are satisfied after that time.

32

33 4-9-705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE.

34 (a) If action, other than the filing of a financing statement, is taken
35 before this Act takes effect and the action would have resulted in priority of
36 a security interest over the rights of a person that becomes a lien creditor

1 had the security interest become enforceable before this Act takes effect, the
2 action is effective to perfect a security interest that attaches under this
3 Act within one year after this Act takes effect. An attached security
4 interest becomes unperfected one year after this Act takes effect unless the
5 security interest becomes a perfected security interest under this Act before
6 the expiration of that period.

7 (b) The filing of a financing statement before this Act takes effect is
8 effective to perfect a security interest to the extent the filing would
9 satisfy the applicable requirements for perfection under this Act.

10 (c) This Act does not render ineffective an effective financing
11 statement that, before this Act takes effect, is filed and satisfies the
12 applicable requirements for perfection under the law of the jurisdiction
13 governing perfection as provided in former § 4-9-103. However, except as
14 otherwise provided in subsections (d) and (e) and § 4-9-706, the financing
15 statement ceases to be effective at the earlier of:

16 (1) the time the financing statement would have ceased to be
17 effective under the law of the jurisdiction in which it is filed; or

18 (2) June 30, 2006.

19 (d) The filing of a continuation statement after this Act takes effect
20 does not continue the effectiveness of the financing statement filed before
21 this Act takes effect. However, upon the timely filing of a continuation
22 statement after this Act takes effect and in accordance with the law of the
23 jurisdiction governing perfection as provided in Part 3, the effectiveness of
24 a financing statement filed in the same office in that jurisdiction before
25 this Act takes effect continues for the period provided by the law of that
26 jurisdiction.

27 (e) Subsection (c)(2) applies to a financing statement that, before
28 this Act takes effect, is filed against a transmitting utility and satisfies
29 the applicable requirements for perfection under the law of the jurisdiction
30 governing perfection as provided in former § 4-9-103 only to the extent that
31 Part 3 provides that the law of a jurisdiction other than the jurisdiction in
32 which the financing statement is filed governs perfection of a security
33 interest in collateral covered by the financing statement.

34 (f) A financing statement that includes a financing statement filed
35 before this Act takes effect and a continuation statement filed after this Act
36 takes effect is effective only to the extent that it satisfies the

1 requirements of Part 5 for an initial financing statement.

2

3 4-9-706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE
4 EFFECTIVENESS OF FINANCING STATEMENT.

5 (a) The filing of an initial financing statement in the office
6 specified in § 4-9-501 continues the effectiveness of a financing statement
7 filed before this Act takes effect if:

8 (1) the filing of an initial financing statement in that office
9 would be effective to perfect a security interest under this Act;

10 (2) the pre-effective-date financing statement was filed in an
11 office in another State or another office in this State; and

12 (3) the initial financing statement satisfies subsection (c).

13 (b) The filing of an initial financing statement under subsection (a)
14 continues the effectiveness of the pre-effective-date financing statement:

15 (1) if the initial financing statement is filed before this Act
16 takes effect, for the period provided in former § 4-9-403 with respect to a
17 financing statement; and

18 (2) if the initial financing statement is filed after this Act
19 takes effect, for the period provided in § 4-9-515 with respect to an initial
20 financing statement.

21 (c) To be effective for purposes of subsection (a), an initial
22 financing statement must:

23 (1) satisfy the requirements of Part 5 for an initial financing
24 statement;

25 (2) identify the pre-effective-date financing statement by
26 indicating the office in which the financing statement was filed and providing
27 the dates of filing and file numbers, if any, of the financing statement and
28 of the most recent continuation statement filed with respect to the financing
29 statement; and

30 (3) indicate that the pre-effective-date financing statement
31 remains effective.

32

33 4-9-707. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT.

34 (a) In this section, "pre-effective-date financing statement" means a
35 financing statement filed before this act takes effect.

36 (b) After this act takes effect, a person may add or delete collateral

1 covered by, continue or terminate the effectiveness of, or otherwise amend the
2 information provided in, a pre-effective-date financing statement only in
3 accordance with the law of the jurisdiction governing perfection as provided
4 in Part 3. However, the effectiveness of a pre-effective-date financing
5 statement also may be terminated in accordance with the law of the
6 jurisdiction in which the financing statement is filed.

7 (c) Except as otherwise provided in subsection (d), if the law of this
8 State governs perfection of a security interest, the information in a pre-
9 effective-date financing statement may be amended after this act takes effect
10 only if:

11 (1) the pre-effective-date financing statement and an amendment
12 are filed in the office specified in § 4-9-501;

13 (2) an amendment is filed in the office specified in § 4-9-501
14 concurrently with, or after the filing in that office of, an initial financing
15 statement that satisfies § 4-9-706(c); or

16 (3) an initial financing statement that provides the information
17 as amended and satisfies § 4-9-706(c) is filed in the office specified in § 4-
18 9-501.

19 (d) If the law of this State governs perfection of a security interest,
20 the effectiveness of a pre-effective-date financing statement may be continued
21 only under § 4-9-705(d) and (f) or § 4-9-706.

22 (e) Whether or not the law of this State governs perfection of a
23 security interest, the effectiveness of a pre-effective-date financing
24 statement filed in this State may be terminated after this act takes effect by
25 filing a termination statement in the office in which the pre-effective-date
26 financing statement is filed, unless an initial financing statement that
27 satisfies § 4-9-706(c) has been filed in the office specified by the law of
28 the jurisdiction governing perfection as provided in Part 3 as the office in
29 which to file a financing statement.

30
31 4-9-708. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR
32 CONTINUATION STATEMENT. A person may file an initial financing statement or a
33 continuation statement under this part if:

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

35 (2) the filing is necessary under this part:

36 (A) to continue the effectiveness of a financing statement filed

1 before this Act takes effect; or

2 (B) to perfect or continue the perfection of a security interest.

3

4 4-9-709. PRIORITY.

5 (a) This Act determines the priority of conflicting claims to
6 collateral. However, if the relative priorities of the claims were
7 established before this Act takes effect, former Chapter 9 determines
8 priority.

9 (b) For purposes of § 4-9-322(a), the priority of a security interest
10 that becomes enforceable under § 4-9-203 of this Act dates from the time this
11 Act takes effect if the security interest is perfected under this Act by the
12 filing of a financing statement before this Act takes effect which would not
13 have been effective to perfect the security interest under former Chapter 9.
14 This subsection does not apply to conflicting security interests each of which
15 is perfected by the filing of such a financing statement.

16

17 SECTION 2. Arkansas Code 4-1-105(2) is amended to read as follows:

18 (2) Where one of the following provisions of this subtitle specifies
19 the applicable law, that provision governs and a contrary agreement is
20 effective only to the extent permitted by the law (including the conflict of
21 laws rules) so specified:

22 Rights of creditors against sold goods, § 4-2-402.

23 Applicability of the chapter on leases, §§ 4-2A-105 and 4-2A-106.

24 Applicability of the chapter on bank deposits and collections, § 4-4-102.

25 Governing law in the chapter on funds transfers, § 4-4A-507.

26 Letters of Credit, § 4-5-116.

27 Applicability of the Chapter on Investment Securities. § 4-8-110.

28 Law governing perfection, the effect of perfection or nonperfection, and the
29 priority of security interests and agricultural liens, §§ 4-9-301 through 4-9-
30 307.

31

32 SECTION 3. Arkansas Code 4-1-201(9), (32), and (37) are amended to read
33 as follows:

34 "(9) "Buyer in ordinary course of business" means a person that buys
35 goods in good faith, without knowledge that the sale violates the rights of
36 another person in the goods, and in ordinary course from a person, other than

1 a pawnbroker, in the business of selling goods of that kind. A person buys
 2 goods in the ordinary course if the sale to the person comports with the usual
 3 or customary practices in the kind of business in which the seller is engaged
 4 or with the seller's own usual or customary practices. A person that sells
 5 oil, gas, or other minerals at the wellhead or minehead is a person in the
 6 business of selling goods of that kind. A buyer in ordinary course of
 7 business may buy for cash, by exchange of other property, or on secured or
 8 unsecured credit, and may acquire goods or documents of title under a pre-
 9 existing contract for sale. Only a buyer that takes possession of the goods
 10 or has a right to recover the goods from the seller under Chapter 2 may be a
 11 buyer in ordinary course of business. A person that acquires goods in a
 12 transfer in bulk or as security for or in total or partial satisfaction of a
 13 money debt is not a buyer in ordinary course of business.

14 (32) "Purchase" includes taking by sale, discount, negotiation,
 15 mortgage, pledge, lien, security interest, issue or re-issue, gift, or any
 16 other voluntary transaction creating an interest in property.

17 (37) "Security interest" means an interest in personal property or
 18 fixtures which secures payment or performance of an obligation. The term also
 19 includes any interest of a consignor and a buyer of accounts, chattel paper, a
 20 payment intangible, or a promissory note in a transaction that is subject to
 21 Chapter 9. The special property interest of a buyer of goods on
 22 identification of those goods to a contract for sale under § 4-2-401 is not a
 23 "security interest", but a buyer may also acquire a "security interest" by
 24 complying with Chapter 9. Except as otherwise provided in § 4-2-505, the
 25 right of a seller or lessor of goods under Chapter 2 or 2A to retain or
 26 acquire possession of the goods is not a "security interest", but a seller or
 27 lessor may also acquire a "security interest" by complying with Chapter 9.
 28 The retention or reservation of title by a seller of goods notwithstanding
 29 shipment or delivery to the buyer (§ 4-2-401) is limited in effect to a
 30 reservation of a "security interest".

31

32 SECTION 4. Arkansas Code 4-2-103(3) is amended to read as follows:

33 (3) The following definitions in other Chapters apply to this Chapter:

34 "Check". § 4-3-104.
 35 "Consignee". § 4-7-102.
 36 "Consignor". § 4-7-102.

1 "Consumer goods". § 4-9-102.
2 "Di shonor". § 4-3-502.
3 "Draft". § 4 3-104.
4

5 SECTION 5. Arkansas Code 4-2-210 is amended to read as follows:

6 4-2-210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS.

7 (1) A party may perform his duty through a delegate unless otherwise
8 agreed or unless the other party has a substantial interest in having his
9 original promisor perform or control the acts required by the contract. No
10 delegation of performance relieves the party delegating of any duty to perform
11 or any liability for breach.

12 (2) Except as otherwise provided in § 4-9-406, unless otherwise agreed,
13 all rights of either seller or buyer can be assigned except where the
14 assignment would materially change the duty of the other party, or increase
15 materially the burden or risk imposed on him by his contract, or impair
16 materially his chance of obtaining return performance. A right to damages for
17 breach of the whole contract or a right arising out of the assignor's due
18 performance of his entire obligation can be assigned despite agreement
19 otherwise.

20 (3) The creation, attachment, perfection, or enforcement of a security
21 interest in the seller's interest under a contract is not a transfer that
22 materially changes the duty of or increases materially the burden or risk
23 imposed on the buyer or impairs materially the buyer's chance of obtaining
24 return performance within the purview of subsection (2) unless, and then only
25 to the extent that, enforcement actually results in a delegation of material
26 performance of the seller. Even in that event, the creation, attachment,
27 perfection, and enforcement of the security interest remain effective, but (i)
28 the seller is liable to the buyer for damages caused by the delegation to the
29 extent that the damages could not reasonably be prevented by the buyer, and
30 (ii) a court having jurisdiction may grant other appropriate relief, including
31 cancellation of the contract for sale or an injunction against enforcement of
32 the security interest or consummation of the enforcement.

33 (4) Unless the circumstances indicate the contrary a prohibition of
34 assignment of "the contract" is to be construed as barring only the delegation
35 to the assignee of the assignor's performance.

36 (5) An assignment of "the contract" or of "all my rights under the

1 contract" or an assignment in similar general terms is an assignment of rights
2 and unless the language or the circumstances (as in an assignment for
3 security) indicate the contrary, it is a delegation of performance of the
4 duties of the assignor and its acceptance by the assignee constitutes a
5 promise by him to perform those duties. This promise is enforceable by either
6 the assignor or the other party to the original contract.

7 (6) The other party may treat any assignment which delegates
8 performance as creating reasonable grounds for insecurity and may without
9 prejudice to his rights against the assignor demand assurances from the
10 assignee (§ 4-2-609).

11
12 SECTION 6. Arkansas Code 4-2-326 is amended to read as follows:

13 4-2-326. SALE ON APPROVAL AND SALE OR RETURN; RIGHTS OF CREDITORS.

14 (1) Unless otherwise agreed, if delivered goods may be returned by the
15 buyer even though they conform to the contract, the transaction is

16 (a) a "sale on approval" if the goods are delivered primarily for
17 use, and

18 (b) a "sale or return" if the goods are delivered primarily for
19 resale.

20 (2) Goods held on approval are not subject to the claims of the buyer's
21 creditors until acceptance; goods held on sale or return are subject to such
22 claims while in the buyer's possession.

23 (3) Any "or return" term of a contract for sale is to be treated as a
24 separate contract for sale within the statute of frauds section of this
25 Chapter (§ 4-2-201) and as contradicting the sale aspect of the contract
26 within the provisions of this Chapter on parol or extrinsic evidence (§ 4-2-
27 202).

28
29 SECTION 7. Arkansas Code 4-2-502 is amended to read as follows:

30 4-2-502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO
31 DELIVER, OR INSOLVENCY.

32 (1) Subject to subsections (2) and (3) and even though the goods have
33 not been shipped a buyer who has paid a part or all of the price of goods in
34 which he has a special property under the provisions of the immediately
35 preceding section may on making and keeping good a tender of any unpaid
36 portion of their price recover them from the seller if:

1 (a) in the case of goods bought for personal, family, or household
2 purposes, the seller repudiates or fails to deliver as required by the
3 contract; or

4 (b) in all cases, the seller becomes insolvent within ten days
5 after receipt of the first installment on their price.

6 (2) The buyer's right to recover the goods under subsection (1)(a)
7 vests upon acquisition of a special property, even if the seller had not then
8 repudiated or failed to deliver.

9 (3) If the identification creating his special property has been made
10 by the buyer he acquires the right to recover the goods only if they conform
11 to the contract for sale.

12
13 SECTION 8. Arkansas Code 4-2-716 is amended to read as follows:

14 4-2-716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN.

15 (1) Specific performance may be decreed where the goods are unique or
16 in other proper circumstances.

17 (2) The decree for specific performance may include such terms and
18 conditions as to payment of the price, damages, or other relief as the court
19 may deem just.

20 (3) The buyer has a right of replevin for goods identified to the
21 contract if after reasonable effort he is unable to effect cover for such
22 goods or the circumstances reasonably indicate that such effort will be
23 unavailing or if the goods have been shipped under reservation and
24 satisfaction of the security interest in them has been made or tendered. In
25 the case of goods bought for personal, family, or household purposes, the
26 buyer's right of replevin vests upon acquisition of a special property, even
27 if the seller had not then repudiated or failed to deliver.

28
29 SECTION 9. Arkansas Code 4-2A-103(3) is amended to read as follows:

30 (3) The following definitions in other Chapters apply to this Chapter:

- 31 "Account". § 4-9-102(a)(2).
- 32 "Between merchants". § 4-2-104(3).
- 33 "Buyer". § 4-2-103(1)(a).
- 34 "Chattel paper". § 4-9-102(a)(11).
- 35 "Consumer goods". § 4-9-102(a)(23).
- 36 "Document". § 4-9-102(a)(30).

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

13

14 SECTION 10. Arkansas Code 4-2A-303 is amended to read as follows:

15 4-2A-303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF
 16 LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF
 17 RIGHTS.

18 (1) As used in this section, "creation of a security interest" includes
 19 the sale of a lease contract that is subject to Chapter 9, Secured
 20 Transactions, by reason of §4-9-109(a)(3).

21 (2) Except as provided in subsection (3) and § 4-9-407, a provision in
 22 a lease agreement which (i) prohibits the voluntary or involuntary transfer,
 23 including a transfer by sale, sublease, creation or enforcement of a security
 24 interest, or attachment, levy, or other judicial process, of an interest of a
 25 party under the lease contract or of the lessor's residual interest in the
 26 goods, or (ii) makes such a transfer an event of default, gives rise to the
 27 rights and remedies provided in subsection (4), but a transfer that is
 28 prohibited or is an event of default under the lease agreement is otherwise
 29 effective.

30 (3) A provision in a lease agreement which (i) prohibits a transfer of
 31 a right to damages for default with respect to the whole lease contract or of
 32 a right to payment arising out of the transferor's due performance of the
 33 transferor's entire obligation, or (ii) makes such a transfer an event of
 34 default, is not enforceable, and such a transfer is not a transfer that
 35 materially impairs the prospect of obtaining return performance by, materially
 36 changes the duty of, or materially increases the burden or risk imposed on,

1 the other party to the lease contract within the purview of subsection (4).

2 (4) Subject to subsection (3) and § 4-9-407:

3 (a) if a transfer is made which is made an event of default under
4 a lease agreement, the party to the lease contract not making the transfer,
5 unless that party waives the default or otherwise agrees, has the rights and
6 remedies described in § 4-2A-501(2);

7 (b) if paragraph (a) is not applicable and if a transfer is made
8 that (i) is prohibited under a lease agreement or (ii) materially impairs the
9 prospect of obtaining return performance by, materially changes the duty of,
10 or materially increases the burden or risk imposed on, the other party to the
11 lease contract, unless the party not making the transfer agrees at any time to
12 the transfer in the lease contract or otherwise, then, except as limited by
13 contract, (i) the transferor is liable to the party not making the transfer
14 for damages caused by the transfer to the extent that the damages could not
15 reasonably be prevented by the party not making the transfer and (ii) a court
16 having jurisdiction may grant other appropriate relief, including cancellation
17 of the lease contract or an injunction against the transfer.

18 (5) A transfer of "the lease" or of "all my rights under the lease", or
19 a transfer in similar general terms, is a transfer of rights and, unless the
20 language or the circumstances, as in a transfer for security, indicate the
21 contrary, the transfer is a delegation of duties by the transferor to the
22 transferee. Acceptance by the transferee constitutes a promise by the
23 transferee to perform those duties. The promise is enforceable by either the
24 transferor or the other party to the lease contract.

25 (6) Unless otherwise agreed by the lessor and the lessee, a delegation
26 of performance does not relieve the transferor as against the other party of
27 any duty to perform or of any liability for default.

28 (7) In a consumer lease, to prohibit the transfer of an interest of a
29 party under the lease contract or to make a transfer an event of default, the
30 language must be specific, by a writing, and conspicuous.

31

32 SECTION 11. Arkansas Code 4-2A-307 is amended to read as follows:

33 4-2A-307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY
34 INTERESTS IN, AND OTHER CLAIMS TO GOODS.

35 (1) Except as otherwise provided in § 4-2A-306, a creditor of a lessee
36 takes subject to the lease contract.

1 (2) Except as otherwise provided in subsection (3) and in §§ 4-2A-306
2 and 2A-308, a creditor of a lessor takes subject to the lease contract unless
3 the creditor holds a lien that attached to the goods before the lease contract
4 became enforceable.

5 (3) Except as otherwise provided in §§ 4-9-317, 4-9-321, and 4-9-323, a
6 lessee takes a leasehold interest subject to a security interest held by a
7 creditor of the lessor.

8

9 SECTION 12. Arkansas Code 4-2A-309(1)(b) is amended to read as follows:

10 (b) a "fixture filing" is the filing, in the office where a record of a
11 mortgage on the real estate would be filed or recorded, of a financing
12 statement covering goods that are or are to become fixtures and conforming to
13 the requirements of § 4-9-502(a) and (b);

14

15 SECTION 13. Arkansas Code 4-4-210(c) is amended to read as follows:

16 (c) Receipt by a collecting bank of a final settlement for an item is a
17 realization on its security interest in the item, accompanying documents, and
18 proceeds. So long as the bank does not receive final settlement for the item
19 or give up possession of the item or accompanying documents for purposes other
20 than collection, the security interest continues to that extent and is subject
21 to Chapter 9, but:

22 (1) no security agreement is necessary to make the security
23 interest enforceable (§ 4-9-203(b)(3)(A));

24 (2) no filing is required to perfect the security interest; and

25 (3) the security interest has priority over conflicting perfected
26 security interests in the item, accompanying documents, or proceeds.

27

28 SECTION 14. Arkansas Code Title 4, Chapter 5, Subchapter 1 is amended
29 to add the following new section as § 4-5-118 and existing §§ 4-5-118 and 4-5-
30 119 shall be renumbered as §§ 4-5-119 and 4-5-120:

31 4-5-118. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON.

32 (a) An issuer or nominated person has a security interest in a document
33 presented under a letter of credit to the extent that the issuer or nominated
34 person honors or gives value for the presentation.

35 (b) So long as and to the extent that an issuer or nominated person has
36 not been reimbursed or has not otherwise recovered the value given with

1 respect to a security interest in a document under subsection (a), the
2 security interest continues and is subject to Chapter 9, but:

3 (1) a security agreement is not necessary to make the security
4 interest enforceable under § 4-9-203(b)(3);

5 (2) if the document is presented in a medium other than a written
6 or other tangible medium, the security interest is perfected; and

7 (3) if the document is presented in a written or other tangible
8 medium and is not a certificated security, chattel paper, a document of title,
9 an instrument, or a letter of credit, the security interest is perfected and
10 has priority over a conflicting security interest in the document so long as
11 the debtor does not have possession of the document.

12
13 SECTION 15. Arkansas Code 4-7-503(1) is amended to read as follows:

14 (1) A document of title confers no right in goods against a person who
15 before issuance of the document had a legal interest or a perfected security
16 interest in them and who neither:

17 (a) delivered or entrusted them or any document of title covering
18 them to the bailor or his nominee with actual or apparent authority to ship,
19 store or sell or with power to obtain delivery under this chapter
20 (§ 4-7-403) or with power of disposition under this subtitle (§§ 4-2-403 and
21 4-9-320) or other statute or rule of law; nor

22 (b) acquiesced in the procurement by the bailor or his nominee of
23 any document of title.

24
25 SECTION 16. Arkansas Code 4-8-103(f) is amended to read as follows:

26 (f) A commodity contract, as defined in § 4-9-102(a)(15), is not a
27 security or a financial asset.

28
29 SECTION 17. Arkansas Code 4-8-106 is amended to read as follows:

30 4-8-106. CONTROL.

31 (a) A purchaser has "control" of a certificated security in bearer form
32 if the certificated security is delivered to the purchaser.

33 (b) A purchaser has "control" of a certificated security in registered
34 form if the certificated security is delivered to the purchaser, and:

35 (1) the certificate is indorsed to the purchaser or in blank by an
36 effective indorsement; or

1 (2) the certificate is registered in the name of the purchaser,
2 upon original issue or registration of transfer by the issuer.

3 (c) A purchaser has "control" of an uncertificated security if:

4 (1) the uncertificated security is delivered to the purchaser; or

5 (2) the issuer has agreed that it will comply with instructions
6 originated by the purchaser without further consent by the registered owner.

7 (d) A purchaser has "control" of a security entitlement if:

8 (1) the purchaser becomes the entitlement holder;

9 (2) the securities intermediary has agreed that it will comply
10 with entitlement orders originated by the purchaser without further consent by
11 the entitlement holder; or

12 (3) another person has control of the security entitlement on
13 behalf of the purchaser or, having previously acquired control of the security
14 entitlement, acknowledges that it has control on behalf of the purchaser.

15 (e) If an interest in a security entitlement is granted by the
16 entitlement holder to the entitlement holder's own securities intermediary,
17 the securities intermediary has control.

18 (f) A purchaser who has satisfied the requirements of subsection (c) or
19 (d) has control, even if the registered owner in the case of subsection (c) or
20 the entitlement holder in the case of subsection (d) retains the right to make
21 substitutions for the uncertificated security or security entitlement, to
22 originate instructions or entitlement orders to the issuer or securities
23 intermediary, or otherwise to deal with the uncertificated security or
24 security entitlement.

25 (g) An issuer or a securities intermediary may not enter into an
26 agreement of the kind described in subsection (c)(2) or (d)(2) without the
27 consent of the registered owner or entitlement holder, but an issuer or a
28 securities intermediary is not required to enter into such an agreement even
29 though the registered owner or entitlement holder so directs. An issuer or
30 securities intermediary that has entered into such an agreement is not
31 required to confirm the existence of the agreement to another party unless
32 requested to do so by the registered owner or entitlement holder.

33
34 SECTION 18. Arkansas Code 4-8-110(e) is amended to read as follows:

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

1 (1) If an agreement between the securities intermediary and its
2 entitlement holder governing the securities account expressly provides that a
3 particular jurisdiction is the securities intermediary's jurisdiction for
4 purposes of the Uniform Commercial Code, that jurisdiction is the securities
5 intermediary's jurisdiction.

6 (2) If paragraph (1) does not apply and an agreement between the
7 securities intermediary and its entitlement holder governing the securities
8 account expressly provides that the agreement is governed by the law of a
9 particular jurisdiction, that jurisdiction is the securities intermediary's
10 jurisdiction.

11 (3) If neither paragraph (1) nor paragraph (2) applies and an
12 agreement between the securities intermediary and its entitlement holder
13 governing the securities account expressly provides that the securities
14 account is maintained at an office in a particular jurisdiction, that
15 jurisdiction is the securities intermediary's jurisdiction.

16 (4) If none of the preceding paragraphs apply, the securities
17 intermediary's jurisdiction is the jurisdiction in which the office identified
18 in an account statement as the office serving the entitlement holder's account
19 is located.

20 (5) If none of the preceding paragraphs apply, the securities
21 intermediary's jurisdiction is the jurisdiction in which the chief executive
22 office of the securities intermediary is located.

23
24 SECTION 19. Arkansas Code 4-8-301(a) is amended to read as follows:

25 (a) Delivery of a certificated security to a purchaser occurs when:

26 (1) the purchaser acquires possession of the security certificate;
27 (2) another person, other than a securities intermediary, either
28 acquires possession of the security certificate on behalf of the purchaser or,
29 having previously acquired possession of the certificate, acknowledges that it
30 holds for the purchaser; or

31 (3) a securities intermediary acting on behalf of the purchaser
32 acquires possession of the security certificate, only if the certificate is in
33 registered form and is (i) registered in the name of the purchaser, (ii)
34 payable to the order of the purchaser, or (iii) specially indorsed to the
35 purchaser by an effective indorsement and has not been indorsed to the
36 securities intermediary or in blank.

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SECTION 20. Arkansas Code 4-8-302 is amended to read as follows:

4-8-302. RIGHTS OF PURCHASER.

(a) Except as otherwise provided in subsections (b) and (c), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

SECTION 21. Arkansas Code 4-8-510 is amended to read as follows:

4-8-510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER.

(a) In a case not covered by the priority rules in Chapter 9 or the rules stated in subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under § 4-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Except as otherwise provided in subsection (d), purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under § 4-8-106(d)(1);

(2) the securities intermediary's agreement to comply with the

1 purchaser's entitlement orders with respect to security entitlements carried
2 or to be carried in the securities account in which the security entitlement
3 is carried, if the purchaser obtained control under § 4-8-106(d)(2); or
4 (3) if the purchaser obtained control through another person under
5 § 4-8-106(d)(3), the time on which priority would be based under this
6 subsection if the other person were the secured party.

7 (d) A securities intermediary as purchaser has priority over a
8 conflicting purchaser who has control unless otherwise agreed by the
9 securities intermediary.

10
11 SECTION 22. (a) In this section:

12 (1) "Local filing office" means a filing office other than the
13 Secretary of State, that is designated as the proper place to file a financing
14 statement under Arkansas Code 4-9-401(1) as it existed on June 30, 2001. The
15 term applies only with respect to a record that covers a type of collateral as
16 to which the filing office is designated in that section as the proper place
17 to file.

18 (2) "Former Chapter 9" means Chapter 9 of Title 4 of the Arkansas
19 Code as it existed on June 30, 2001.

20 (3) (A) "Former Chapter 9 records" means:

21 (i) Financing statements and other records that have
22 been filed in a local filing office before July 1, 2001, and that are, or upon
23 processing and indexing will be, reflected in the index maintained, as of June
24 30, 2001, by the local filing office for financing statements and other
25 records filed in the local filing office before July 1, 2001, and

26 (ii) The index as of June 30, 2001.

27 (B) The term does not include records presented to a local filing
28 office for filing after June 30, 2001, whether or not the records relate to
29 financing statements filed in the local filing office before July 1, 2001.

30 (4) "Mortgage", "as-extracted collateral", "fixture filing",
31 "goods" and "fixtures" have the meanings set forth in Arkansas Code 4-9-102
32 for those terms.

33 (b) A local filing office must not accept for filing a record presented
34 after June 30, 2001, whether or not the record relates to a financing
35 statement filed in the local filing office before July 1, 2001.

36 (c) Until July 1, 2008, each local filing office must maintain all

1 former Chapter 9 records in accordance with former Chapter 9. A former
2 Chapter 9 record that is not reflected on the index maintained at June 30,
3 2001, by the local filing office must be processed and indexed, and reflected
4 on the index as of June 30, 2001, as soon as practicable but in any event no
5 later than July 30, 2001.

6 (d) Until at least June 30, 2008, each local filing office must respond
7 to requests for information with respect to former Chapter 9 records relating
8 to a debtor and issue certificates in accordance with former Chapter 9. The
9 fees charged for responding to requests for information relating to a debtor
10 and issuing certificates with respect to former Chapter 9 records must be the
11 fees in effect under former Chapter 9.

12 (e) After June 30, 2008, each local filing office may remove and
13 destroy, in accordance with any then applicable record retention law of this
14 State, all former Chapter 9 records, including the related index.

15 (f) This section does not apply, with respect to financing statements
16 and other records, to a filing office in which mortgages or records of
17 mortgages on real property are required to be filed or recorded, if:

18 (1) The collateral is timber to be cut or as-extracted
19 collateral, or

20 (2) The record is or relates to a financing statement filed as a
21 fixture filing and the collateral is goods that are or are to become fixtures.

22

23 SECTION 23. EMERGENCY CLAUSE. It is hereby found and determined by the
24 General Assembly that the present Article 9 of the Uniform Commercial Code
25 which exists in all fifty states, the District of Columbia, and Puerto Rico is
26 obsolescent and is in need of significant expansion to cover new categories of
27 collateral, to promote electronic filing, to reduce duplicate filing, and to
28 resolve conflicting case law. The revisions contained in this Act will bring
29 greater certainty to financing transactions, and will reduce both their cost
30 and the cost of credit. Because current Article 9 is uniform throughout the
31 United States, it becomes essential that the effective date for the
32 substantial revisions contemplated by this Act be the same in every state. If
33 Arkansas and all of the other states and territories do not act in concert and
34 enact a common effective date, severe complications will arise. For example,
35 the proper place to perfect a security interest depends on the law of the
36 state where the issue is litigated. Therefore, the rules for filing must be

1 uniform at all times. Because the several states are proposing that the
2 revised Article 9 become effective on July 1, 2001 an emergency is hereby
3 declared to exist and this Act being necessary for the preservation of the
4 public peace, health, and safety shall be in full force and effect on July 1,
5 2001.

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/s/ Napper

APPROVED: 4/10/2001