

1 **ENROLLED**

2 **H. B. 4251**

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

6 [Passed March 8, 2012; in effect ninety days from passage.]

**Interim
Bill**

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9
10 AN ACT to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104,
11 §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code
12 of West Virginia, 1931, as amended; to amend and reenact §46-
13 2A-103 of said code; to amend and reenact §46-9-102, §46-9-
14 105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326,
15 §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-
16 515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to
17 amend said code by adding thereto nine new sections,
18 designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-
19 805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all
20 relating generally to amendments to the uniform commercial
21 code; amending and adding definitions; amending what
22 constitutes control of electronic chattle paper; providing for
23 effect on filed financing statements of change in governing
24 law; amending priority of security interests created by new
25 debtor; amending effectiveness of terms restricting

1 assignment; improving the system for filing financing
2 statements; providing greater protection for existing secured
3 party having a security interest in after-acquired property
4 upon relocation of debtor; reforming the correction statement
5 process; technical changes; and providing transitional rules
6 regarding perfection of security interests, effectiveness of
7 financing statements, persons entitled to file financing
8 statements and priority of financing statements.

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

10 That §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-
11 105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West
12 Virginia, 1931, as amended, be repealed; that §46-2A-103 of said
13 code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-
14 307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-
15 408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-
16 518, §46-9-607 and §46-9-625 of said code be amended and reenacted;
17 and that said code be amended by adding thereto nine new sections,
18 designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805,
19 §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all to read as
20 follows:

21 **ARTICLE 2A. LEASES.**

22 Part 1. General Provisions.

23 **§46-2A-103. Definitions and index of definitions.**

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

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

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

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

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

23 (e) "Consumer lease" shall have the same meaning as that
24 ascribed to it in section one hundred two, article one, chapter

1 forty-six-a of this code.

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

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

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

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

8 (iii) One of the following occurs:

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

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

15 (C) The lessee, before signing the lease contract, receives an
16 accurate and complete statement designating the promises and
17 warranties, and any disclaimers of warranties, limitations or
18 modifications of remedies, or liquidated damages, including those
19 of a third party, such as the manufacturer of the goods, provided
20 to the lessor by the person supplying the goods in connection with
21 or as part of the contract by which the lessor acquired the goods
22 or the right to possession and use of the goods; or

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

1 (a) Of the identity of the person supplying the goods to the
2 lessor, unless the lessee has selected that person and directed the
3 lessor to acquire the goods or the right to possession and use of
4 the goods from that person; (b) that the lessee is entitled under
5 this article to the promises and warranties, including those of any
6 third party, provided to the lessor by the person supplying the
7 goods in connection with or as part of the contract by which the
8 lessor acquired the goods or the right to possession and use of the
9 goods; and (c) that the lessee may communicate with the person
10 supplying the goods to the lessor and receive an accurate and
11 complete statement of those promises and warranties, including any
12 disclaimers and limitations of them or of remedies.

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

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

23 (j) "Lease" means a transfer of the right to possession and
24 use of goods for a term in return for consideration, but a sale,

1 including a sale on approval or a sale or return, or retention or
2 creation of a security interest is not a lease. Unless the context
3 clearly indicates otherwise, the term includes a sublease.

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

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

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

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

19 (o) "Lessee in ordinary course of business" means a person who
20 in good faith and without knowledge that the lease to him or her is
21 in violation of the ownership rights or security interest or
22 leasehold interest of a third party in the goods leases in ordinary
23 course from a person in the business of selling or leasing goods of
24 that kind but does not include a pawnbroker. "Leasing" may be for

1 cash or by exchange of other property or on secured or unsecured
2 credit and includes acquiring goods or documents of title under a
3 preexisting lease contract but does not include a transfer in bulk
4 or as security for or in total or partial satisfaction of a money
5 debt.

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

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

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

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

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

20 (u) "Present value" means the amount as of a date certain of
21 one or more sums payable in the future, discounted to the date
22 certain. The discount is determined by the interest rate specified
23 by the parties if the rate was not manifestly unreasonable at the
24 time the transaction was entered into; otherwise, the discount is

1 determined by a commercially reasonable rate that takes into
2 account the facts and circumstances of each case at the time the
3 transaction was entered into.

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

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

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

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

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

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

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

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

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

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

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

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

1 (3) The following definitions in other articles apply to this
2 article:

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

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

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

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

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

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

9 "Entrusting". Section 2-403(3).

10 "General intangible". Section 9-102(a)(42).

11 "Instrument". Section 9-102(a)(47).

12 "Merchant". Section 2-104(1).

13 "Mortgage". Section 9-102(a)(55).

14 "Pursuant to commitment". 9-102(a)(69).

15 "Receipt". Section 2-103(1)(c).

16 "Sale". Section 2-106(1).

17 "Sale on approval". Section 2-326.

18 "Sale or return". Section 2-326.

19 "Seller". Section 2-103(1)(d).

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

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

1 **§46-9-102. Definitions and index of definitions.**

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

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

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

1 rights arising out of the use of a credit or charge card or
2 information contained on or for use with the card.

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

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

9 (A) Authenticated by a secured party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (7) "Authenticate" means:

15 (A) To sign; or

16 (B), To attach to or logically associate with the record an
17 electronic sound, symbol or process, with present intent to adopt
18 or accept a record.

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

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

24 (10) "Certificate of title" means a certificate of title with

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

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

1 or series of instruments, the group of records taken together
2 constitutes chattel paper.

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

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

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

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

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

11 (A) The claimant is an organization; or

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

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

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

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

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

23 (A) Traded on or subject to the rules of a board of trade that
24 has been designated as a contract market for such a contract

1 pursuant to federal commodities laws; or

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

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

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

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

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

14 (18) "Communicate" means:

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

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

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

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

23 (20) "Consignment" means a transaction, regardless of its
24 form, in which a person delivers goods to a merchant for the

1 purpose of sale and:

2 (A) The merchant:

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

5 (ii) Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

24 (B) A security interest in consumer goods secures the

1 obligation.

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

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

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

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

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

18 (28) "Debtor" means:

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

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

24 (C) A consignee.

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

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

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

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

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

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

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

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

19 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

6 (37) "Filing office" means an office designated in section 9-
7 501 as the place to file a financing statement.

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

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

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

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

21 (42) "General intangible" means any personal property,
22 including things in action, other than accounts, chattel paper,
23 commercial tort claims, deposit accounts, documents, goods,
24 instruments, investment property, letter-of-credit rights, letters

1 of credit, money and oil, gas or other minerals before extraction.

2 The term includes payment intangibles and software.

3 (43) [reserved].

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

22 (45) "Governmental unit" means a subdivision, agency,
23 department, county, parish, municipality or other unit of the
24 government of the United States, a state or a foreign country. The

1 term includes an organization having a separate corporate existence
2 if the organization is eligible to issue debt on which interest is
3 exempt from income taxation under the laws of the United States.

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

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

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

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

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

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

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

23 (49) "Investment property" means a security, whether
24 certificated or uncertificated, security entitlement, securities

1 account, commodity contract or commodity account.

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

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

11 (52) "Lien creditor" means:

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

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

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

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

19 (53) "Manufactured home" means a structure, transportable in
20 one or more sections, which, in the traveling mode, is eight body
21 feet or more in width or forty body feet or more in length, or,
22 when erected on site, is three hundred twenty or more square feet,
23 and which is built on a permanent chassis and designed to be used
24 as a dwelling with or without a permanent foundation when connected

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

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

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

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

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

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

22 (57) "New value" means: (i) Money; (ii) money's worth in
23 property, services or new credit; or (iii) release by a transferee
24 of an interest in property previously transferred to the

1 transferee. The term does not include an obligation substituted
2 for another obligation.

3 (58) "Noncash proceeds" means proceeds other than cash
4 proceeds.

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

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

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

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

21 (A) The spouse of the individual;

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

24 (C) An ancestor or lineal descendant of the individual or the

1 individual's spouse; or

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

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

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

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

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

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

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

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

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

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

24 (C) Rights arising out of collateral;

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

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

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

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

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

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

24 (69) "Proposal" means a record authenticated by a secured

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

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

6 (A) Debt securities are issued;

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

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

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

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

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

24 (C) A record consisting of legislation enacted by the

1 Legislature of a state or the Congress of the United States which
2 forms or organizes an organization, any record amending the
3 legislation, and any record filed with or issued by the state or
4 the United States which amends or restates the name of the
5 organization.

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

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

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

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

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

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

4 (76) "Secured party" means:

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

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

9 (C) A consignor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13	"Applicant"	Section 5-102.
14	"Beneficiary"	Section 5-102.
15	"Broker"	Section 8-102.
16	"Certificated security"	Section 8-102.
17	"Check"	Section 3-104.
18	"Clearing corporation"	Section 8-102.
19	"Contract for sale"	Section 2-106.
20	"Customer"	Section 4-104.
21	"Entitlement holder"	Section 8-102.
22	"Financial asset"	Section 8-102.
23	"Holder in due course"	Section 3-302.
24	"Issuer" (with respect to a letter of	

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

1 "Security entitlement" Section 8-102.

2 "Uncertificated security" Section 8-102.

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

6 **§46-9-105. Control of electronic chattel paper.**

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

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

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

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

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

24 (4) Copies or amendments that add or change an identified

1 assignee of the authoritative copy can be made only with the
2 consent of the secured party;

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

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

8 **§46-9-307. Location of debtor.**

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

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

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

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

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

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

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

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

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

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

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

21 (2) In the state that the registered organization, branch or
22 agency designates, if the law of the United States authorizes the
23 registered organization, branch, or agency to designate its state
24 of location, including by designating its main office, home office

1 or other comparable office; or

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

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

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

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

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

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

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

24 (k) *Section applies only to this part.* -- This section applies

1 only for purposes of this part.

2 **§46-9-311. Perfection of security interests in property subject to**
3 **certain statutes, regulations and treaties.**

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

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

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

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

24 (b) *Compliance with other law.* -- Compliance with the

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

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

19 (d) *Inapplicability to certain inventory.* -- During any period
20 in which collateral subject to a statute specified in subsection
21 (a)(2) of this section is inventory held for sale or lease by a
22 person or leased by that person as lessor and that person is in the
23 business of selling goods of that kind, this section does not apply
24 to a security interest in that collateral created by that person.

1 **§46-9-316. Effect of change in governing law.**

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

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

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

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

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

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

1 collateral consisting of goods, remains continuously perfected if:

2 (1) The collateral is located in one jurisdiction and subject
3 to a security interest perfected under the law of that
4 jurisdiction;

5 (2) Thereafter the collateral is brought into another
6 jurisdiction; and

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

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

17 (e) *When subsection (d) security interest becomes unperfected*
18 *against purchasers. --* A security interest described in subsection
19 (d) of this section becomes unperfected as against a purchaser of
20 the goods for value and is deemed never to have been perfected as
21 against a purchaser of the goods for value if the applicable
22 requirements for perfection under section 9-311(b) or 9-313 are not
23 satisfied before the earlier of:

24 (1) The time the security interest would have become

1 unperfected under the law of the other jurisdiction had the goods
2 not become covered by a certificate of title from this state; or

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

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

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

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

17 (g) *Subsection (f) security interest perfected or unperfected*
18 *under law of new jurisdiction. --* If a security interest described
19 in subsection (f) of this section becomes perfected under the law
20 of the other jurisdiction before the earlier of the time or the end
21 of the period described in that subsection, it remains perfected
22 thereafter. If the security interest does not become perfected
23 under the law of the other jurisdiction before the earlier of that
24 time or the end of that period, it becomes unperfected and is

1 deemed never to have been perfected as against a purchaser of the
2 collateral for value.

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

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

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

23 (A) *Effect of change in governing law on financing statement*
24 *filed against original debtor.* If a financing statement naming an

1 original debtor is filed pursuant to the law of the jurisdiction
2 designated in Section 9-301(1) or 9-305(c) and the new debtor is
3 located in another jurisdiction, the following rules apply:

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

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

21 **§46-9-317. Interests that take priority over or take free of**
22 **security interest or agricultural lien.**

23 (a) *Conflicting security interests and rights of lien*
24 *creditors.* -- A security interest or agricultural lien is

1 subordinate to the rights of:

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

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

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

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

22 (d) *Licensees and buyers of certain collateral.* -- A licensee
23 of a general intangible or a buyer, other than a secured party, of
24 collateral other than tangible chattel paper, tangible documents,

1 goods, instruments, or a certificated security takes free of a
2 security interest if the licensee or buyer gives value without
3 knowledge of the security interest and before it is perfected.

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

11 **§46-9-326. Priority of security interests created by new debtor.**

12 (a) *Subordination of security interest created by new debtor.* -
13 - Subject to subsection (b) of this section, a security interest
14 that is created by a new debtor in collateral in which the new
15 debtor has or acquires rights and is perfected solely by a filed
16 financing statement that would be ineffective to perfect the
17 security interest but for the application of Section 9-316(i) (1) or
18 9-508 is subordinate to a security interest in the same collateral
19 which is perfected other than by such a filed financing statement
20 .

21 (b) *Priority under other provisions; multiple original*
22 *debtors.* -- The other provisions of this part determine the
23 priority among conflicting security interests in the same
24 collateral perfected by filed financing described in subsection (a)

1 of this section. However, if the security agreements to which a
 2 new debtor became bound as debtor were not entered into by the same
 3 original debtor, the conflicting security interests rank according
 4 to priority in time of the new debtor's having become bound.

5 PART 4. RIGHTS OF THIRD PARTIES.

6 **§46-9-406. Discharge of account debtor; notification of**
 7 **assignment; identification and proof of**
 8 **assignment; restrictions on assignment of**
 9 **accounts, chattel paper, payment intangibles and**
 10 **promissory notes ineffective.**

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

21 (b) *When notification ineffective.* -- Subject to subsection
 22 (h) of this section, notification is ineffective under subsection
 23 (a) of this section:

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

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

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

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

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

11 (C) The account debtor knows that the assignment to that
12 assignee is limited.

13 (c) Proof of assignment. Subject to subsection (h) of this
14 section, if requested by the account debtor, an assignee shall
15 seasonably furnish reasonable proof that the assignment has been
16 made. Unless the assignee complies, the account debtor may
17 discharge its obligation by paying the assignor, even if the
18 account debtor has received a notification under subsection (a) of
19 this section.

20 (d) *Term restricting assignment generally ineffective.* --
21 Except as otherwise provided in subsection (e) of this section and
22 sections 2A-303 and 9-407, and subject to subsection (h) of this
23 section, a term in an agreement between an account debtor and an
24 assignor or in a promissory note is ineffective to the extent that

1 it:

2 (1) Prohibits, restricts or requires the consent of the
3 account debtor or person obligated on the promissory note to the
4 assignment or transfer of, or the creation, attachment, perfection
5 or enforcement of a security interest in, the account, chattel
6 paper, payment intangible or promissory note; or

7 (2) Provides that the assignment or transfer or the creation,
8 attachment, perfection or enforcement of the security interest may
9 give rise to a default, breach, right of recoupment, claim,
10 defense, termination, right of termination or remedy under the
11 account, chattel paper, payment intangible or promissory note.

12 (e) *Inapplicability of subsection (d) to certain sales.*--
13 Subsection (d) of this section does not apply to the sale of a
14 payment intangible or promissory note other than a sale pursuant to
15 a disposition under section 9-610 or an acceptance of collateral
16 under section 9-620.

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

1 (1) Prohibits, restricts or requires the consent of the
2 government, governmental body or official, or account debtor to the
3 assignment or transfer of, or the creation, attachment, perfection
4 or enforcement of a security interest in the account or chattel
5 paper; or

6 (2) Provides that the assignment or transfer or the creation,
7 attachment, perfection or enforcement of the security interest may
8 give rise to a default, breach, right of recoupment, claim,
9 defense, termination, right of termination or remedy under the
10 account or chattel paper.

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

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

19 (i) *Inapplicability.* -- This section does not apply to an
20 assignment of a health-care-insurance receivable. Subsection (f)
21 does not apply to an assignment or transfer of, or the creation,
22 attachment, perfection or enforcement of a security interest in, a
23 right the transfer of which is prohibited or restricted by any of
24 the following statutes to the extent that the statute is

1 inconsistent with subsection (f): Chapter twenty-three, article
2 four, section eighteen, Chapter forty-six-a, article six-h, and a
3 claim or right to receive benefits under a special needs trust as
4 described in 42 U.S.C. §1396p(d)(4).

5 (j) *Section prevails over specified inconsistent law.* -- This
6 section prevails over any inconsistent provision of an existing or
7 future statute, rule or regulation of this state unless the
8 provision is contained in a statute of this state, refers expressly
9 to this section and states that the provision prevails over this
10 section.

11 **§46-9-408. Restrictions on assignment of promissory notes,**
12 **health-care-insurance receivables and certain**
13 **general intangibles ineffective.**

14 (a) *Term restricting assignment generally ineffective.*--
15 Except as otherwise provided in subsection (b) of this section, a
16 term in a promissory note or in an agreement between an account
17 debtor and a debtor which relates to a health-care-insurance
18 receivable or a general intangible, including a contract, permit,
19 license or franchise, and which term prohibits, restricts or
20 requires the consent of the person obligated on the promissory note
21 or the account debtor to, the assignment or transfer of or
22 creation, attachment or perfection of a security interest in, the
23 promissory note, health-care-insurance receivable or general
24 intangible, is ineffective to the extent that the term:

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
5 a default, breach, right of recoupment, claim, defense,
6 termination, right of termination or remedy under the promissory
7 note, health-care-insurance receivable or general intangible.

8 (b) Applicability of subsection (a) to sales of certain rights
9 to payment. Subsection (a) of this section applies to a security
10 interest in a payment intangible or promissory note only if the
11 security interest arises out of a sale of the payment intangible or
12 promissory note other than a sale pursuant to a disposition under
13 section 9-610 or an acceptance of collateral under section 9-620.

14 (c) *Legal restrictions on assignment generally ineffective.--*
15 A rule of law, statute or regulation that prohibits, restricts or
16 requires the consent of a government, governmental body or
17 official, person obligated on a promissory note, or account debtor
18 to the assignment or transfer of, or creation of a security
19 interest in, a promissory note, health-care-insurance receivable
20 or general intangible, including a contract, permit, license or
21 franchise between an account debtor and a debtor, is ineffective to
22 the extent that the rule of law, statute or regulation:

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

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

6 (d) *Limitation on ineffectiveness under subsections (a) and*
7 *(c).* -- To the extent that a term in a promissory note or in an
8 agreement between an account debtor and a debtor which relates to
9 a health-care-insurance receivable or general intangible or a rule
10 of law, statute or regulation described in subsection (c) of this
11 section would be effective under law other than this article but is
12 ineffective under subsection (a) or (c) of this section, the
13 creation, attachment or perfection of a security interest in the
14 promissory note, health-care-insurance receivable or general
15 intangible:

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

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

20 (3) Does not require the person obligated on the promissory
21 note or the account debtor to recognize the security interest, pay
22 or render performance to the secured party, or accept payment or
23 performance from the secured party;

24 (4) Does not entitle the secured party to use or assign the

1 debtor's rights under the promissory note, health-care-insurance
2 receivable or general intangible, including any related information
3 or materials furnished to the debtor in the transaction giving rise
4 to the promissory note, health-care-insurance receivable or general
5 intangible;

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

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

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

19 (f) *Inapplicability.* -- Subsection (c) of this section does
20 not apply to an assignment or transfer of or the creation,
21 attachment, perfection, or enforcement of a security interest in,
22 a right the transfer of which is prohibited or restricted by any of
23 the following statutes, to the extent that the statute is
24 inconsistent with said subsection: Chapter twenty-three, article

1 four, section eighteen; chapter forty-six-a, article six-h; and a
2 claim or right to receive benefits under a special needs trust as
3 described in 42 U.S.C. §1396(d)(4).

4 **§46-9-502. Contents of financing statement; record of mortgage as**
5 **financing statement; time of filing financing**
6 **statement.**

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

9 (1) Provides the name of the debtor;

10 (2) Provides the name of the secured party or a representative
11 of the secured party; and

12 (3) Indicates the collateral covered by the financing
13 statement.

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

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

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

23 (3) Provide a description of the real property to which the
24 collateral is related sufficient to give constructive notice of a

1 mortgage under the law of this state if the description were
2 contained in a record of the mortgage of the real property; and

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

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

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

10 (2) The goods are or are to become fixtures relate to the real
11 property described in the record or the collateral is related to
12 the real property described in the record and is as-extracted
13 collateral or timber to be cut;

14 (3) The record satisfies the requirements for a financing
15 statement in this section: *Provided, That*

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

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

22 (4) The record is duly recorded.

23 (d) *Filing before security agreement or attachment.* -- A
24 financing statement may be filed before a security agreement is

1 made or a security interest otherwise attaches.

2 **§46-9-503. Name of debtor and secured party.**

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

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

13 (2) Subject to subsection (f) of this section, if the
14 collateral is being administered by the personal representative of
15 a decedent, only if the financing statement provides, as the name
16 of the debtor, the name of the decedent and indicates that
17 collateral is being administered by a personal representative;

18 (3) If the collateral is held in a trust that is not
19 a registered organization, only if the financing statement:

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

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

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

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

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

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

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

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

17 (6) In other cases:

18 (A) If the debtor has a name, only if the financing statement
19 provides the organizational name of the debtor; and

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

24 (b) *Additional debtor-related information.* -- A financing

1 statement that provides the name of the debtor in accordance with
2 subsection (a) of this section is not rendered ineffective by the
3 absence of:

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

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

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

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

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

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

23 (g) *Multiple driver's licenses.* -- If this state has issued
24 to an individual more than one driver's license of a kind described

1 in subdivision (a) (4) of this section, the one that was issued most
2 recently is the one to which subdivision (a) (4) refers.

3 (h) *Definition.* -- In this section, the "name of the settlor
4 or testator" means:

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

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

12 **§46-9-507. Effect of certain events on effectiveness of financing**
13 **statement.**

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

19 (b) *Information becoming seriously misleading.* -- Except as
20 otherwise provided in subsection (c) of this section and section 9-
21 508, a financing statement is not rendered ineffective if, after
22 the financing statement is filed, the information provided in the
23 financing statement becomes seriously misleading under section 9-
24 506.

1 (c) *Change in debtor's name.* -- If the name that a filed
2 financing statement provides for a debtor becomes insufficient as
3 the name of the debtor under section 9-503(a) so that the financing
4 statement becomes seriously misleading under section 9-506:

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

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

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

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

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

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

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

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

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

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

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

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

19 **§46-9-516. What constitutes filing; effectiveness of filing.**

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

24 (b) *Refusal to accept record; filing does not occur.* -- Filing

1 does not occur with respect to a record that a filing office
2 refuses to accept because:

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

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

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

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

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

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

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

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

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

1 relates;

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

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

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

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

12

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

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

19 (c) *Rules applicable to subsection (b).* -- For purposes of
20 subsection (b):

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

23 (2) A record that does not indicate that it is an amendment or
24 identify an initial financing statement to which it relates, as

1 required by section 9-512, 9-514 or 9-518, is an initial financing
2 statement.

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

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

20 (1) Upon the commencement of proceedings pursuant to this
21 subsection, the Secretary of State shall identify the financing
22 statement in its records as subject to administrative review and
23 publish a notice in the *West Virginia Register* regarding the
24 proceedings.

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

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

18 (4) The Secretary of State shall annually submit a report to
19 the Legislature regarding actions taken against fraudulent filings
20 pursuant to this section which identifies the number and
21 characteristics of such proceedings, identifies any creditors found
22 to have made fraudulent filings, describes proceedings initiated by
23 the secretary in which it is ultimately determined that fraudulent
24 filings did not occur, describes the number and type of complaints

1 received by the secretary in which it is alleged that fraudulent
2 filings have occurred, and describes the actions taken by the
3 secretary to investigate complaints concerning allegedly fraudulent
4 filings and the results of the investigations.

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

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

22 **§46-9-518. Claim concerning inaccurate or wrongfully filed record.**

23 (a) *Statement with respect to record indexed under person's*
24 *name.* -- A person may file in the filing office an information

1 statement with respect to a record indexed there under the person's
2 name if the person believes that the record is inaccurate or was
3 wrongfully filed.

4 (b) *Contents of statement under subsection (a).* -- An
5 information statement under subsection (a) of this section must:

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

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

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

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

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

18 (c) *Statement by secured party of record.* -- A person may
19 file in the filing office an information statement with respect to
20 a record filed there if the person is a secured party of record
21 with respect to the financing statement to which the record relates
22 and believes that the person that filed the record was not entitled
23 to do so under section 9-509(d).

24 (d) *Contents of statement under subsection (c).* -- An

1 information statement under subsection (c) of this section must:

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

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

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

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

10 (3) Provide the basis for the person's belief that the person
11 that filed the record was not entitled to do so under Section 9-
12 509(d).

13 (e) *Record not affected by information statement.*-- The
14 filing of a an information statement does not affect the
15 effectiveness of an initial financing statement or other filed
16 record.

17 **§46-9-607. Collection and enforcement by secured party.**

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

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

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

1 (3) May enforce the obligations of an account debtor or other
2 person obligated on collateral and exercise the rights of the
3 debtor with respect to the obligation of the account debtor or
4 other person obligated on collateral to make payment or otherwise
5 render performance to the debtor, and with respect to any property
6 that secures the obligations of the account debtor or other person
7 obligated on the collateral;

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

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

16 (b) *Nonjudicial enforcement of mortgage.* -- If necessary to
17 enable a secured party to exercise under subsection (a)(3) of this
18 section the right of a debtor to enforce a mortgage nonjudicially,
19 the secured party may record in the office in which a record of the
20 mortgage is recorded:

21 (1) A copy of the security agreement that creates or provides
22 for a security interest in the obligation secured by the mortgage;
23 and

24 (2) The secured party's sworn affidavit in recordable form

1 stating that:

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

4 (B) The secured party is entitled to enforce the mortgage
5 nonjudicially.

6 (c) *Commercially reasonable collection and enforcement.* -- A
7 secured party shall proceed in a commercially reasonable manner if
8 the secured party:

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

11 (2) Is entitled to charge back uncollected collateral or
12 otherwise to full or limited recourse against the debtor or a
13 secondary obligor.

14 (d) *Expenses of collection and enforcement.* -- A secured
15 party may deduct from the collections made pursuant to subsection
16 (c) of this section reasonable expenses of collection and
17 enforcement, including reasonable attorney's fees and legal
18 expenses incurred by the secured party.

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

22 SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

23 **§46-9-625. Remedies for secured party's failure to comply with**
24 **article.**

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

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

12 (c) *Persons entitled to recover damages; statutory damages if*
13 *collateral is consumer goods.* -- Except as otherwise provided in
14 section 9-628:

15 (1) A person that, at the time of the failure, was a debtor,
16 was an obligor, or held a security interest in or other lien on the
17 collateral may recover damages under subsection (b) of this section
18 for its loss; and

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

1 (d) *Recovery when deficiency eliminated or reduced.* -- A
2 debtor whose deficiency is eliminated under section 9-626 may
3 recover damages for the loss of any surplus. However, a debtor or
4 secondary obligor whose deficiency is eliminated or reduced under
5 section 9-626 may not otherwise recover under subsection (b) of
6 this section for noncompliance with the provisions of this part
7 relating to collection, enforcement, disposition or acceptance.

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

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

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

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

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

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

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

23 (f) *Statutory damages: noncompliance with section 9-210.* --
24 A debtor or consumer obligor may recover damages under subsection

1 (b) of this section and, in addition, \$500 in each case from a
2 person that, without reasonable cause, fails to comply with a
3 request under section 9-210. A recipient of a request under
4 section 9-210 which never claimed an interest in the collateral or
5 obligations that are the subject of a request under that section
6 has a reasonable excuse for failure to comply with the request
7 within the meaning of this subsection.

8 (g) *Limitation of security interest: noncompliance with*
9 *section 9-210.* -- If a secured party fails to comply with a
10 request regarding a list of collateral or a statement of account
11 under section 9-210, the secured party may claim a security
12 interest only as shown in the list or statement included in the
13 request as against a person that is reasonably misled by the
14 failure.

15 PART 8. TRANSITION PROVISIONS FOR 2012 AMENDMENTS.

16 **§46-9-801. Effective date.**

17 The amendments to this article enacted by the Legislature
18 during the 2012 Regular Legislative Session take effect on July 1,
19 2013.

20 **§46-9-802. Savings clause.**

21 (a) *Preeffective-date transactions or liens.* -- Except as
22 otherwise provided in this part, this article applies to a
23 transaction or lien within its scope, even if the transaction or
24 lien was entered into or created before the amendments to this

1 article during the 2012 Regular Legislative Session take effect as
2 provided in section 9-801.

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

7 **§46-9-803. Security interest perfected before effective date.**

8 (a) *Continuing perfection: perfection requirements*
9 *satisfied.*-- A security interest that is a perfected security
10 interest immediately before the amendments to this article take
11 effect is a perfected security interest under this article if, when
12 this article takes effect, the applicable requirements for
13 attachment and perfection under this article as amended by the
14 Legislature during the 2012 Regular Legislative Session are
15 satisfied without further action.

16 (b) *Continuing perfection: perfection requirements not*
17 *satisfied.* -- Except as otherwise provided in section 9-805, if,
18 immediately before amendments to this article take effect, a
19 security interest is a perfected security interest, but the
20 applicable requirements for perfection under this article as
21 amended by the Legislature during the 2012 Regular Legislative
22 Session are not satisfied when the amendments to this article take
23 effect, the security interest remains perfected thereafter only if
24 the applicable requirements for perfection under this article as

1 amended by the Legislature during the 2012 Regular Legislative
2 Session are satisfied within one year after the amendments take
3 effect.

4 **§46-9-804. Security interest unperfected before effective date.**

5 A security interest that is an unperfected security interest
6 immediately before the amendments to this article during the 2012
7 Regular Legislative Session take effect becomes a perfected
8 security interest:

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

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

16 **§46-9-805. Effectiveness of action taken before effective date.**

17 (a) *Preeffective-date filing effective.* -- The filing of a
18 financing statement before the amendments to this article during
19 the 2012 Regular Legislative Session take effect is effective to
20 perfect a security interest to the extent the filing would satisfy
21 the applicable requirements for perfection under this article as
22 amended during the 2012 Regular Legislative Session.

23 (b) *When preeffective-date filing becomes ineffective.* --
24 This article does not render ineffective an effective financing

1 statement that, before the amendments to this article during the
2 2011 Regular Legislative Session take effect, is filed and
3 satisfies the applicable requirements for perfection under the law
4 of the jurisdiction governing perfection as provided in this
5 article as it existed before its amendment during the 2012 Regular
6 Legislative Session. However, except as otherwise provided in
7 subsections (c) and (d) and Section 9-806, the financing statement
8 ceases to be effective:

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

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

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

17 (B) June 30, 2018.

18 (c) *Continuation statement.* -- The filing of a continuation
19 statement after the amendments to this article during the 2012
20 Regular Legislative Session take effect does not continue the
21 effectiveness of a financing statement filed before those
22 amendments to the article take effect. However, upon the timely
23 filing of a continuation statement after the amendments to this
24 article during the 2012 Regular Legislative session take effect and

1 in accordance with the law of the jurisdiction governing perfection
2 as provided in this article as amended during the 2012 Regular
3 Legislative Session, the effectiveness of a financing statement
4 filed in the same office in that jurisdiction before the amendments
5 to this article during the 2012 Regular Legislative Session takes
6 effect continues for the period provided by the law of that
7 jurisdiction.

8 (d) *Application of subsection (b) (2) (B) to transmitting*
9 *utility financing statement.* -- Subsection (b) (2) (B) applies to a
10 financing statement that, before the amendments to this article
11 during the 2012 Regular Legislative Session take effect, is filed
12 against a transmitting utility and satisfies the applicable
13 requirements for perfection under the law of the jurisdiction
14 governing perfection as provided in this article as it existed
15 before amendment, only to the extent that this article as amended
16 by during the 2012 Regular Legislative Session provides that the
17 law of a jurisdiction other than the jurisdiction in which the
18 financing statement is filed governs perfection of a security
19 interest in collateral covered by the financing statement.

20 (e) *Application of Part 5.* -- A financing statement that
21 includes a financing statement filed before this [Act] takes effect
22 and a continuation statement filed after the amendments to this
23 article during the 2012 Regular Legislative Session take effect is
24 effective only to the extent that it satisfies the requirements of

1 Part 5 as amended during the 2012 Regular Legislative Session for
 2 an initial financing statement. A financing statement that
 3 indicates that the debtor is a decedent's estate indicates that the
 4 collateral is being administered by a personal representative
 5 within the meaning of section 9-503(a)(2) as amended during the
 6 2012 Regular Legislative Session . A financing statement that
 7 indicates that the debtor is a trust or is a trustee acting with
 8 respect to property held in trust indicates that the collateral is
 9 held in a trust within the meaning of section 9-503(a)(3) as
 10 amended during the 2012 Regular Legislative Session.

11 **§46-9-806. When initial financing statement suffices to continue**
 12 **effectiveness of financing statement.**

13 (a) *Initial financing statement in lieu of continuation*
 14 *statement.* -- The filing of an initial financing statement in the
 15 office specified in section 9-501 continues the effectiveness of a
 16 financing statement filed before the amendments to this article
 17 during the 2012 Regular Legislative Session take effect if:

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

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

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

24 (b) *Period of continued effectiveness.* -- The filing of an

1 initial financing statement under subsection (a) continues the
2 effectiveness of the preeffective-date financing statement:

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

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

13 (c) *Requirements for initial financing statement under*
14 *subsection (a).* -- To be effective for purposes of subsection (a),
15 an initial financing statement must:

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

19 (2) Identify the preeffective-date financing statement by
20 indicating the office in which the financing statement was filed
21 and providing the dates of filing and file numbers, if any, of the
22 financing statement and of the most recent continuation statement
23 filed with respect to the financing statement; and

24 (3) Indicate that the preeffective-date financing statement

1 remains effective.

2 **§46-9-807. Amendment of preeffective-date financing statement.**

3 (a) "*Preeffective-date financing statement*". -- In this
4 section, "preeffective-date financing statement" means a financing
5 statement filed before the amendments to this article during the
6 2011 Regular Legislative Session take effect.

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

17 (c) *Method of amending: general rule*. -- Except as otherwise
18 provided in subsection (d), if the law of this state governs
19 perfection of a security interest, the information in a
20 preeffective-date financing statement may be amended after the
21 amendments to this article during the 2012 Regular Legislative
22 Session take effect only if:

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

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

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

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

11 (e) *Method of amending: additional termination rule.* --
12 Whether or not the law of this state governs perfection of a
13 security interest, the effectiveness of a preeffective-date
14 financing statement filed in this state may be terminated after the
15 amendments to this article during the 2012 Regular Legislative
16 Session take effect by filing a termination statement in the office
17 in which the preeffective-date financing statement is filed, unless
18 an initial financing statement that satisfies section 9-806(c) has
19 been filed in the office specified by the law of the jurisdiction
20 governing perfection as provided in this article as amended during
21 the 2012 Regular Legislative Session as the office in which to
22 file a financing statement.

23 **§46-9-808. Person entitled to file initial financing statement or**
24 **continuation statement.**

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

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

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

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

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

10 **§46-9-809. Priority.**

11 This article determines the priority of conflicting claims to
12 collateral. However, if the relative priorities of the claims were
13 established before the amendments to this article during the 2012
14 Regular Legislative Session take effect, this article, as it
15 existed before the 2012 amendments determines priority.