

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**ENROLLED**

**House Bill No. 4251**

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



Passed March 8, 2011

To Take Effect Ninety Days From Passage

# ENROLLED

## H. B. 4251

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(BY DELEGATES DOYLE, RODIGHIERO, FERRO,  
FRAZIER, REYNOLDS AND STORCH)

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[Passed March 8, 2012; to take effect ninety days from passage.]

AN ACT to repeal §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-2A-103 of said code; to amend and reenact §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-518, §46-9-607 and §46-9-625; and to amend said code by adding thereto nine new sections, designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all relating generally to amendments to the uniform commercial code; amending and adding definitions; amending what constitutes control of electronic chattle paper; providing for effect on filed financing statements of change in governing law; amending priority of security interests created by new debtor; amending effectiveness of terms restricting assignment; improving the system for filing financing statements; providing greater protection for existing secured party having a security interest in after-acquired property upon relocation of debtor; reforming the correction statement process; technical changes; and providing transitional rules regarding perfection of security interests, effectiveness of financing statements, persons entitled to file financing statements and priority of financing statements.

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

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§46-11-104, §46-11-105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West Virginia, 1931, as amended, be repealed; that §46-2A-103 of said code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-408,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

**ARTICLE 2A. LEASES.**

**PART 1. GENERAL PROVISIONS.**

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

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

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

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

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

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

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

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

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

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

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

37 (iii) One of the following occurs:

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

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

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

53 (D) If the lease is not a consumer lease, the lessor, before  
54 the lessee signs the lease contract, informs the lessee in  
55 writing: (a) Of the identity of the person supplying the goods  
56 to the lessor, unless the lessee has selected that person and  
57 directed the lessor to acquire the goods or the right to  
58 possession and use of the goods from that person; (b) that the  
59 lessee is entitled under this article to the promises and  
60 warranties, including those of any third party, provided to the  
61 lessor by the person supplying the goods in connection with  
62 or as part of the contract by which the lessor acquired the  
63 goods or the right to possession and use of the goods; and (c)  
64 that the lessee may communicate with the person supplying  
65 the goods to the lessor and receive an accurate and complete  
66 statement of those promises and warranties, including any  
67 disclaimers and limitations of them or of remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

128 (u) “Present value” means the amount as of a date certain  
129 of one or more sums payable in the future, discounted to the  
130 date certain. The discount is determined by the interest rate  
131 specified by the parties if the rate was not manifestly  
132 unreasonable at the time the transaction was entered into;

133 otherwise, the discount is determined by a commercially  
134 reasonable rate that takes into account the facts and  
135 circumstances of each case at the time the transaction was  
136 entered into.

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

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

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

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

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

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

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

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

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

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

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

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



158 (3) The following definitions in other articles apply to  
159 this article:

160 “Account”. Section 9–102(a)(2).

161 “Between merchants”. Section 2–104(3).

162 “Buyer”. Section 2–103(1)(a).

163 “Chattel paper”. Section 9–102(a)(11).

164 “Consumer goods”. Section 9–102(a)(23).

165 “Document”. Section 9–102(a)(30).

166 “Entrusting”. Section 2–403(3).

167 “General intangible”. Section 9–102(a)(42).

168 “Instrument”. Section 9–102(a)(47).

169 “Merchant”. Section 2–104(1).

170 “Mortgage”. Section 9–102(a)(55).

171 “Pursuant to commitment”. 9-102(a)(69).

172 “Receipt”. Section 2–103(1)(c).

173 “Sale”. Section 2–106(1).

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

175 “Sale or return”. Section 2–326.

176 “Seller”. Section 2–103(1)(d).

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

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

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

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

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

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

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

31 (4) “Accounting”, except as used in “accounting for”,  
32 means a record:

33 (A) Authenticated by a secured party;

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

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

39 (5) “Agricultural lien” means an interest, in farm  
40 products:

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

43 (i) Goods or services furnished in connection with a  
44 debtor’s farming operation; or

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

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

48 (i) In the ordinary course of its business furnished goods  
49 or services to a debtor in connection with a debtor’s farming  
50 operation; or

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

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

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

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

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

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

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

64 (7) "Authenticate" means:

65 (A) To sign; or

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

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

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

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

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

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

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

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

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

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

111 (A) The claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

140 (18) “Communicate” means:

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

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

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

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

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

152 (A) The merchant:

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

155 (ii) Is not an auctioneer; and

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

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

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

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

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

166 (22) “Consumer debtor” means a debtor in a consumer  
167 transaction.

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

171 (24) “Consumer-goods transaction” means a consumer  
172 transaction in which:

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

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

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



181 (26) “Consumer transaction” means a transaction in  
182 which: (i) An individual incurs an obligation primarily for  
183 personal, family or household purposes; (ii) a security interest  
184 secures the obligation; and (iii) the collateral is held or  
185 acquired primarily for personal, family or household  
186 purposes. The term includes consumer-goods transactions.

187 (27) “Continuation statement” means an amendment of a  
188 financing statement which:

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

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

194 (28) “Debtor” means:

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

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

200 (C) A consignee.

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

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

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

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

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

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

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

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

220 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

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

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

231 (37) “Filing office” means an office designated in section  
232 9-501 as the place to file a financing statement.

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

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

238 (40) “Fixture filing” means the filing of a financing  
239 statement covering goods that are or are to become fixtures  
240 and satisfying section 9-502(a) and (b). The term includes  
241 the filing of a financing statement covering goods of a  
242 transmitting utility which are or are to become fixtures.

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

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

253 (43) [reserved].

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

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

275 (45) “Governmental unit” means a subdivision, agency,  
276 department, county, parish, municipality or other unit of the  
277 government of the United States, a state or a foreign country.  
278 The term includes an organization having a separate  
279 corporate existence if the organization is eligible to issue debt  
280 on which interest is exempt from income taxation under the  
281 laws of the United States.

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

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

293 right to payment arising out of the use of a credit or charge  
294 card or information contained on or for use with the card.

295 (48) “Inventory” means goods, other than farm products,  
296 which:

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

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

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

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

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

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

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

316 (52) “Lien creditor” means:

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

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

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

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

324 (53) “Manufactured home” means a structure,  
325 transportable in one or more sections, which, in the traveling  
326 mode, is eight body feet or more in width or forty body feet  
327 or more in length, or, when erected on site, is three hundred  
328 twenty or more square feet, and which is built on a permanent  
329 chassis and designed to be used as a dwelling with or without  
330 a permanent foundation when connected to the required  
331 utilities, and includes the plumbing, heating, air-conditioning  
332 and electrical systems contained therein. The term includes  
333 any structure that meets all of the requirements of this  
334 paragraph except the size requirements and with respect to  
335 which the manufacturer voluntarily files a certification  
336 required by the United States secretary of housing and urban  
337 development and complies with the standards established  
338 under Title 42 of the United States Code.

339 (54) “Manufactured-home transaction” means a secured  
340 transaction:

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

344 (B) In which a manufactured home, other than a  
345 manufactured home held as inventory, is the primary  
346 collateral.

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

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

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

358 (58) “Noncash proceeds” means proceeds other than cash  
359 proceeds.

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

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

373 (61) “Payment intangible” means a general intangible  
374 under which the account debtor’s principal obligation is a  
375 monetary obligation.

376 (62) “Person related to”, with respect to an individual,  
377 means:

378 (A) The spouse of the individual;

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

381 (C) An ancestor or lineal descendant of the individual or  
382 the individual’s spouse; or

383 (D) Any other relative, by blood or marriage, of the  
384 individual or the individual’s spouse who shares the same  
385 home with the individual.

386 (63) “Person related to”, with respect to an organization,  
387 means:

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

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

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

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

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



400 (64) “Proceeds”, except as used in section 9-609(b),  
401 means the following property:

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

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

406 (C) Rights arising out of collateral;

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

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

415 (65) “Production-money crops” means crops that secure  
416 a production-money obligation incurred with respect to the  
417 production of those crops.

418 (66) “Production-money obligation” means an obligation  
419 of an obligor incurred for new value given to enable the  
420 debtor to produce crops if the value is in fact used for the  
421 production of the crops.

422 (67) “Production of crops” includes tilling and otherwise  
423 preparing land for growing, planting, cultivating, fertilizing,  
424 irrigating, harvesting and gathering crops and protecting them  
425 from damage or disease.

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

431 (69) “Proposal” means a record authenticated by a  
432 secured party which includes the terms on which the secured  
433 party is willing to accept collateral in full or partial  
434 satisfaction of the obligation it secures pursuant to sections 9-  
435 620, 9-621 and 9-622.

436 (70) “Public-finance transaction” means a secured  
437 transaction in connection with which:

438 (A) Debt securities are issued;

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

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

445 (71) “Public organic record” means a record that is  
446 available to the public for inspection and is:

447 (A) A record consisting of the record initially filed with  
448 or issued by a state or the United States to form or organize  
449 an organization and any record filed with or issued by the  
450 state or the United States which amends or restates the initial  
451 record;

452 (B) An organic record of a business trust consisting of the  
453 record initially filed with a state and any record filed with the

454 state which amends or restates the initial record, if a statute  
455 of the state governing business trusts requires that the record  
456 be filed with the state; or

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

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

469 (73) “Record”, except as used in “for record”, “of  
470 record”, “record or legal title” and “record owner”, means  
471 information that is inscribed on a tangible medium or which  
472 is stored in an electronic or other medium and is retrievable  
473 in perceivable form.

474 (74) “Registered organization” means an organization  
475 formed or organized solely under the law of a single state or  
476 the United States by the filing of a public organic record  
477 with, the issuance of a public organic record by, or the  
478 enactment of legislation by the state or the United States.  
479 The term includes a business trust that is formed or organized  
480 under the law of a single state if a statute of the state  
481 governing business trusts requires that the business trust’s  
482 organic record be filed with the state.

483 (75) “Secondary obligor” means an obligor to the extent  
484 that:

- 485 (A) The obligor's obligation is secondary; or
- 486 (B) The obligor has a right of recourse with respect to an  
487 obligation secured by collateral against the debtor, another  
488 obligor or property of either.
- 489 (76) "Secured party" means:
- 490 (A) A person in whose favor a security interest is created  
491 or provided under a security agreement, whether or not any  
492 obligation to be secured is outstanding;
- 493 (B) A person that holds an agricultural lien;
- 494 (C) A consignor;
- 495 (D) A person to which accounts, chattel paper, payment  
496 intangibles or promissory notes have been sold;
- 497 (E) A trustee, indenture trustee, agent, collateral agent or  
498 other representative in whose favor a security interest or  
499 agricultural lien is created or provided for; or
- 500 (F) A person that holds a security interest arising under  
501 section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.
- 502 (77) "Security agreement" means an agreement that  
503 creates or provides for a security interest.
- 504 (78) "Send," in connection with a record or notification,  
505 means:
- 506 (A) To deposit in the mail, deliver for transmission, or  
507 transmit by any other usual means of communication, with  
508 postage or cost of transmission provided for, addressed to any  
509 address reasonable under the circumstances; or

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

513 (79) “Software” means a computer program and any  
514 supporting information provided in connection with a  
515 transaction relating to the program. The term does not  
516 include a computer program that is included in the definition  
517 of goods.

518 (80) “State” means a state of the United States, the  
519 District of Columbia, Puerto Rico, the United States Virgin  
520 Islands or any territory or insular possession subject to the  
521 jurisdiction of the United States.

522 (81) “Supporting obligation” means a letter-of-credit  
523 right or secondary obligation that supports the payment or  
524 performance of an account, chattel paper, a document, a  
525 general intangible, an instrument or investment property.

526 (82) “Tangible chattel paper” means chattel paper  
527 evidenced by a record or records consisting of information  
528 that is inscribed on a tangible medium.

529 (83) “Termination statement” means an amendment of a  
530 financing statement which:

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

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

535 (84) “Transmitting utility” means a person primarily  
536 engaged in the business of:

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

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

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

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

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

547 "Applicant" Section 5-102.

548 "Beneficiary" Section 5-102.

549 "Broker" Section 8-102.

550 "Certificated security" Section 8-102.

551 "Check" Section 3-104.

552 "Clearing corporation" Section 8-102.

553 "Contract for sale" Section 2-106.

554 "Customer" Section 4-104.

555 "Entitlement holder" Section 8-102.

556 "Financial asset" Section 8-102.

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

|     |                                       |                 |
|-----|---------------------------------------|-----------------|
| 558 | “Issuer” (with respect to a letter of |                 |
| 559 | credit or letter-of-credit right)     | Section 5-102.  |
| 560 | “Issuer” (with respect to a security) | Section 8-201.  |
| 561 | “Issuer” (with respect to             |                 |
| 562 | a document of title)                  | Section 7-102.  |
| 563 | “Lease”                               | Section 2A-103. |
| 564 | “Lease agreement”                     | Section 2A-103. |
| 565 | “Lease contract”                      | Section 2A-103. |
| 566 | “Leasehold interest”                  | Section 2A-103. |
| 567 | “Lessee”                              | Section 2A-103. |
| 568 | “Lessee in ordinary course            |                 |
| 569 | of business”                          | Section 2A-103. |
| 570 | “Lessor”                              | Section 2A-103. |
| 571 | “Lessor’s residual interest”          | Section 2A-103. |
| 572 | “Letter of credit”                    | Section 5-102.  |
| 573 | “Merchant”                            | Section 2-104.  |
| 574 | “Negotiable instrument”               | Section 3-104.  |
| 575 | “Nominated person”                    | Section 5-102.  |
| 576 | “Note”                                | Section 3-104.  |
| 577 | “Proceeds of a letter of credit”      | Section 5-114.  |

|     |  |                |
|-----|--|----------------|
| 578 | “Prove”  | Section 3-103. |
| 579 | “Sale”   | Section 2-106. |
| 580 | “Securities account”   | Section 8-501. |
| 581 | “Securities intermediary”                                    | Section 8-102. |
| 582 | “Security”   | Section 8-102. |
| 583 | “Security certificate”                                       | Section 8-102. |
| 584 | “Security entitlement”                                       | Section 8-102. |
| 585 | “Uncertificated security”                                    | Section 8-102. |
| 586 | (c) Article 1 definitions and principles. Article 1 contains |                |
| 587 | general definitions and principles of construction and       |                |
| 588 | interpretation applicable throughout this article.           |                |

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

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

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

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



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

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

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

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

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

**§46-9-307. Location of debtor.**

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

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

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

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

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

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

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

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

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

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

39       (2) In the state that the registered organization, branch or  
40 agency designates, if the law of the United States authorizes  
41 the registered organization, branch, or agency to designate its

42 state of location, including by designating its main office,  
43 home office or other comparable office; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 regulation or treaty described in subsection (a) may be  
31 perfected only by compliance with those requirements, and  
32 a security interest so perfected remains perfected  
33 notwithstanding a change in the use or transfer of possession  
34 of the collateral.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 interest would have become unperfected under the law of the  
40 other jurisdiction had the goods not become so covered.

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

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

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

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

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

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

67       (g) *Subsection (f) security interest perfected or*  
68 *unperfected under law of new jurisdiction.* -- If a security  
69 interest described in subsection (f) of this section becomes  
70 perfected under the law of the other jurisdiction before the  
71 earlier of the time or the end of the period described in that  
72 subsection, it remains perfected thereafter. If the security  
73 interest does not become perfected under the law of the other  
74 jurisdiction before the earlier of that time or the end of that  
75 period, it becomes unperfected and is deemed never to have  
76 been perfected as against a purchaser of the collateral for  
77 value.

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

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

88       (2) If a security interest perfected by a financing  
89 statement that is effective under paragraph (1) becomes  
90 perfected under the law of the other jurisdiction before the  
91 earlier of the time the financing statement would have  
92 become ineffective under the law of the jurisdiction  
93 designated in section 9-301(1) or 9-305(c) or the expiration  
94 of the four-month period, it remains perfected thereafter. If  
95 the security interest does not become perfected under the law  
96 of the other jurisdiction before the earlier time or event, it  
97 becomes unperfected and is deemed never to have been  
98 perfected as against a purchaser of the collateral for value.



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

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

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

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

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

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

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

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

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

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

31 (e) *Purchase-money security interest.* -- Except as  
32 otherwise provided in sections 9-320 and 9-321, if a person  
33 files a financing statement with respect to a purchase-money  
34 security interest before or within twenty days after the debtor  
35 receives delivery of the collateral, the security interest takes

36 priority over the rights of a buyer, lessee or lien creditor  
37 which arise between the time the security interest attaches  
38 and the time of filing.

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

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

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

PART 4. RIGHTS OF THIRD PARTIES.

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

1 (a) *Discharge of account debtor; effect of notification.*--  
2 Subject to subsections (b) through (i), an account debtor on

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

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

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

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

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

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

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

27 (C) The account debtor knows that the assignment to that  
28 assignee is limited.

29 (c) *Proof of assignment.* -- Subject to subsection (h) of  
30 this section, if requested by the account debtor, an assignee

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

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

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

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

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

59 (f) *Legal restrictions on assignment generally ineffective.* --  
60 Except as otherwise provided in sections 2A-303 and 9-407  
61 and subject to subsections (h) and (i) of this section, a rule of

62 law, statute or regulation that prohibits, restricts or requires  
63 the consent of a government, governmental body or official,  
64 or account debtor to the assignment or transfer of, or creation  
65 of a security interest in, an account or chattel paper is  
66 ineffective to the extent that the rule of law, statute or  
67 regulation:

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

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

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

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

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

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

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

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

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

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

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

19 promissory note, health-care-insurance receivable or general  
20 intangible.

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

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

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

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

46 (d) *Limitation on ineffectiveness under subsections (a)*  
47 *and (c).* -- To the extent that a term in a promissory note or  
48 in an agreement between an account debtor and a debtor  
49 which relates to a health-care-insurance receivable or general



50 intangible or a rule of law, statute or regulation described in  
51 subsection (c) of this section would be effective under law  
52 other than this article but is ineffective under subsection (a)  
53 or (c) of this section, the creation, attachment or perfection of  
54 a security interest in the promissory note, health-care-  
55 insurance receivable or general intangible:

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

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

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

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

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

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

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

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

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

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

3 (1) Provides the name of the debtor;

4 (2) Provides the name of the secured party or a  
 5 representative of the secured party; and

6 (3) Indicates the collateral covered by the financing  
 7 statement.

8 (b) *Real-property-related financing statements.* -- Except  
 9 as otherwise provided in section 9-501(b), to be sufficient, a  
 10 financing statement that covers as-extracted collateral or  
 11 timber to be cut, or which is filed as a fixture filing and

12 covers goods that are or are to become fixtures, must satisfy  
13 subsection (a) of this section and also:

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

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

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

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

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

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

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

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

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

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

44 (4) The record is duly recorded.

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

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

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

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

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

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

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

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

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

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

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

28 (ii) If the name is provided in accordance with  
29 subparagraph (A)(ii), provides additional information  
30 sufficient to distinguish the trust from other trusts having one  
31 or more of the same settlors or the same testator and indicates  
32 that the collateral is held in a trust, unless the additional  
33 information so indicates;

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

38 (5) If the debtor is an individual to whom subdivision (4)  
39 does not apply, only if the financing statement provides the  
40 individual name of the debtor or the surname and first  
41 personal name of the debtor; and

42 (6) In other cases:

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

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

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

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

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

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

61 (d) *Representative capacity.*-- Failure to indicate the  
62 representative capacity of a secured party or representative of  
63 a secured party does not affect the sufficiency of a financing  
64 statement.

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

68 (f) *Name of decedent.* -- The name of the decedent  
69 indicated on the order appointing the personal representative  
70 of the decedent issued by the court having jurisdiction over  
71 the collateral is sufficient as the "name of the decedent"  
72 under subdivision (a)(2) of this section.

73 (g) *Multiple driver's licenses.* -- If this state has issued to  
74 an individual more than one driver's license of a kind  
75 described in subdivision (a)(4) of this section, the one that  
76 was issued most recently is the one to which subdivision  
77 (a)(4) refers.

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

80 (1) If the settlor is a registered organization, the name that  
81 is stated to be the settlor's name on the public organic record  
82 most recently filed with or issued or enacted by the settlor's  
83 jurisdiction of organization which purports to state, amend,  
84 or restate the settlor's name; or

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

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

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

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

12 (c) *Change in debtor's name.* -- If the name that a filed  
13 financing statement provides for a debtor becomes

14 insufficient as the name of the debtor under section 9-503(a)  
15 so that the financing statement becomes seriously misleading  
16 under section 9-506:

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

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

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

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

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

13 (c) *Lapse and continuation of financing statement.* -- The  
14 effectiveness of a filed financing statement lapses on the



15 expiration of the period of its effectiveness unless before the  
16 lapse a continuation statement is filed pursuant to subsection  
17 (d) of this section. Upon lapse, a financing statement ceases  
18 to be effective and any security interest or agricultural lien  
19 that was perfected by the financing statement becomes  
20 unperfected, unless the security interest is perfected  
21 otherwise. If the security interest or agricultural lien becomes  
22 unperfected upon lapse, it is deemed never to have been  
23 perfected as against a purchaser of the collateral for value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (7) In the case of a continuation statement, the record is  
48 not filed within the six-month period prescribed by section 9-  
49 515(d).

50 (c) *Rules applicable to subsection (b).* -- For purposes of  
51 subsection (b):

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

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

58 (d) *Refusal to accept record; record effective as filed*  
59 *record.* -- A record that is communicated to the filing office  
60 with tender of the filing fee, but which the filing office  
61 refuses to accept for a reason other than one set forth in  
62 subsection (b) of this section, is effective as a filed record  
63 except as against a purchaser of the collateral which gives  
64 value in reasonable reliance upon the absence of the record  
65 from the files.

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

76       (1) Upon the commencement of proceedings pursuant to  
77 this subsection, the Secretary of State shall identify the  
78 financing statement in its records as subject to administrative  
79 review and publish a notice in the *West Virginia Register*  
80 regarding the proceedings.

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

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

99       (4) The Secretary of State shall annually submit a report  
100 to the Legislature regarding actions taken against fraudulent  
101 filings pursuant to this section which identifies the number  
102 and characteristics of such proceedings, identifies any  
103 creditors found to have made fraudulent filings, describes  
104 proceedings initiated by the secretary in which it is ultimately  
105 determined that fraudulent filings did not occur, describes the  
106 number and type of complaints received by the secretary in  
107 which it is alleged that fraudulent filings have occurred, and  
108 describes the actions taken by the secretary to investigate

109 complaints concerning allegedly fraudulent filings and the  
110 results of the investigations.

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

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

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

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

6 (b) *Contents of statement under subsection (a).* -- An  
7 information statement under subsection (a) of this section  
8 must:

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

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

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

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

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

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

28 (d) *Contents of statement under subsection (c).* -- An  
29 information statement under subsection (c) of this section  
30 must:

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

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

34 (B) If the information statement relates to a record filed  
35 or recorded in a filing office described in section 9-501(a)(1),

36 the date and time that the initial financing statement was filed  
37 or recorded and the information specified in section 9-502(b);

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

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

42 (e) *Record not affected by information statement.*-- The  
43 filing of a an information statement does not affect the  
44 effectiveness of an initial financing statement or other filed  
45 record.

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

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

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

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

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

15 (4) If it holds a security interest in a deposit account  
16 perfected by control under section 9-104(a)(1), may apply the



17 balance of the deposit account to the obligation secured by  
18 the deposit account; and

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

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

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

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

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

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

37 (c) *Commercially reasonable collection and enforcement.*  
38 -- A secured party shall proceed in a commercially reasonable  
39 manner if the secured party:

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

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

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

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

#### SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (f) *Statutory damages: noncompliance with section 9-*  
 50 *210.* -- A debtor or consumer obligor may recover damages  
 51 under subsection (b) of this section and, in addition, \$500 in  
 52 each case from a person that, without reasonable cause, fails  
 53 to comply with a request under section 9-210. A recipient of  
 54 a request under section 9-210 which never claimed an interest  
 55 in the collateral or obligations that are the subject of a request  
 56 under that section has a reasonable excuse for failure to  
 57 comply with the request within the meaning of this  
 58 subsection.

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

## PART 8. TRANSITION PROVISIONS FOR 2012 AMENDMENTS.

### **§46-9-801. Effective date.**

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

### **§46-9-802. Savings clause.**

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

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

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

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

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

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

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

1 A security interest that is an unperfected security interest  
2 immediately before the amendments to this article during the

3 2012 Regular Legislative Session take effect becomes a  
4 perfected security interest:

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

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

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

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

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

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

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

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

26 (B) June 30, 2018.

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

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

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

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

1 (a) *Initial financing statement in lieu of continuation*  
2 *statement.* -- The filing of an initial financing statement in  
3 the office specified in section 9-501 continues the  
4 effectiveness of a financing statement filed before the  
5 amendments to this article during the 2012 Regular  
6 Legislative Session take effect if:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (e) *Method of amending: additional termination rule.* --  
37 Whether or not the law of this state governs perfection of a  
38 security interest, the effectiveness of a preeffective-date  
39 financing statement filed in this state may be terminated after  
40 the amendments to this article during the 2012 Regular  
41 Legislative Session take effect by filing a termination  
42 statement in the office in which the preeffective-date  
43 financing statement is filed, unless an initial financing  
44 statement that satisfies section 9-806(c) has been filed in the  
45 office specified by the law of the jurisdiction governing  
46 perfection as provided in this article as amended during the  
47 2012 Regular Legislative Session as the office in which to  
48 file a financing statement.

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

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

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

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

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

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

**§46-9-809. Priority.**

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

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*Governor*