

**Senate Bill No. 374**

(By Senators Klempa, Tucker, Browning, Nohe and Jenkins)

[Introduced January 20, 2012; referred to the Committee on  
Interstate Cooperation; and then to the Committee on the  
Judiciary.]

**Interim  
Bill**

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

1 of debtor; reforming the correction statement process;  
2 technical changes; and transition rules.

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

4 That §46-11-101, §46-11-102, §46-11-103, §46-11-104, §46-11-  
5 105, §46-11-106, §46-11-107 and §46-11-108 of the Code of West  
6 Virginia, 1931, as amended, be repealed; that §46-2A-103 of said  
7 code be amended and reenacted; that §46-9-102, §46-9-105, §46-9-  
8 307, §46-9-311, §46-9-316, §46-9-317, §46-9-326, §46-9-406, §46-9-  
9 408, §46-9-502, §46-9-503, §46-9-507, §46-9-515, §46-9-516, §46-9-  
10 518, §46-9-607 and §46-9-625 of said code be amended and reenacted;  
11 and that said code be amended by adding thereto nine new sections,  
12 designated §46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805,  
13 §46-9-806, §46-9-807, §46-9-808 and §46-9-809, all to read as  
14 follows:

15 **ARTICLE 2A. LEASES.**

16 Part 1. General Provisions.

17 **§46-2A-103. Definitions and index of definitions.**

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

19 (a) "Buyer in ordinary course of business" means a person who  
20 in good faith and without knowledge that the sale to him or her is  
21 in violation of the ownership rights or security interest or  
22 leasehold interest of a third party in the goods, buys in ordinary  
23 course from a person in the business of selling goods of that kind  
24 but does not include a pawnbroker. "Buying" may be for cash or by

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

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

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

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

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

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

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

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

24 (ii) The lessor acquires the goods or the right to possession

1 and use of the goods in connection with the lease; and

2 (iii) One of the following occurs:

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

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

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

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

19 (a) Of the identity of the person supplying the goods to the  
20 lessor, unless the lessee has selected that person and directed the  
21 lessor to acquire the goods or the right to possession and use of  
22 the goods from that person; (b) that the lessee is entitled under  
23 this article to the promises and warranties, including those of any  
24 third party, provided to the lessor by the person supplying the

1 goods in connection with or as part of the contract by which the  
2 lessor acquired the goods or the right to possession and use of the  
3 goods; and (c) that the lessee may communicate with the person  
4 supplying the goods to the lessor and receive an accurate and  
5 complete statement of those promises and warranties, including any  
6 disclaimers and limitations of them or of remedies.

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

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

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

22 (k) "Lease agreement" means the bargain, with respect to the  
23 lease, of the lessor and the lessee in fact as found in their  
24 language or by implication from other circumstances including

1 course of dealing or usage of trade or course of performance as  
2 provided in this article. Unless the context clearly indicates  
3 otherwise, the term includes a sublease agreement.

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

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

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

13 (o) "Lessee in ordinary course of business" means a person who  
14 in good faith and without knowledge that the lease to him or her is  
15 in violation of the ownership rights or security interest or  
16 leasehold interest of a third party in the goods leases in ordinary  
17 course from a person in the business of selling or leasing goods of  
18 that kind but does not include a pawnbroker. "Leasing" may be for  
19 cash or by exchange of other property or on secured or unsecured  
20 credit and includes acquiring goods or documents of title under a  
21 preexisting lease contract but does not include a transfer in bulk  
22 or as security for or in total or partial satisfaction of a money  
23 debt.

24 (p) "Lessor" means a person who transfers the right to

1 possession and use of goods under a lease. Unless the context  
2 clearly indicates otherwise, the term includes a sublessor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (3) The following definitions in other articles apply to this  
20 article:

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

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

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

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



- 1 "Consumer goods". Section 9-102(a)(23).
- 2 "Document". Section 9-102(a)(30).
- 3 "Entrusting". Section 2-403(3).
- 4 "General intangible". Section 9-102(a)(42).
- 5 "Instrument". Section 9-102(a)(47).
- 6 "Merchant". Section 2-104(1).
- 7 "Mortgage". Section 9-102(a)(55).
- 8 "Pursuant to commitment". ~~Section 9-102(a)(68)~~ 9-102(a)(69).
- 9 "Receipt". Section 2-103(1)(c).
- 10 "Sale". Section 2-106(1).
- 11 "Sale on approval". Section 2-326.
- 12 "Sale or return". Section 2-326.
- 13 "Seller". Section 2-103(1)(d).

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

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

19 **§46-9-102. Definitions and index of definitions.**

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

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

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

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

1 instrument constitutes part of chattel paper.

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

4 (A) Authenticated by a secured party;

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

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

10 (5) "Agricultural lien" means an interest, ~~other than a~~  
11 ~~security interest,~~ in farm products:

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

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

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

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

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

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

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

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

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

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

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

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

10 (7) "Authenticate" means:

11 (A) To sign; or

12 (B) ~~To execute or otherwise adopt a symbol, or encrypt or~~  
13 ~~similarly process a record, in whole or in part, with the present~~  
14 ~~intent of the authenticating person to identify the person and~~  
15 ~~adopt or accept a record, To attach to or logically associate with~~  
16 ~~the record an electronic sound, symbol or process, with present~~  
17 ~~intent to adopt or accept a record.~~

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

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

23 (10) "Certificate of title" means a certificate of title with  
24 respect to which a statute provides for the security interest in

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

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

1 constitutes chattel paper.

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

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

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

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

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

10 (A) The claimant is an organization; or

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

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

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

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

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

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

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

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

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

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

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

13 (18) "Communicate" means:

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

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

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

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

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

1 (A) The merchant:

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

4 (ii) Is not an auctioneer; and

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

17          (28) "Debtor" means:

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

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

23           (C) A consignee.

24          (29) "Deposit account" means a demand, time, savings, passbook

1 or similar account maintained with a bank. The term does not  
2 include investment property or accounts evidenced by an instrument.

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

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

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

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

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

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

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

18 (ii) Aquatic goods produced in aquacultural operations;

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

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

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

24 (35) "Farming operation" means raising, cultivating,

1 propagating, fattening, grazing or any other farming, livestock or  
2 aquacultural operation.

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

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

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

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

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

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

20 (42) "General intangible" means any personal property,  
21 including things in action, other than accounts, chattel paper,  
22 commercial tort claims, deposit accounts, documents, goods,  
23 instruments, investment property, letter-of-credit rights, letters  
24 of credit, money and oil, gas or other minerals before extraction.

1 The term includes payment intangibles and software.

2 (43) [reserved].

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

21 (45) "Governmental unit" means a subdivision, agency,  
22 department, county, parish, municipality or other unit of the  
23 government of the United States, a state or a foreign country. The  
24 term includes an organization having a separate corporate existence

1 if the organization is eligible to issue debt on which interest is  
2 exempt from income taxation under the laws of the United States.

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

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

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

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

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

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

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

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

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

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

10          (52) "Lien creditor" means:

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

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

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

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

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

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

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

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

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

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

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

21 (57) "New value" means: (i) Money; (ii) money's worth in  
22 property, services or new credit; or (iii) release by a transferee  
23 of an interest in property previously transferred to the  
24 transferee. The term does not include an obligation substituted

1 for another obligation.

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

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

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

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

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

20 (A) The spouse of the individual;

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

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



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

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

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

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

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

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

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

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

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

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

23 (C) Rights arising out of collateral;

24 (D) To the extent of the value of collateral, claims arising

1 out of the loss, nonconformity, or interference with the use of,  
2 defects or infringement of rights in, or damage to, the collateral;  
3 or

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

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

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

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

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

23 (69) "Proposal" means a record authenticated by a secured  
24 party which includes the terms on which the secured party is

1 willing to accept collateral in full or partial satisfaction of the  
2 obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

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

5 (A) Debt securities are issued;

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

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

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

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

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

23 (C) A record consisting of legislation enacted by the  
24 Legislature of a state or the Congress of the United States which

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

5 ~~(71)~~ (72) "Pursuant to commitment", with respect to an advance  
6 made or other value given by a secured party, means pursuant to the  
7 secured party's obligation, whether or not a subsequent event of  
8 default or other event not within the secured party's control has  
9 relieved or may relieve the secured party from its obligation.

10 ~~(72)~~ (73) "Record", except as used in "for record", "of  
11 record", "record or legal title" and "record owner", means  
12 information that is inscribed on a tangible medium or which is  
13 stored in an electronic or other medium and is retrievable in  
14 perceivable form.

15 ~~(73)~~ (74) "Registered organization" means an organization  
16 formed or organized solely under the law of a single state or the  
17 United States and as to which the state or the United States must  
18 maintain a public record showing the organization to have been  
19 organized by the filing of a public organic record with, the  
20 issuance of a public organic record by, or the enactment of  
21 legislation by the state or the United States. The term includes  
22 a business trust that is formed or organized under the law of a  
23 single state if a statute of the state governing business trusts  
24 requires that the business trust's organic record be filed with the

1 state.

2 ~~(74)~~ (75) "Secondary obligor" means an obligor to the extent  
3 that:

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

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

8 ~~(75)~~ (76) "Secured party" means:

9 (A) A person in whose favor a security interest is created or  
10 provided ~~for~~ under a security agreement, whether or not any  
11 obligation to be secured is outstanding;

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

13 (C) A consignor;

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

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

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

21 ~~(76)~~ (77) "Security agreement" means an agreement that creates  
22 or provides for a security interest.

23 ~~(77)~~ (78) "Send," in connection with a record or notification,  
24 means:

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

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

8 ~~(78)~~ (79) "Software" means a computer program and any  
9 supporting information provided in connection with a transaction  
10 relating to the program. The term does not include a computer  
11 program that is included in the definition of goods.

12 ~~(79)~~ (80) "State" means a state of the United States, the  
13 District of Columbia, Puerto Rico, the United States Virgin Islands  
14 or any territory or insular possession subject to the jurisdiction  
15 of the United States.

16 ~~(80)~~ (81) "Supporting obligation" means a letter-of-credit  
17 right or secondary obligation that supports the payment or  
18 performance of an account, chattel paper, a document, a general  
19 intangible, an instrument or investment property.

20 ~~(81)~~ (82) "Tangible chattel paper" means chattel paper  
21 evidenced by a record or records consisting of information that is  
22 inscribed on a tangible medium.

23 ~~(82)~~ (83) "Termination statement" means an amendment of a  
24 financing statement which:

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

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

5 ~~(83)~~ (84) "Transmitting utility" means a person primarily  
6 engaged in the business of:

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

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

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

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

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

17 "Applicant" Section 5-102.

18 "Beneficiary" Section 5-102.

19 "Broker" Section 8-102.

20 "Certificated security" Section 8-102.

21 "Check" Section 3-104.

22 "Clearing corporation" Section 8-102.

23 "Contract for sale" Section 2-106.

24 "Customer" Section 4-104.

|    |   |                 |
|----|---|-----------------|
| 1  | "Entitlement holder"  | Section 8-102.  |
| 2  | "Financial asset"   | Section 8-102.  |
| 3  | "Holder in due course"  | Section 3-302.  |
| 4  | "Issuer" (with respect to a letter of                               |                 |
| 5  | credit or letter-of-credit right)                                   | Section 5-102.  |
| 6  | "Issuer" (with respect to a security)                               | Section 8-201.  |
| 7  | "Issuer" (with respect to <del>documents</del> a document of title) |                 |
| 8  |   | Section 7-102.  |
| 9  | "Lease"   | Section 2A-103. |
| 10 | "Lease agreement"   | Section 2A-103. |
| 11 | "Lease contract"  | Section 2A-103. |
| 12 | "Leasehold interest"  | Section 2A-103. |
| 13 | "Lessee"  | Section 2A-103. |
| 14 | "Lessee in ordinary course of business"                             | Section 2A-103. |
| 15 | "Lessor"  | Section 2A-103. |
| 16 | "Lessor's residual interest"  | Section 2A-103. |
| 17 | "Letter of credit"  | Section 5-102.  |
| 18 | "Merchant"  | Section 2-104.  |
| 19 | "Negotiable instrument"   | Section 3-104.  |
| 20 | "Nominated person"  | Section 5-102.  |
| 21 | "Note"  | Section 3-104.  |
| 22 | "Proceeds of a letter of credit"                                    | Section 5-114.  |
| 23 | "Prove"   | Section 3-103.  |
| 24 | "Sale"  | Section 2-106.  |



|   |                           |                |
|---|---------------------------|----------------|
| 1 | "Securities account"      | Section 8-501. |
| 2 | "Securities intermediary" | Section 8-102. |
| 3 | "Security"                | Section 8-102. |
| 4 | "Security certificate"    | Section 8-102. |
| 5 | "Security entitlement"    | Section 8-102. |
| 6 | "Uncertificated security" | Section 8-102. |

7 (c) Article 1 definitions and principles. Article 1 contains  
8 general definitions and principles of construction and  
9 interpretation applicable throughout this article.

10 **§46-9-105. Control of electronic chattel paper.**

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

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

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

24 (2) The authoritative copy identifies the secured party as the

1 assignee of the record or records;

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

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

7 (5) Each copy of the authoritative copy and any copy of a copy  
8 is readily identifiable as a copy that is not the authoritative  
9 copy; and

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

12 **§46-9-307. Location of debtor.**

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

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

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

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

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

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

1 Subsection (b) of this section applies only if a debtor's  
2 residence, place of business or chief executive office, as  
3 applicable, is located in a jurisdiction whose law generally  
4 requires information concerning the existence of a nonpossessory  
5 security interest to be made generally available in a filing,  
6 recording or registration system as a condition or result of the  
7 security interest's obtaining priority over the rights of a lien  
8 creditor with respect to the collateral. If subsection (b) does  
9 not apply, the debtor is located in the District of Columbia.

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

14 (e) *Location of registered organization organized under state*  
15 *law.* -- A registered organization that is organized under the law  
16 of a state is located in that state.

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

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

1 (2) In the state that the registered organization, branch or  
2 agency designates, if the law of the United States authorizes the  
3 registered organization, branch, or agency to designate its state  
4 of location, including by designating its main office, home office  
5 or other comparable office; or

6 (3) In the District of Columbia, if neither ~~paragraph~~  
7 subdivision(1) nor ~~paragraph~~ subdivision(2) of this subsection  
8 applies.

9 (g) *Continuation of location: changed in status of registered*  
10 *organization.* -- A registered organization continues to be located  
11 in the jurisdiction specified by subsection (e) or (f)  
12 notwithstanding:

13 (1) The suspension, revocation, forfeiture or lapse of the  
14 registered organization's status as such in its jurisdiction of  
15 organization; or

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

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

20 (i) *Location of foreign bank branch or agency if licensed in*  
21 *only one state.* -- A branch or agency of a bank that is not  
22 organized under the law of the United States or a state is located  
23 in the state in which the branch or agency is licensed, if all  
24 branches and agencies of the bank are licensed in only one state.



1 debtor or obligor, as appropriate; or

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

7       (b) *Compliance with other law.* -- Compliance with the  
8 requirements of a statute, regulation or treaty described in  
9 subsection (a) of this section for obtaining priority over the  
10 rights of a lien creditor is equivalent to the filing of a  
11 financing statement under this article. Except as otherwise  
12 provided in subsection (d) of this section and sections 9-313 and  
13 9-316(d) and (e) for goods covered by a certificate of title, a  
14 security interest in property subject to a statute, regulation or  
15 treaty described in subsection (a) may be perfected only by  
16 compliance with those requirements, and a security interest so  
17 perfected remains perfected notwithstanding a change in the use or  
18 transfer of possession of the collateral.

19       (c) *Duration and renewal of perfection.* -- Except as otherwise  
20 provided in subsection (d) of this section and section 9-316(d) and  
21 (e), duration and renewal of perfection of a security interest  
22 perfected by compliance with the requirements prescribed by a  
23 statute, regulation or treaty described in subsection (a) are  
24 governed by the statute, regulation or treaty. In other respects,

1 the security interest is subject to this article.

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

8 **~~§46-9-316. Continued perfection of security interest following~~**  
9 **Effect of change in governing law.**

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

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

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

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

21 (b) *Security interest perfected or unperfected under law of*  
22 *new jurisdiction.* -- If a security interest described in subsection  
23 (a) of this section becomes perfected under the law of the other

1 jurisdiction before the earliest time or event described in said  
2 subsection, it remains perfected thereafter. If the security  
3 interest does not become perfected under the law of the other  
4 jurisdiction before the earliest time or event, it becomes  
5 unperfected and is deemed never to have been perfected as against  
6 a purchaser of the collateral for value.

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

11       (1) The collateral is located in one jurisdiction and subject  
12 to a security interest perfected under the law of that  
13 jurisdiction;

14       (2) Thereafter the collateral is brought into another  
15 jurisdiction; and

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

18       (d) *Goods covered by certificate of title from this state.--*  
19 Except as otherwise provided in subsection (e) of this section, a  
20 security interest in goods covered by a certificate of title which  
21 is perfected by any method under the law of another jurisdiction  
22 when the goods become covered by a certificate of title from this  
23 state remains perfected until the security interest would have  
24 become unperfected under the law of the other jurisdiction had the



1 goods not become so covered.

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

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

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

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

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

24       (2) The expiration of four months after a change of the

1 applicable jurisdiction to another jurisdiction.

2       (g) *Subsection (f) security interest perfected or unperfected*  
3 *under law of new jurisdiction.* -- If a security interest described  
4 in subsection (f) of this section becomes perfected under the law  
5 of the other jurisdiction before the earlier of the time or the end  
6 of the period described in that subsection, it remains perfected  
7 thereafter. If the security interest does not become perfected  
8 under the law of the other jurisdiction before the earlier of that  
9 time or the end of that period, it becomes unperfected and is  
10 deemed never to have been perfected as against a purchaser of the  
11 collateral for value.

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

16       (1) A financing statement filed before the change pursuant to  
17 the law of the jurisdiction designated in section 9-301(1) or  
18 9-305(c) is effective to perfect a security interest in the  
19 collateral if the financing statement would have been effective to  
20 perfect a security interest in the collateral had the debtor not  
21 changed its location.

22       (2) If a security interest perfected by a financing statement  
23 that is effective under paragraph (1) becomes perfected under the  
24 law of the other jurisdiction before the earlier of the time the

1 financing statement would have become ineffective under the law of  
2 the jurisdiction designated in section 9-301(1) or 9-305(c) or the  
3 expiration of the four-month period, it remains perfected  
4 thereafter. If the security interest does not become perfected  
5 under the law of the other jurisdiction before the earlier time or  
6 event, it becomes unperfected and is deemed never to have been  
7 perfected as against a purchaser of the collateral for value.

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

13 (i) The financing statement is effective to perfect a  
14 security interest in collateral acquired by the new debtor before,  
15 and within four months after, the new debtor becomes bound under  
16 Section 9-203(d), if the financing statement would have been  
17 effective to perfect a security interest in the collateral had the  
18 collateral been acquired by the original debtor.

19 (ii) A security interest perfected by the financing statement  
20 and which becomes perfected under the law of the other jurisdiction  
21 before the earlier of the time the financing statement would have  
22 become ineffective under the law of the jurisdiction designated in  
23 Section 9-301(1) or 9-305(c) or the expiration of the four-month  
24 period remains perfected thereafter. A security interest that is

1 perfected by the financing statement but which does not become  
2 perfected under the law of the other jurisdiction before the  
3 earlier time or event becomes unperfected and is deemed never to  
4 have been perfected as against a purchaser of the collateral for  
5 value.

6 **§46-9-317. Interests that take priority over or take free of**  
7 **security interest or agricultural lien.**

8 (a) *Conflicting security interests and rights of lien*  
9 *creditors.* -- A security interest or agricultural lien is  
10 subordinate to the rights of:

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

12 (2) Except as otherwise provided in subsection (e) of this  
13 section, a person that becomes a lien creditor before the earlier  
14 of the time: (A) The security interest or agricultural lien is  
15 perfected; or (B) one of the conditions specified in section 9-  
16 203(b)(3) is met and a financing statement covering the collateral  
17 is filed.

18 (b) *Buyers that receive delivery.* -- Except as otherwise  
19 provided in subsection (e) of this section, a buyer, other than a  
20 secured party, of tangible chattel paper, tangible documents,  
21 goods, instruments or a ~~security certificate~~ certificated security  
22 takes free of a security interest or agricultural lien if the buyer  
23 gives value and receives delivery of the collateral without

1 knowledge of the security interest or agricultural lien and before  
2 it is perfected.

3 (c) *Lessees that receive delivery.* -- Except as otherwise  
4 provided in subsection (e) of this section, a lessee of goods takes  
5 free of a security interest or agricultural lien if the lessee  
6 gives value and receives delivery of the collateral without  
7 knowledge of the security interest or agricultural lien and before  
8 it is perfected.

9 (d) *Licensees and buyers of certain collateral.* -- A licensee  
10 of a general intangible or a buyer, other than a secured party, of  
11 ~~accounts, electronic chattel paper, electronic documents, general~~  
12 ~~intangibles or investment property~~ collateral other than tangible  
13 chattel paper, tangible documents, goods, instruments, or a  
14 certificated security takes free of a security interest if the  
15 licensee or buyer gives value without knowledge of the security  
16 interest and before it is perfected.

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

24 **§46-9-326. Priority of security interests created by new debtor.**

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

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

21                           PART 4. RIGHTS OF THIRD PARTIES.

22 **§46-9-406.       Discharge of account debtor; notification of**  
 23                           **assignment; identification and proof of**

1           **assignment; restrictions on assignment of**  
2           **accounts, chattel paper, payment intangibles and**  
3           **promissory notes ineffective.**

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

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

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

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

22           (3) At the option of an account debtor, if the notification  
23 notifies the account debtor to make less than the full amount of

1 any installment or other periodic payment to the assignee, even if:

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

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

5 (C) The account debtor knows that the assignment to that  
6 assignee is limited.

7 (c) Proof of assignment. Subject to subsection (h) of this  
8 section, if requested by the account debtor, an assignee shall  
9 seasonably furnish reasonable proof that the assignment has been  
10 made. Unless the assignee complies, the account debtor may  
11 discharge its obligation by paying the assignor, even if the  
12 account debtor has received a notification under subsection (a) of  
13 this section.

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

20 (1) Prohibits, restricts or requires the consent of the  
21 account debtor or person obligated on the promissory note to the  
22 assignment or transfer of, or the creation, attachment, perfection  
23 or enforcement of a security interest in, the account, chattel  
24 paper, payment intangible or promissory note; or



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

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

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

19           (1) Prohibits, restricts or requires the consent of the  
20 government, governmental body or official, or account debtor to the  
21 assignment or transfer of, or the creation, attachment, perfection  
22 or enforcement of a security interest in the account or chattel  
23 paper; or

24           (2) Provides that the assignment or transfer or the creation,

1 attachment, perfection or enforcement of the security interest may  
2 give rise to a default, breach, right of recoupment, claim,  
3 defense, termination, right of termination or remedy under the  
4 account or chattel paper.

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

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

13 (i) *Inapplicability.* -- This section does not apply to an  
14 assignment of a health-care-insurance receivable. Subsection (f)  
15 does not apply to an assignment or transfer of, or the creation,  
16 attachment, perfection or enforcement of a security interest in, a  
17 right the transfer of which is prohibited or restricted by any of  
18 the following statutes to the extent that the statute is  
19 inconsistent with subsection (f): Chapter twenty-three, article  
20 four, section eighteen, Chapter forty-six-a, article six-h, and a  
21 claim or right to receive benefits under a special needs trust as  
22 described in 42 U.S.C. §1396p(d) (4).

23 (j) *Section prevails over specified inconsistent law.* -- This  
24 section prevails over any inconsistent provision of an existing or

1 future statute, rule or regulation of this state unless the  
2 provision is contained in a statute of this state, refers expressly  
3 to this section and states that the provision prevails over this  
4 section.

5 **§46-9-408. Restrictions on assignment of promissory notes,**  
6 **health-care-insurance receivables and certain**  
7 **general intangibles ineffective.**

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

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

21 (2) Provides that the assignment or transfer or the creation,  
22 attachment or perfection of the security interest may give rise to  
23 a default, breach, right of recoupment, claim, defense,

1 termination, right of termination or remedy under the promissory  
2 note, health-care-insurance receivable or general intangible.

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

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

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

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

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

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

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

15           (3) Does not require the person obligated on the promissory  
16 note or the account debtor to recognize the security interest, pay  
17 or render performance to the secured party, or accept payment or  
18 performance from the secured party;

19           (4) Does not entitle the secured party to use or assign the  
20 debtor's rights under the promissory note, health-care-insurance  
21 receivable or general intangible, including any related information  
22 or materials furnished to the debtor in the transaction giving rise  
23 to the promissory note, health-care-insurance receivable or general  
24 intangible;

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

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

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

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

23 **§46-9-502. Contents of financing statement; record of mortgage as**  
24 **financing statement; time of filing financing**

1                   **statement.**

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

4           (1) Provides the name of the debtor;

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

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

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

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

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

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

1 a mortgage is effective, from the date of recording, as a financing  
2 statement filed as a fixture filing or as a financing statement  
3 covering as-extracted collateral or timber to be cut only if:

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

5 (2) The goods are or are to become fixtures relate to the real  
6 property described in the record or the collateral is related to  
7 the real property described in the record and is as-extracted  
8 collateral or timber to be cut;

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

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

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

17 (4) The record is duly recorded.

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

21 **§46-9-503. Name of debtor and secured party.**

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

24 (1) Except as otherwise provided in paragraph (3) of this



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

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

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

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

22 (B) ~~Indicates, in the debtor's name or otherwise, that the~~  
23 ~~debtor is a trust or is a trustee acting with respect to property~~  
24 ~~held in trust;~~ collateral is held in a trust that is not a

1 registered organization, only if the financing statement:

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

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

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

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

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

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

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

19 (5) If the debtor is an individual to whom subdivision (4)  
20 does not apply, only if the financing statement provides the  
21 individual name of the debtor or the surname and first personal  
22 name of the debtor; and

23 ~~(4)~~ (6) In other cases:

24 (A) If the debtor has a name, only if ~~it~~ the financing

1 statement provides the ~~individual or~~ organizational name of the  
2 debtor; and

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

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

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

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

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

18 (d) *Representative capacity.*-- Failure to indicate the  
19 representative capacity of a secured party or representative of a  
20 secured party does not affect the sufficiency of a financing  
21 statement.

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

1       (f) Name of decedent. -- The name of the decedent indicated  
2 on the order appointing the personal representative of the decedent  
3 issued by the court having jurisdiction over the collateral is  
4 sufficient as the "name of the decedent" under subdivision (a) (2)  
5 of this section.

6       (g) Multiple driver's licenses. -- If this state has issued  
7 to an individual more than one driver's license of a kind described  
8 in subdivision (a) (4) of this section, the one that was issued most  
9 recently is the one to which subdivision (a) (4) refers.

10       (h) Definition. -- In this section, the "name of the settlor  
11 or testator" means:

12       (1) If the settlor is a registered organization, the name that  
13 is stated to be the settlor's name on the public organic record  
14 most recently filed with or issued or enacted by the settlor's  
15 jurisdiction of organization which purports to state, amend, or  
16 restate the settlor's name; or

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

19 **§46-9-507. Effect of certain events on effectiveness of financing**  
20 **statement.**

21       (a) Disposition. -- A filed financing statement remains  
22 effective with respect to collateral that is sold, exchanged,  
23 leased, licensed or otherwise disposed of and in which a security

1 interest or agricultural lien continues, even if the secured party  
2 knows of or consents to the disposition.

3 (b) *Information becoming seriously misleading.* -- Except as  
4 otherwise provided in subsection (c) of this section and section 9-  
5 508, a financing statement is not rendered ineffective if, after  
6 the financing statement is filed, the information provided in the  
7 financing statement becomes seriously misleading under section 9-  
8 506.

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

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

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

1 **§46-9-515. Duration and effectiveness of financing statement;**  
2 **effect of lapsed financing statement.**

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

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

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

1 collateral for value.

2       (d) *When continuation statement may be filed.* -- A  
3 continuation statement may be filed only within six months before  
4 the expiration of the five-year period specified in subsection (a)  
5 of this section or the thirty-year period specified in subsection  
6 (b) of this section, whichever is applicable.

7       (e) *Effect of filing continuation statement.* -- Except as  
8 otherwise provided in section 9-510, upon timely filing of a  
9 continuation statement, the effectiveness of the initial financing  
10 statement continues for a period of five years commencing on the  
11 day on which the financing statement would have become ineffective  
12 in the absence of the filing. Upon the expiration of the five-year  
13 period, the financing statement lapses in the same manner as  
14 provided in subsection (c) of this section, unless, before the  
15 lapse, another continuation statement is filed pursuant to  
16 subsection (d) of this section. Succeeding continuation statements  
17 may be filed in the same manner to continue the effectiveness of  
18 the initial financing statement.

19       (f) *Transmitting utility financing statement.* -- If a debtor  
20 is a transmitting utility and a filed initial financing statement  
21 so indicates, the financing statement is effective until a  
22 termination statement is filed.

23       (g) *Record of mortgage as financing statement.* -- A record of  
24 a mortgage that is effective as a financing statement filed as a

1 fixture filing under section 9-502(c) remains effective as a  
2 financing statement filed as a fixture filing until the mortgage is  
3 released or satisfied of record or its effectiveness otherwise  
4 terminates as to the real property.

5 **§46-9-516. What constitutes filing; effectiveness of filing.**

6 (a) *What constitutes filing.* -- Except as otherwise provided  
7 in subsection (b) of this section, communication of a record to a  
8 filing office and tender of the filing fee or acceptance of the  
9 record by the filing office constitutes filing.

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

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

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

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

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

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

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

24 (ii) Identifies an initial financing statement whose



1 effectiveness has lapsed under section 9-515;

2 (C) In the case of an initial financing statement that  
3 provides the name of a debtor identified as an individual or an  
4 amendment that provides a name of a debtor identified as an  
5 individual which was not previously provided in the financing  
6 statement to which the record relates, the record does not identify  
7 the debtor's ~~last name~~ surname; or

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

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

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

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

20 (B) Indicate whether the name provided as the name of the  
21 debtor is the name of an individual or an organization; ~~or~~

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

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

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

2 ~~(iii) An organizational identification number for the debtor~~

3 ~~or indicate that the debtor has none;~~

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

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

10 (c) *Rules applicable to subsection (b).* -- For purposes of  
11 subsection (b):

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

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

18 (d) *Refusal to accept record; record effective as filed*  
19 *record.* -- A record that is communicated to the filing office with  
20 tender of the filing fee, but which the filing office refuses to  
21 accept for a reason other than one set forth in subsection (b) of  
22 this section, is effective as a filed record except as against a  
23 purchaser of the collateral which gives value in reasonable  
24 reliance upon the absence of the record from the files.

1           (e) *Administrative review.* -- If the Secretary of State  
2 determines that a financing statement which identifies a public  
3 official or employee as a debtor is fraudulent or that an  
4 individual debtor and an individual secured party would appear to  
5 be the same individual on the financing statement or that the  
6 individual debtor claims to be a transmitting utility, without  
7 supporting documents, the Secretary may commence administrative  
8 proceedings to remove the statement from its records in accordance  
9 with the provisions of article five, chapter twenty-nine-a of this  
10 code.

11           (1) Upon the commencement of proceedings pursuant to this  
12 subsection, the Secretary of State shall identify the financing  
13 statement in its records as subject to administrative review and  
14 publish a notice in the *West Virginia Register* regarding the  
15 proceedings.

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

22           (3) If upon the completion of administrative review, it is  
23 determined that the filing of a financing statement was fraudulent,  
24 the filing party shall be assessed all costs incurred by the

1 Secretary in reaching a final determination, including  
2 reimbursement for all costs of the hearing. The filing party may  
3 also be subject to a civil penalty not exceeding \$500 per  
4 fraudulent filing. If upon completion of administrative review or  
5 any subsequent appeal of a decision of the Secretary of State, it  
6 is determined that a filing subject to appeal is not fraudulent,  
7 the secretary or court may award the prevailing party reasonable  
8 costs and expenses, including attorney fees.

9 (4) The Secretary of State shall annually submit a report to  
10 the Legislature regarding actions taken against fraudulent filings  
11 pursuant to this section which identifies the number and  
12 characteristics of such proceedings, identifies any creditors found  
13 to have made fraudulent filings, describes proceedings initiated by  
14 the secretary in which it is ultimately determined that fraudulent  
15 filings did not occur, describes the number and type of complaints  
16 received by the secretary in which it is alleged that fraudulent  
17 filings have occurred, and describes the actions taken by the  
18 secretary to investigate complaints concerning allegedly fraudulent  
19 filings and the results of the investigations.

20 (5) A decision by the secretary to remove a financing  
21 statement determined to have been fraudulently filed subject to  
22 appeal *de novo* to the circuit court of Kanawha County. Pending the  
23 outcome of an appeal, the financing statement may not be removed  
24 from the records of the Secretary, but shall be identified in the

1 records as having been adjudicated to be fraudulent, subject to a  
2 pending appeal by the putative creditor.

3 (6) A financing statement filed by a regulated financial  
4 institution is not subject to the provisions of this section. For  
5 the purposes of this section, a regulated financial institution is  
6 a bank, bank and trust company, trust company, savings bank,  
7 savings association, building and loan association, credit union,  
8 consumer finance company, insurance company, investment company,  
9 mortgage lender or broker, securities broker, dealer or  
10 underwriter, or other institution chartered, licensed, registered  
11 or otherwise authorized under federal law, the law of this state or  
12 any other state, to engage in secured lending.

13 **§46-9-518. Claim concerning inaccurate or wrongfully filed record.**

14 (a) ~~Correction statement.~~ Statement with respect to record  
15 indexed under person's name. -- A person may file in the filing  
16 office ~~a correction~~ an information statement with respect to a  
17 record indexed there under the person's name if the person believes  
18 that the record is inaccurate or was wrongfully filed.

19 (b) ~~Sufficiency~~ Contents of ~~correction~~ statement under  
20 subsection (a). -- ~~A correction~~ An information statement under  
21 subsection (a) of this section must:

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

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

1 (B) If the ~~correction~~ information statement relates to a  
2 record filed or recorded in a filing office described in section 9-  
3 501(a)(1), the date and time that the initial financing statement  
4 was filed or recorded and the information specified in section 9-  
5 502(b);

6 (2) Indicate that it is ~~a correction~~ an information statement;  
7 and

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

12 (c) Statement by secured party of record. -- A person may  
13 file in the filing office an information statement with respect to  
14 a record filed there if the person is a secured party of record  
15 with respect to the financing statement to which the record relates  
16 and believes that the person that filed the record was not entitled  
17 to do so under section 9-509(d).

18 (d) Contents of statement under subsection (c). -- An  
19 information statement under subsection (c) of this section must:

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

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

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

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

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

4 (3) Provide the basis for the person's belief that the person  
 5 that filed the record was not entitled to do so under Section 9-  
 6 509(d).

7 ~~(c)~~ (e) Record not affected by ~~correction~~ information  
 8 statement.-- The filing of a ~~correction~~ an information statement  
 9 does not affect the effectiveness of an initial financing statement  
 10 or other filed record.

11 **§46-9-607. Collection and enforcement by secured party.**

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

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

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

19 (3) May enforce the obligations of an account debtor or other  
 20 person obligated on collateral and exercise the rights of the  
 21 debtor with respect to the obligation of the account debtor or  
 22 other person obligated on collateral to make payment or otherwise  
 23 render performance to the debtor, and with respect to any property  
 24 that secures the obligations of the account debtor or other person

1 obligated on the collateral;

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

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

10       (b) *Nonjudicial enforcement of mortgage.* -- If necessary to  
11 enable a secured party to exercise under subsection (a)(3) of this  
12 section the right of a debtor to enforce a mortgage nonjudicially,  
13 the secured party may record in the office in which a record of the  
14 mortgage is recorded:

15       (1) A copy of the security agreement that creates or provides  
16 for a security interest in the obligation secured by the mortgage;  
17 and

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

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

22       (B) The secured party is entitled to enforce the mortgage  
23 nonjudicially.

24       (c) *Commercially reasonable collection and enforcement.* -- A



1 secured party shall proceed in a commercially reasonable manner if  
2 the secured party:

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

5 (2) Is entitled to charge back uncollected collateral or  
6 otherwise to full or limited recourse against the debtor or a  
7 secondary obligor.

8 (d) *Expenses of collection and enforcement.* -- A secured  
9 party may deduct from the collections made pursuant to subsection  
10 (c) of this section reasonable expenses of collection and  
11 enforcement, including reasonable attorney's fees and legal  
12 expenses incurred by the secured party.

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

16 SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

17 **§46-9-625. Remedies for secured party's failure to comply with**  
18 **article.**

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

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

7           (c) *Persons entitled to recover damages; statutory damages ~~in~~*  
8 ~~*consumer goods transaction*~~ *if collateral is consumer goods.* --  
9 Except as otherwise provided in section 9-628:

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

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

20           (d) *Recovery when deficiency eliminated or reduced.* -- A  
21 debtor whose deficiency is eliminated under section 9-626 may  
22 recover damages for the loss of any surplus. However, a debtor or  
23 secondary obligor whose deficiency is eliminated or reduced under  
24 section 9-626 may not otherwise recover under subsection (b) of

1 this section for noncompliance with the provisions of this part  
2 relating to collection, enforcement, disposition or acceptance.

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

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

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

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

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

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

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

18 (f) *Statutory damages: noncompliance with section 9-210.* --  
19 A debtor or consumer obligor may recover damages under subsection  
20 (b) of this section and, in addition, \$500 in each case from a  
21 person that, without reasonable cause, fails to comply with a  
22 request under section 9-210. A recipient of a request under  
23 section 9-210 which never claimed an interest in the collateral or  
24 obligations that are the subject of a request under that section

1 has a reasonable excuse for failure to comply with the request  
2 within the meaning of this subsection.

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

10 PART 8. TRANSITION PROVISIONS FOR 2012 AMENDMENTS.

11 **§46-9-801. Effective date.**

12 The amendments to this article enacted by the Legislature  
13 during the 2012 Regular Legislative Session take effect on July 1,  
14 2013.

15 **§46-9-802. Savings clause.**

16 (a) *Preeffective-date transactions or liens.* -- Except as  
17 otherwise provided in this part, this article applies to a  
18 transaction or lien within its scope, even if the transaction or  
19 lien was entered into or created before the amendments to this  
20 article during the 2012 Regular Legislative Session take effect as  
21 provided in section 9-801.

22 (b) *Preeffective-date proceedings.* -- This article does not  
23 affect an action, case, or proceeding commenced before the

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

3 **§46-9-803. Security interest perfected before effective date.**

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

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

1 **§46-9-804. Security interest unperfected before effective date.**

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

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

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

13 **§46-9-805. Effectiveness of action taken before effective date.**

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

20 (b) *When preeffective-date filing becomes ineffective.* --  
21 This article does not render ineffective an effective financing  
22 statement that, before the amendments to this article during the  
23 2011 Regular Legislative Session take effect, is filed and

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

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

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

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

15 (B) June 30, 2018.

16 (c) *Continuation statement.* -- The filing of a continuation  
17 statement after the amendments to this article during the 2012  
18 Regular Legislative Session take effect does not continue the  
19 effectiveness of a financing statement filed before those  
20 amendments to the article take effect. However, upon the timely  
21 filing of a continuation statement after the amendments to this  
22 article during the 2012 Regular Legislative session take effect and  
23 in accordance with the law of the jurisdiction governing perfection  
24 as provided in this article as amended during the 2012 Regular

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

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

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



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

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

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

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

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

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

22 (b) *Period of continued effectiveness.* -- The filing of an  
23 initial financing statement under subsection (a) continues the

1 effectiveness of the preeffective-date financing statement:

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

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

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

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

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

23       (3) Indicate that the preeffective-date financing statement  
24 remains effective.

1 **§46-9-807. Amendment of preeffective-date financing statement.**

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

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

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

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

24 (2) An amendment is filed in the office specified in section

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

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

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

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

22 **§46-9-808. Person entitled to file initial financing statement or**  
23 **continuation statement.**

24 A person may file an initial financing statement or a

1 continuation statement under this part if:

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

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

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

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

9 **§46-9-809. Priority.**

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

NOTE: The purpose of this bill is to generally amend the Uniform Commercial Code; to improve the system for filing financing statements; provide greater protection for an existing secured party having a security interest in after-acquired property upon relocation of debtor; and to reform the correction statement process. The bill makes technical changes and provides transition rules.

§46-9-801, §46-9-802, §46-9-803, §46-9-804, §46-9-805, §46-9-806, §46-9-807, §46-9-808 and §46-9-809 are new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

2012R1471SI