

1                                   **UNIFORM COMMERCIAL CODE - ARTICLE 9**

2   **- SECURED TRANSACTIONS**

3   2000 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Lyle W. Hillyard**

6 AN ACT RELATING TO THE UNIFORM COMMERCIAL CODE; REPEALING THE  
7 FORMER CHAPTER 9; ADOPTING THE NEW UNIFORM ARTICLE 9 WITH CHANGES;  
8 INCLUDING GENERAL PROVISIONS; ADDRESSING EFFECTIVENESS OF SECURITY  
9 AGREEMENTS; ADDRESSING ATTACHMENT OF SECURITY INTERESTS; ADDRESSING  
10 RIGHTS OF PARTIES TO SECURITY AGREEMENTS; ADDRESSING PERFECTION AND  
11 PRIORITY; ADDRESSING RIGHTS OF THIRD PARTIES; ADDRESSING FILING;  
12 ADDRESSING DEFAULT; ADDRESSING THE TRANSITION FROM THE OLD TO THE  
13 NEW LAW; MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE DATE.

14 This act affects sections of Utah Code Annotated 1953 as follows:

15 AMENDS:

16                   **15-4-6.5**, as enacted by Chapter 257, Laws of Utah 1991

17                   **25-6-9**, as enacted by Chapter 59, Laws of Utah 1988

18                   **31A-22-419**, as last amended by Chapter 204, Laws of Utah 1986

19                   **38-7-2.5**, as enacted by Chapter 167, Laws of Utah 1996

20                   **38-8-2**, as last amended by Chapter 66, Laws of Utah 1984

21                   **38-12-102**, as enacted by Chapter 323, Laws of Utah 1995

22                   **38-12-103**, as enacted by Chapter 323, Laws of Utah 1995

23                   **41-1a-223**, as renumbered and amended by Chapter 1, Laws of Utah 1992

24                   **41-1a-601**, as renumbered and amended by Chapter 1, Laws of Utah 1992

25                   **41-1a-606**, as renumbered and amended by Chapter 1, Laws of Utah 1992

26                   **57-3-102**, as renumbered and amended by Chapter 61 and last amended by Chapter 85,  
27 Laws of Utah 1998

28           **57-16-9**, as enacted by Chapter 178, Laws of Utah 1981  
29           **58-37-13**, as last amended by Chapters 198 and 294, Laws of Utah 1996  
30           **70A-1-105**, as last amended by Chapter 241, Laws of Utah 1997  
31           **70A-1-201**, as last amended by Chapter 13, Laws of Utah 1998  
32           **70A-1-206**, as last amended by Chapter 204, Laws of Utah 1996  
33           **70A-2-103**, as last amended by Chapter 10, Laws of Utah 1997  
34           **70A-2-210**, as enacted by Chapter 154, Laws of Utah 1965  
35           **70A-2-326**, as enacted by Chapter 154, Laws of Utah 1965  
36           **70A-2-502**, as enacted by Chapter 154, Laws of Utah 1965  
37           **70A-2-716**, as enacted by Chapter 154, Laws of Utah 1965  
38           **70A-2a-103**, as last amended by Chapter 237, Laws of Utah 1993  
39           **70A-2a-303**, as last amended by Chapter 237, Laws of Utah 1993  
40           **70A-2a-307**, as last amended by Chapter 237, Laws of Utah 1993  
41           **70A-2a-309**, as last amended by Chapter 237, Laws of Utah 1993  
42           **70A-3-605**, as repealed and reenacted by Chapter 237, Laws of Utah 1993  
43           **70A-4-210**, as repealed and reenacted by Chapter 237, Laws of Utah 1993  
44           **70A-5-114**, as repealed and reenacted by Chapter 241, Laws of Utah 1997  
45           **70A-7-503**, as enacted by Chapter 154, Laws of Utah 1965  
46           **70A-8-102**, as repealed and reenacted by Chapter 204, Laws of Utah 1996  
47           **70A-8-105**, as repealed and reenacted by Chapter 204, Laws of Utah 1996  
48           **70A-8-109**, as enacted by Chapter 204, Laws of Utah 1996  
49           **70A-8-301**, as repealed and reenacted by Chapter 204, Laws of Utah 1996  
50           **70A-8-302**, as repealed and reenacted by Chapter 204, Laws of Utah 1996  
51           **70A-8-510**, as enacted by Chapter 204, Laws of Utah 1996

52 ENACTS:

53           **57-3-108**, Utah Code Annotated 1953  
54           **70A-5-120**, Utah Code Annotated 1953  
55           **70A-9a-101**, Utah Code Annotated 1953  
56           **70A-9a-102**, Utah Code Annotated 1953  
57           **70A-9a-102.1**, Utah Code Annotated 1953  
58           **70A-9a-103**, Utah Code Annotated 1953

- 59            **70A-9a-104**, Utah Code Annotated 1953
- 60            **70A-9a-105**, Utah Code Annotated 1953
- 61            **70A-9a-106**, Utah Code Annotated 1953
- 62            **70A-9a-107**, Utah Code Annotated 1953
- 63            **70A-9a-108**, Utah Code Annotated 1953
- 64            **70A-9a-109**, Utah Code Annotated 1953
- 65            **70A-9a-110**, Utah Code Annotated 1953
- 66            **70A-9a-201**, Utah Code Annotated 1953
- 67            **70A-9a-202**, Utah Code Annotated 1953
- 68            **70A-9a-203**, Utah Code Annotated 1953
- 69            **70A-9a-204**, Utah Code Annotated 1953
- 70            **70A-9a-205**, Utah Code Annotated 1953
- 71            **70A-9a-206**, Utah Code Annotated 1953
- 72            **70A-9a-207**, Utah Code Annotated 1953
- 73            **70A-9a-208**, Utah Code Annotated 1953
- 74            **70A-9a-209**, Utah Code Annotated 1953
- 75            **70A-9a-210**, Utah Code Annotated 1953
- 76            **70A-9a-301**, Utah Code Annotated 1953
- 77            **70A-9a-302**, Utah Code Annotated 1953
- 78            **70A-9a-303**, Utah Code Annotated 1953
- 79            **70A-9a-304**, Utah Code Annotated 1953
- 80            **70A-9a-305**, Utah Code Annotated 1953
- 81            **70A-9a-306**, Utah Code Annotated 1953
- 82            **70A-9a-307**, Utah Code Annotated 1953
- 83            **70A-9a-308**, Utah Code Annotated 1953
- 84            **70A-9a-309**, Utah Code Annotated 1953
- 85            **70A-9a-310**, Utah Code Annotated 1953
- 86            **70A-9a-311**, Utah Code Annotated 1953
- 87            **70A-9a-312**, Utah Code Annotated 1953
- 88            **70A-9a-313**, Utah Code Annotated 1953
- 89            **70A-9a-314**, Utah Code Annotated 1953

90           **70A-9a-315**, Utah Code Annotated 1953  
91           **70A-9a-316**, Utah Code Annotated 1953  
92           **70A-9a-317**, Utah Code Annotated 1953  
93           **70A-9a-318**, Utah Code Annotated 1953  
94           **70A-9a-319**, Utah Code Annotated 1953  
95           **70A-9a-320**, Utah Code Annotated 1953  
96           **70A-9a-321**, Utah Code Annotated 1953  
97           **70A-9a-322**, Utah Code Annotated 1953  
98           **70A-9a-323**, Utah Code Annotated 1953  
99           **70A-9a-324**, Utah Code Annotated 1953  
100          **70A-9a-325**, Utah Code Annotated 1953  
101          **70A-9a-326**, Utah Code Annotated 1953  
102          **70A-9a-327**, Utah Code Annotated 1953  
103          **70A-9a-328**, Utah Code Annotated 1953  
104          **70A-9a-329**, Utah Code Annotated 1953  
105          **70A-9a-330**, Utah Code Annotated 1953  
106          **70A-9a-331**, Utah Code Annotated 1953  
107          **70A-9a-332**, Utah Code Annotated 1953  
108          **70A-9a-333**, Utah Code Annotated 1953  
109          **70A-9a-334**, Utah Code Annotated 1953  
110          **70A-9a-335**, Utah Code Annotated 1953  
111          **70A-9a-336**, Utah Code Annotated 1953  
112          **70A-9a-337**, Utah Code Annotated 1953  
113          **70A-9a-338**, Utah Code Annotated 1953  
114          **70A-9a-339**, Utah Code Annotated 1953  
115          **70A-9a-340**, Utah Code Annotated 1953  
116          **70A-9a-341**, Utah Code Annotated 1953  
117          **70A-9a-342**, Utah Code Annotated 1953  
118          **70A-9a-401**, Utah Code Annotated 1953  
119          **70A-9a-402**, Utah Code Annotated 1953  
120          **70A-9a-403**, Utah Code Annotated 1953

- 121            **70A-9a-404**, Utah Code Annotated 1953
- 122            **70A-9a-405**, Utah Code Annotated 1953
- 123            **70A-9a-406**, Utah Code Annotated 1953
- 124            **70A-9a-407**, Utah Code Annotated 1953
- 125            **70A-9a-408**, Utah Code Annotated 1953
- 126            **70A-9a-409**, Utah Code Annotated 1953
- 127            **70A-9a-501**, Utah Code Annotated 1953
- 128            **70A-9a-502**, Utah Code Annotated 1953
- 129            **70A-9a-503**, Utah Code Annotated 1953
- 130            **70A-9a-504**, Utah Code Annotated 1953
- 131            **70A-9a-505**, Utah Code Annotated 1953
- 132            **70A-9a-506**, Utah Code Annotated 1953
- 133            **70A-9a-507**, Utah Code Annotated 1953
- 134            **70A-9a-508**, Utah Code Annotated 1953
- 135            **70A-9a-509**, Utah Code Annotated 1953
- 136            **70A-9a-510**, Utah Code Annotated 1953
- 137            **70A-9a-511**, Utah Code Annotated 1953
- 138            **70A-9a-512**, Utah Code Annotated 1953
- 139            **70A-9a-513**, Utah Code Annotated 1953
- 140            **70A-9a-514**, Utah Code Annotated 1953
- 141            **70A-9a-515**, Utah Code Annotated 1953
- 142            **70A-9a-516**, Utah Code Annotated 1953
- 143            **70A-9a-517**, Utah Code Annotated 1953
- 144            **70A-9a-518**, Utah Code Annotated 1953
- 145            **70A-9a-519**, Utah Code Annotated 1953
- 146            **70A-9a-520**, Utah Code Annotated 1953
- 147            **70A-9a-521**, Utah Code Annotated 1953
- 148            **70A-9a-522**, Utah Code Annotated 1953
- 149            **70A-9a-523**, Utah Code Annotated 1953
- 150            **70A-9a-524**, Utah Code Annotated 1953
- 151            **70A-9a-525**, Utah Code Annotated 1953

152           **70A-9a-526**, Utah Code Annotated 1953  
153           **70A-9a-527**, Utah Code Annotated 1953  
154           **70A-9a-601**, Utah Code Annotated 1953  
155           **70A-9a-602**, Utah Code Annotated 1953  
156           **70A-9a-603**, Utah Code Annotated 1953  
157           **70A-9a-604**, Utah Code Annotated 1953  
158           **70A-9a-605**, Utah Code Annotated 1953  
159           **70A-9a-606**, Utah Code Annotated 1953  
160           **70A-9a-607**, Utah Code Annotated 1953  
161           **70A-9a-608**, Utah Code Annotated 1953  
162           **70A-9a-609**, Utah Code Annotated 1953  
163           **70A-9a-610**, Utah Code Annotated 1953  
164           **70A-9a-611**, Utah Code Annotated 1953  
165           **70A-9a-612**, Utah Code Annotated 1953  
166           **70A-9a-613**, Utah Code Annotated 1953  
167           **70A-9a-614**, Utah Code Annotated 1953  
168           **70A-9a-615**, Utah Code Annotated 1953  
169           **70A-9a-616**, Utah Code Annotated 1953  
170           **70A-9a-617**, Utah Code Annotated 1953  
171           **70A-9a-618**, Utah Code Annotated 1953  
172           **70A-9a-619**, Utah Code Annotated 1953  
173           **70A-9a-620**, Utah Code Annotated 1953  
174           **70A-9a-621**, Utah Code Annotated 1953  
175           **70A-9a-622**, Utah Code Annotated 1953  
176           **70A-9a-623**, Utah Code Annotated 1953  
177           **70A-9a-624**, Utah Code Annotated 1953  
178           **70A-9a-625**, Utah Code Annotated 1953  
179           **70A-9a-626**, Utah Code Annotated 1953  
180           **70A-9a-627**, Utah Code Annotated 1953  
181           **70A-9a-628**, Utah Code Annotated 1953  
182           **70A-9a-701**, Utah Code Annotated 1953

- 183           **70A-9a-702**, Utah Code Annotated 1953
- 184           **70A-9a-703**, Utah Code Annotated 1953
- 185           **70A-9a-704**, Utah Code Annotated 1953
- 186           **70A-9a-705**, Utah Code Annotated 1953
- 187           **70A-9a-706**, Utah Code Annotated 1953
- 188           **70A-9a-707**, Utah Code Annotated 1953
- 189           **70A-9a-708**, Utah Code Annotated 1953
- 190           **70A-9a-709**, Utah Code Annotated 1953
- 191    REPEALS AND REENACTS:
- 192           **70A-5-118**, as enacted by Chapter 241, Laws of Utah 1997
- 193           **70A-5-119**, as enacted by Chapter 241, Laws of Utah 1997
- 194    REPEALS:
- 195           **70A-9-101**, as enacted by Chapter 154, Laws of Utah 1965
- 196           **70A-9-102**, as last amended by Chapter 172, Laws of Utah 1996
- 197           **70A-9-103**, as last amended by Chapter 241, Laws of Utah 1997
- 198           **70A-9-104**, as last amended by Chapter 241, Laws of Utah 1997
- 199           **70A-9-105**, as last amended by Chapter 241, Laws of Utah 1997
- 200           **70A-9-106**, as last amended by Chapter 241, Laws of Utah 1997
- 201           **70A-9-107**, as enacted by Chapter 154, Laws of Utah 1965
- 202           **70A-9-108**, as enacted by Chapter 154, Laws of Utah 1965
- 203           **70A-9-109**, as enacted by Chapter 154, Laws of Utah 1965
- 204           **70A-9-110**, as enacted by Chapter 154, Laws of Utah 1965
- 205           **70A-9-112**, as enacted by Chapter 154, Laws of Utah 1965
- 206           **70A-9-113**, as last amended by Chapter 5, Laws of Utah 1991
- 207           **70A-9-114**, as enacted by Chapter 272, Laws of Utah 1977
- 208           **70A-9-115**, as enacted by Chapter 204, Laws of Utah 1996
- 209           **70A-9-116**, as enacted by Chapter 204, Laws of Utah 1996
- 210           **70A-9-201**, as enacted by Chapter 154, Laws of Utah 1965
- 211           **70A-9-202**, as enacted by Chapter 154, Laws of Utah 1965
- 212           **70A-9-203**, as last amended by Chapter 204, Laws of Utah 1996
- 213           **70A-9-204**, as enacted by Chapter 272, Laws of Utah 1977

214           **70A-9-205**, as last amended by Chapter 272, Laws of Utah 1977  
215           **70A-9-206**, as enacted by Chapter 154, Laws of Utah 1965  
216           **70A-9-207**, as enacted by Chapter 154, Laws of Utah 1965  
217           **70A-9-208**, as enacted by Chapter 154, Laws of Utah 1965  
218           **70A-9-301**, as last amended by Chapter 204, Laws of Utah 1996  
219           **70A-9-302**, as last amended by Chapter 204, Laws of Utah 1996  
220           **70A-9-303**, as last amended by Chapter 204, Laws of Utah 1996  
221           **70A-9-304**, as last amended by Chapter 241, Laws of Utah 1997  
222           **70A-9-305**, as last amended by Chapter 241, Laws of Utah 1997  
223           **70A-9-306**, as last amended by Chapter 204, Laws of Utah 1996  
224           **70A-9-307**, as last amended by Chapter 114, Laws of Utah 1986  
225           **70A-9-308**, as enacted by Chapter 272, Laws of Utah 1977  
226           **70A-9-309**, as last amended by Chapter 204, Laws of Utah 1996  
227           **70A-9-310**, as enacted by Chapter 154, Laws of Utah 1965  
228           **70A-9-311**, as enacted by Chapter 154, Laws of Utah 1965  
229           **70A-9-312**, as last amended by Chapter 204, Laws of Utah 1996  
230           **70A-9-313**, as last amended by Chapter 5, Laws of Utah 1991  
231           **70A-9-314**, as enacted by Chapter 154, Laws of Utah 1965  
232           **70A-9-315**, as enacted by Chapter 154, Laws of Utah 1965  
233           **70A-9-316**, as enacted by Chapter 154, Laws of Utah 1965  
234           **70A-9-317**, as enacted by Chapter 154, Laws of Utah 1965  
235           **70A-9-318**, as last amended by Chapter 197, Laws of Utah 1990  
236           **70A-9-400**, as last amended by Chapter 92, Laws of Utah 1987  
237           **70A-9-401**, as last amended by Chapter 66, Laws of Utah 1984  
238           **70A-9-402**, as last amended by Chapter 232, Laws of Utah 1999  
239           **70A-9-403**, as last amended by Chapter 172, Laws of Utah 1996  
240           **70A-9-404**, as last amended by Chapter 147, Laws of Utah 1994  
241           **70A-9-405**, as last amended by Chapter 313, Laws of Utah 1994  
242           **70A-9-406**, as last amended by Chapter 313, Laws of Utah 1994  
243           **70A-9-407**, as last amended by Chapter 313, Laws of Utah 1994  
244           **70A-9-408**, as last amended by Chapter 272, Laws of Utah 1977

245           **70A-9-409**, as last amended by Chapter 178, Laws of Utah 1985  
246           **70A-9-501**, as last amended by Chapter 272, Laws of Utah 1977  
247           **70A-9-502**, as last amended by Chapter 272, Laws of Utah 1977  
248           **70A-9-503**, as enacted by Chapter 154, Laws of Utah 1965  
249           **70A-9-504**, as last amended by Chapter 272, Laws of Utah 1977  
250           **70A-9-505**, as last amended by Chapter 272, Laws of Utah 1977  
251           **70A-9-506**, as enacted by Chapter 154, Laws of Utah 1965  
252           **70A-9-507**, as enacted by Chapter 154, Laws of Utah 1965

253 *Be it enacted by the Legislature of the state of Utah:*

254           Section 1. Section **15-4-6.5** is amended to read:

255           **15-4-6.5. Divorce or separate maintenance of co-obligors.**

256           (1) On the entering of a decree of divorce or separate maintenance of joint debtors in  
257 contract, the claim of a creditor remains unchanged unless otherwise provided by the contract or  
258 until a new contract is entered into between the creditor and the debtors individually.

259           (2) In addition to ~~[his]~~ the creditor's duties as a secured party under ~~[Section 70A-9-112]~~  
260 Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions, and ~~[his]~~ the creditor's  
261 duties as a trustee or beneficiary of a trust deed under Title 57, Chapter 1, Conveyances, a creditor,  
262 who has been notified by service of a copy of a court order under ~~[Sections]~~ Section 30-3-5 or  
263 30-4-3 that the debtors are divorced or living separately under an order for separate maintenance,  
264 and who has been expressly advised of the separate, current addresses of the debtors either by the  
265 court order or by other written notice, shall provide to the debtors individually all statements,  
266 notices, and other similar correspondence required by law or by the contract.

267           (3) (a) Except as provided in Subsection (3)(b), a creditor may continue to make negative  
268 credit reports of joint debtors under Section 70C-7-107 and may report the repayment practices or  
269 credit history of joint debtors under Title 7, Chapter 14, Credit Information Exchange.

270           (b) With respect to a debtor who is not ordered by the court under Sections 30-3-5 or  
271 30-4-3 to make payments on a joint obligation, no negative credit report under Section 70C-7-107,  
272 and no report of the debtor's repayment practices or credit history under Title 7, Chapter 14, Credit  
273 Information Exchange, may be made regarding the joint obligation after the creditor is served  
274 notice of the court's order as required under Subsection (2), unless the creditor has made a demand  
275 on the debtor for payment because of the failure to make payments by the other debtor, who is

276 ordered by the court to make the payments.

277 Section 2. Section **25-6-9** is amended to read:

278 **25-6-9. Good faith transfer.**

279 (1) A transfer or obligation is not voidable under Subsection 25-6-5 (1)(a) against a person  
280 who took in good faith and for a reasonably equivalent value or against any subsequent transferee  
281 or obligee.

282 (2) Except as otherwise provided in this section, to the extent a transfer is voidable in an  
283 action by a creditor under Subsection 25-6-8 (1)(a), the creditor may recover judgment for the  
284 value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to satisfy  
285 the creditor's claim, whichever is less. The judgment may be entered against:

286 (a) the first transferee of the asset or the person for whose benefit the transfer was made;

287 or

288 (b) any subsequent transferee other than a good faith transferee who took for value or from  
289 any subsequent transferee.

290 (3) If the judgment under Subsection (2) is based upon the value of the asset transferred,  
291 the judgment must be for an amount equal to the value of the asset at the time of the transfer,  
292 subject to an adjustment as equities may require.

293 (4) Notwithstanding voidability of a transfer or an obligation under this chapter, a  
294 good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the  
295 transfer or obligation, to:

296 (a) a lien on or a right to retain any interest in the asset transferred;

297 (b) enforcement of any obligation incurred; or

298 (c) a reduction in the amount of the liability on the judgment.

299 (5) A transfer is not voidable under Subsection 25-6-5 (1)(b) or Section 25-6-6 if the  
300 transfer results from:

301 (a) termination of a lease upon default by the debtor when the termination is pursuant to  
302 the lease and applicable law; or

303 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a, [~~the~~]  
304 Uniform Commercial Code -- Secured Transactions.

305 (6) A transfer is not voidable under Subsection 25-6-6 (2):

306 (a) to the extent the insider gave new value to or for the benefit of the debtor after the

307 transfer was made unless the new value was secured by a valid lien;

308 (b) if made in the ordinary course of business or financial affairs of the debtor and the  
309 insider; or

310 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured  
311 present value given for that purpose as well as an antecedent debt of the debtor.

312 Section 3. Section **31A-22-419** is amended to read:

313 **31A-22-419. Insurer's purchase of and loans on policies.**

314 Any life insurer may purchase for its own benefit any policy of insurance or other  
315 obligation of the company and any claim of its policyholders. The insurer may also lend to the  
316 holders of policies of the company a sum which does not exceed the sum of the cash value of the  
317 policies and the surplus or dividend additions to the policies. The policies and all additions to  
318 them shall be security for payment of the loan. An insurer's security interest in a policy under this  
319 section need not be filed under Title 70A, Chapter 9a, Uniform Commercial Code -- Secured  
320 Transactions, to be perfected.

321 Section 4. Section **38-7-2.5** is amended to read:

322 **38-7-2.5. Failure to notify -- Effect -- Penalty.**

323 (1) (a) A person who fails to meet the notice requirements of Subsections 38-7-2(1) and  
324 (2) is precluded from receiving an award of costs and attorneys' fees from the person against whom  
325 a notice of lien has been filed in an action to enforce the lien if costs and attorneys' fees are  
326 authorized by contract or statute.

327 (b) Subsection (1)(a) does not create a right to costs and attorneys' fees.

328 (2) In addition to the penalties provided in Subsection (1)(a), a lien claimant who, within  
329 20 days from the date of receiving notice of noncompliance with the notice requirements of  
330 Subsection 38-7-2(1) or (2), willfully refuses to release the notice of lien or record the lien in  
331 compliance with Section 38-7-2 is liable to the person against whom the notice of lien was filed  
332 for \$1,000 or for treble damages, whichever is greater.

333 (3) Failure to meet the notice requirements of Subsections 38-7-2(1) and (2) does not:

334 (a) invalidate any lien arising at common law or in equity or by any statute of this state;

335 or

336 (b) affect the rules of priority provided in Title 70A, Chapter 9a, [~~Part 3~~] Uniform  
337 Commercial Code -- Secured Transactions.

338 Section 5. Section **38-8-2** is amended to read:

339 **38-8-2. Lien against stored property -- Attachment and duration -- Search for**  
340 **financing statement prerequisite to enforcement of lien.**

341 (1) Where a rental agreement, as defined in Subsection 38-8-1(6), is entered into between  
342 the owner and the occupant, the owner of the self-service storage facility and [his] the owner's  
343 heirs, executors, administrators, successors, and assigns have a lien upon all personal property  
344 located at the self-service storage facility for rent, labor, or other charges, present or future, in  
345 relation to the personal property and for expenses necessary for its preservation or expenses  
346 reasonably incurred in its sale or other disposition under this chapter.

347 (2) The lien described in Subsection (1) attaches as of the date the personal property is  
348 brought to the self-service storage facility and continues so long as the owner retains possession  
349 and until any default is corrected, or a sale pursuant to a default is conducted, or the property is  
350 otherwise disposed of to satisfy the lien.

351 (3) (a) Before taking enforcement action under Section 38-8-3, the owner shall determine  
352 if a financing statement filed in accordance with [~~Section 70A-9-401, et seq.~~] Title 70A, Chapter  
353 9a, Part 5, Filing, has been filed with the Division of Corporations and Commercial Code  
354 concerning the property to be sold or otherwise disposed of.

355 (b) A security interest evidenced by a financing statement filed in accordance with Title  
356 70A, Chapter 9a, Part 5, Filing, has priority over the lien provided by this section.

357 Section 6. Section **38-12-102** is amended to read:

358 **38-12-102. Notice requirements for lien filings -- Exceptions.**

359 (1) No later than 30 days after the day on which a lien claimant or the lien claimant's  
360 authorized agent files for recordation a notice of lien meeting the requirements of Subsection (2)  
361 with a county recorder, county clerk, or clerk of the court, a lien claimant or the lien claimant's  
362 agent shall send by certified mail a written copy of the notice of lien to the last-known address of  
363 the person against whom the notice of lien is filed.

364 (2) The notice of lien shall contain the following information:

365 (a) the name and address of the person against whom the lien is filed;

366 (b) (i) a statement that certain property owned by the person against whom the lien is filed  
367 is subject to a lien;

368 (ii) the amount of the judgment, settlement, or compromise if the lien is based on a charge

- 369 against or interest in a judgment, settlement, or compromise; or
- 370 (iii) the amount of state taxes owed;
- 371 (c) the article number contained on the certified mail receipt;
- 372 (d) the date the notice of lien was filed; and
- 373 (e) the name and address of the lien claimant.
- 374 (3) The notice requirements of Subsections (1) and (2) do not apply to a:
- 375 (a) mechanics' lien as provided in Title 38, Chapter 1, Mechanics' Liens;
- 376 (b) lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;
- 377 (c) federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;
- 378 (d) hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;
- 379 (e) self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service
- 380 Storage Facilities;
- 381 (f) oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;
- 382 (g) claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11,
- 383 Residence Lien Restriction and Lien Recovery Fund Act;
- 384 (h) trust deed;
- 385 (i) mortgage;
- 386 (j) interests subject to a security agreement as defined in [~~Subsection 70A-9-105(1)~~
- 387 Section 70A-9a-102; or
- 388 (k) other liens subject to the same or stricter notice requirements than those imposed by
- 389 Subsections (1) and (2).
- 390 Section 7. Section **38-12-103** is amended to read:
- 391 **38-12-103. Failure to notify -- Effect -- Penalty.**
- 392 (1) (a) A person who fails to meet the notice requirements of Subsections 38-12-102(1)
- 393 and (2) is precluded from receiving an award of costs and attorneys' fees from the person against
- 394 whom a notice of lien has been filed in an action to enforce the lien if costs and attorneys' fees are
- 395 authorized by contract or statute.
- 396 (b) Subsection (1)(a) does not create a right to costs and attorneys' fees.
- 397 (2) In addition to the penalties provided in Subsection (1)(a), a lien claimant who, within
- 398 20 days from the date of receiving notice of noncompliance with the notice requirements of
- 399 Subsection 38-12-102(1) or (2), willfully refuses to release the notice of lien or record the lien in

400 compliance with Section 38-12-102 is liable to the person against whom the notice of lien was  
401 filed for \$1,000 or for treble damages, whichever is greater.

402 (3) Failure to meet the notice requirements of Subsections 38-12-102(1) and (2) does not:

403 (a) invalidate any lien arising at common law or in equity or by any statute of this state;

404 or

405 (b) affect the rules of priority provided in Title 70A, Chapter 9a, [~~Part 3~~] Uniform

406 Commercial Code -- Secured Transactions.

407 Section 8. Section **41-1a-223** is amended to read:

408 **41-1a-223. Registration without Utah title.**

409 (1) (a) If the owner of a vehicle operating interstate and registered in another state desires

410 to retain registration of the vehicle in the other state, the applicant need not surrender but shall

411 submit for inspection evidences of out-of-state registration.

412 (b) The division upon a proper showing shall register the vehicle in this state.

413 (2) (a) If a person is relocating from another jurisdiction and establishing residence in this

414 state, whether temporary or permanent, and that person has a vehicle registered and titled in

415 another jurisdiction and is not able to surrender title to the vehicle being registered in Utah because

416 title is physically held by a lienholder, the division may register the vehicle without issuing a Utah

417 title.

418 (b) Notwithstanding [~~the provisions of~~] Section [~~70A-9-103~~] 70A-9a-316, the registration

419 of a vehicle under this section does not alter or affect the rights or security interest of any

420 lienholder in another jurisdiction.

421 Section 9. Section **41-1a-601** is amended to read:

422 **41-1a-601. Lien validity -- Security interest.**

423 (1) Except as provided under Subsection (2), a lien upon a vehicle, vessel, or outboard

424 motor, except a lien dependent upon possession, is not valid against the creditors of an owner

425 acquiring a lien by levy or attachment, or subsequent purchasers, or encumbrancers without notice

426 until Sections 41-1a-602 through 41-1a-606 have been complied with.

427 (2) Security interests in inventory consisting in part of vehicles subject to registration

428 under this chapter, that are held for sale by a person in the business of selling goods of that kind,

429 shall be perfected under Section [~~70A-9-302~~] 70A-9a-310, except that buyers in the ordinary

430 course of business, as defined in Section 70A-1-201, take free of the security interests as provided

431 in Section [~~70A-9-307~~] 70A-9a-320.

432 Section 10. Section **41-1a-606** is amended to read:

433 **41-1a-606. Method of giving notice -- Exceptions.**

434 The method provided in Sections 41-1a-602 through 41-1a-605, for giving constructive  
435 notice of a lien or encumbrance upon a registered vehicle is exclusive except for liens dependent  
436 upon possession and any lien or encumbrance filed as provided under this chapter, which are  
437 exempt from the provisions of Section [~~70A-9-302~~] 70A-9a-311, and other provisions of law that  
438 otherwise require or relate to the recording or filing of instruments creating or evidencing title  
439 retention or other liens or encumbrances upon vehicles of a type subject to registration under this  
440 chapter.

441 Section 11. Section **57-3-102** is amended to read:

442 **57-3-102. Record imparts notice -- Change in interest rate -- Validity of document**  
443 **-- Notice of unnamed interests -- Conveyance by grantee.**

444 (1) Each document executed, acknowledged, and certified, in the manner prescribed by  
445 this title, each original document or certified copy of a document complying with Section 57-4a-3,  
446 whether or not acknowledged, each copy of a notice of location complying with Section 40-1-4,  
447 and each financing statement complying with Section [~~70A-9-402~~] 70A-9a-502, whether or not  
448 acknowledged shall, from the time of recording with the appropriate county recorder, impart notice  
449 to all persons of their contents.

450 (2) If a recorded document was given as security, a change in the interest rate in  
451 accordance with the terms of an agreement pertaining to the underlying secured obligation does  
452 not affect the notice or alter the priority of the document provided under Subsection (1).

453 (3) This section does not affect the validity of a document with respect to the parties to the  
454 document and all other persons who have notice of the document.

455 (4) The fact that a recorded document recites only a nominal consideration, names the  
456 grantee as trustee, or otherwise purports to be in trust without naming beneficiaries or stating the  
457 terms of the trust does not charge any third person with notice of any interest of the grantor or of  
458 the interest of any other person not named in the document.

459 (5) The grantee in a recorded document may convey the interest granted to him free and  
460 clear of all claims not disclosed in the document in which he appears as grantee or in any other  
461 document recorded in accordance with this title that sets forth the names of the beneficiaries,

462 specifies the interest claimed, and describes the real property subject to the interest.

463 Section 12. Section **57-3-108** is enacted to read:

464 **57-3-108. Financing statements not subject to title.**

465 This title does not apply to a financing statement filed or recorded in a filing office

466 described in Subsection 70A-9a-501(1)(a) that:

467 (1) covers as-extracted collateral or timber to be cut; or

468 (2) (a) is filed as a fixture filing; and

469 (b) covers goods that are or are to become fixtures.

470 Section 13. Section **57-16-9** is amended to read:

471 **57-16-9. Lienholder's liability for rent and fees.**

472 Notwithstanding [~~the provisions of~~] Section 38-3-2 and Section [~~70A-9-317~~] 70A-9a-402,

473 the lienholder of record of a mobile home is primarily liable to the mobile home park owner or

474 operator for rent and service charges if a mobile home is not removed within [~~10~~] ten days after

475 receipt of written notice that a mobile home has been abandoned or that a writ of restitution has

476 been issued. The lienholder, however, is only liable for rent that accrues after receipt of such

477 notice.

478 Section 14. Section **58-37-13** is amended to read:

479 **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

480 (1) As used in this section:

481 (a) "Complaint" means a verified civil in rem complaint seeking forfeiture or any criminal

482 information or indictment which contains or is amended to include a demand for forfeiture of a

483 defendant's in personam interest in any property which is subject to forfeiture.

484 (b) "Drug distributing paraphernalia" means any property used or designed to be used in

485 the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is

486 considered "designed to be used" for one or more of the above-listed purposes if the property has

487 been altered or modified to include a feature or device which would actually promote or conceal

488 a violation of this chapter.

489 (c) "Drug manufacturing equipment or supplies" includes any illegally possessed

490 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies

491 possessed with intent to engage in clandestine laboratory operation as defined in Section 58-37d-3.

492 (d) "Interest holder" means a secured party as defined in [~~Section 70A-9-105(1)(m)~~]

493 Section 70A-9a-102, a mortgagee, lien creditor, or the beneficiary of a security interest or  
494 encumbrance pertaining to an interest in property, whose interest would be perfected against a  
495 good faith purchaser for value. A person who holds property for the benefit of or as an agent or  
496 nominee for another, or who is not in substantial compliance with any statute requiring an interest  
497 in property to be recorded or reflected in public records in order to perfect the interest against a  
498 good faith purchaser for value, is not an interest holder.

499 (e) "Proceeds" means property acquired directly or indirectly from, produced through,  
500 realized through, or caused by an act or omission and includes any property of any kind without  
501 reduction for expenses incurred in the acquisition, maintenance, or production of that property, or  
502 any other purpose.

503 (f) "Resolution of criminal charges" occurs at the time a claimant who is also charged with  
504 violations under Title 58, Chapters 37, 37a, 37b, 37c, or 37d enters a plea, upon return of a jury  
505 verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

506 (g) "Violation of this chapter" means any conduct prohibited by Title 58, Chapters 37, 37a,  
507 37b, 37c, or 37d or any conduct occurring outside the state which would be a violation of the laws  
508 of the place where the conduct occurred and which would be a violation of Title 58, Chapters 37,  
509 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

510 (2) The following are subject to forfeiture and no property right exists in them:

511 (a) all controlled substances which have been manufactured, distributed, dispensed, or  
512 acquired in violation of this chapter;

513 (b) all raw materials, products, and equipment of any kind used, or intended for use, in  
514 manufacturing, compounding, processing, delivering, importing, or exporting any controlled  
515 substance in violation of this chapter;

516 (c) all property used or intended for use as a container for property described in  
517 Subsections (2)(a) and (2)(b);

518 (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used  
519 with health food supplements and herbs, used or intended for use to administer controlled  
520 substances in violation of this chapter;

521 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to  
522 transport, or in any manner facilitate the transportation, sale, receipt, simple possession, or  
523 concealment of property described in Subsections (2)(a) and (2)(b), except that:

524 (i) a conveyance used by any person as a common carrier in the transaction of business as  
525 a common carrier may not be forfeited under this section unless the owner or other person in  
526 charge of the conveyance was a consenting party or knew or had reason to know of the violation  
527 of this chapter;

528 (ii) a conveyance may not be forfeited under this section by reason of any act or omission  
529 committed or omitted without the owner's knowledge or consent; and

530 (iii) any forfeiture of a conveyance is subject to the claim of an interest holder who did not  
531 know or have reason to know after the exercise of reasonable diligence that a violation would or  
532 did take place in the use of the conveyance;

533 (f) all books, records, and research, including formulas, microfilm, tapes, and data used  
534 or intended for use in violation of this chapter;

535 (g) everything of value furnished or intended to be furnished in exchange for a controlled  
536 substance in violation of this chapter, and all moneys, negotiable instruments, and securities used  
537 or intended to be used to facilitate any violation of this chapter. An interest in property may not  
538 be forfeited under this subsection unless it is proven by a preponderance of the evidence that the  
539 interest holder knew, had reason to know of, or consented to the conduct which made the property  
540 subject to forfeiture. The burden of presenting this evidence shall be upon the state;

541 (h) all imitation controlled substances as defined in Section 58-37b-2, Imitation Controlled  
542 Substances Act;

543 (i) all warehousing, housing, and storage facilities, or interest in real property of any kind  
544 used, or intended for use, in producing, cultivating, warehousing, storing, protecting, or  
545 manufacturing any controlled substances in violation of this chapter, except that:

546 (i) any forfeiture of a housing, warehousing, or storage facility or interest in real property  
547 is subject to the claim of an interest holder who did not know or have reason to know after the  
548 exercise of reasonable diligence that a violation would take place on the property;

549 (ii) an interest in property may not be forfeited under this subsection if the interest holder  
550 did not know or have reason to know of the conduct which made the property subject to forfeiture,  
551 or did not willingly consent to the conduct; and

552 (iii) unless the premises are used in producing, cultivating, or manufacturing controlled  
553 substances, a housing, warehousing, or storage facility or interest in real property may not be  
554 forfeited under this subsection unless cumulative sales of controlled substances on the property

555 within a two-month period total or exceed \$1,000, or the street value of any controlled substances  
556 found on the premises at any given time totals or exceeds \$1,000. A narcotics officer experienced  
557 in controlled substances law enforcement may testify to establish the street value of the controlled  
558 substances for purposes of this subsection;

559 (j) any firearm, weapon, or ammunition carried or used during or in relation to a violation  
560 of this chapter or any firearm, weapon, or ammunition kept or located within the proximity of  
561 controlled substances or other property subject to forfeiture under this section; and

562 (k) all proceeds traceable to any violation of this chapter. There is a rebuttable  
563 presumption that all money, coins, and currency found in proximity to forfeitable controlled  
564 substances, drug manufacturing equipment or supplies, drug distributing paraphernalia, or  
565 forfeitable records of importation, manufacture, or distribution of controlled substances are  
566 proceeds traceable to a violation of this chapter. The burden of proof is upon the claimant of the  
567 property to rebut this presumption.

568 (3) (a) Property subject to forfeiture under this chapter may be seized by any peace officer  
569 of this state upon process issued by any court having jurisdiction over the property. However,  
570 seizure without process may be made when:

571 (i) the seizure is incident to an arrest or search under a search warrant or an inspection  
572 under an administrative inspection warrant;

573 (ii) the property subject to seizure has been the subject of a prior judgment in favor of the  
574 state in a criminal injunction or forfeiture proceeding under this chapter;

575 (iii) the peace officer has probable cause to believe that the property is directly or indirectly  
576 dangerous to health or safety; or

577 (iv) the peace officer has probable cause to believe that the property has been used or  
578 intended to be used in violation of this chapter and has probable cause to believe the property will  
579 be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state.

580 (b) Upon the filing of a complaint, the court shall immediately issue to the seizing agency  
581 a warrant for seizure of any property subject to forfeiture which had been seized without a warrant  
582 in a manner described in this Subsection (3).

583 (4) In the event of seizure under Subsection (3), forfeiture proceedings under Subsection  
584 (9) shall be instituted within 90 days of the seizure. The time period may be extended by the court  
585 having jurisdiction over the property upon notice to all claimants and interest holders and for good

586 cause shown.

587 (5) Property taken or detained under this section is not repleviable but is in custody of the  
588 law enforcement agency making the seizure, subject only to the orders and decrees of the court or  
589 the official having jurisdiction. When property is seized under this chapter, the appropriate person  
590 or agency may:

591 (a) place the property under seal;

592 (b) remove the property to a place designated by it or the warrant under which it was  
593 seized; or

594 (c) take custody of the property and remove it to an appropriate location for disposition  
595 in accordance with law.

596 (6) All substances listed in Schedule I that are possessed, transferred, distributed, or  
597 offered for distribution in violation of this chapter are contraband and no property right shall exist  
598 in them. All substances listed in Schedule I which are seized or come into the possession of the  
599 state may be retained for any evidentiary or investigative purpose, including sampling or other  
600 preservation prior to disposal or destruction by the state.

601 (7) All marijuana or any species of plants from which controlled substances in Schedules  
602 I and II are derived which have been planted or cultivated in violation of this chapter, or of which  
603 the owners or cultivators are unknown, or are wild growths, may be seized and retained for any  
604 evidentiary or investigative purpose, including sampling or other preservation prior to disposal or  
605 destruction by the state. Failure, upon demand by the department or its authorized agent, of any  
606 person in occupancy or in control of land or premises upon which species of plants are growing  
607 or being stored, to produce an appropriate license or proof that he is the holder of a license, is  
608 authority for the seizure and forfeiture of the plants.

609 (8) When any property is forfeited under this chapter by a finding of the court that no  
610 person is entitled to recover the property, it shall be deposited in the custody of the Division of  
611 Finance. Disposition of all property is as follows:

612 (a) The state may include in its complaint seeking forfeiture, a request that the seizing  
613 agency be awarded the property. Upon a finding that the seizing agency is able to use the forfeited  
614 property in the enforcement of controlled substances laws, the court having jurisdiction over the  
615 case shall award the property to the seizing agency. Each agency shall use the forfeited property  
616 for controlled substance law enforcement purposes only. Forfeited property or proceeds from the

617 sale of forfeited property may not be used to pay any cash incentive, award, or bonus to any peace  
618 officer or individual acting as an agent for the agency, nor may it be used to supplant any ordinary  
619 operating expense of the agency. The seizing agency shall pay to the prosecuting agency the legal  
620 costs incurred in filing and pursuing the forfeiture action. Property forfeited under this section may  
621 not be applied by the court to costs or fines assessed against any defendant in the case.

622 (b) The seizing agency, or if it makes no application, any state agency, bureau, county, or  
623 municipality, which demonstrates a need for specific property or classes of property subject to  
624 forfeiture shall be given the property for use in enforcement of controlled substances laws upon  
625 the payment of costs to the county attorney or, if within a prosecution district, the district attorney  
626 for legal costs for filing and pursuing the forfeiture and upon application for the property to the  
627 director of the Division of Finance. The application shall clearly set forth the need for the property  
628 and the use to which the property will be put.

629 (c) The director of the Division of Finance shall review all applications for property  
630 submitted under Subsection (8)(b) and, if the seizing agency makes no application, make a  
631 determination based on necessity and advisability as to final disposition and shall notify the  
632 designated applicant or seizing agency, where no application is made, who may obtain the property  
633 upon payment of all costs to the appropriate department. The Division of Finance shall in turn  
634 reimburse the prosecuting agency or agencies for costs of filing and pursuing the forfeiture action,  
635 not to exceed the amount of the net proceeds received for the sale of the property. Any proceeds  
636 remaining after payment shall be returned to the seizing agency or agencies.

637 (d) If no disposition is made upon an application under Subsection (8)(a) or (b), the  
638 director of the Division of Finance shall dispose of the property by public bidding or as considered  
639 appropriate, by destruction. Proof of destruction shall be upon oath of two officers or employees  
640 of the department having charge of the property, and verified by the director of the department or  
641 his designated agent.

642 (9) Forfeiture proceedings shall be commenced as follows:

643 (a) For actions brought under Subsections (2)(a) through (2)(j), a complaint shall be  
644 prepared by the county attorney, or if within a prosecution district, the district attorney, or the  
645 attorney general, and filed in a court of record where the property was seized or is to be seized. In  
646 cases in which the claimant of the property is also charged as a criminal defendant, the complaint  
647 shall be filed in the county where the criminal charges arose, regardless of the location of the

648 property. The complaint shall include:

649 (i) a description of the property which is subject to forfeiture;

650 (ii) the date and place of seizure, if known; and

651 (iii) the allegations of conduct which gives rise to forfeiture.

652 (b) In cases where a claimant is also charged as a criminal defendant, the forfeiture shall  
653 proceed as part of the criminal prosecution as an in personam action against the defendant's  
654 interest in the property subject to forfeiture. A defendant need not file a written answer to the  
655 complaint, but may acknowledge or deny interest in the property at the time of first appearance on  
656 the criminal charges. If a criminal information or indictment is amended to include a demand for  
657 forfeiture, the defendant may respond to the demand at the time of the amendment.

658 (i) Unless motion for disposition is made by the defendant, the determination of forfeiture  
659 shall be stayed until resolution of the criminal charges. Hearing on the forfeiture shall be before  
660 the court without a jury. The court may consider any evidence presented in the criminal case, and  
661 receive any other evidence offered by the state or the defendant. The court shall determine by a  
662 preponderance of the evidence the issues in the case and order forfeiture or release of the property  
663 as it determines.

664 (ii) A defendant may move the court to transfer the forfeiture action, to stay all action,  
665 including discovery, in the forfeiture, or for hearing on the forfeiture any time prior to trial of the  
666 criminal charges. Either party may move the court to enter a finding of forfeiture as to defendant's  
667 interest in part or all of the property, either by default or by stipulation. Upon entry of a finding,  
668 the court shall stay the entry of judgment until resolution of the criminal charges. Any finding of  
669 forfeiture entered by the court prior to resolution of the criminal charges may not constitute a  
670 separate judgment, and any motion for disposition, stay, severance, or transfer of the forfeiture  
671 action may not create a separate proceeding. Upon the granting of a motion by the defendant for  
672 disposition, stay, severance, or transfer of the forfeiture action, the defendant shall be considered  
673 to have waived any claim that the defendant has been twice put in jeopardy for the same offense.

674 (iii) Any other person claiming an interest in property subject to forfeiture under this  
675 subsection may not intervene in a trial or appeal of a complaint filed under this subsection.  
676 Following the entry of an in personam forfeiture order, or upon the filing of a petition for release  
677 under Subsection (9)(e), the county attorney, district attorney, or attorney general may proceed with  
678 a separate in rem action to resolve any other claims upon the property subject to forfeiture.

679 (c) A complaint seeking forfeiture under Subsection (2)(k) shall be prepared by the county  
680 attorney, or if within a prosecution district, the district attorney, or by the attorney general, either  
681 in personam as part of a criminal prosecution, or in a separate civil in rem action against the  
682 property alleged to be proceeds, and filed in the county where the property is seized or  
683 encumbered, if the proceeds are located outside the state. A finding that property is the proceeds  
684 of a violation of this chapter does not require proof that the property is the proceeds of any  
685 particular exchange or transaction. Proof that property is proceeds may be shown by evidence  
686 which establishes all of the following by a preponderance of the evidence:

687 (i) that the person has engaged in conduct in violation of this chapter;

688 (ii) that the property was acquired by the person during that period when the conduct in  
689 violation of this chapter occurred or within a reasonable time after that period; and

690 (iii) that there was no likely source for the property other than conduct in violation of the  
691 chapter.

692 (d) Notice of the seizure and intended forfeiture shall be filed with the clerk of the court,  
693 and served upon all persons known to the county attorney or district attorney to have a claim in the  
694 property by:

695 (i) personal service upon a claimant who is charged in a criminal information or  
696 indictment; and

697 (ii) certified mail to each claimant whose name and address is known or to each owner  
698 whose right, title, or interest is of record in the Division of Motor Vehicles to the address given  
699 upon the records of the division, which service is considered complete even though the mail is  
700 refused or cannot be forwarded. The county attorney, district attorney, or attorney general shall  
701 make one publication in a newspaper of general circulation in the county where the seizure was  
702 made for all other claimants whose addresses are unknown, but who are believed to have an  
703 interest in the property.

704 (e) Except under Subsection (9)(a) in personam actions, any claimant or interest holder  
705 shall file with the court a verified answer to the complaint within 20 days after service. When  
706 property is seized under this chapter, any interest holder or claimant of the property, prior to being  
707 served with a complaint under this section, may file a petition in the court having jurisdiction for  
708 release of his interest in the property. The petition shall specify the claimant's interest in the  
709 property and his right to have it released. A copy shall be served upon the county attorney or, if

710 within a prosecution district, the district attorney in the county of the seizure, who shall answer the  
711 petition within 20 days. A petitioner need not answer a complaint of forfeiture.

712 (f) For civil actions in rem, after 20 days following service of a complaint or petition for  
713 release, the court shall examine the record and if no answer is on file, the court shall allow the  
714 complainant or petitioner an opportunity to present evidence in support of his claim and order  
715 forfeiture or release of the property as the court determines. If the county attorney or district  
716 attorney has not filed an answer to a petition for release and the court determines from the evidence  
717 that the petitioner is not entitled to recovery of the property, it shall enter an order directing the  
718 county attorney or district attorney to answer the petition within ten days. If no answer is filed  
719 within that period, the court shall order the release of the property to the petitioner entitled to  
720 receive it.

721 (g) When an answer to a complaint or petition appears of record at the end of 20 days, the  
722 court shall set the matter for hearing. At this hearing all interested parties may present evidence  
723 of their rights of release of the property following the state's evidence for forfeiture. The court  
724 shall determine by a preponderance of the evidence the issues in the case and order forfeiture or  
725 release of the property as it determines.

726 (h) When the court determines that claimants have no right in the property in whole or in  
727 part, it shall declare the property to be forfeited.

728 (i) When the court determines that property, in whole or in part, is not subject to forfeiture,  
729 it shall order release of the property to the proper claimant. If the court determines that the  
730 property is subject to forfeiture and release in part, it shall order partial release and partial  
731 forfeiture. When the property cannot be divided for partial forfeiture and release, the court shall  
732 order it sold and the proceeds distributed:

733 (i) first, proportionally among the legitimate claimants;

734 (ii) second, to defray the costs of the action, including seizure, storage of the property,  
735 legal costs of filing and pursuing the forfeiture, and costs of sale; and

736 (iii) third, to the Division of Finance for the General Fund.

737 (j) In a proceeding under this section where forfeiture is declared, in whole or in part, the  
738 court shall assess all costs of the forfeiture proceeding, including seizure and storage of the  
739 property, against the individual or individuals whose conduct was the basis of the forfeiture, and  
740 may assess costs against any other claimant or claimants to the property as appropriate.

741 Section 15. Section **70A-1-105** is amended to read:

742 **70A-1-105. Territorial application of title -- Parties' power to choose applicable law.**

743 (1) Except as provided in this section, when a transaction bears a reasonable relation to  
744 this state and also to another state or nation, the parties may agree that the law either of this state  
745 or of such other state or nation shall govern their rights and duties. Failing such agreement, this  
746 title applies to transactions bearing an appropriate relation to this state.

747 (2) Where one of the following provisions of this title specifies the applicable law, that  
748 provision governs and a contrary agreement is effective only to the extent permitted by the law,  
749 including the conflict of laws rules, so specified:

750 (a) rights of creditors against sold goods under Section 70A-2-402;

751 (b) applicability of the chapter on leases under Sections 70A-2a-105 and 70A-2a-106;

752 (c) applicability of the chapter on [~~Bank Deposits and Collections~~] bank deposits and  
753 collections under Section 70A-4-102;

754 (d) applicability of the chapter on letters of credit under Section 70A-5-116;

755 [~~(d)~~] (e) applicability of the chapter on [Investment Securities] investment securities under  
756 Section 70A-8-109; or

757 [~~(e)~~] perfection provisions of the chapter on Secured Transactions under Section  
758 70A-9-103; or]

759 (f) law governing perfection, the effect of perfection or nonperfection, and the priority of  
760 security interests and agricultural liens under Sections 70A-9a-301 through 70A-9a-307.

761 [~~(f)~~] applicability of the chapter on Letters of Credit under Section 70A-5-116.]

762 Section 16. Section **70A-1-201** is amended to read:

763 **70A-1-201. General definitions.**

764 In addition to definitions contained in the subsequent chapters of this title and unless the  
765 context otherwise requires, in this title:

766 (1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim,  
767 setoff, suit in equity, and any other proceedings in which rights are determined.

768 (2) "Aggrieved party" means a party entitled to resort to a remedy.

769 (3) "Agreement" means the bargain of the parties in fact as found in their language or by  
770 implication from other circumstances including course of dealing or usage of trade or course of  
771 performance as provided in Sections 70A-1-205 and 70A-2-208. Whether an agreement has legal

772 consequences is determined by the provisions of this title, if applicable; otherwise by the law of  
773 contracts as provided in Section 70A-1-103. Compare the definition of "contract" in Subsection  
774 (11).

775 (4) "Bank" means any person engaged in the business of banking.

776 (5) "Bearer" means the person in possession of an instrument, document of title, or  
777 certificated security payable to bearer or indorsed in blank.

778 (6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued  
779 by a person engaged in the business of transporting or forwarding goods, and includes an airbill.

780 "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail  
781 transportation, and includes an air consignment note or air waybill.

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

783 (8) "Burden of establishing a fact" means the burden of persuading the triers of fact that  
784 the existence of the fact is more probable than its nonexistence.

785 (9) "Buyer in ordinary course of business" means a person ~~[who]~~ that buys goods, in good  
786 faith ~~[and]~~, without knowledge that the sale ~~[to him is in violation of]~~ violates the ~~[ownership]~~  
787 rights ~~[or security interest]~~ of ~~[a third party]~~ another person in the goods, ~~[buys]~~ and in the ordinary  
788 course from a person, other than a pawnbroker, in the business of selling goods of that kind ~~[but~~  
789 ~~does not include a pawnbroker. All persons who sell minerals or the like, including oil and gas,~~  
790 ~~at wellhead or minehead are considered to be persons]~~. A person buys goods in the ordinary  
791 course if the sale to the person comports with the usual or customary practices in the kind of  
792 business in which the seller is engaged or with the seller's own usual or customary practices. A  
793 person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business  
794 of selling goods of that kind. ["Buying"] A buyer in ordinary course of business may [be] buy for  
795 cash [or], by exchange of other property, or on secured or unsecured credit, and [includes  
796 receiving] may acquire goods or documents of title under a preexisting contract for sale [but does  
797 not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt].  
798 Only a buyer that takes possession of the goods or has a right to recover the goods from the seller  
799 under Chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in  
800 a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer  
801 in ordinary course of business.

802 (10) "Conspicuous" means a term or clause that is so written that a reasonable person

803 against whom it is to operate ought to have noticed it. A printed heading in capitals such as:  
804 NONNEGOTIABLE BILL OF LADING is conspicuous. Language in the body of a form is  
805 "conspicuous" if it is in larger or other contrasting type or color. In a telegram any stated term is  
806 "conspicuous." Whether a term or clause is "conspicuous" or not is for decision by the court.

807 (11) "Contract" means the total legal obligation which results from the parties' agreement  
808 as affected by this title and any other applicable rules of law. Compare the definition of  
809 "agreement" in Subsection (3).

810 (12) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any  
811 representative of creditors, including an assignee for the benefit of creditors, a trustee in  
812 bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or  
813 assignor's estate.

814 (13) "Defendant" includes a person in the position of defendant in a cross-action or  
815 counterclaim.

816 (14) "Delivery" with respect to instruments, documents of title, chattel paper, or  
817 certificated securities means voluntary transfer of possession.

818 (15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse  
819 receipt, or order for the delivery of goods, and also any other document which in the regular course  
820 of business or financing is treated as adequately representing that the person in possession of it is  
821 entitled to receive, hold and dispose of the document and the goods it covers. To be a document  
822 of title, a document must purport to be issued by or addressed to a bailee and purport to cover  
823 goods in the bailee's possession which are either identified or are fungible portions of an identified  
824 mass.

825 (16) "Fault" means wrongful act, omission, or breach.

826 (17) "Fungible" with respect to goods or securities means goods or securities of which any  
827 unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not  
828 fungible are considered fungible for the purposes of this title to the extent that under a particular  
829 agreement or document unlike units are treated as equivalents.

830 (18) "Genuine" means free of forgery or counterfeiting.

831 (19) "Good faith" means honesty in fact in the conduct or transaction concerned.

832 (20) "Holder" with respect to a negotiable instrument, certificated security, or document  
833 of title means the person in possession if:

834 (a) in the case of a negotiable instrument payable to bearer or to an identified person, the  
835 identified person is in possession;

836 (b) in the case of a security, the person in possession is the registered owner, or the security  
837 has been indorsed to the person in possession by the registered owner, or the security is in bearer  
838 form; or

839 (c) in the case of a document of title, the goods are deliverable to bearer or to the order of  
840 the person in possession.

841 (21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase  
842 or discount a draft complying with the terms of the credit.

843 (22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other  
844 proceedings intended to liquidate or rehabilitate the estate of the person involved.

845 (23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course  
846 of business or cannot pay his debts as they become due or if he is insolvent within the meaning of  
847 the federal bankruptcy law.

848 (24) "Money" means a medium of exchange authorized or adopted by a domestic or  
849 foreign government or intergovernmental organization and includes a monetary unit of account  
850 established by an intergovernmental organization or by agreement between two or more nations.

851 (25) (a) A person has "notice" of a fact when:

852 (i) he has actual knowledge of it;

853 (ii) he has received a notice or notification of it; or

854 (iii) from all the facts and circumstances known to him at the time in question he has  
855 reason to know that it exists.

856 (b) A person "knows" or has "knowledge" of a fact when he has actual knowledge of it.

857 (c) "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather  
858 than to reason to know.

859 (d) The time and circumstances under which a notice or notification may cease to be  
860 effective are not determined by this title.

861 (26) (a) A person "notifies" or "gives" a notice or notification to another by taking such  
862 steps as may be reasonably required to inform the other person in ordinary course whether or not  
863 the other person actually comes to know of it.

864 (b) A person "receives" a notice or notification when:

865 (i) it comes to his attention; or

866 (ii) it is duly delivered at the place of business through which the contract was made or at  
867 any other place held out by him as the place for receipt of such communications.

868 (27) Notice, knowledge of a notice, or notification received by an organization is effective  
869 for a particular transaction from the time when it is brought to the attention of the individual  
870 conducting that transaction, and in any event from the time when it would have been brought to  
871 his attention if the organization had exercised due diligence. An organization exercises due  
872 diligence if it maintains reasonable routines for communicating significant information to the  
873 person conducting the transaction and there is reasonable compliance with the routines. Due  
874 diligence does not require an individual acting for the organization to communicate information  
875 unless such communication is part of his regular duties or unless he has reason to know of the  
876 transaction and that the transaction would be materially affected by the information.

877 (28) "Organization" includes a corporation, government or governmental subdivision or  
878 agency, business trust, estate, trust, partnership or association, two or more persons having a joint  
879 or common interest, or any other legal or commercial entity.

880 (29) "Party," as distinct from "third party," means a person who has engaged in a  
881 transaction or made an agreement within this title.

882 (30) "Person" includes an individual or an organization as provided in Section 70A-1-102.

883 (31) "Presumption" or "presumed" means that the trier of fact must find the existence of  
884 the fact presumed unless and until evidence is introduced which would support a finding of its  
885 nonexistence.

886 (32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,  
887 security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in  
888 property.

889 (33) "Purchaser" means a person who takes by purchase.

890 (34) "Remedy" means any remedial right to which an aggrieved party is entitled with or  
891 without resort to a tribunal.

892 (35) "Representative" includes an agent, an officer of a corporation or association, and a  
893 trustee, executor, or administrator of an estate, or any other person empowered to act for another.

894 (36) "Rights" includes remedies.

895 (37) (a) "Security interest" means an interest in personal property or fixtures which secures

896 payment or performance of an obligation. [~~The retention or reservation of title by a seller of goods,~~  
897 ~~notwithstanding shipment or delivery to the buyer as provided in Section 70A-2-401, is limited in~~  
898 ~~effect to a reservation of a "security interest."~~] The term also includes any interest of a consignor  
899 and a buyer of accounts [~~or~~], chattel paper [~~which~~], a payment intangible, or a promissory note in  
900 a transaction that is subject to Title 70A, Chapter 9a, Uniform Commercial Code -- Secured  
901 Transactions. The special property interest of a buyer of goods on identification of those goods  
902 to a contract for sale under Section 70A-2-401 is not a "security interest," but a buyer may also  
903 acquire a "security interest" by complying with Title 70A, Chapter 9a, Uniform Commercial Code  
904 -- Secured Transactions. [Unless a consignment is intended as security, reservation of title under  
905 the consignment is not a "security interest." A consignment in any event is subject to the  
906 provisions on consignment sales provided in Section 70A-2-326.] Except as otherwise provided  
907 in Section 70A-2-505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or  
908 acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire  
909 a "security interest" by complying with Chapter 9a, Uniform Commercial Code -- Secured  
910 Transactions. The retention or reservation of title by a seller of goods notwithstanding shipment  
911 or delivery to the buyer (Section 70A-2-401) is limited in effect to a reservation of a "security  
912 interest." Notwithstanding anything in Title 70A to the contrary, "security interest" does not  
913 include a rental purchase agreement as defined in Section 15-8-3.

914 (b) Whether a transaction creates a lease or security interest is determined by the facts of  
915 each case; however, a transaction creates a security interest if the consideration the lessee is to pay  
916 the lessor for the right to possession and use of the goods is an obligation for the term of the lease  
917 not subject to termination by the lessee, and:

918 (i) the original term of the lease is equal to or greater than the remaining economic life of  
919 the goods;

920 (ii) the lessee is bound to renew the lease for the remaining economic life of the goods or  
921 is bound to become the owner of the goods;

922 (iii) the lessee has an option to renew the lease for the remaining economic life of the  
923 goods for no additional consideration or nominal additional consideration upon compliance with  
924 the lease agreement; or

925 (iv) the lessee has an option to become the owner of the goods for no additional  
926 consideration or nominal additional consideration upon compliance with the lease agreement.

927 (c) A transaction does not create a security interest merely because it provides that:

928 (i) the present value of the consideration the lessee is obligated to pay the lessor for the  
929 right to possession and use of the goods is substantially equal to or is greater than the fair market  
930 value of the goods at the time the lease is entered into;

931 (ii) the lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing,  
932 recording, or registration fees, or service or maintenance costs with respect to the goods;

933 (iii) the lessee has an option to renew the lease or to become the owner of the goods;

934 (iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater  
935 than the reasonably predictable fair market rent for the use of the goods for the term of the renewal  
936 at the time the option is to be performed; or

937 (v) the lessee has an option to become the owner of the goods for a fixed price that is equal  
938 to or greater than the reasonably predictable fair market value of the goods at the time the option  
939 is to be performed.

940 (d) For purposes of this subsection:

941 (i) Additional consideration is not nominal if, when the option to renew the lease is granted  
942 to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the  
943 renewal determined at the time the option is to be performed, or when the option to become the  
944 owner of the goods is granted to the lessee the price is stated to be the fair market value of the  
945 goods determined at the time the option is to be performed.

946 (ii) Additional consideration is nominal if it is less than the lessee's reasonably predictable  
947 cost of performing under the lease agreement if the option is not exercised.

948 (iii) "Reasonably predictable" and "remaining economic life of the goods" are to be  
949 determined with reference to the facts and circumstances at the time the transaction is entered into.

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

955 (38) "Send" in connection with any writing or notice means to deposit in the mail or  
956 deliver for transmission by any other usual means of communication with postage or the cost of  
957 the transmission provided for and properly addressed, and, in the case of an instrument, to an

958 address specified thereon or otherwise agreed, or if there be none to any address reasonable under  
959 the circumstances. The receipt of any writing or notice within the time at which it would have  
960 arrived if properly sent has the effect of a proper sending.

961 (39) "Signed" includes any symbol executed or adopted by a party with present intention  
962 to authenticate a writing.

963 (40) "Surety" includes guarantor.

964 (41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical  
965 method of transmission, or the like.

966 (42) "Term" means that portion of an agreement which relates to a particular matter.

967 (43) "Unauthorized signature" means one made without actual, implied, or apparent  
968 authority and includes a forgery.

969 (44) "Value." Except as otherwise provided with respect to negotiable instruments and  
970 bank collections as in Sections 70A-3-303, 70A-4-210, and 70A-4-211, a person gives "value"  
971 for rights if he acquires them:

972 (a) in return for a binding commitment to extend credit or for the extension of immediately  
973 available credit whether or not drawn upon and whether or not a charge-back is provided for in the  
974 event of difficulties in collection;

975 (b) as security for or in total or partial satisfaction of a preexisting claim;

976 (c) by accepting delivery pursuant to a preexisting contract for purchase; or

977 (d) generally, in return for any consideration sufficient to support a simple contract.

978 (45) "Warehouse receipt" means a receipt issued by a person engaged in the business of  
979 storing goods for hire.

980 (46) "Written" or "writing" includes printing, typewriting, or any other intentional  
981 reduction to tangible form.

982 Section 17. Section **70A-1-206** is amended to read:

983 **70A-1-206. Statute of frauds for kinds of personal property not otherwise covered.**

984 (1) Except in the cases described in Subsection (2) of this section, a contract for the sale  
985 of personal property is not enforceable by way of action or defense beyond \$5,000 in amount or  
986 value of remedy unless there is some writing which indicates that a contract for sale has been made  
987 between the parties at a defined or stated price, reasonably identifies the subject matter, and is  
988 signed by the party against whom enforcement is sought or by his authorized agent.

989 (2) Subsection (1) of this section does not apply to contracts for the sale of goods (Section  
990 70A-2-201) nor of securities (Section 70A-8-112) nor to security agreements (Section [~~70A-9-203~~  
991 70A-9a-203]).

992 Section 18. Section **70A-2-103** is amended to read:

993 **70A-2-103. Definitions and index of definitions.**

994 (1) In this chapter unless the context otherwise requires:

995 (a) "Buyer" means a person who buys or contracts to buy goods.

996 (b) "Good faith" in the case of a merchant means honesty in fact and the observance of  
997 reasonable commercial standards of fair dealing in the trade.

998 (c) "Receipt" of goods means taking physical possession of them.

999 (d) "Seller" means a person who sells or contracts to sell goods.

1000 (2) Other definitions applying to this chapter or to specified parts thereof, and the sections  
1001 in which they appear are:

1002 (a) "Acceptance." Section 70A-2-606.

1003 (b) "Banker's credit." Section 70A-2-325.

1004 (c) "Between merchants." Section 70A-2-104.

1005 (d) "Cancellation." Subsection 70A-2-106(4).

1006 (e) "Commercial unit." Section 70A-2-105.

1007 (f) "Confirmed credit." Section 70A-2-325.

1008 (g) "Conforming to contract." Section 70A-2-106.

1009 (h) "Contract for sale." Section 70A-2-106.

1010 (i) "Cover." Section 70A-2-712.

1011 (j) "Entrusting." Section 70A-2-403.

1012 (k) "Financing agency." Section 70A-2-104.

1013 (l) "Future goods." Section 70A-2-105.

1014 (m) "Goods." Section 70A-2-105.

1015 (n) "Identification." Section 70A-2-501.

1016 (o) "Installment contract." Section 70A-2-612.

1017 (p) "Letter of Credit." Section 70A-2-325.

1018 (q) "Lot." Section 70A-2-105.

1019 (r) "Merchant." Section 70A-2-104.

- 1020           (s) "Overseas." Section 70A-2-323.
- 1021           (t) "Person in position of seller." Section 70A-2-707.
- 1022           (u) "Present sale." Section 70A-2-106.
- 1023           (v) "Sale." Section 70A-2-106.
- 1024           (w) "Sale on approval." Section 70A-2-326.
- 1025           (x) "Sale or return." Section 70A-2-326.
- 1026           (y) "Termination." Section 70A-2-106.
- 1027           (3) The following definitions in other chapters apply to this chapter:
- 1028           (a) "Check." Section 70A-3-104.
- 1029           (b) "Consignee." Section 70A-7-102.
- 1030           (c) "Consignor." Section 70A-7-102.
- 1031           (d) "Consumer goods." Section [~~70A-9-109~~] 70A-9a-102.
- 1032           (e) "Dishonor." Section 70A-3-502.
- 1033           (f) "Draft." Section 70A-3-104.
- 1034           (4) In addition Chapter 1 contains general definitions and principles of construction and
- 1035 interpretation applicable throughout this chapter.

1036           Section 19. Section **70A-2-210** is amended to read:

1037           **70A-2-210. Delegation of performance -- Assignment of rights.**

1038           (1) A party may perform his duty through a delegate unless otherwise agreed or unless the

1039 other party has a substantial interest in having his original promisor perform or control the acts

1040 required by the contract. No delegation of performance relieves the party delegating of any duty

1041 to perform or any liability for breach.

1042           (2) [~~Unless~~] Except as otherwise provided in Section 70A-9a-406, unless otherwise

1043 agreed, all rights of either seller or buyer can be assigned except where the assignment would

1044 materially change the duty of the other party, or increase materially the burden or risk imposed on

1045 him by his contract, or impair materially his chance of obtaining return performance. A right to

1046 damages for breach of the whole contract or a right arising out of the assignor's due performance

1047 of his entire obligation can be assigned despite agreement otherwise.

1048           (3) The creation, attachment, perfection, or enforcement of a security interest in the seller's

1049 interest under a contract is not a transfer that materially changes the duty of or increases materially

1050 the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining

1051 return performance within the purview of Subsection (2) unless, and then only to the extent that,  
1052 enforcement actually results in a delegation of material performance of the seller. Even in that  
1053 event, the creation, attachment, perfection, and enforcement of the security interest remain  
1054 effective, but:

1055 (a) the seller is liable to the buyer for damages caused by the delegation to the extent that  
1056 the damages could not reasonably be prevented by the buyer; and

1057 (b) a court having jurisdiction may grant other appropriate relief, including cancellation  
1058 of the contract for sale or an injunction against enforcement of the security interest or  
1059 consummation of the enforcement.

1060 [~~(3)~~] (4) Unless the circumstances indicate the contrary a prohibition of assignment of "the  
1061 contract" is to be construed as barring only the delegation of (to) the assignee of the assignor's  
1062 performance.

1063 [~~(4)~~] (5) An assignment of "the contract" or of "all my rights under the contract" or an  
1064 assignment in similar general terms is an assignment of rights and unless the language or the  
1065 circumstances (as in an assignment of (for) security) indicate the contrary, it is a delegation of  
1066 performance of the duties of the assignor and its acceptance by the assignee constitutes a promise  
1067 by him to perform those duties. This promise is enforceable by either the assignor or the other  
1068 party to the original contract.

1069 [~~(5)~~] (6) The other party may treat any assignment which delegates performance as creating  
1070 reasonable grounds for insecurity and may without prejudice to his rights against the assignor  
1071 demand assurances from the assignee (Section 70A-2-609).

1072 Section 20. Section **70A-2-326** is amended to read:

1073 **70A-2-326. Sale on approval and sale or return -- Rights of creditors.**

1074 (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though  
1075 they conform to the contract, the transaction is:

1076 (a) a "sale on approval" if the goods are delivered primarily for use[;]; and

1077 (b) a "sale or return" if the goods are delivered primarily for resale.

1078 (2) [~~Except as provided in Subsection (3), goods~~] Goods held on approval are not subject  
1079 to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to  
1080 such claims while in the buyer's possession.

1081 [~~(3) Where goods are delivered to a person for sale and such person maintains a place of~~

1082 ~~business at which he deals in goods of the kind involved, under a name other than the name of the~~  
1083 ~~person making delivery then with respect to claims of creditors of the person conducting the~~  
1084 ~~business the goods are deemed to be on sale or return. The provisions of this subsection are~~  
1085 ~~applicable even though an agreement purports to reserve title to the person making delivery until~~  
1086 ~~payment or resale or uses such words as "on consignment" or "on memorandum." However, this~~  
1087 ~~subsection is not applicable if the person making delivery]~~

1088 ~~[(a) complies with an applicable law providing for a consignor's interest or the like to be~~  
1089 ~~evidenced by a sign, or]~~

1090 ~~[(b) establishes that the person conducting the business is generally known by his creditors~~  
1091 ~~to be substantially engaged in selling the goods of others, or]~~

1092 ~~[(c) complies with the filing provisions of the chapter on Secured Transactions (Chapter~~  
1093 ~~9);]~~

1094 ~~[(4)] (3)~~ Any "or return" term of a contract for sale is to be treated as a separate contract  
1095 for sale within the statute of frauds section of this chapter (Section 70A-2-201) and as  
1096 contradicting the sale aspect of the contract within the provisions of this chapter on parol or  
1097 extrinsic evidence (Section 70A-2-202).

1098 Section 21. Section **70A-2-502** is amended to read:

1099 **70A-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or**  
1100 **insolvency.**

1101 (1) Subject to ~~[Subsection]~~ Subsections (2) and (3) and even though the goods have not  
1102 been shipped a buyer who has paid a part or all of the price of goods in which he has a special  
1103 property under the provisions of the immediately preceding section may on making and keeping  
1104 good a tender of any unpaid portion of their price recover them from the seller if:

1105 (a) in the case of goods bought for personal, family, or household purposes, the seller  
1106 repudiates or fails to deliver as required by the contract; or

1107 (b) in all cases, the seller becomes insolvent within ten days after receipt of the first  
1108 installment on their price.

1109 (2) The buyer's right to recover the goods under Subsection (1)(a) vests upon acquisition  
1110 of a special property, even if the seller had not then repudiated or failed to deliver.

1111 ~~[(2)] (3)~~ If the identification creating his special property has been made by the buyer he  
1112 acquires the right to recover the goods only if they conform to the contract for sale.

1113 Section 22. Section **70A-2-716** is amended to read:

1114 **70A-2-716. Buyer's right to specific performance or replevin.**

1115 (1) Specific performance may be decreed where the goods are unique or in other proper  
1116 circumstances.

1117 (2) The decree for specific performance may include such terms and conditions as to  
1118 payment of the price, damages, or other relief as the court may deem just.

1119 (3) The buyer has a right of replevin for goods identified to the contract if after reasonable  
1120 effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such  
1121 effort will be unavailing or if the goods have been shipped under reservation and satisfaction of  
1122 the security interest in them has been made or tendered. In the case of goods bought for personal,  
1123 family, or household purposes, the buyer's right of replevin vests upon acquisition of a special  
1124 property, even if the seller had not then repudiated or failed to deliver.

1125 Section 23. Section **70A-2a-103** is amended to read:

1126 **70A-2a-103. Definitions -- Index of definitions.**

1127 (1) In this chapter, unless the context otherwise requires:

1128 (a) "Buyer in ordinary course of business" means a person, who in good faith and without  
1129 knowledge that the sale to him is in violation of the ownership rights or security interest or  
1130 leasehold interest of a third party in the goods, buys in ordinary course from a person in the  
1131 business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for  
1132 cash or by exchange of other property or on secured or unsecured credit and includes receiving  
1133 goods or documents of title under a preexisting contract for sale, but does not include a transfer  
1134 in bulk, or as security for, or in total or partial satisfaction of a money debt.

1135 (b) "Cancellation" occurs when either party puts an end to the lease contract for default  
1136 by the other party.

1137 (c) "Commercial unit" means a unit of goods which by commercial usage is a single whole  
1138 for purposes of lease, and the division of which materially impairs its character or value on the  
1139 market or in use. A commercial unit may be a single article, such as a machine, or a set of articles,  
1140 such as a suite of furniture or a line of machinery, or a quantity, such as a gross or carload, or any  
1141 other unit treated in use or in the relevant market as a single whole.

1142 (d) "Conforming goods or performance under a lease contract" means goods or  
1143 performance that are in accordance with the obligations under the lease contract.

1144 (e) "Consumer lease" means a lease that a lessor, regularly engaged in the business of  
1145 leasing or selling, makes to a lessee, who is an individual and who takes under the lease primarily  
1146 for a personal, family, or household purpose.

1147 (f) "Fault" means wrongful act, omission, breach, or default.

1148 (g) "Finance lease" means a lease in which:

1149 (i) the lessor does not select, manufacture, or supply the goods;

1150 (ii) the lessor acquires the goods or the right to possession and use of the goods in  
1151 connection with the lease; and

1152 (iii) one of the following occurs:

1153 (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the  
1154 right to possession and use of the goods before signing the lease contract;

1155 (B) the lessee's approval of the contract by which the lessor acquired the goods or the right  
1156 to possession and use of the goods is a condition to effectiveness of the lease contract;

1157 (C) the lessee, before signing the lease contract, receives an accurate and complete  
1158 statement designating the promises and warranties, and any disclaimers of warranties, limitations,  
1159 or modifications of remedies, or liquidated damages, including those of a third party, such as the  
1160 manufacturer of the goods, provided to the lessor by the person supplying the goods in connection  
1161 with or as part of the contract by which the lessor acquired the goods or the right to possession and  
1162 use of the goods; or

1163 (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease  
1164 contract, informs the lessee in writing:

1165 (I) of the identity of the person supplying the goods to the lessor, unless the lessee has  
1166 selected that person and directed the lessor to acquire the goods or the right to possession and use  
1167 of the goods from that person;

1168 (II) that the lessee is entitled under this chapter to the promises and warranties, including  
1169 those of any third party, provided to the lessor by the person supplying the goods in connection  
1170 with or as part of the contract by which the lessor acquired the goods or the right to possession and  
1171 use of the goods; and

1172 (III) that the lessee may communicate with the person supplying the goods to the lessor  
1173 and receive an accurate and complete statement of those promises and warranties, including any  
1174 disclaimers and limitations of them or of remedies.

1175 (h) "Goods" means all things that are movable at the time of identification to the lease  
1176 contract, or are fixtures. The term does not include money, documents, instruments, accounts,  
1177 chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction.  
1178 The term also includes the unborn young of animals.

1179 (i) "Installment lease contract" means a lease contract that authorizes or requires the  
1180 delivery of goods in separate lots to be separately accepted, even though the lease contract contains  
1181 a clause stating "each delivery is a separate lease" or its equivalent.

1182 (j) "Lease" means a transfer of the right to possession and use of goods for a term, in return  
1183 for consideration. Unless the context clearly indicates otherwise, the term includes a sublease.  
1184 But a sale, including a sale on approval or a sale or return, or retention or creation of a security  
1185 interest is not a lease.

1186 (k) "Lease agreement" with respect to the lease, means the bargain of the lessor and the  
1187 lessee in fact as found in their language or by implication from other circumstances including  
1188 course of dealing or usage of trade or course of performance as provided in this chapter. Unless  
1189 the context clearly indicates otherwise, the term includes a sublease agreement.

1190 (l) "Lease contract" means the total legal obligation that results from the lease agreement  
1191 as affected by this chapter and any other applicable rules of law. Unless the context clearly  
1192 indicates otherwise, the term includes a sublease contract.

1193 (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease  
1194 contract.

1195 (n) "Lessee" means a person who acquires the right to possession and use of goods under  
1196 a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

1197 (o) "Lessee in ordinary course of business" means a person who in good faith and without  
1198 knowledge that the lease to him is in violation of the ownership rights, security interest, or  
1199 leasehold interest of a third party in the goods, leases in ordinary course from a person in the  
1200 business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing"  
1201 may be for cash or by exchange of other property, or on secured or unsecured credit, and includes  
1202 receiving goods or documents of title under a preexisting lease contract. "Leasing" does not  
1203 include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

1204 (p) "Lessor" means a person who transfers the right to possession and use of goods under  
1205 a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

1206 (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration,  
1207 termination, or cancellation of the lease contract.

1208 (r) "Lien" means a charge against or interest in goods to secure payment of a debt or  
1209 performance of an obligation, but the term does not include a security interest.

1210 (s) "Lot" means a parcel or single article that is the subject matter of a separate lease or  
1211 delivery, whether or not it is sufficient to perform the lease contract.

1212 (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind  
1213 subject to the lease.

1214 (u) "Present value" means the amount as of a date certain of one or more sums payable in  
1215 the future, discounted to the date certain. The discount is determined by the interest rate specified  
1216 by the parties if the rate was not manifestly unreasonable at the time the transaction was entered  
1217 into; otherwise, the discount is determined by a commercially reasonable rate that takes into  
1218 account the facts and circumstances of each case at the time the transaction was entered into.

1219 (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or  
1220 any other voluntary transaction creating an interest in goods.

1221 (w) "Sublease" means a lease of goods, the right to possession and use of which was  
1222 acquired by the lessor as a lessee under an existing lease.

1223 (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under  
1224 a finance lease.

1225 (y) "Supply contract" means a contract under which a lessor buys or leases goods to be  
1226 leased.

1227 (z) "Termination" occurs when either party, pursuant to a power created by agreement or  
1228 law, puts an end to the lease contract otherwise than for default.

1229 (2) Other definitions applying to this chapter and the sections in which they appear are:

1230 (a) "Accessions," Section 70A-2a-310;

1231 (b) "Construction mortgage," Section 70A-2a-309;

1232 (c) "Encumbrance," Section 70A-2a-309;

1233 (d) "Fixtures," Section 70A-2a-309;

1234 (e) "Fixture filing," Section 70A-2a-309; and

1235 (f) "Purchase money lease," Section 70A-2a-309.

1236 (3) The following definitions in other chapters apply to this chapter:

- 1237 (a) "Account," [~~Section 70A-9-106~~] Subsection 70A-9a-102(2);
- 1238 (b) "Between merchants," Section 70A-2-104;
- 1239 (c) "Buyer," Section 70A-2-103;
- 1240 (d) "Chattel paper," [~~Section 70A-9-105~~] Subsection 70A-9a-102(11);
- 1241 (e) "Consumer goods," [~~Section 70A-9-109~~] Subsection 70A-9a-102(23);
- 1242 (f) "Document," [~~Section 70A-9-105~~] Subsection 70A-9a-102(30);
- 1243 (g) "Entrusting," Section 70A-2-403;
- 1244 (h) "General [~~intangibles~~] intangible," [~~Section 70A-9-106~~] Subsection 70A-9a-102(42);
- 1245 (i) "Good faith," Section 70A-2-103;
- 1246 (j) "Instrument," [~~Section 70A-9-105~~] Subsection 70A-9a-102(47);
- 1247 (k) "Merchant," Section 70A-2-104;
- 1248 (l) "Mortgage," [~~Section 70A-9-105~~] Subsection 70A-9a-102(55);
- 1249 (m) "Pursuant to commitment," [~~Section 70A-9-105~~] Subsection 70A-9a-102(68);
- 1250 (n) "Receipt," Section 70A-2-103;
- 1251 (o) "Sale," Section 70A-2-106;
- 1252 (p) "Sale on approval," Section 70A-2-326;
- 1253 (q) "Sale or return," Section 70A-2-326; and
- 1254 (r) "Seller," Section 70A-2-103.

1255 (4) In addition, Title 70A, Chapter 1, Uniform Commercial Code -- General Provisions,  
 1256 contains general definitions and principles of construction and interpretation applicable throughout  
 1257 this chapter.

1258 Section 24. Section **70A-2a-303** is amended to read:

1259 **70A-2a-303. Transfer of party's interest under lease contract or of lessor's residual**  
 1260 **interest in goods -- Transfer as event of default -- Creation or enforcement of security**  
 1261 **interest -- Transfer of right to damages for default.**

1262 (1) As used in this section, "creation of a security interest" includes the sale of a lease  
 1263 contract subject to Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions, by  
 1264 reason of [~~Section 70A-9-102~~] Subsection 70A-9a-109(1)(c).

1265 (2) Except as provided in [~~Subsections~~] Subsection (3) and [~~(4)~~] Section 70A-9a-407, a  
 1266 provision in a lease agreement that prohibits the voluntary or involuntary transfer (including a  
 1267 transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or

1268 other judicial process) of an interest of a party under the lease contract or of the lessor's residual  
1269 interest in the goods, or that makes such a transfer an event of default, gives rise to the rights and  
1270 remedies provided in Subsection ~~[(5)]~~ (4), but a transfer that is prohibited or is an event of default  
1271 under the lease agreement is otherwise effective.

1272 ~~[(3) A provision in a lease agreement that either prohibits the creation or enforcement of~~  
1273 ~~a security interest in an interest of a party under the lease contract or in the lessor's residual interest~~  
1274 ~~in the goods, or makes such a transfer an event of default, is not enforceable unless, and then only~~  
1275 ~~to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use~~  
1276 ~~of the goods in violation of the provision, or an actual delegation of a material performance of~~  
1277 ~~either party to the lease contract in violation of the provision. Neither the granting nor the~~  
1278 ~~enforcement of a security interest in either the lessor's interest under the lease contract or the~~  
1279 ~~lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining~~  
1280 ~~return performance by, materially changes the duty of, or materially increases the burden or risk~~  
1281 ~~imposed on, the lessee within the purview of Subsection (5) unless, and then only to the extent~~  
1282 ~~that, there is an actual delegation of a material performance of the lessor.]~~

1283 ~~[(4)]~~ (3) A provision in a lease agreement that prohibits a transfer of a right to damages  
1284 for default with respect to the whole lease contract or of a right to payment arising out of the  
1285 transferor's due performance of the transferor's entire obligation, or makes such a transfer an event  
1286 of default, is not enforceable, and such a transfer is not a transfer that materially impairs the  
1287 prospect of obtaining return performance by, materially changes the duty of, or materially increases  
1288 the burden or risk imposed on, the other party to the lease contract within the purview of  
1289 Subsection ~~[(5)]~~ (4).

1290 ~~[(5)]~~ (4) Subject to ~~[Subsections]~~ Subsection (3) and ~~[(4)]~~ Section 70A-9a-407:

1291 (a) if a transfer is made that is made an event of default under a lease agreement, the party  
1292 to the lease contract not making the transfer, unless that party waives the default or otherwise  
1293 agrees, has the rights and remedies described in Section 70A-2a-501; and

1294 (b) if Subsection ~~[(5)]~~ (4)(a) is not applicable and if a transfer is made that is prohibited  
1295 under a lease agreement, or materially impairs the prospect of obtaining return performance by,  
1296 materially changes the duty of, or materially increases the burden or risk imposed on, the other  
1297 party to the lease contract, unless the party not making the transfer agrees at any time to the  
1298 transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is

1299 liable to the party not making the transfer for damages caused by the transfer to the extent that the  
1300 damages could not reasonably be prevented by the party not making the transfer, and a court  
1301 having jurisdiction may grant other appropriate relief, including cancellation of the lease contract  
1302 or an injunction against the transfer.

1303 ~~[(6)]~~ (5) A transfer of "the lease" or of "all my rights under the lease" or a transfer in  
1304 similar general terms, is a transfer of rights, and unless the language or the circumstances, as in a  
1305 transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor  
1306 to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform  
1307 those duties. The promise is enforceable by either the transferor or the other party to the lease  
1308 contract.

1309 ~~[(7)]~~ (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance  
1310 does not relieve the transferor as against the other party of any duty to perform or any liability for  
1311 default.

1312 ~~[(8)]~~ (7) In a consumer lease, to prohibit the transfer of an interest of a party under the  
1313 lease contract, or to make a transfer an event of default, the language must be specific, by writing,  
1314 and conspicuous.

1315 Section 25. Section **70A-2a-307** is amended to read:

1316 **70A-2a-307. Priority of liens arising by attachment or levy on, security interests in,**  
1317 **and other claims to goods.**

1318 (1) Except as otherwise provided in Section 70A-2a-306, a creditor of a lessee takes  
1319 subject to the lease contract.

1320 (2) Except as otherwise provided in ~~[Subsections]~~ Subsection (3) ~~[and (4)]~~ and in Sections  
1321 70A-2a-306 and 70A-2a-308, a creditor of a lessor takes subject to the lease contract unless~~[-(a)]~~  
1322 the creditor holds a lien that attached to the goods before the lease contract became enforceable~~[-]~~.

1323 ~~[(b) the creditor holds a security interest in the goods and the lessee did not give value and  
1324 receive delivery of the goods without knowledge of the security interest; or]~~

1325 ~~[(c) the creditor holds a security interest in the goods that was perfected before the lease  
1326 contract became enforceable.]~~

1327 ~~[(3) A lessee in the ordinary course of business takes the leasehold interest free of a  
1328 security interest in the goods created by the lessor even though the security interest is perfected and  
1329 the lessee knows of its existence.]~~

1330           ~~[(4) A lessee other than a lessee in the ordinary course of business takes the leasehold~~  
1331 ~~interest free of a security interest to the extent that it secures future advances made after the~~  
1332 ~~secured party acquires knowledge of the lease or more than 45 days after the lease contract~~  
1333 ~~becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a~~  
1334 ~~commitment entered into without knowledge of the lease and before the expiration of the 45-day~~  
1335 ~~period.]~~

1336           (3) Except as otherwise provided in Sections 70A-9a-317, 70A-9a-321, and 70A-9a-323,  
1337 a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

1338           Section 26. Section **70A-2a-309** is amended to read:

1339           **70A-2a-309. Lessor's and lessee's rights when goods become fixtures.**

1340           (1) In this section:

1341           (a) goods are "fixtures" when they become so related to particular real estate that an  
1342 interest in them arises under real estate law;

1343           (b) a "fixture filing" is the filing, in the office where a record of a mortgage on the real  
1344 estate would be filed, recorded, or registered, of a financing statement covering goods that are or  
1345 are to become fixtures and conforming to the requirements of [~~Subsection 70A-9-402 (5)]~~

1346 Subsections 70A-9a-502(1) and (2);

1347           (c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods  
1348 or the right to possession or use of the goods before the lease agreement is enforceable;

1349           (d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred  
1350 for the construction of an improvement on land including the acquisition cost of the land, if the  
1351 recorded writing so indicates; and

1352           (e) "encumbrance" includes real estate mortgages and other liens on real estate and all  
1353 other rights in real estate that are not ownership interests.

1354           (2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods  
1355 that become fixtures, but no lease exists under this chapter of ordinary building materials  
1356 incorporated into an improvement on land.

1357           (3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

1358           (4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of  
1359 an encumbrancer or owner of the real estate if:

1360           (a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or

1361 owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed or  
1362 recorded before the goods become fixtures or within ten days thereafter, and the lessee has an  
1363 interest of record in the real estate or is in possession of the real estate; or

1364 (b) the interest of the lessor is perfected by a fixture filing before the interest of the  
1365 encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest  
1366 of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in  
1367 the real estate or is in possession of the real estate.

1368 (5) The interest of a lessor of fixtures, whether or not perfected, has priority over the  
1369 conflicting interest of an encumbrancer or owner of the real estate if:

1370 (a) the fixtures are readily removable factory or office machines, readily removable  
1371 equipment that is not primarily used or leased for use in the operation of the real estate, or readily  
1372 removable replacements of domestic appliances that are goods subject to a consumer lease, and  
1373 before the goods become fixtures the lease contract is enforceable;

1374 (b) the conflicting interest is a lien on the real estate obtained by legal or equitable  
1375 proceedings after the lease contract is enforceable;

1376 (c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an  
1377 interest in the goods as fixtures; or

1378 (d) the lessee has a right to remove the goods as against the encumbrancer or owner. If  
1379 the lessee's right to remove terminates, the priority of the interest of the lessor continues for a  
1380 reasonable time.

1381 (6) Notwithstanding Subsection (4)(a), but otherwise subject to Subsections (4) and (5),  
1382 the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of  
1383 the real estate under a construction mortgage recorded before the goods become fixtures if the  
1384 goods become fixtures before the completion of the construction. To the extent given to refinance  
1385 a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a  
1386 mortgage has this priority to the same extent as the encumbrancer of the real estate under the  
1387 construction mortgage.

1388 (7) In cases not within the preceding subsections, priority between the interest of a lessor  
1389 of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer  
1390 or owner of the real estate who is not the lessee is determined by the priority rules governing  
1391 conflicting interests in real estate.

1392 (8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority  
1393 over all conflicting interests of all owners and encumbrances of the real estate, the lessor or the  
1394 lessee may:

1395 (a) on default, expiration, termination, or cancellation of the lease agreement but subject  
1396 to the lease agreement and this chapter; or

1397 (b) if necessary to enforce other rights and remedies of the lessor or lessee under this  
1398 chapter, remove the goods from the real estate, free and clear of all conflicting interests of all  
1399 owners and encumbrances of the real estate, but the lessor or lessee must reimburse any  
1400 encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed  
1401 for the cost of repair of any physical injury, but not for any diminution in value of the real estate  
1402 caused by the absence of the goods removed or by any necessity of replacing them. A person  
1403 entitled to reimbursement may refuse permission to remove the goods until the party seeking  
1404 removal gives adequate security for the performance of this obligation.

1405 (9) Even though the lease agreement does not create a security interest, the interest of a  
1406 lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing  
1407 statement as a fixture filing for leased goods that are or are to become fixtures in accordance with  
1408 the relevant provisions of Title 70A, Chapter 9a, Uniform Commercial Code -- Secured  
1409 Transactions.

1410 Section 27. Section **70A-3-605** is amended to read:

1411 **70A-3-605. Discharge of indorsers and accommodation parties.**

1412 (1) In this section, the term "indorser" includes a drawer having the obligation described  
1413 in Subsection 70A-3-414 (4).

1414 (2) Discharge, under Section 70A-3-604, of the obligation of a party to pay an instrument  
1415 does not discharge the obligation of an indorser or accommodation party having a right of recourse  
1416 against the discharged party.

1417 (3) If a person entitled to enforce an instrument agrees, with or without consideration, to  
1418 an extension of the due date of the obligation of a party to pay the instrument, the extension  
1419 discharges an indorser or accommodation party having a right of recourse against the party whose  
1420 obligation is extended to the extent the indorser or accommodation party proves that the extension  
1421 caused loss to the indorser or accommodation party with respect to the right of recourse.

1422 (4) If a person entitled to enforce an instrument agrees, with or without consideration, to

1423 a material modification of the obligation of a party other than an extension of the due date, the  
1424 modification discharges the obligation of an indorser or accommodation party having a right of  
1425 recourse against the person whose obligation is modified to the extent the modification causes loss  
1426 to the indorser or accommodation party with respect to the right of recourse. The loss suffered by  
1427 the indorser or accommodation party as a result of the modification is equal to the amount of the  
1428 right of recourse unless the person enforcing the instrument proves that no loss was caused by the  
1429 modification or that the loss caused by the modification was an amount less than the amount of  
1430 the right of recourse.

1431 (5) If the obligation of a party to pay an instrument is secured by an interest in collateral  
1432 and a person entitled to enforce the instrument impairs the value of the interest in collateral, the  
1433 obligation of an indorser or accommodation party having a right of recourse against the obligor is  
1434 discharged to the extent of the impairment. The value of an interest in collateral is impaired to the  
1435 extent the value of the interest is reduced to an amount less than the amount of the right of recourse  
1436 of the party asserting discharge, or the reduction in value of the interest causes an increase in the  
1437 amount by which the amount of the right of recourse exceeds the value of the interest. The burden  
1438 of proving impairment is on the party asserting discharge.

1439 (6) If the obligation of a party is secured by an interest in collateral not provided by an  
1440 accommodation party and a person entitled to enforce the instrument impairs the value of the  
1441 interest in collateral, the obligation of any party who is jointly and severally liable with respect to  
1442 the secured obligation is discharged to the extent the impairment causes the party asserting  
1443 discharge to pay more than that party would have been obliged to pay, taking into account rights  
1444 of contribution, if impairment had not occurred. If the party asserting discharge is an  
1445 accommodation party not entitled to discharge under Subsection (5), the party is deemed to have  
1446 a right to contribution based on joint and several liability rather than a right to reimbursement. The  
1447 burden of proving impairment is on the party asserting discharge.

1448 (7) Under Subsection (5) or (6), impairing value of an interest in collateral includes failure  
1449 to obtain or maintain perfection or recordation of the interest in collateral, release of collateral  
1450 without substitution of collateral of equal value, failure to perform a duty to preserve the value of  
1451 collateral owed, under Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions,  
1452 or other law, to a debtor or surety or other person secondarily liable, or failure to comply with  
1453 applicable law in disposing of collateral.

1454 (8) An accommodation party is not discharged under Subsection (3), (4), or (5) unless the  
1455 person entitled to enforce the instrument knows of the accommodation or has notice under  
1456 Subsection 70A-3-419 (3) that the instrument was signed for accommodation.

1457 (9) A party is not discharged under this section if the party asserting discharge consents  
1458 to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement  
1459 of the party provides for waiver of discharge under this section either specifically or by general  
1460 language indicating that parties waive defenses based on suretyship or impairment of collateral.

1461 Section 28. Section **70A-4-210** is amended to read:

1462 **70A-4-210. Security interest of collecting bank in items, accompanying documents,**  
1463 **and proceeds.**

1464 (1) A collecting bank has a security interest in an item and any accompanying documents  
1465 or the proceeds of either:

1466 (a) in case of an item deposited in an account, to the extent to which credit given for the  
1467 item has been withdrawn or applied;

1468 (b) in case of an item for which it has given credit available for withdrawal as of right, to  
1469 the extent of the credit given, whether or not the credit is drawn upon or there is a right of  
1470 charge-back; or

1471 (c) if it makes an advance on or against the item.

1472 (2) If credit given for several items received at one time or pursuant to a single agreement  
1473 is withdrawn or applied in part, the security interest remains upon all the items, any accompanying  
1474 documents or the proceeds of either. For the purpose of this section, credits first given are first  
1475 withdrawn.

1476 (3) Receipt by a collecting bank of a final settlement for an item is a realization on its  
1477 security interest in the item, accompanying documents, and proceeds. So long as the bank does  
1478 not receive final settlement for the item or give up possession of the item or accompanying  
1479 documents for purposes other than collection, the security interest continues to that extent and is  
1480 subject to Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions, but:

1481 (a) no security agreement is necessary to make the security interest enforceable, Subsection  
1482 [~~70A-9-203(1)(a)~~] 70A-9a-203(2)(c)(i);

1483 (b) no filing is required to perfect the security interest; and

1484 (c) the security interest has priority over conflicting perfected security interests in the item,

1485 accompanying documents, or proceeds.

1486 Section 29. Section **70A-5-114** is amended to read:

1487 **70A-5-114. Assignment of proceeds.**

1488 (1) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft,  
1489 or other item of value paid or delivered upon honor or giving of value by the issuer or any  
1490 nominated person under the letter of credit. The term does not include a beneficiary's drawing  
1491 rights or documents presented by the beneficiary.

1492 (2) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The  
1493 beneficiary may do so before presentation as a present assignment of its right to receive proceeds  
1494 contingent upon its compliance with the terms and conditions of the letter of credit.

1495 (3) An issuer or nominated person need not recognize an assignment of proceeds of a letter  
1496 of credit until it consents to the assignment.

1497 (4) An issuer or nominated person has no obligation to give or withhold its consent to an  
1498 assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the  
1499 assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a  
1500 condition to honor.

1501 (5) Rights of a transferee beneficiary or nominated person are independent of the  
1502 beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right  
1503 to the proceeds.

1504 (6) Neither the rights recognized by this section between an assignee and an issuer,  
1505 transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of  
1506 proceeds to an assignee or a third person affect the rights between the assignee and any person  
1507 other than the issuer, transferee beneficiary, or nominated person. The mode of creating and  
1508 perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is  
1509 governed by Title 70A, Chapter 9a, Uniform Commercial Code -- Secured Transactions, or other  
1510 law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights  
1511 and obligations arising upon the creation of a security interest or other assignment of a  
1512 beneficiary's right to proceeds and its perfection are governed by Title 70A, Chapter 9a, Uniform  
1513 Commercial Code -- Secured Transactions, or other law.

1514 Section 30. Section **70A-5-118** is repealed and reenacted to read:

1515 **70A-5-118. Security interest of issuer or nominated person.**

1516 (1) An issuer or nominated person has a security interest in a document presented under  
1517 a letter of credit to the extent that the issuer or nominated person honors or gives value for the  
1518 presentation.

1519 (2) So long as and to the extent that an issuer or nominated person has not been reimbursed  
1520 or has not otherwise recovered the value given with respect to a security interest in a document  
1521 under Subsection (1), the security interest continues and is subject to Chapter 9, but:

1522 (a) a security agreement is not necessary to make the security interest enforceable under  
1523 Subsection 70A-9a-203(2)(c);

1524 (b) if the document is presented in a medium other than a written or other tangible  
1525 medium, the security interest is perfected; and

1526 (c) if the document is presented in a written or other tangible medium and is not a  
1527 certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the  
1528 security interest is perfected and has priority over a conflicting security interest in the document  
1529 so long as the debtor does not have possession of the document.

1530 Section 31. Section **70A-5-119** is repealed and reenacted to read:

1531 **70A-5-119. Applicability.**

1532 This act applies to a letter of credit that is issued on or after July 1, 1997. This act does not  
1533 apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit  
1534 that was issued before July 1, 1997.

1535 Section 32. Section **70A-5-120** is enacted to read:

1536 **70A-5-120. Savings clause.**

1537 A transaction arising out of or associated with a letter of credit that was issued before July  
1538 1, 1997, and the rights, obligations, and interests flowing from that transaction are governed by any  
1539 statute or other law amended or repealed by this act as if repeal or amendment had not occurred  
1540 and may be terminated, completed, consummated, or enforced under that statute or other law.

1541 Section 33. Section **70A-7-503** is amended to read:

1542 **70A-7-503. Document of title to goods defeated in certain cases.**

1543 (1) A document of title confers no right in goods against a person who before issuance of  
1544 the document had a legal interest or a perfected security interest in them and who neither

1545 (a) delivered or entrusted them or any document of title covering them to the bailor or his  
1546 nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery

1547 under this chapter (Section 70A-7-403) or with power of disposition under this act (Sections  
1548 70A-2-403 and [~~70A-9-307~~] 70A-9a-320) or other statute or rule of law; nor

1549 (b) acquiesced in the procurement by the bailor or his nominee of any document of title.

1550 (2) Title to goods based upon an unaccepted delivery order is subject to the rights of  
1551 anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly  
1552 negotiated. Such a title may be defeated under the next section to the same extent as the rights of  
1553 the issuer or a transferee from the issuer.

1554 (3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the  
1555 rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by  
1556 the carrier in accordance with Part 4 of this chapter pursuant to its own bill of lading discharges  
1557 the carrier's obligation to deliver.

1558 Section 34. Section **70A-8-102** is amended to read:

1559 **70A-8-102. Rules for determining whether certain obligations and interests are**  
1560 **securities or financial assets.**

1561 (1) A share or similar equity interest issued by a corporation, business trust, joint stock  
1562 company, or similar entity is a security.

1563 (2) An "investment company security" is a security. "Investment company security" means  
1564 a share or similar equity interest issued by an entity that is registered as an investment company  
1565 under the federal investment company laws, an interest in a unit investment trust that is so  
1566 registered, or a face-amount certificate issued by a face-amount certificate company that is so  
1567 registered. Investment company security does not include an insurance policy or endowment  
1568 policy or annuity contract issued by an insurance company.

1569 (3) An interest in a partnership or limited liability company is not a security unless it is  
1570 dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that  
1571 it is a security governed by this chapter, or it is an investment company security. However, an  
1572 interest in a partnership or limited liability company is a financial asset if it is held in a securities  
1573 account.

1574 (4) A writing that is a security certificate is governed by this chapter and not by Chapter  
1575 3, even though it also meets the requirements of that chapter. However, a negotiable instrument  
1576 governed by Chapter 3 is a financial asset if it is held in a securities account.

1577 (5) An option or similar obligation issued by a clearing corporation to its participants is

1578 not a security, but is a financial asset.

1579 (6) A commodity contract, as defined in [~~Section 70A-9-114~~] Subsection 70A-9a-102(15),  
1580 is not a security or a financial asset.

1581 Section 35. Section **70A-8-105** is amended to read:

1582 **70A-8-105. Control.**

1583 (1) A purchaser has "control" of a certificated security in bearer form if the certificated  
1584 security is delivered to the purchaser.

1585 (2) A purchaser has "control" of a certificated security in registered form if the certificated  
1586 security is delivered to the purchaser, and:

1587 (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

1588 (b) the certificate is registered in the name of the purchaser, upon original issue or  
1589 registration of transfer by the issuer.

1590 (3) A purchaser has "control" of an uncertificated security if:

1591 (a) the uncertificated security is delivered to the purchaser; or

1592 (b) the issuer has agreed that it will comply with instructions originated by the purchaser  
1593 without further consent by the registered owner.

1594 (4) A purchaser has "control" of a security entitlement if:

1595 (a) the purchaser becomes the entitlement holder; [~~or~~]

1596 (b) the securities intermediary has agreed that it will comply with entitlement orders  
1597 originated by the purchaser without further consent by the entitlement holder[~~;~~ or

1598 (c) another person has control of the security entitlement on behalf of the purchaser or,  
1599 having previously acquired control of the security entitlement, acknowledges that it has control on  
1600 behalf of the purchaser.

1601 (5) If an interest in a security entitlement is granted by the entitlement holder to the  
1602 entitlement holder's own securities intermediary, the securities intermediary has control.

1603 (6) A purchaser who has satisfied the requirements of Subsection (3)(b) or (4)(b) has  
1604 control even if the registered owner in the case of Subsection (3)(b) or the entitlement holder in  
1605 the case of Subsection (4)(b) retains the right to make substitutions for the uncertificated security  
1606 or security entitlement, to originate instructions or entitlement orders to the issuer or securities  
1607 intermediary, or otherwise to deal with the uncertificated security or security entitlement.

1608 (7) An issuer or a securities intermediary may not enter into an agreement of the kind

1609 described in Subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement  
1610 holder, but an issuer or a securities intermediary is not required to enter into such an agreement  
1611 even though the registered owner or entitlement holder so directs. An issuer or securities  
1612 intermediary that has entered into such an agreement is not required to confirm the existence of  
1613 the agreement to another party unless requested to do so by the registered owner or entitlement  
1614 holder.

1615 Section 36. Section **70A-8-109** is amended to read:

1616 **70A-8-109. Applicability -- Choice of law.**

1617 (1) The local law of the issuer's jurisdiction, as specified in Subsection (4), governs:

1618 (a) the validity of a security;

1619 (b) the rights and duties of the issuer with respect to registration of transfer;

1620 (c) the effectiveness of registration of transfer by the issuer;

1621 (d) whether the issuer owes any duties to an adverse claimant to a security; and

1622 (e) whether an adverse claim can be asserted against a person to whom transfer of a

1623 certificated or uncertificated security is registered or a person who obtains control of an

1624 uncertificated security.

1625 (2) The local law of the securities intermediary's jurisdiction, as specified in Subsection

1626 (5), governs:

1627 (a) acquisition of a security entitlement from the securities intermediary;

1628 (b) the rights and duties of the securities intermediary and entitlement holder arising out

1629 of a security entitlement;

1630 (c) whether the securities intermediary owes any duties to an adverse claimant to a security

1631 entitlement; and

1632 (d) whether an adverse claim can be asserted against a person who acquires a security

1633 entitlement from the securities intermediary or a person who purchases a security entitlement or

1634 interest therein from an entitlement holder.

1635 (3) The local law of the jurisdiction in which a security certificate is located at the time

1636 of delivery governs whether an adverse claim can be asserted against a person to whom the security

1637 certificate is delivered.

1638 (4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is

1639 organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified

1640 by the issuer. An issuer organized under the law of this state may specify the law of another  
1641 jurisdiction as the law governing the matters specified in Subsections (1)(b) through (e).

1642 (5) The following rules determine a "securities intermediary's jurisdiction" for purposes  
1643 of this section:

1644 (a) If an agreement between the securities intermediary and its entitlement holder  
1645 ~~[specifies that it is governed by the law of a particular jurisdiction]~~ governing the securities  
1646 account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction  
1647 for purposes of this part, this chapter, or this title, that jurisdiction is the securities intermediary's  
1648 jurisdiction.

1649 (b) If Subsection (5)(a) does not apply and an agreement between the securities  
1650 intermediary and its entitlement holder governing the securities account expressly provides that  
1651 the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities  
1652 intermediary's jurisdiction.

1653 ~~[(b)]~~ (c) If neither Subsection (5)(a) nor Subsection (5)(b) applies and an agreement  
1654 between the securities intermediary and its entitlement holder [does not specify the governing law  
1655 as provided in Subsection (a), but] governing the securities account expressly [specifies] provides  
1656 that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction  
1657 is the securities intermediary's jurisdiction.

1658 ~~[(c)]~~ (d) If [an agreement between the securities intermediary and its entitlement holder  
1659 does not specify a jurisdiction as provided in Subsection (a) or (b)] Subsections (5)(a) through (c)  
1660 do not apply, the securities intermediary's jurisdiction is the jurisdiction in which ~~[is located]~~  
1661 the office identified in an account statement as the office serving the entitlement holder's account is  
1662 located.

1663 ~~[(d)]~~ (e) If [an agreement between the securities intermediary and its entitlement holder  
1664 does not specify a jurisdiction as provided in Subsection (a) or (b) and an account statement does  
1665 not identify an office serving the entitlement holder's account as provided in Subsection (c)]  
1666 Subsections (5)(a) through (d) do not apply, the securities intermediary's jurisdiction is the  
1667 jurisdiction in which ~~[is located]~~ the chief executive office of the securities intermediary is located.

1668 (6) A securities intermediary's jurisdiction is not determined by the physical location of  
1669 certificates representing financial assets, or by the jurisdiction in which is organized the issuer of  
1670 the financial asset with respect to which an entitlement holder has a security entitlement, or by the

1671 location of facilities for data processing or other record keeping concerning the account.

1672 Section 37. Section **70A-8-301** is amended to read:

1673 **70A-8-301. Delivery.**

1674 (1) Delivery of a certificated security to a purchaser occurs when:

1675 (a) the purchaser acquires possession of the security certificate;

1676 (b) another person, other than a securities intermediary, either acquires possession of the  
1677 security certificate on behalf of the purchaser or, having previously acquired possession of the  
1678 certificate, acknowledges that it holds for the purchaser; or

1679 (c) a securities intermediary acting on behalf of the purchaser acquires possession of the  
1680 security certificate, only if the certificate is in registered form and ~~[has been]~~ is:

1681 (i) registered in the name of the purchaser;

1682 (ii) payable to the order of the purchaser; or

1683 (iii) specially indorsed to the purchaser by an effective indorsement and has not been  
1684 indorsed to the securities intermediary or in blank.

1685 (2) Delivery of an uncertificated security to a purchaser occurs when:

1686 (a) the issuer registers the purchaser as the registered owner, upon original issue or  
1687 registration of transfer; or

1688 (b) another person, other than a securities intermediary, either becomes the registered  
1689 owner of the uncertificated security on behalf of the purchaser or, having previously become the  
1690 registered owner, acknowledges that it holds for the purchaser.

1691 Section 38. Section **70A-8-302** is amended to read:

1692 **70A-8-302. Rights of purchaser.**

1693 (1) Except as otherwise provided in Subsections (2) and (3), ~~[upon delivery]~~ a purchaser  
1694 of a certificated or uncertificated security ~~[to a purchaser, the purchaser]~~ acquires all rights in the  
1695 security that the transferor had or had power to transfer.

1696 (2) A purchaser of a limited interest acquires rights only to the extent of the interest  
1697 purchased.

1698 (3) A purchaser of a certificated security who as a previous holder had notice of an adverse  
1699 claim does not improve its position by taking from a protected purchaser.

1700 Section 39. Section **70A-8-510** is amended to read:

1701 **70A-8-510. Rights of purchaser of security entitlement from entitlement holder.**

1702 (1) ~~[An]~~ In a case not covered by the priority rules in Chapter 9a, Uniform Commercial  
1703 Code -- Secured Transactions, or the rules stated in Subsection (3), an action based on an adverse  
1704 claim to a financial asset or security entitlement, whether framed in conversion, replevin,  
1705 constructive trust, equitable lien, or other theory, may not be asserted against a person who  
1706 purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser  
1707 gives value, does not have notice of the adverse claim, and obtains control.

1708 (2) If an adverse claim could not have been asserted against an entitlement holder under  
1709 Section 70A-8-502, the adverse claim cannot be asserted against a person who purchases a security  
1710 entitlement, or an interest therein, from the entitlement holder.

1711 (3) In a case not covered by the priority rules in Chapter 9a, Uniform Commercial Code  
1712 -- Secured Transactions, a purchaser for value of a security entitlement, or an interest therein, who  
1713 obtains control has priority over a purchaser of a security entitlement, or an interest therein, who  
1714 does not obtain control. [Purchasers] Except as otherwise provided in Subsection (4), purchasers  
1715 who have control rank ~~[equally, except that a]~~ according to priority in time of:

1716 (a) the purchaser's becoming the person for whom the securities account, in which the  
1717 security entitlement is carried, is maintained, if the purchaser obtained control under Subsection  
1718 70A-8-105(4)(a);

1719 (b) the securities intermediary's agreement to comply with the purchaser's entitlement  
1720 orders with respect to security entitlements carried or to be carried in the securities account in  
1721 which the security entitlement is carried, if the purchaser obtained control under Subsection  
1722 70A-8-105(4)(b); or

1723 (c) if the purchaser obtained control through another person under Subsection  
1724 70A-8-105(4)(c), the time on which priority would be based under this subsection if the other  
1725 person were the secured party.

1726 (4) A securities intermediary as purchaser has priority over a conflicting purchaser who  
1727 has control unless otherwise agreed by the securities intermediary.

1728 Section 40. Section **70A-9a-101** is enacted to read:

1729 **CHAPTER 9a. UNIFORM COMMERCIAL CODE -- SECURED TRANSACTIONS**

1730 **Part 1. General Provisions**

1731 **70A-9a-101. Title.**

1732 This chapter may be cited as Uniform Commercial Code--Secured Transactions.

1733 Section 41. Section **70A-9a-102** is enacted to read:

1734 **70A-9a-102. Definitions and index of definitions.**

1735 In this chapter:

1736 (1) "Accession" means goods that are physically united with other goods in such a manner  
1737 that the identity of the original goods is not lost.

1738 (2) (a) "Account," except as used in "account for," means a right to payment of a monetary  
1739 obligation, whether or not earned by performance:

1740 (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise  
1741 disposed of;

1742 (ii) for services rendered or to be rendered;

1743 (iii) for a policy of insurance issued or to be issued;

1744 (iv) for a secondary obligation incurred or to be incurred;

1745 (v) for energy provided or to be provided;

1746 (vi) for the use or hire of a vessel under a charter or other contract;

1747 (vii) arising out of the use of a credit or charge card or information contained on or for use  
1748 with the card; or

1749 (viii) as winnings in a lottery or other game of chance operated or sponsored by a state,  
1750 governmental unit of a state, or person licensed or authorized to operate the game by a state or  
1751 governmental unit of a state.

1752 (b) "Account" includes health-care-insurance receivables.

1753 (c) "Account" does not include:

1754 (i) rights to payment evidenced by chattel paper or an instrument;

1755 (ii) commercial tort claims;

1756 (iii) deposit accounts;

1757 (iv) investment property;

1758 (v) letter-of-credit rights or letters of credit; or

1759 (vi) rights to payment for money or funds advanced or sold, other than rights arising out  
1760 of the use of a credit or charge card or information contained on or for use with the card.

1761 (3) (a) "Account debtor" means a person obligated on an account, chattel paper, or general  
1762 intangible.

1763 (b) "Account debtor" does not include persons obligated to pay a negotiable instrument,

- 1764 even if the instrument constitutes part of chattel paper.
- 1765 (4) "Accounting," except as used in "accounting for," means a record:
- 1766 (a) authenticated by a secured party;
- 1767 (b) indicating the aggregate unpaid secured obligations as of a date not more than 35 days
- 1768 earlier or 35 days later than the date of the record; and
- 1769 (c) identifying the components of the obligations in reasonable detail.
- 1770 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:
- 1771 (a) which secures payment or performance of an obligation for:
- 1772 (i) goods or services furnished in connection with a debtor's farming operation; or
- 1773 (ii) rent on real property leased by a debtor in connection with its farming operation;
- 1774 (b) which is created by statute in favor of a person that:
- 1775 (i) in the ordinary course of its business furnished goods or services to a debtor in
- 1776 connection with a debtor's farming operation; or
- 1777 (ii) leased real property to a debtor in connection with the debtor's farming operation; and
- 1778 (c) whose effectiveness does not depend on the person's possession of the personal
- 1779 property.
- 1780 (6) "As-extracted collateral" means:
- 1781 (a) oil, gas, or other minerals that are subject to a security interest that:
- 1782 (i) is created by a debtor having an interest in the minerals before extraction; and
- 1783 (ii) attaches to the minerals as extracted; or
- 1784 (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other
- 1785 minerals in which the debtor had an interest before extraction.
- 1786 (7) "Authenticate" means:
- 1787 (a) to sign; or
- 1788 (b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in
- 1789 whole or in part, with the present intent of the authenticating person to identify the person and
- 1790 adopt or accept a record.
- 1791 (8) (a) "Bank" means an organization that is engaged in the business of banking.
- 1792 (b) "Bank" includes:
- 1793 (i) a depository institution as defined in Section 7-1-103; and
- 1794 (ii) a trust company.

1795 (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

1796 (10) "Certificate of title" means a certificate of title with respect to which a statute  
1797 provides for the security interest in question to be indicated on the certificate as a condition or  
1798 result of the security interest's obtaining priority over the rights of a lien creditor with respect to  
1799 the collateral.

1800 (11) (a) "Chattel paper" means a record or records that evidence both a monetary  
1801 obligation and a security interest in specific goods, a security interest in specific goods and  
1802 software used in the goods, a security interest in specific goods and license of software used in the  
1803 goods, a lease of specific goods, or a lease of specific goods and license of software used in the  
1804 goods. In this Subsection (11), "monetary obligation" means a monetary obligation secured by the  
1805 goods or owed under a lease of the goods and includes a monetary obligation with respect to  
1806 software used in the goods.

1807 (b) "Chattel paper" does not include:

1808 (i) charters or other contracts involving the use or hire of a vessel; or

1809 (ii) records that evidence a right to payment arising out of the use of a credit or charge card  
1810 or information contained or for use with the card.

1811 (c) If a transaction is evidenced by records that include an instrument or series of  
1812 instruments, the group of records taken together constitutes chattel paper.

1813 (12) "Collateral" means the property subject to a security interest or agricultural lien.  
1814 "Collateral" includes:

1815 (a) proceeds to which a security interest attaches;

1816 (b) accounts, chattel paper, payment intangibles, and promissory notes that have been sold;  
1817 and

1818 (c) goods that are the subject of a consignment.

1819 (13) "Commercial tort claim" means a claim arising in tort with respect to which:

1820 (a) the claimant is an organization; or

1821 (b) the claimant is an individual and the claim:

1822 (i) arose in the course of the claimant's business or profession; and

1823 (ii) does not include damages arising out of personal injury to or the death of an individual.

1824 (14) "Commodity account" means an account maintained by a commodity intermediary  
1825 in which a commodity contract is carried for a commodity customer.

1826 (15) "Commodity contract" means a commodity futures contract, an option on a  
1827 commodity futures contract, a commodity option, or another contract if the contract or option is:

1828 (a) traded on or subject to the rules of a board of trade that has been designated as a  
1829 contract market for such a contract pursuant to federal commodities laws; or

1830 (b) traded on a foreign commodity board of trade, exchange, or market, and is carried on  
1831 the books of a commodity intermediary for a commodity customer.

1832 (16) "Commodity customer" means a person for which a commodity intermediary carries  
1833 a commodity contract on its books.

1834 (17) "Commodity intermediary" means a person that:

1835 (a) is registered as a futures commission merchant under federal commodities law; or

1836 (b) in the ordinary course of its business provides clearance or settlement services for a  
1837 board of trade that has been designated as a contract market pursuant to federal commodities law.

1838 (18) "Communicate" means:

1839 (a) to send a written or other tangible record;

1840 (b) to transmit a record by any means agreed upon by the persons sending and receiving  
1841 the record; or

1842 (c) in the case of transmission of a record to or by a filing office, to transmit a record by  
1843 any means prescribed by filing-office rule.

1844 (19) "Consignee" means a merchant to which goods are delivered in a consignment.

1845 (20) "Consignment" means a transaction, regardless of its form, in which a person delivers  
1846 goods to a merchant for the purpose of sale and:

1847 (a) the merchant:

1848 (i) deals in goods of that kind under a name other than the name of the person making  
1849 delivery;

1850 (ii) is not an auctioneer; and

1851 (iii) is not generally known by its creditors to be substantially engaged in selling the goods  
1852 of others;

1853 (b) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the  
1854 time of delivery;

1855 (c) the goods are not consumer goods immediately before delivery; and

1856 (d) the transaction does not create a security interest that secures an obligation.

- 1857 (21) "Consignor" means a person that delivers goods to a consignee in a consignment.
- 1858 (22) "Consumer debtor" means a debtor in a consumer transaction.
- 1859 (23) "Consumer goods" means goods that are used or bought for use primarily for  
1860 personal, family, or household purposes.
- 1861 (24) "Consumer-goods transaction" means a consumer transaction in which:
- 1862 (a) an individual incurs an obligation primarily for personal, family, or household  
1863 purposes; and
- 1864 (b) a security interest in consumer goods secures the obligation.
- 1865 (25) "Consumer obligor" means an obligor who is an individual and who incurred the  
1866 obligation as part of a transaction entered into primarily for personal, family, or household  
1867 purposes.
- 1868 (26) (a) "Consumer transaction" means a transaction in which:
- 1869 (i) an individual incurs an obligation primarily for personal, family, or household purposes;  
1870 (ii) a security interest secures the obligation; and
- 1871 (iii) the collateral is held or acquired primarily for personal, family, or household purposes.
- 1872 (b) "Consumer transaction" includes consumer-goods transactions.
- 1873 (27) "Continuation statement" means an amendment of a financing statement which:
- 1874 (a) identifies, by its file number, the initial financing statement to which it relates; and  
1875 (b) indicates that it is a continuation statement for, or that it is filed to continue the  
1876 effectiveness of, the identified financing statement.
- 1877 (28) "Debtor" means:
- 1878 (a) a person having an interest, other than a security interest or other lien, in the collateral,  
1879 whether or not the person is an obligor;
- 1880 (b) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or  
1881 (c) a consignee.
- 1882 (29) (a) "Deposit account" means a demand, time, savings, passbook, or similar account  
1883 maintained with a bank.
- 1884 (b) "Deposit account" does not include investment property or accounts evidenced by an  
1885 instrument.
- 1886 (30) "Document" means a document of title or a receipt of the type described in Subsection  
1887 70A-7-201(2).

1888 (31) "Electronic chattel paper" means chattel paper evidenced by a record or records  
1889 consisting of information stored in an electronic medium.

1890 (32) "Encumbrance" means a right, other than an ownership interest, in real property.  
1891 "Encumbrance" includes mortgages and other liens on real property.

1892 (33) "Equipment" means goods other than inventory, farm products, or consumer goods.

1893 (34) "Farm products" means goods, other than standing timber, with respect to which the  
1894 debtor is engaged in a farming operation and which are:

1895 (a) crops grown, growing, or to be grown, including:

1896 (i) crops produced on trees, vines, and bushes; and

1897 (ii) aquatic goods produced in aquacultural operations;

1898 (b) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

1899 (c) supplies used or produced in a farming operation; or

1900 (d) products of crops or livestock in their unmanufactured states.

1901 (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or  
1902 any other farming, livestock, or aquacultural operation.

1903 (36) "File number" means the number assigned to an initial financing statement pursuant  
1904 to Subsection 70A-9a-519(1).

1905 (37) "Filing office" means an office designated in Section 70A-9a-501 as the place to file  
1906 a financing statement.

1907 (38) "Filing-office rule" means a rule adopted pursuant to Section 70A-9a-526.

1908 (39) "Financing statement" means a record or records composed of an initial financing  
1909 statement and any filed record relating to the initial financing statement.

1910 (40) (a) "Fixture filing" means the filing of a financing statement covering goods that are  
1911 or are to become fixtures and satisfying Subsections 70A-9a-502(1) and (2).

1912 (b) "Fixture filing" includes the filing of a financing statement covering goods of a  
1913 transmitting utility which are or are to become fixtures.

1914 (41) "Fixtures" means goods that have become so related to particular real property that  
1915 an interest in them arises under real property law.

1916 (42) (a) "General intangible" means any personal property, including things in action, other  
1917 than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,  
1918 instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or

1919 other minerals before extraction.

1920 (b) "General intangible" includes payment intangibles and software.

1921 (43) "Good faith" means honesty in fact and the observance of reasonable commercial  
1922 standards of fair dealing.

1923 (44) (a) "Goods" means all things that are movable when a security interest attaches.

1924 (b) "Goods" includes:

1925 (i) fixtures;

1926 (ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

1927 (iii) the unborn young of animals;

1928 (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines,  
1929 or bushes; and

1930 (v) manufactured homes.

1931 (c) "Goods" also includes a computer program embedded in goods and any supporting  
1932 information provided in connection with a transaction relating to the program if:

1933 (i) the program is associated with the goods in such a manner that it customarily is  
1934 considered part of the goods; or

1935 (ii) by becoming the owner of the goods, a person acquires a right to use the program in  
1936 connection with the goods.

1937 (d) "Goods" does not include a computer program embedded in goods that consist solely  
1938 of the medium in which the program is embedded.

1939 (e) "Goods" also does not include accounts, chattel paper, commercial tort claims, deposit  
1940 accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights,  
1941 letters of credit, money, or oil, gas, or other minerals before extraction.

1942 (45) (a) "Governmental unit" means a subdivision, agency, department, county, parish,  
1943 municipality, or other unit of the government of the United States, a state, or a foreign country.

1944 (b) "Governmental unit" includes an organization having a separate corporate existence  
1945 if the organization is eligible to issue debt on which interest is exempt from income taxation under  
1946 the laws of the United States.

1947 (46) "Health-care-insurance receivable" means an interest in or claim under a policy of  
1948 insurance which is a right to payment of a monetary obligation for health-care goods or services  
1949 provided.

1950           (47) (a) "Instrument" means a negotiable instrument or any other writing that evidences  
1951 a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is  
1952 of a type that in ordinary course of business is transferred by delivery with any necessary  
1953 indorsement or assignment.

1954           (b) "Instrument" does not include:

1955           (i) investment property;

1956           (ii) letters of credit; or

1957           (iii) writings that evidence a right to payment arising out of the use of a credit or charge  
1958 card or information contained on or for use with the card.

1959           (48) "Inventory" means goods, other than farm products, which:

1960           (a) are leased by a person as lessor;

1961           (b) are held by a person for sale or lease or to be furnished under a contract of service;

1962           (c) are furnished by a person under a contract of service; or

1963           (d) consist of raw materials, work in process, or materials used or consumed in a business.

1964           (49) "Investment property" means a security, whether certificated or uncertificated,  
1965 security entitlement, securities account, commodity contract, or commodity account.

1966           (50) "Jurisdiction of organization," with respect to a registered organization, means the  
1967 jurisdiction under whose law the organization is organized.

1968           (51) (a) "Letter-of-credit right" means a right to payment or performance under a letter of  
1969 credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment  
1970 or performance.

1971           (b) "Letter-of-credit right" does not include the right of a beneficiary to demand payment  
1972 or performance under a letter of credit.

1973           (52) "Lien creditor" means:

1974           (a) a creditor that has acquired a lien on the property involved by attachment, levy, or the  
1975 like;

1976           (b) an assignee for benefit of creditors from the time of assignment;

1977           (c) a trustee in bankruptcy from the date of the filing of the petition; or

1978           (d) a receiver in equity from the time of appointment.

1979           (53) (a) "Manufactured home" means a structure, transportable in one or more sections,  
1980 which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length.

1981 or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and  
1982 designed to be used as a dwelling with or without a permanent foundation when connected to the  
1983 required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems  
1984 contained therein.

1985 (b) "Manufactured home" includes any structure that meets all of the requirements of this  
1986 Subsection (53) except the size requirements and with respect to which the manufacturer  
1987 voluntarily files a certification required by the United States Secretary of Housing and Urban  
1988 Development and complies with the standards established under Title 42 of the United States  
1989 Code.

1990 (54) "Manufactured-home transaction" means a secured transaction:

1991 (a) that creates a purchase-money security interest in a manufactured home, other than a  
1992 manufactured home held as inventory; or

1993 (b) in which a manufactured home, other than a manufactured home held as inventory, is  
1994 the primary collateral.

1995 (55) "Mortgage" means a consensual interest in real property, including fixtures, which  
1996 secures payment or performance of an obligation.

1997 (56) "New debtor" means a person that becomes bound as debtor under Subsection  
1998 70A-9a-203(4) by a security agreement previously entered into by another person.

1999 (57) (a) "New value" means:

2000 (i) money;

2001 (ii) money's worth in property, services, or new credit; or

2002 (iii) release by a transferee of an interest in property previously transferred to the  
2003 transferee.

2004 (b) "New value" does not include an obligation substituted for another obligation.

2005 (58) "Noncash proceeds" means proceeds other than cash proceeds.

2006 (59) (a) "Obligor" means a person that, with respect to an obligation secured by a security  
2007 interest in or an agricultural lien on the collateral:

2008 (i) owes payment or other performance of the obligation;

2009 (ii) has provided property other than the collateral to secure payment or other performance  
2010 of the obligation; or

2011 (iii) is otherwise accountable in whole or in part for payment or other performance of the

2012 obligation.

2013 (b) "Obligor" does not include issuers or nominated persons under a letter of credit.

2014 (60) "Original debtor," except as used in Subsection 70A-9a-310(3), means a person that,

2015 as debtor, entered into a security agreement to which a new debtor has become bound under

2016 Subsection 70A-9a-203(4).

2017 (61) "Payment intangible" means a general intangible under which the account debtor's

2018 principal obligation is a monetary obligation.

2019 (62) "Person related to," with respect to an individual, means:

2020 (a) the spouse of the individual;

2021 (b) a brother, brother-in-law, sister, or sister-in-law of the individual;

2022 (c) an ancestor or lineal descendant of the individual or the individual's spouse; or

2023 (d) any other relative, by blood or marriage, of the individual or the individual's spouse

2024 who shares the same home with the individual.

2025 (63) "Person related to," with respect to an organization, means:

2026 (a) a person directly or indirectly controlling, controlled by, or under common control with  
2027 the organization;

2028 (b) an officer or director of, or a person performing similar functions with respect to, the  
2029 organization;

2030 (c) an officer or director of, or a person performing similar functions with respect to, a  
2031 person described in Subsection (63)(a);

2032 (d) the spouse of an individual described in Subsection (63)(a), (b), or (c); or

2033 (e) an individual who is related by blood or marriage to an individual described in

2034 Subsection (63)(a), (b), (c), or (d) and shares the same home with the individual.

2035 (64) "Proceeds," except as used in Subsection 70A-9a-609(2), means the following  
2036 property:

2037 (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of  
2038 collateral;

2039 (b) whatever is collected on, or distributed on account of, collateral;

2040 (c) rights arising out of collateral;

2041 (d) to the extent of the value of collateral, claims arising out of the loss, nonconformity,  
2042 or interference with the use of, defects or infringement of rights in, or damage to, the collateral;

2043 or

2044 (e) to the extent of the value of collateral and to the extent payable to the debtor or the  
2045 secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement  
2046 of rights in, or damage to, the collateral.

2047 (65) "Promissory note" means an instrument that evidences a promise to pay a monetary  
2048 obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank  
2049 that the bank has received for deposit a sum of money or funds.

2050 (66) "Proposal" means a record authenticated by a secured party which includes the terms  
2051 on which the secured party is willing to accept collateral in full or partial satisfaction of the  
2052 obligation it secures pursuant to Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622.

2053 (67) "Public-finance transaction" means a secured transaction in connection with which:

2054 (a) debt securities are issued;

2055 (b) all or a portion of the securities issued have an initial stated maturity of at least 20  
2056 years; and

2057 (c) the debtor, obligor, secured party, account debtor or other person obligated on  
2058 collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest  
2059 is a state or a governmental unit of a state.

2060 (68) "Pursuant to commitment," with respect to an advance made or other value given by  
2061 a secured party, means pursuant to the secured party's obligation, whether or not a subsequent  
2062 event of default or other event not within the secured party's control has relieved or may relieve  
2063 the secured party from its obligation.

2064 (69) "Record," except as used in "for record," "of record," "record or legal title," and  
2065 "record owner," means information that is inscribed on a tangible medium or which is stored in  
2066 an electronic or other medium and is retrievable in perceivable form.

2067 (70) "Registered organization" means an organization organized solely under the law of  
2068 a single state or the United States and as to which the state or the United States must maintain a  
2069 public record showing the organization to have been organized.

2070 (71) "Secondary obligor" means an obligor to the extent that:

2071 (a) the obligor's obligation is secondary; or

2072 (b) the obligor has a right of recourse with respect to an obligation secured by collateral  
2073 against the debtor, another obligor, or property of either.

2074 (72) "Secured party" means:

2075 (a) a person in whose favor a security interest is created or provided for under a security  
2076 agreement, whether or not any obligation to be secured is outstanding;

2077 (b) a person that holds an agricultural lien;

2078 (c) a consignor;

2079 (d) a person to which accounts, chattel paper, payment intangibles, or promissory notes  
2080 have been sold;

2081 (e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose  
2082 favor a security interest or agricultural lien is created or provided for; or

2083 (f) a person that holds a security interest arising under Section 70A-2-401, 70A-2-505,  
2084 70A-4-210, or 70A-5-118 or Subsection 70A-2-711(3) or 70A-2a-508(5).

2085 (73) "Security agreement" means an agreement that creates or provides for a security  
2086 interest.

2087 (74) "Send," in connection with a record or notification, means:

2088 (a) to deposit in the mail, deliver for transmission, or transmit by any other usual means  
2089 of communication, with postage or cost of transmission provided for, addressed to any address  
2090 reasonable under the circumstances; or

2091 (b) to cause the record or notification to be received within the time that it would have  
2092 been received if properly sent under Subsection (74)(a).

2093 (75) (a) "Software" means a computer program and any supporting information provided  
2094 in connection with a transaction relating to the program.

2095 (b) "Software" does not include a computer program that is included in the definition of  
2096 goods.

2097 (76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
2098 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the  
2099 United States.

2100 (77) "Supporting obligation" means a letter-of-credit right or secondary obligation that  
2101 supports the payment or performance of an account, chattel paper, a document, a general  
2102 intangible, an instrument, or investment property.

2103 (78) "Tangible chattel paper" means chattel paper evidenced by a record or records  
2104 consisting of information that is inscribed on a tangible medium.

2105 (79) "Termination statement" means an amendment of a financing statement which:  
2106 (a) identifies, by its file number, the initial financing statement to which it relates; and  
2107 (b) indicates either that it is a termination statement or that the identified financing  
2108 statement is no longer effective.

2109 (80) "Transmitting utility" means a person primarily engaged in the business of:  
2110 (a) operating a railroad, subway, street railway, or trolley bus;  
2111 (b) transmitting communications electrically, electromagnetically, or by light;  
2112 (c) transmitting goods by pipeline or sewer; or  
2113 (d) transmitting or producing and transmitting electricity, steam, gas, or water.

2114 Section 42. Section **70A-9a-102.1** is enacted to read:

2115 **70A-9a-102.1. Definitions from other chapters.**

2116 (1) The following definitions in other chapters of this title apply to this chapter:

2117 (a) "Applicant" Section 70A-5-102.

2118 (b) "Beneficiary" Section 70A-5-102.

2119 (c) "Broker" Section 70A-8-101.

2120 (d) "Certificated security" Section 70A-8-101.

2121 (e) "Check" Section 70A-3-104.

2122 (f) "Clearing corporation" Section 70A-8-101.

2123 (g) "Contract for sale" Section 70A-2-106.

2124 (h) "Customer" Section 70A-4-104.

2125 (i) "Entitlement holder" Section 70A-8-101.

2126 (j) "Financial asset" Section 70A-8-101.

2127 (k) "Holder in due course" Section 70A-3-302.

2128 (l) (i) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section 70A-5-102.

2129 (ii) "Issuer" (with respect to a security) Section 70A-8-201.

2130 (m) "Lease" Section 70A-2a-103.

2131 (n) "Lease agreement" Section 70A-2a-103.

2132 (o) "Lease contract" Section 70A-2a-103.

2133 (p) "Leasehold interest" Section 70A-2a-103.

2134 (q) "Lessee" Section 70A-2a-103.

2135 (r) "Lessee in ordinary course of business" Section 70A-2a-103.

- 2136 (s) "Lessor" Section 70A-2a-103.
- 2137 (t) "Lessor's residual interest" Section 70A-2a-103.
- 2138 (u) "Letter of credit" Section 70A-5-102.
- 2139 (v) "Merchant" Section 70A-2-104.
- 2140 (w) "Negotiable instrument" Section 70A-3-104.
- 2141 (x) "Nominated person" Section 70A-5-102.
- 2142 (y) "Note" Section 70A-3-104.
- 2143 (z) "Proceeds of a letter of credit" Section 70A-5-114.
- 2144 (aa) "Prove" Section 70A-3-103.
- 2145 (bb) "Sale" Section 70A-2-106.
- 2146 (cc) "Securities account" Section 70A-8-501.
- 2147 (dd) "Securities intermediary" Section 70A-8-101.
- 2148 (ee) "Security" Section 70A-8-101.
- 2149 (ff) "Security certificate" Section 70A-8-101.
- 2150 (gg) "Security entitlement" Section 70A-8-101.
- 2151 (hh) "Uncertificated security" Section 70A-8-101.
- 2152 (2) Chapter 1 contains general definitions and principles of construction and interpretation
- 2153 applicable throughout this chapter.
- 2154 Section 43. Section **70A-9a-103** is enacted to read:
- 2155 **70A-9a-103. Purchase-money security interest -- Application of payments -- Burden**
- 2156 **of establishing.**
- 2157 (1) In this section:
- 2158 (a) "purchase-money collateral" means goods or software that secures a purchase-money
- 2159 obligation incurred with respect to that collateral; and
- 2160 (b) "purchase-money obligation" means an obligation of an obligor incurred as all or part
- 2161 of the price of the collateral or for value given to enable the debtor to acquire rights in or the use
- 2162 of the collateral if the value is in fact so used.
- 2163 (2) A security interest in goods is a purchase-money security interest:
- 2164 (a) to the extent that the goods are purchase-money collateral with respect to that security
- 2165 interest;
- 2166 (b) if the security interest is in inventory that is or was purchase-money collateral, also to

2167 the extent that the security interest secures a purchase-money obligation incurred with respect to  
2168 other inventory in which the secured party holds or held a purchase-money security interest; and

2169 (c) also to the extent that the security interest secures a purchase-money obligation  
2170 incurred with respect to software in which the secured party holds or held a purchase-money  
2171 security interest.

2172 (3) A security interest in software is a purchase-money security interest to the extent that  
2173 the security interest also secures a purchase-money obligation incurred with respect to goods in  
2174 which the secured party holds or held a purchase-money security interest if:

2175 (a) the debtor acquired its interest in the software in an integrated transaction in which it  
2176 acquired an interest in the goods; and

2177 (b) the debtor acquired its interest in the software for the principal purpose of using the  
2178 software in the goods.

2179 (4) The security interest of a consignor in goods that are the subject of a consignment is  
2180 a purchase-money security interest in inventory.

2181 (5) In a transaction other than a consumer-goods transaction, if the extent to which a  
2182 security interest is a purchase-money security interest depends on the application of a payment to  
2183 a particular obligation, the payment must be applied:

2184 (a) in accordance with any reasonable method of application to which the parties agree;

2185 (b) in the absence of the parties' agreement to a reasonable method, in accordance with any  
2186 intention of the obligor manifested at or before the time of payment; or

2187 (c) in the absence of an agreement to a reasonable method and a timely manifestation of  
2188 the obligor's intention, in the following order:

2189 (i) to obligations that are not secured; and

2190 (ii) if more than one obligation is secured, to obligations secured by purchase-money  
2191 security interests in the order in which those obligations were incurred.

2192 (6) In a transaction other than a consumer-goods transaction, a purchase-money security  
2193 interest does not lose its status as such, even if:

2194 (a) the purchase-money collateral also secures an obligation that is not a purchase-money  
2195 obligation;

2196 (b) collateral that is not purchase-money collateral also secures the purchase-money  
2197 obligation; or

2198 (c) the purchase-money obligation has been renewed, refinanced, consolidated, or  
2199 restructured.

2200 (7) In a transaction other than a consumer-goods transaction, a secured party claiming a  
2201 purchase-money security interest has the burden of establishing the extent to which the security  
2202 interest is a purchase-money security interest.

2203 (8) The limitation of the rules in Subsections (5), (6), and (7) to transactions other than  
2204 consumer-goods transactions is intended to leave to the court the determination of the proper rules  
2205 in consumer-goods transactions. The court may not infer from that limitation the nature of the  
2206 proper rule in consumer-goods transactions and may continue to apply established approaches.

2207 Section 44. Section **70A-9a-104** is enacted to read:

2208 **70A-9a-104. Control of deposit account.**

2209 (1) A secured party has control of a deposit account if:

2210 (a) the secured party is the bank with which the deposit account is maintained;

2211 (b) the debtor, secured party, and bank have agreed in an authenticated record that the bank  
2212 will comply with instructions originated by the secured party directing disposition of the funds in  
2213 the deposit account without further consent by the debtor; or

2214 (c) the secured party becomes the bank's customer with respect to the deposit account.

2215 (2) A secured party that has satisfied Subsection (1) has control, even if the debtor retains  
2216 the right to direct the disposition of funds from the deposit account.

2217 Section 45. Section **70A-9a-105** is enacted to read:

2218 **70A-9a-105. Control of electronic chattel paper.**

2219 A secured party has control of electronic chattel paper if the record or records comprising  
2220 the chattel paper are created, stored, and assigned in such a manner that:

2221 (1) a single authoritative copy of the record or records exists which is unique, identifiable  
2222 and, except as otherwise provided in Subsections (4), (5), and (6), unalterable;

2223 (2) the authoritative copy identifies the secured party as the assignee of the record or  
2224 records;

2225 (3) the authoritative copy is communicated to and maintained by the secured party or its  
2226 designated custodian;

2227 (4) copies or revisions that add or change an identified assignee of the authoritative copy  
2228 can be made only with the participation of the secured party;

2229 (5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a  
2230 copy that is not the authoritative copy; and

2231 (6) any revision of the authoritative copy is readily identifiable as an authorized or  
2232 unauthorized revision.

2233 Section 46. Section **70A-9a-106** is enacted to read:

2234 **70A-9a-106. Control of investment property.**

2235 (1) A person has control of a certificated security, uncertificated security, or security  
2236 entitlement as provided in Section 70A-8-105.

2237 (2) A secured party has control of a commodity contract if:

2238 (a) the secured party is the commodity intermediary with which the commodity contract  
2239 is carried; or

2240 (b) the commodity customer, secured party, and commodity intermediary have agreed that  
2241 the commodity intermediary will apply any value distributed on account of the commodity contract  
2242 as directed by the secured party without further consent by the commodity customer.

2243 (3) A secured party having control of all security entitlements or commodity contracts  
2244 carried in a securities account or commodity account has control over the securities account or  
2245 commodity account.

2246 Section 47. Section **70A-9a-107** is enacted to read:

2247 **70A-9a-107. Control of letter-of-credit right.**

2248 A secured party has control of a letter-of-credit right to the extent of any right to payment  
2249 or performance by the issuer or any nominated person if the issuer or nominated person has  
2250 consented to an assignment of proceeds of the letter of credit under Subsection 70A-5-114(3) or  
2251 otherwise applicable law or practice.

2252 Section 48. Section **70A-9a-108** is enacted to read:

2253 **70A-9a-108. Sufficiency of description.**

2254 (1) Except as otherwise provided in Subsections (3), (4), and (5), a description of personal  
2255 or real property is sufficient, whether or not it is specific, if it reasonably identifies what is  
2256 described.

2257 (2) Except as otherwise provided in Subsection (4), a description of collateral reasonably  
2258 identifies the collateral if it identifies the collateral by:

2259 (a) specific listing;

2260 (b) category;  
2261 (c) except as otherwise provided in Subsection (5), a type of collateral defined in this title;  
2262 (d) quantity;  
2263 (e) computational or allocational formula or procedure; or  
2264 (f) except as otherwise provided in Subsection (3), any other method, if the identity of the  
2265 collateral is objectively determinable.

2266 (3) A description of collateral as "all the debtor's assets" or "all the debtor's personal  
2267 property" or using words of similar import does not reasonably identify the collateral.

2268 (4) Except as otherwise provided in Subsection (5), a description of a security entitlement,  
2269 securities account, or commodity account is sufficient if it describes:

2270 (a) the collateral by those terms or as investment property; or

2271 (b) the underlying financial asset or commodity contract.

2272 (5) A description only by type of collateral defined in this title is an insufficient description  
2273 of:

2274 (a) a commercial tort claim; or

2275 (b) in a consumer transaction, consumer goods, a security entitlement, a securities account,  
2276 or a commodity account.

2277 Section 49. Section **70A-9a-109** is enacted to read:

2278 **70A-9a-109. Scope.**

2279 (1) Except as otherwise provided in Subsections (3) and (4), this chapter applies to:

2280 (a) a transaction, regardless of its form, that creates a security interest in personal property  
2281 or fixtures by contract;

2282 (b) an agricultural lien;

2283 (c) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

2284 (d) a consignment;

2285 (e) a security interest arising under Section 70A-2-401 or 70A-2-505 or Subsection  
2286 70A-2-711(3) or 70A-2a-508(5), as provided in Section 70A-9a-110; and

2287 (f) a security interest arising under Section 70A-4-210 or 70A-5-118.

2288 (2) The application of this chapter to a security interest in a secured obligation is not  
2289 affected by the fact that the obligation is itself secured by a transaction or interest to which this  
2290 chapter does not apply.

- 2291 (3) This chapter does not apply to the extent that:  
2292 (a) a statute, regulation, or treaty of the United States preempts this chapter;  
2293 (b) another statute of this state expressly governs the creation, perfection, priority, or  
2294 enforcement of a security interest created by this state or a governmental unit of this state;  
2295 (c) a statute of another state, a foreign country, or a governmental unit of another state or  
2296 a foreign country, other than a statute generally applicable to security interests, expressly governs  
2297 creation, perfection, priority, or enforcement of a security interest created by the state, country, or  
2298 governmental unit; or  
2299 (d) the rights of a transferee beneficiary or nominated person under a letter of credit are  
2300 independent and superior under Section 70A-5-114.  
2301 (4) This chapter does not apply to:  
2302 (a) a landlord's lien, other than an agricultural lien;  
2303 (b) a lien, other than an agricultural lien, given by statute or other rule of law for services  
2304 or materials, but Section 70A-9a-333 applies with respect to priority of the lien;  
2305 (c) an assignment of a claim for wages, salary, or other compensation of an employee;  
2306 (d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of  
2307 a sale of the business out of which they arose;  
2308 (e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes  
2309 which is for the purpose of collection only;  
2310 (f) an assignment of a right to payment under a contract to an assignee that is also  
2311 obligated to perform under the contract;  
2312 (g) an assignment of a single account, payment intangible, or promissory note to an  
2313 assignee in full or partial satisfaction of a preexisting indebtedness;  
2314 (h) a transfer of an interest in or an assignment of a claim under a policy of insurance,  
2315 other than an assignment by or to a health-care provider of a health-care-insurance receivable and  
2316 any subsequent assignment of the right to payment, but Sections 70A-9a-315 and 70A-9a-322  
2317 apply with respect to proceeds and priorities in proceeds;  
2318 (i) an assignment of a right represented by a judgment, other than a judgment taken on a  
2319 right to payment that was collateral;  
2320 (j) a right of recoupment or set-off, but:  
2321 (i) Section 70A-9a-340 applies with respect to the effectiveness of rights of recoupment

2322 or set-off against deposit accounts; and

2323 (ii) Section 70A-9a-404 applies with respect to defenses or claims of an account debtor;

2324 (k) the creation or transfer of an interest in or lien on real property, including a lease or  
2325 rents thereunder, except to the extent that provision is made for:

2326 (i) liens on real property in Sections 70A-9a-203 and 70A-9a-308;

2327 (ii) fixtures in Section 70A-9a-334;

2328 (iii) fixture filings in Sections 70A-9a-501, 70A-9a-502, 70A-9a-512, 70A-9a-516, and  
2329 70A-9a-519; and

2330 (iv) security agreements covering personal and real property in Section 70A-9a-604;

2331 (l) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections  
2332 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds; or

2333 (m) an assignment of a deposit account in a consumer transaction, but Sections  
2334 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds.

2335 Section 50. Section **70A-9a-110** is enacted to read:

2336 **70A-9a-110. Security interests arising under Chapter 2 or 2a.**

2337 A security interest arising under Section 70A-2-401 or 70A-2-505, or Subsection  
2338 70A-2-711(3) or 70A-2a-508(5) is subject to this chapter. However, until the debtor obtains  
2339 possession of the goods:

2340 (1) the security interest is enforceable, even if Subsection 70A-9a-203(2)(c) has not been  
2341 satisfied;

2342 (2) filing is not required to perfect the security interest;

2343 (3) the rights of the secured party after default by the debtor are governed by Chapter 2 or  
2344 2a; and

2345 (4) the security interest has priority over a conflicting security interest created by the  
2346 debtor.

2347 Section 51. Section **70A-9a-201** is enacted to read:

2348 **Part 2. Effectiveness of Security Agreement -- Attachment of Security Interest -- Rights**  
2349 **of Parties to Security Agreement**

2350 **70A-9a-201. General effectiveness of security agreement.**

2351 (1) Except as otherwise provided in this title, a security agreement is effective according  
2352 to its terms between the parties, against purchasers of the collateral, and against creditors.

2353 (2) A transaction subject to this chapter is subject to:

2354 (a) any applicable rule of law which establishes a different rule for consumers; and

2355 (b) Title 70C, Utah Consumer Credit Code.

2356 (3) In case of conflict between this chapter and a rule of law, statute, or regulation

2357 described in Subsection (2), the rule of law, statute, or regulation controls. Failure to comply with

2358 a statute or regulation described in Subsection (2) has only the effect the statute or regulation

2359 specifies.

2360 (4) This chapter does not:

2361 (a) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or

2362 regulation described in Subsection (2); or

2363 (b) extend the application of the rule of law, statute, or regulation to a transaction not

2364 otherwise subject to it.

2365 Section 52. Section **70A-9a-202** is enacted to read:

2366 **70A-9a-202. Title to collateral immaterial.**

2367 Except as otherwise provided with respect to consignments or sales of accounts, chattel

2368 paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights

2369 and obligations apply whether title to collateral is in the secured party or the debtor.

2370 Section 53. Section **70A-9a-203** is enacted to read:

2371 **70A-9a-203. Attachment and enforceability of security interest -- Proceeds --**

2372 **Supporting obligations -- Formal requisites.**

2373 (1) A security interest attaches to collateral when it becomes enforceable against the debtor  
2374 with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2375 (2) Except as otherwise provided in Subsections (3) through (9), a security interest is  
2376 enforceable against the debtor and third parties with respect to the collateral only if:

2377 (a) value has been given;

2378 (b) the debtor has rights in the collateral or the power to transfer rights in the collateral to

2379 a secured party; and

2380 (c) one of the following conditions is met:

2381 (i) the debtor has authenticated a security agreement that provides a description of the

2382 collateral and, if the security interest covers timber to be cut, a description of the land concerned;

2383 (ii) the collateral is not a certificated security and is in the possession of the secured party

2384 under Section 70A-9a-313 pursuant to the debtor's security agreement;

2385 (iii) the collateral is a certificated security in registered form and the security certificate  
2386 has been delivered to the secured party under Section 70A-8-301 pursuant to the debtor's security  
2387 agreement; or

2388 (iv) the collateral is deposit accounts, electronic chattel paper, investment property, or  
2389 letter-of-credit rights, and the secured party has control under Section 70A-9a-104, 70A-9a-105,  
2390 70A-9a-106, or 70A-9a-107 pursuant to the debtor's security agreement.

2391 (3) Subsection (2) is subject to Section 70A-4-210 on the security interest of a collecting  
2392 bank, Section 70A-5-118 on the security interest of a letter-of-credit issuer or nominated person,  
2393 Section 70A-9a-110 on a security interest arising under Chapter 2 or 2a, and Section 70A-9a-206  
2394 on security interests in investment property.

2395 (4) A person becomes bound as debtor by a security agreement entered into by another  
2396 person if, by operation of law other than this chapter or by contract:

2397 (a) the security agreement becomes effective to create a security interest in the person's  
2398 property; or

2399 (b) the person becomes generally obligated for the obligations of the other person,  
2400 including the obligation secured under the security agreement, and acquires or succeeds to all or  
2401 substantially all of the assets of the other person.

2402 (5) If a new debtor becomes bound as debtor by a security agreement entered into by  
2403 another person:

2404 (a) the agreement satisfies Subsection (2)(c) with respect to existing or after-acquired  
2405 property of the new debtor to the extent the property is described in the agreement; and

2406 (b) another agreement is not necessary to make a security interest in the property  
2407 enforceable.

2408 (6) The attachment of a security interest in collateral gives the secured party the rights to  
2409 proceeds provided by Section 70A-9a-315 and is also attachment of a security interest in a  
2410 supporting obligation for the collateral.

2411 (7) The attachment of a security interest in a right to payment or performance secured by  
2412 a security interest or other lien on personal or real property is also attachment of a security interest  
2413 in the security interest, mortgage, or other lien.

2414 (8) The attachment of a security interest in a securities account is also attachment of a

2415 security interest in the security entitlements carried in the securities account.

2416 (9) The attachment of a security interest in a commodity account is also attachment of a

2417 security interest in the commodity contracts carried in the commodity account.

2418 Section 54. Section **70A-9a-204** is enacted to read:

2419 **70A-9a-204. After-acquired property -- Future advances.**

2420 (1) Except as otherwise provided in Subsection (2), a security agreement may create or  
2421 provide for a security interest in after-acquired collateral.

2422 (2) A security interest does not attach under a term constituting an after-acquired property  
2423 clause to:

2424 (a) consumer goods, other than an accession when given as additional security, unless the  
2425 debtor acquires rights in them within ten days after the secured party gives value; or

2426 (b) a commercial tort claim.

2427 (3) A security agreement may provide that collateral secures, or that accounts, chattel  
2428 paper, payment intangibles, or promissory notes are sold in connection with, future advances or  
2429 other value, whether or not the advances or value are given pursuant to commitment.

2430 Section 55. Section **70A-9a-205** is enacted to read:

2431 **70A-9a-205. Use or disposition of collateral permissible.**

2432 (1) A security interest is not invalid or fraudulent against creditors solely because:

2433 (a) the debtor has the right or ability to:

2434 (i) use, commingle, or dispose of all or part of the collateral, including returned or  
2435 repossessed goods;

2436 (ii) collect, compromise, enforce, or otherwise deal with collateral;

2437 (iii) accept the return of collateral or make repossessions; or

2438 (iv) use, commingle, or dispose of proceeds; or

2439 (b) the secured party fails to require the debtor to account for proceeds or replace  
2440 collateral.

2441 (2) This section does not relax the requirements of possession if attachment, perfection,  
2442 or enforcement of a security interest depends upon possession of the collateral by the secured party.

2443 Section 56. Section **70A-9a-206** is enacted to read:

2444 **70A-9a-206. Security interest arising in purchase or delivery of financial asset.**

2445 (1) A security interest in favor of a securities intermediary attaches to a person's security

2446 entitlement if:

2447 (a) the person buys a financial asset through the securities intermediary in a transaction in  
2448 which the person is obligated to pay the purchase price to the securities intermediary at the time  
2449 of the purchase; and

2450 (b) the securities intermediary credits the financial asset to the buyer's securities account  
2451 before the buyer pays the securities intermediary.

2452 (2) The security interest described in Subsection (1) secures the person's obligation to pay  
2453 for the financial asset.

2454 (3) A security interest in favor of a person that delivers a certificated security or other  
2455 financial asset represented by a writing attaches to the security or other financial asset if:

2456 (a) the security or other financial asset:

2457 (i) in the ordinary course of business is transferred by delivery with any necessary  
2458 indorsement or assignment; and

2459 (ii) is delivered under an agreement between persons in the business of dealing with such  
2460 securities or financial assets; and

2461 (b) the agreement calls for delivery against payment.

2462 (4) The security interest described in Subsection (3) secures the obligation to make  
2463 payment for the delivery.

2464 Section 57. Section **70A-9a-207** is enacted to read:

2465 **70A-9a-207. Rights and duties of secured party having possession or control of**  
2466 **collateral.**

2467 (1) Except as otherwise provided in Subsection (4), a secured party shall use reasonable  
2468 care in the custody and preservation of collateral in the secured party's possession. In the case of  
2469 chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights  
2470 against prior parties unless otherwise agreed.

2471 (2) Except as otherwise provided in Subsection (4), if a secured party has possession of  
2472 collateral:

2473 (a) reasonable expenses, including the cost of insurance and payment of taxes or other  
2474 charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to  
2475 the debtor and are secured by the collateral;

2476 (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in

2477 any effective insurance coverage;

2478 (c) the secured party shall keep the collateral identifiable, but fungible collateral may be  
2479 commingled; and

2480 (d) the secured party may use or operate the collateral:

2481 (i) for the purpose of preserving the collateral or its value;

2482 (ii) as permitted by an order of a court having competent jurisdiction; or

2483 (iii) except in the case of consumer goods, in the manner and to the extent agreed by the  
2484 debtor.

2485 (3) Except as otherwise provided in Subsection (4), a secured party having possession of  
2486 collateral or control of collateral under Section 70A-9a-104, 70A-9a-105, 70A-9a-106, or  
2487 70A-9a-107:

2488 (a) may hold as additional security any proceeds, except money or funds, received from  
2489 the collateral;

2490 (b) shall apply money or funds received from the collateral to reduce the secured  
2491 obligation, unless remitted to the debtor; and

2492 (c) may create a security interest in the collateral.

2493 (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or  
2494 promissory notes or a consignor:

2495 (a) Subsection (1) does not apply unless the secured party is entitled under an agreement:

2496 (i) to charge back uncollected collateral; or

2497 (ii) otherwise to full or limited recourse against the debtor or a secondary obligor based  
2498 on the nonpayment or other default of an account debtor or other obligor on the collateral; and

2499 (b) Subsections (2) and (3) do not apply.

2500 Section 58. Section **70A-9a-208** is enacted to read:

2501 **70A-9a-208. Additional duties of secured party having control of collateral.**

2502 (1) This section applies to cases in which there is no outstanding secured obligation and  
2503 the secured party is not committed to make advances, incur obligations, or otherwise give value.

2504 (2) Within ten days after receiving an authenticated demand by the debtor:

2505 (a) a secured party having control of a deposit account under Subsection 70A-9a-104(1)(b)  
2506 shall send to the bank with which the deposit account is maintained an authenticated statement that  
2507 releases the bank from any further obligation to comply with instructions originated by the secured

2508 party:

2509 (b) a secured party having control of a deposit account under Subsection 70A-9a-104(1)(c)

2510 shall:

2511 (i) pay the debtor the balance on deposit in the deposit account; or

2512 (ii) transfer the balance on deposit into a deposit account in the debtor's name;

2513 (c) a secured party, other than a buyer, having control of electronic chattel paper under

2514 Section 70A-9a-105 shall:

2515 (i) communicate the authoritative copy of the electronic chattel paper to the debtor or its

2516 designated custodian;

2517 (ii) if the debtor designates a custodian that is the designated custodian with which the

2518 authoritative copy of the electronic chattel paper is maintained for the secured party, communicate

2519 to the custodian an authenticated record releasing the designated custodian from any further

2520 obligation to comply with instructions originated by the secured party and instructing the custodian

2521 to comply with instructions originated by the debtor; and

2522 (iii) take appropriate action to enable the debtor or its designated custodian to make copies

2523 of or revisions to the authoritative copy which add or change an identified assignee of the

2524 authoritative copy without the consent of the secured party;

2525 (d) a secured party having control of investment property under Subsection

2526 70A-8-105(4)(b) or 70A-9a-105(2) shall send to the securities intermediary or commodity

2527 intermediary with which the security entitlement or commodity contract is maintained an

2528 authenticated record that releases the securities intermediary or commodity intermediary from any

2529 further obligation to comply with entitlement orders or directions originated by the secured party;

2530 and

2531 (e) a secured party having control of a letter-of-credit right under Section 70A-9a-107 shall

2532 send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of

2533 credit to the secured party an authenticated release from any further obligation to pay or deliver

2534 proceeds of the letter of credit to the secured party.

2535 Section 59. Section **70A-9a-209** is enacted to read:

2536 **70A-9a-209. Duties of secured party if account debtor has been notified of**

2537 **assignment.**

2538 (1) Except as otherwise provided in Subsection (3), this section applies if:

2539 (a) there is no outstanding secured obligation; and

2540 (b) the secured party is not committed to make advances, incur obligations, or otherwise  
2541 give value.

2542 (2) Within ten days after receiving an authenticated demand by the debtor, a secured party  
2543 shall send to an account debtor that has received notification of an assignment to the secured party  
2544 as assignee under Subsection 70A-9a-406(1) an authenticated record that releases the account  
2545 debtor from any further obligation to the secured party.

2546 (3) This section does not apply to an assignment constituting the sale of an account, chattel  
2547 paper, or payment intangible.

2548 Section 60. Section **70A-9a-210** is enacted to read:

2549 **70A-9a-210. Request for accounting -- Request regarding list of collateral or**  
2550 **statement of account.**

2551 (1) In this section:

2552 (a) "Request" means a record of a type described in Subsection (1)(b), (c), or (d).

2553 (b) "Request for an accounting" means a record authenticated by a debtor requesting that  
2554 the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably  
2555 identifying the transaction or relationship that is the subject of the request.

2556 (c) "Request regarding a list of collateral" means a record authenticated by a debtor  
2557 requesting that the recipient approve or correct a list of what the debtor believes to be the collateral  
2558 securing an obligation and reasonably identifying the transaction or relationship that is the subject  
2559 of the request.

2560 (d) "Request regarding a statement of account" means a record authenticated by a debtor  
2561 requesting that the recipient approve or correct a statement indicating what the debtor believes to  
2562 be the aggregate amount of unpaid obligations secured by collateral as of a specified date and  
2563 reasonably identifying the transaction or relationship that is the subject of the request.

2564 (2) Subject to Subsections (3), (4), (5), and (6), a secured party, other than a buyer of  
2565 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with  
2566 a request within 14 days after receipt:

2567 (a) in the case of a request for an accounting, by authenticating and sending to the debtor  
2568 an accounting; and

2569 (b) in the case of a request regarding a list of collateral or a request regarding a statement

2570 of account, by authenticating and sending to the debtor an approval or correction.

2571 (3) A secured party that claims a security interest in all of a particular type of collateral  
2572 owned by the debtor may comply with a request regarding a list of collateral by sending to the  
2573 debtor an authenticated record including a statement to that effect within 14 days after receipt.

2574 (4) A person that receives a request regarding a list of collateral, claims no interest in the  
2575 collateral when it receives the request, and claimed an interest in the collateral at an earlier time  
2576 shall comply with the request within 14 days after receipt by sending to the debtor an authenticated  
2577 record:

2578 (a) disclaiming any interest in the collateral; and

2579 (b) if known to the recipient, providing the name and mailing address of any assignee of  
2580 or successor to the recipient's interest in the collateral.

2581 (5) A person that receives a request for an accounting or a request regarding a statement  
2582 of account, claims no interest in the obligations when it receives the request, and claimed an  
2583 interest in the obligations at an earlier time shall comply with the request within 14 days after  
2584 receipt by sending to the debtor an authenticated record:

2585 (a) disclaiming any interest in the obligations; and

2586 (b) if known to the recipient, providing the name and mailing address of any assignee of  
2587 or successor to the recipient's interest in the obligations.

2588 (6) A debtor is entitled without charge to one response to a request under this section  
2589 during any six-month period. The secured party may require payment of a charge not exceeding  
2590 \$25 for each additional response.

2591 Section 61. Section **70A-9a-301** is enacted to read:

2592 **Part 3. Perfection and Priority**

2593 **70A-9a-301. Law governing perfection and priority of security interests.**

2594 Except as otherwise provided in Sections 70A-9a-303 through 70A-9a-306, the following  
2595 rules determine the law governing perfection, the effect of perfection or nonperfection, and the  
2596 priority of a security interest in collateral:

2597 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction,  
2598 the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and  
2599 the priority of a security interest in collateral.

2600 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs

2601 perfection, the effect of perfection or nonperfection, and the priority of a possessory security  
2602 interest in that collateral.

2603 (3) Except as otherwise provided in Subsection (4), while negotiable documents, goods,  
2604 instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that  
2605 jurisdiction governs:

2606 (a) perfection of a security interest in the goods by filing a fixture filing;

2607 (b) perfection of a security interest in timber to be cut; and

2608 (c) the effect of perfection or nonperfection and the priority of a nonpossessory security  
2609 interest in the collateral.

2610 (4) The local law of the jurisdiction in which the wellhead or minehead is located governs  
2611 perfection, the effect of perfection or nonperfection, and the priority of a security interest in  
2612 as-extracted collateral.

2613 Section 62. Section **70A-9a-302** is enacted to read:

2614 **70A-9a-302. Law governing perfection and priority of agricultural liens.**

2615 While farm products are located in a jurisdiction, the local law of that jurisdiction governs  
2616 perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the  
2617 farm products.

2618 Section 63. Section **70A-9a-303** is enacted to read:

2619 **70A-9a-303. Law governing perfection and priority of security interests in goods**  
2620 **covered by a certificate of title.**

2621 (1) This section applies to goods covered by a certificate of title, even if there is no other  
2622 relationship between the jurisdiction under whose certificate of title the goods are covered and the  
2623 goods or the debtor.

2624 (2) Goods become covered by a certificate of title when a valid application for the  
2625 certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease  
2626 to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be  
2627 effective under the law of the issuing jurisdiction or the time the goods become covered  
2628 subsequently by a certificate of title issued by another jurisdiction.

2629 (3) The local law of the jurisdiction under whose certificate of title the goods are covered  
2630 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest  
2631 in goods covered by a certificate of title from the time the goods become covered by the certificate

2632 of title until the goods cease to be covered by the certificate of title.

2633 Section 64. Section **70A-9a-304** is enacted to read:

2634 **70A-9a-304. Law governing perfection and priority of security interests in deposit**  
2635 **accounts.**

2636 (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or  
2637 nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

2638 (2) The following rules determine a bank's jurisdiction for purposes of this part:

2639 (a) If an agreement between the bank and the debtor governing the deposit account  
2640 expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part,  
2641 this chapter, or this title, that jurisdiction is the bank's jurisdiction.

2642 (b) If Subsection (2)(a) does not apply and an agreement between the bank and its  
2643 customer governing the deposit account expressly provides that the agreement is governed by the  
2644 law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

2645 (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between  
2646 the bank and its customer governing the deposit account expressly provides that the deposit  
2647 account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's  
2648 jurisdiction.

2649 (d) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction  
2650 in which the office identified in an account statement as the office serving the customer's account  
2651 is located.

2652 (e) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction  
2653 in which the chief executive office of the bank is located.

2654 Section 65. Section **70A-9a-305** is enacted to read:

2655 **70A-9a-305. Law governing perfection and priority of security interests in investment**  
2656 **property.**

2657 (1) Except as otherwise provided in Subsection (3), the following rules apply:

2658 (a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction  
2659 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest  
2660 in the certificated security represented thereby.

2661 (b) The local law of the issuer's jurisdiction as specified in Subsection 70A-8-110(4)  
2662 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest

2663 in an uncertificated security.

2664 (c) The local law of the securities intermediary's jurisdiction as specified in Subsection  
2665 70A-8-109(5) governs perfection, the effect of perfection or nonperfection, and the priority of a  
2666 security interest in a security entitlement or securities account.

2667 (d) The local law of the commodity intermediary's jurisdiction governs perfection, the  
2668 effect of perfection or nonperfection, and the priority of a security interest in a commodity contract  
2669 or commodity account.

2670 (2) The following rules determine a commodity intermediary's jurisdiction for purposes  
2671 of this part:

2672 (a) If an agreement between the commodity intermediary and commodity customer  
2673 governing the commodity account expressly provides that a particular jurisdiction is the  
2674 commodity intermediary's jurisdiction for purposes of this part, this chapter, or this title, that  
2675 jurisdiction is the commodity intermediary's jurisdiction.

2676 (b) If Subsection (2)(a) does not apply and an agreement between the commodity  
2677 intermediary and commodity customer governing the commodity account expressly provides that  
2678 the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity  
2679 intermediary's jurisdiction.

2680 (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between  
2681 the commodity intermediary and commodity customer governing the commodity account expressly  
2682 provides that the commodity account is maintained at an office in a particular jurisdiction, that  
2683 jurisdiction is the commodity intermediary's jurisdiction.

2684 (d) If none of the Subsections (2)(a) through (c) applies, the commodity intermediary's  
2685 jurisdiction is the jurisdiction in which the office identified in an account statement as the office  
2686 servicing the commodity customer's account is located.

2687 (e) If none of the Subsections (2)(a) through (d) applies, the commodity intermediary's  
2688 jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary  
2689 is located.

2690 (3) The local law of the jurisdiction in which the debtor is located governs:

2691 (a) perfection of a security interest in investment property by filing;

2692 (b) automatic perfection of a security interest in investment property created by a broker  
2693 or securities intermediary; and

2694 (c) automatic perfection of a security interest in a commodity contract or commodity  
2695 account created by a commodity intermediary.

2696 Section 66. Section **70A-9a-306** is enacted to read:

2697 **70A-9a-306. Law governing perfection and priority of security interests in**  
2698 **letter-of-credit rights.**

2699 (1) Subject to Subsection (3), the local law of the issuer's jurisdiction or a nominated  
2700 person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority  
2701 of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's  
2702 jurisdiction is a state.

2703 (2) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is  
2704 the jurisdiction whose law governs the liability of the issuer or nominated person with respect to  
2705 the letter-of-credit right as provided in Section 70A-5-116.

2706 (3) This section does not apply to a security interest that is perfected only under Subsection  
2707 70A-9a-308(4).

2708 Section 67. Section **70A-9a-307** is enacted to read:

2709 **70A-9a-307. Location of debtor.**

2710 (1) In this section, "place of business" means a place where a debtor conducts its affairs.

2711 (2) Except as otherwise provided in this section, the following rules determine a debtor's  
2712 location:

2713 (a) A debtor who is an individual is located at the individual's principal residence.

2714 (b) A debtor that is an organization and has only one place of business is located at its  
2715 place of business.

2716 (c) A debtor that is an organization and has more than one place of business is located at  
2717 its chief executive office.

2718 (3) Subsection (2) applies only if a debtor's residence, place of business, or chief executive  
2719 office, as applicable, is located in a jurisdiction whose law generally requires information  
2720 concerning the existence of a nonpossessory security interest to be made generally available in a  
2721 filing, recording, or registration system as a condition or result of the security interest's obtaining  
2722 priority over the rights of a lien creditor with respect to the collateral. If Subsection (2) does not  
2723 apply, the debtor is located in the District of Columbia.

2724 (4) A person that ceases to exist, have a residence, or have a place of business continues

2725 to be located in the jurisdiction specified by Subsections (2) and (3).

2726 (5) A registered organization that is organized under the law of a state is located in that  
2727 state.

2728 (6) Except as otherwise provided in Subsection (9), a registered organization that is  
2729 organized under the law of the United States and a branch or agency of a bank that is not organized  
2730 under the law of the United States or a state are located:

2731 (a) in the state that the law of the United States designates, if the law designates a state of  
2732 location;

2733 (b) in the state that the registered organization, branch, or agency designates, if the law of  
2734 the United States authorizes the registered organization, branch, or agency to designate its state of  
2735 location; or

2736 (c) in the District of Columbia, if neither Subsection (6)(a) nor Subsection (6)(b) applies.

2737 (7) A registered organization continues to be located in the jurisdiction specified by  
2738 Subsection (5) or (6) notwithstanding:

2739 (a) the suspension, revocation, forfeiture, or lapse of the registered organization's status  
2740 as such in its jurisdiction of organization; or

2741 (b) the dissolution, winding up, or cancellation of the existence of the registered  
2742 organization.

2743 (8) The United States is located in the District of Columbia.

2744 (9) A branch or agency of a bank that is not organized under the law of the United States  
2745 or a state is located in the state in which the branch or agency is licensed, if all branches and  
2746 agencies of the bank are licensed in only one state.

2747 (10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located  
2748 at the designated office of the agent upon which service of process may be made on behalf of the  
2749 carrier.

2750 (11) This section applies only for purposes of this part.

2751 Section 68. Section **70A-9a-308** is enacted to read:

2752 **70A-9a-308. When security interest or agricultural lien is perfected -- Continuity of**  
2753 **perfection.**

2754 (1) Except as otherwise provided in this section and Section 70A-9a-309, a security  
2755 interest is perfected if it has attached and all of the applicable requirements for perfection in

2756 Sections 70A-9a-310 through 70A-9a-316 have been satisfied. A security interest is perfected  
2757 when it attaches if the applicable requirements are satisfied before the security interest attaches.

2758 (2) An agricultural lien is perfected if it has become effective and all of the applicable  
2759 requirements for perfection in Section 70A-9a-310 have been satisfied. An agricultural lien is  
2760 perfected when it becomes effective if the applicable requirements are satisfied before the  
2761 agricultural lien becomes effective.

2762 (3) A security interest or agricultural lien is perfected continuously if it is originally  
2763 perfected by one method under this chapter and is later perfected by another method under this  
2764 chapter, without an intermediate period when it was unperfected.

2765 (4) Perfection of a security interest in collateral also perfects a security interest in a  
2766 supporting obligation for the collateral.

2767 (5) Perfection of a security interest in a right to payment or performance also perfects a  
2768 security interest in a security interest, mortgage, or other lien on personal or real property securing  
2769 the right.

2770 (6) Perfection of a security interest in a securities account also perfects a security interest  
2771 in the security entitlements carried in the securities account.

2772 (7) Perfection of a security interest in a commodity account also perfects a security interest  
2773 in the commodity contracts carried in the commodity account.

2774 Section 69. Section **70A-9a-309** is enacted to read:

2775 **70A-9a-309. Security interest perfected upon attachment.**

2776 The following security interests are perfected when they attach:

2777 (1) a purchase-money security interest in consumer goods, except as otherwise provided  
2778 in Subsection 70A-9a-311(2) with respect to consumer goods that are subject to a statute or treaty  
2779 described in Subsection 70A-9a-311(1);

2780 (2) an assignment of accounts or payment intangibles which does not by itself or in  
2781 conjunction with other assignments to the same assignee transfer a significant part of the assignor's  
2782 outstanding accounts or payment intangibles;

2783 (3) a sale of a payment intangible;

2784 (4) a sale of a promissory note;

2785 (5) a security interest created by the assignment of a health-care-insurance receivable to  
2786 the provider of the health-care goods or services;

- 2787 (6) a security interest arising under Section 70A-2-401 or 70A-2-505 or Subsection  
2788 70A-2-711(3) or 70A-2a-508(5), until the debtor obtains possession of the collateral;
- 2789 (7) a security interest of a collecting bank arising under Section 70A-4-210;
- 2790 (8) a security interest of an issuer or nominated person arising under Section 70A-5-118;
- 2791 (9) a security interest arising in the delivery of a financial asset under Subsection  
2792 70A-9a-206(3);
- 2793 (10) a security interest in investment property created by a broker or securities  
2794 intermediary;
- 2795 (11) a security interest in a commodity contract or a commodity account created by a  
2796 commodity intermediary;
- 2797 (12) an assignment for the benefit of all creditors of the transferor and subsequent transfers  
2798 by the assignee thereunder; and
- 2799 (13) a security interest created by an assignment of a beneficial interest in a decedent's  
2800 estate.
- 2801 Section 70. Section **70A-9a-310** is enacted to read:
- 2802 **70A-9a-310. When filing required to perfect security interest or agricultural lien --**  
2803 **Security interests and agricultural liens to which filing provisions do not apply.**
- 2804 (1) Except as otherwise provided in Subsection (2) and Subsection 70A-9a-312(2), a  
2805 financing statement must be filed to perfect all security interests and agricultural liens.
- 2806 (2) The filing of a financing statement is not necessary to perfect a security interest:
- 2807 (a) that is perfected under Subsection 70A-9a-308(4), (5), (6), or (7);
- 2808 (b) that is perfected under Section 70A-9a-309 when it attaches;
- 2809 (c) in property subject to a statute, regulation, or treaty described in Subsection  
2810 70A-9a-311(1);
- 2811 (d) in goods in possession of a bailee which is perfected under Subsection  
2812 70A-9a-312(4)(a) or (b);
- 2813 (e) in certificated securities, documents, goods, or instruments which is perfected without  
2814 filing or possession under Subsection 70A-9a-312(5), (6), or (7);
- 2815 (f) in collateral in the secured party's possession under Section 70A-9a-313;
- 2816 (g) in a certificated security which is perfected by delivery of the security certificate to the  
2817 secured party under Section 70A-9a-313;

2818 (h) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit  
2819 rights which is perfected by control under Section 70A-9a-314;

2820 (i) in proceeds which is perfected under Section 70A-9a-315; or

2821 (j) that is perfected under Section 70A-9a-316.

2822 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under  
2823 this chapter is not required to continue the perfected status of the security interest against creditors  
2824 of and transferees from the original debtor.

2825 Section 71. Section **70A-9a-311** is enacted to read:

2826 **70A-9a-311. Perfection of security interests in property subject to certain statutes,**  
2827 **regulations, and treaties.**

2828 (1) Except as otherwise provided in Subsection (4), the filing of a financing statement is  
2829 not necessary or effective to perfect a security interest in property subject to:

2830 (a) a statute, regulation, or treaty of the United States whose requirements for a security  
2831 interest's obtaining priority over the rights of a lien creditor with respect to the property preempt  
2832 Subsection 70A-9a-310(1);

2833 (b) Section 41-1a-601; or

2834 (c) a certificate-of-title statute of another jurisdiction which provides for a security interest  
2835 to be indicated on the certificate as a condition or result of the security interest's obtaining priority  
2836 over the rights of a lien creditor with respect to the property.

2837 (2) Compliance with the requirements of a statute, regulation, or treaty described in  
2838 Subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of  
2839 a financing statement under this chapter. Except as otherwise provided in Subsection (4), Section  
2840 70A-9a-313, and Subsections 70A-9a-316(4) and (5) for goods covered by a certificate of title, a  
2841 security interest in property subject to a statute, regulation, or treaty described in Subsection (1)  
2842 may be perfected only by compliance with those requirements, and a security interest so perfected  
2843 remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

2844 (3) Except as otherwise provided in Subsection (4) and Subsections 70A-9a-316(4) and  
2845 (5), duration and renewal of perfection of a security interest perfected by compliance with the  
2846 requirements prescribed by a statute, regulation, or treaty described in Subsection (1) are governed  
2847 by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.

2848 (4) During any period in which collateral subject to a statute specified in Subsection (1)(b)

2849 is inventory held for sale or lease by a person or leased by that person as lessor and that person is  
2850 in the business of selling goods of that kind, this section does not apply to a security interest in that  
2851 collateral created by that person.

2852 Section 72. Section **70A-9a-312** is enacted to read:

2853 **70A-9a-312. Perfection of security interests in chattel paper, deposit accounts,**  
2854 **documents, goods covered by documents, instruments, investment property, letter-of-credit**  
2855 **rights, and money -- Perfection by permissive filing -- Temporary perfection without filing**  
2856 **or transfer of possession.**

2857 (1) A security interest in chattel paper, negotiable documents, instruments, or investment  
2858 property may be perfected by filing.

2859 (2) Except as otherwise provided in Subsections 70A-9a-315(3) and (4) for proceeds:

2860 (a) a security interest in a deposit account may be perfected only by control under Section  
2861 70A-9a-314;

2862 (b) and except as otherwise provided in Subsection 70A-9a-308(4), a security interest in  
2863 a letter-of-credit right may be perfected only by control under Section 70A-9a-314; and

2864 (c) a security interest in money may be perfected only by the secured party's taking  
2865 possession under Section 70A-9a-313.

2866 (3) While goods are in the possession of a bailee that has issued a negotiable document  
2867 covering the goods:

2868 (a) a security interest in the goods may be perfected by perfecting a security interest in the  
2869 document; and

2870 (b) a security interest perfected in the document has priority over any security interest that  
2871 becomes perfected in the goods by another method during that time.

2872 (4) While goods are in the possession of a bailee that has issued a nonnegotiable document  
2873 covering the goods, a security interest in the goods may be perfected by:

2874 (a) issuance of a document in the name of the secured party;

2875 (b) the bailee's receipt of notification of the secured party's interest; or

2876 (c) filing as to the goods.

2877 (5) A security interest in certificated securities, negotiable documents, or instruments is  
2878 perfected without filing or the taking of possession for a period of 20 days from the time it attaches  
2879 to the extent that it arises for new value given under an authenticated security agreement.

2880 (6) A perfected security interest in a negotiable document or goods in possession of a  
2881 bailee, other than one that has issued a negotiable document for the goods, remains perfected for  
2882 20 days without filing if the secured party makes available to the debtor the goods or documents  
2883 representing the goods for the purpose of:

2884 (a) ultimate sale or exchange; or

2885 (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or  
2886 otherwise dealing with them in a manner preliminary to their sale or exchange.

2887 (7) A perfected security interest in a certificated security or instrument remains perfected  
2888 for 20 days without filing if the secured party delivers the security certificate or instrument to the  
2889 debtor for the purpose of:

2890 (a) ultimate sale or exchange; or

2891 (b) presentation, collection, enforcement, renewal, or registration of transfer.

2892 (8) After the 20-day period specified in Subsection (5), (6), or (7) expires, perfection  
2893 depends upon compliance with this chapter.

2894 Section 73. Section **70A-9a-313** is enacted to read:

2895 **70A-9a-313. When possession by or delivery to secured party perfects security**  
2896 **interest without filing.**

2897 (1) Except as otherwise provided in Subsection (2), a secured party may perfect a security  
2898 interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking  
2899 possession of the collateral. A secured party may perfect a security interest in certificated  
2900 securities by taking delivery of the certificated securities under Section 70A-8-301.

2901 (2) With respect to goods covered by a certificate of title issued by this state, a secured  
2902 party may perfect a security interest in the goods by taking possession of the goods only in the  
2903 circumstances described in Subsection 70A-9a-316(4).

2904 (3) With respect to collateral other than certificated securities and goods covered by a  
2905 document, a secured party takes possession of collateral in the possession of a person other than  
2906 the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of  
2907 the debtor's business, when:

2908 (a) the person in possession authenticates a record acknowledging that it holds possession  
2909 of the collateral for the secured party's benefit; or

2910 (b) the person takes possession of the collateral after having authenticated a record

2911 acknowledging that it will hold possession of collateral for the secured party's benefit.

2912 (4) If perfection of a security interest depends upon possession of the collateral by a  
2913 secured party, perfection occurs no earlier than the time the secured party takes possession and  
2914 continues only while the secured party retains possession.

2915 (5) A security interest in a certificated security in registered form is perfected by delivery  
2916 when delivery of the certificated security occurs under Section 70A-8-301 and remains perfected  
2917 by delivery until the debtor obtains possession of the security certificate.

2918 (6) A person in possession of collateral is not required to acknowledge that it holds  
2919 possession for a secured party's benefit.

2920 (7) If a person acknowledges that it holds possession for the secured party's benefit:

2921 (a) the acknowledgment is effective under Subsection (3) or Subsection 70A-8-301(1),  
2922 even if the acknowledgment violates the rights of a debtor; and

2923 (b) unless the person otherwise agrees or law other than this chapter otherwise provides,  
2924 the person does not owe any duty to the secured party and is not required to confirm the  
2925 acknowledgment to another person.

2926 (8) A secured party having possession of collateral does not relinquish possession by  
2927 delivering the collateral to a person other than the debtor or a lessee of the collateral from the  
2928 debtor in the ordinary course of the debtor's business if the person was instructed before the  
2929 delivery or is instructed contemporaneously with the delivery:

2930 (a) to hold possession of the collateral for the secured party's benefit; or

2931 (b) to redeliver the collateral to the secured party.

2932 (9) A secured party does not relinquish possession, even if a delivery under Subsection (8)  
2933 violates the rights of a debtor. A person to which collateral is delivered under Subsection (8) does  
2934 not owe any duty to the secured party and is not required to confirm the delivery to another person  
2935 unless the person otherwise agrees or law other than this chapter otherwise provides.

2936 Section 74. Section **70A-9a-314** is enacted to read:

2937 **70A-9a-314. Perfection by control.**

2938 (1) A security interest in investment property, deposit accounts, letter-of-credit rights, or  
2939 electronic chattel paper may be perfected by control of the collateral under Section 70A-9a-104,  
2940 70A-9a-105, 70A-9a-106, or 70A-9a-107.

2941 (2) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights

2942 is perfected by control under Section 70A-9a-104, 70A-9a-105, or 70A-9a-107 when the secured  
2943 party obtains control and remains perfected by control only while the secured party retains control.

2944 (3) A security interest in investment property is perfected by control under Section  
2945 70A-9a-106 from the time the secured party obtains control and remains perfected by control until:

2946 (a) the secured party does not have control; and

2947 (b) one of the following occurs:

2948 (i) if the collateral is a certificated security, the debtor has or acquires possession of the  
2949 security certificate;

2950 (ii) if the collateral is an uncertificated security, the issuer has registered or registers the  
2951 debtor as the registered owner; or

2952 (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement  
2953 holder.

2954 Section 75. Section **70A-9a-315** is enacted to read:

2955 **70A-9a-315. Secured party's rights on disposition of collateral and in proceeds.**

2956 (1) Except as otherwise provided in this chapter and in Subsection 70A-2-403(2):

2957 (a) a security interest or agricultural lien continues in collateral notwithstanding sale, lease,  
2958 license, exchange, or other disposition thereof unless the secured party authorized the disposition  
2959 free of the security interest or agricultural lien; and

2960 (b) a security interest attaches to any identifiable proceeds of collateral.

2961 (2) Proceeds that are commingled with other property are identifiable proceeds:

2962 (a) if the proceeds are goods, to the extent provided by Section 70A-9a-336; and

2963 (b) if the proceeds are not goods, to the extent that the secured party identifies the proceeds  
2964 by a method of tracing, including application of equitable principles, that is permitted under law  
2965 other than this chapter with respect to commingled property of the type involved.

2966 (3) A security interest in proceeds is a perfected security interest if the security interest in  
2967 the original collateral was perfected.

2968 (4) A perfected security interest in proceeds becomes unperfected on the 21st day after the  
2969 security interest attaches to the proceeds unless:

2970 (a) the following conditions are satisfied:

2971 (i) a filed financing statement covers the original collateral;

2972 (ii) the proceeds are collateral in which a security interest may be perfected by filing in the

- 2973 office in which the financing statement has been filed; and
- 2974 (iii) the proceeds are not acquired with cash proceeds;
- 2975 (b) the proceeds are identifiable cash proceeds; or
- 2976 (c) the security interest in the proceeds is perfected other than under Subsection (3) when
- 2977 the security interest attaches to the proceeds or within 20 days thereafter.
- 2978 (5) If a filed financing statement covers the original collateral, a security interest in
- 2979 proceeds which remains perfected under Subsection (4)(a) becomes unperfected at the later of:
- 2980 (a) when the effectiveness of the filed financing statement lapses under Section
- 2981 70A-9a-515 or is terminated under Section 70A-9a-513; or
- 2982 (b) the 21st day after the security interest attaches to the proceeds.
- 2983 Section 76. Section **70A-9a-316** is enacted to read:
- 2984 **70A-9a-316. Continued perfection of security interest following change in governing**
- 2985 **law.**
- 2986 (1) A security interest perfected pursuant to the law of the jurisdiction designated in
- 2987 Subsection 70A-9a-301(1) or 70A-9a-305(3) remains perfected until the earliest of:
- 2988 (a) the time perfection would have ceased under the law of that jurisdiction;
- 2989 (b) the expiration of four months after a change of the debtor's location to another
- 2990 jurisdiction; or
- 2991 (c) the expiration of one year after a transfer of collateral to a person that thereby becomes
- 2992 a debtor and is located in another jurisdiction.
- 2993 (2) If a security interest described in Subsection (1) becomes perfected under the law of
- 2994 the other jurisdiction before the earliest time or event described in that subsection, it remains
- 2995 perfected thereafter. If the security interest does not become perfected under the law of the other
- 2996 jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have
- 2997 been perfected as against a purchaser of the collateral for value.
- 2998 (3) A possessory security interest in collateral, other than goods covered by a certificate
- 2999 of title and as-extracted collateral consisting of goods, remains continuously perfected if:
- 3000 (a) the collateral is located in one jurisdiction and subject to a security interest perfected
- 3001 under the law of that jurisdiction;
- 3002 (b) thereafter the collateral is brought into another jurisdiction; and
- 3003 (c) upon entry into the other jurisdiction, the security interest is perfected under the law

3004 of the other jurisdiction.

3005 (4) Except as otherwise provided in Subsection (5), a security interest in goods covered  
3006 by a certificate of title which is perfected by any method under the law of another jurisdiction when  
3007 the goods become covered by a certificate of title from this state remains perfected until the  
3008 security interest would have become unperfected under the law of the other jurisdiction had the  
3009 goods not become so covered.

3010 (5) A security interest described in Subsection (4) becomes unperfected as against a  
3011 purchaser of the goods for value and is deemed never to have been perfected as against a purchaser  
3012 of the goods for value if the applicable requirements for perfection under Subsection  
3013 70A-9a-311(2) or Section 70A-9a-313 are not satisfied before the earlier of:

3014 (a) the time the security interest would have become unperfected under the law of the other  
3015 jurisdiction had the goods not become covered by a certificate of title from this state; or

3016 (b) the expiration of four months after the goods had become so covered.

3017 (6) A security interest in deposit accounts, letter-of-credit rights, or investment property  
3018 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated  
3019 person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's  
3020 jurisdiction, as applicable, remains perfected until the earlier of:

3021 (a) the time the security interest would have become unperfected under the law of that  
3022 jurisdiction; or

3023 (b) the expiration of four months after a change of the applicable jurisdiction to another  
3024 jurisdiction.

3025 (7) If a security interest described in Subsection (6) becomes perfected under the law of the  
3026 other jurisdiction before the earlier of the time or the end of the period described in that subsection,  
3027 it remains perfected thereafter. If the security interest does not become perfected under the law  
3028 of the other jurisdiction before the earlier of that time or the end of that period, it becomes  
3029 unperfected and is deemed never to have been perfected as against a purchaser of the collateral for  
3030 value.

3031 Section 77. Section **70A-9a-317** is enacted to read:

3032 **70A-9a-317. Interests that take priority over or take free of security interest or**  
3033 **agricultural lien.**

3034 (1) A security interest or agricultural lien is subordinate to the rights of:

3035 (a) a person entitled to priority under Section 70A-9a-322; and

3036 (b) except as otherwise provided in Subsection (5), a person that becomes a lien creditor  
3037 before the earlier of the time:

3038 (i) the security interest or agricultural lien is perfected; or

3039 (ii) one of the conditions specified in Subsection 70A-9a-203(2)(c) is met and a financing  
3040 statement covering the collateral is filed.

3041 (2) Except as otherwise provided in Subsection (5), a buyer, other than a secured party,  
3042 of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a  
3043 security interest or agricultural lien if the buyer gives value and receives delivery of the collateral  
3044 without knowledge of the security interest or agricultural lien and before it is perfected.

3045 (3) Except as otherwise provided in Subsection (5), a lessee of goods takes free of a  
3046 security interest or agricultural lien if the lessee gives value and receives delivery of the collateral  
3047 without knowledge of the security interest or agricultural lien and before it is perfected.

3048 (4) A licensee of a general intangible or a buyer, other than a secured party, of accounts,  
3049 electronic chattel paper, general intangibles, or investment property other than a certificated  
3050 security takes free of a security interest if the licensee or buyer gives value without knowledge of  
3051 the security interest and before it is perfected.

3052 (5) Except as otherwise provided in Sections 70A-9a-320 and 70A-9a-321, if a person files  
3053 a financing statement with respect to a purchase-money security interest before or within 20 days  
3054 after the debtor receives delivery of the collateral, the security interest takes priority over the rights  
3055 of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and  
3056 the time of filing.

3057 Section 78. Section **70A-9a-318** is enacted to read:

3058 **70A-9a-318. No interest retained in right to payment that is sold -- Rights and title**  
3059 **of seller of account or chattel paper with respect to creditors and purchasers.**

3060 (1) A debtor that has sold an account, chattel paper, payment intangible, or promissory  
3061 note does not retain a legal or equitable interest in the collateral sold.

3062 (2) For purposes of determining the rights of creditors of, and purchasers for value of an  
3063 account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's  
3064 security interest is unperfected, the debtor is deemed to have rights and title to the account or  
3065 chattel paper identical to those the debtor sold.

3066 Section 79. Section **70A-9a-319** is enacted to read:

3067 **70A-9a-319. Rights and title of consignee with respect to creditors and purchasers.**

3068 (1) Except as otherwise provided in Subsection (2), for purposes of determining the rights  
3069 of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the  
3070 possession of the consignee, the consignee is deemed to have rights and title to the goods identical  
3071 to those the consignor had or had power to transfer.

3072 (2) For purposes of determining the rights of a creditor of a consignee, law other than this  
3073 chapter determines the rights and title of a consignee while goods are in the consignee's possession  
3074 if, under this part, a perfected security interest held by the consignor would have priority over the  
3075 rights of the creditor.

3076 Section 80. Section **70A-9a-320** is enacted to read:

3077 **70A-9a-320. Buyer of goods.**

3078 (1) Except as otherwise provided in Subsection (5), a buyer in ordinary course of business,  
3079 other than a person buying farm products from a person engaged in farming operations, takes free  
3080 of a security interest created by the buyer's seller, even if the security interest is perfected and the  
3081 buyer knows of its existence.

3082 (2) Except as otherwise provided in Subsection (5), a buyer of goods from a person who  
3083 used or bought the goods for use primarily for personal, family, or household purposes takes free  
3084 of a security interest, even if perfected, if the buyer buys:

3085 (a) without knowledge of the security interest;

3086 (b) for value;

3087 (c) primarily for the buyer's personal, family, or household purposes; and

3088 (d) before the filing of a financing statement covering the goods.

3089 (3) To the extent that it affects the priority of a security interest over a buyer of goods  
3090 under Subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the  
3091 seller is located is governed by Subsections 70A-9a-316(1) and (2).

3092 (4) A buyer in ordinary course of business buying oil, gas, or other minerals at the  
3093 wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

3094 (5) Subsections (1) and (2) do not affect a security interest in goods in the possession of  
3095 the secured party under Section 70A-9a-313.

3096 (6) (a) Notwithstanding Subsection (1), a secured party may not enforce a security interest

3097 in farm products against a buyer, commission merchant, or selling agent who purchases or sells  
3098 farm products in the ordinary course of business from or for a person engaged in farming  
3099 operations unless the secured party has complied with the rules issued by the Division of  
3100 Corporations and Commercial Code under Subsection (6)(b).

3101 (b) The Division of Corporations and Commercial Code shall issue the rules necessary to  
3102 implement a central filing system that will conform to the requirements of the Food Security Act  
3103 of 1985, P.L. 99-198, as now enacted or as it may be hereafter amended.

3104 Section 81. Section **70A-9a-321** is enacted to read:

3105 **70A-9a-321. Licensee of general intangible and lessee of goods in ordinary course of**  
3106 **business.**

3107 (1) In this section, "licensee in ordinary course of business" means a person that becomes  
3108 a licensee of a general intangible in good faith, without knowledge that the license violates the  
3109 rights of another person in the general intangible, and in the ordinary course from a person in the  
3110 business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary  
3111 course if the license to the person comports with the usual or customary practices in the kind of  
3112 business in which the licensor is engaged or with the licensor's own usual or customary practices.

3113 (2) A licensee in ordinary course of business takes its rights under a nonexclusive license  
3114 free of a security interest in the general intangible created by the licensor, even if the security  
3115 interest is perfected and the licensee knows of its existence.

3116 (3) A lessee in ordinary course of business takes its leasehold interest free of a security  
3117 interest in the goods created by the lessor, even if the security interest is perfected and the lessee  
3118 knows of its existence.

3119 Section 82. Section **70A-9a-322** is enacted to read:

3120 **70A-9a-322. Priorities among conflicting security interests in and agricultural liens**  
3121 **on same collateral.**

3122 (1) Except as otherwise provided in this section, priority among conflicting security  
3123 interests and agricultural liens in the same collateral is determined according to the following rules:

3124 (a) Conflicting perfected security interests and agricultural liens rank according to priority  
3125 in time of filing or perfection. Priority dates from the earlier of the time a filing covering the  
3126 collateral is first made or the security interest or agricultural lien is first perfected, if there is no  
3127 period thereafter when there is neither filing nor perfection.

3128 (b) A perfected security interest or agricultural lien has priority over a conflicting  
3129 unperfected security interest or agricultural lien.

3130 (c) The first security interest or agricultural lien to attach or become effective has priority  
3131 if conflicting security interests and agricultural liens are unperfected.

3132 (2) For the purposes of Subsection (1)(a):

3133 (a) the time of filing or perfection as to a security interest in collateral is also the time of  
3134 filing or perfection as to a security interest in proceeds; and

3135 (b) the time of filing or perfection as to a security interest in collateral supported by a  
3136 supporting obligation is also the time of filing or perfection as to a security interest in the  
3137 supporting obligation.

3138 (3) Except as otherwise provided in Subsection (6), a security interest in collateral which  
3139 qualifies for priority over a conflicting security interest under Section 70A-9a-327, 70A-9a-328,  
3140 70A-9a-329, 70A-9a-330, or 70A-9a-331 also has priority over a conflicting security interest in:

3141 (a) any supporting obligation for the collateral; and

3142 (b) proceeds of the collateral if:

3143 (i) the security interest in proceeds is perfected;

3144 (ii) the proceeds are cash proceeds or of the same type as the collateral; and

3145 (iii) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash  
3146 proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

3147 (4) Subject to Subsection (5) and except as otherwise provided in Subsection (6), if a  
3148 security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment  
3149 property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected  
3150 security interests in proceeds of the collateral rank according to priority in time of filing.

3151 (5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds,  
3152 chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

3153 (6) Subsections (1) through (5) are subject to:

3154 (a) Subsection (7) and the other provisions of this part;

3155 (b) Section 70A-4-210 with respect to a security interest of a collecting bank;

3156 (c) Section 70A-5-118 with respect to a security interest of an issuer or nominated person;  
3157 and

3158 (d) Section 70A-9a-110 with respect to a security interest arising under Chapter 2 or 2a.

3159 (7) A perfected agricultural lien on collateral has priority over a conflicting security  
3160 interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so  
3161 provides.

3162 Section 83. Section **70A-9a-323** is enacted to read:

3163 **70A-9a-323. Future advances.**

3164 (1) Except as otherwise provided in Subsection (3), for purposes of determining the  
3165 priority of a perfected security interest under Subsection 70A-9a-322(1)(a), perfection of the  
3166 security interest dates from the time an advance is made to the extent that the security interest  
3167 secures an advance that:

3168 (a) is made while the security interest is perfected only:

3169 (i) under Section 70A-9a-309 when it attaches; or

3170 (ii) temporarily under Subsection 70A-9a-312(5), (6), or (7); and

3171 (b) is not made pursuant to a commitment entered into before or while the security interest  
3172 is perfected by a method other than under Section 70A-9a-309 or Subsection 70A-9a-312(5), (6),  
3173 or (7).

3174 (2) Except as otherwise provided in Subsection (3), a security interest is subordinate to the  
3175 rights of a person that becomes a lien creditor to the extent that the security interest secures an  
3176 advance made more than 45 days after the person becomes a lien creditor unless the advance is  
3177 made:

3178 (a) without knowledge of the lien; or

3179 (b) pursuant to a commitment entered into without knowledge of the lien.

3180 (3) Subsections (1) and (2) do not apply to a security interest held by a secured party that  
3181 is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignee.

3182 (4) Except as otherwise provided in Subsection (5), a buyer of goods other than a buyer  
3183 in ordinary course of business takes free of a security interest to the extent that it secures advances  
3184 made after the earlier of:

3185 (a) the time the secured party acquires knowledge of the buyer's purchase; or

3186 (b) 45 days after the purchase.

3187 (5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered  
3188 into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

3189 (6) Except as otherwise provided in Subsection (7), a lessee of goods, other than a lessee

3190 in ordinary course of business, takes the leasehold interest free of a security interest to the extent  
3191 that it secures advances made after the earlier of:

3192 (a) the time the secured party acquires knowledge of the lease; or

3193 (b) 45 days after the lease contract becomes enforceable.

3194 (7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered  
3195 into without knowledge of the lease and before the expiration of the 45-day period.

3196 Section 84. Section **70A-9a-324** is enacted to read:

3197 **70A-9a-324. Priority of purchase-money security interests.**

3198 (1) Except as otherwise provided in Subsection (7), a perfected purchase-money security  
3199 interest in goods other than inventory or livestock has priority over a conflicting security interest  
3200 in the same goods, and, except as otherwise provided in Section 70A-9a-327, a perfected security  
3201 interest in its identifiable proceeds also has priority, if the purchase-money security interest is  
3202 perfected when the debtor receives possession of the collateral or within 20 days thereafter.

3203 (2) Subject to Subsection (3) and except as otherwise provided in Subsection (7), a  
3204 perfected purchase-money security interest in inventory has priority over a conflicting security  
3205 interest in the same inventory, has priority over a conflicting security interest in chattel paper or  
3206 an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so  
3207 provided in Section 70A-9a-330, and, except as otherwise provided in Section 70A-9a-327, also  
3208 has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash  
3209 proceeds are received on or before the delivery of the inventory to a buyer, if:

3210 (a) the purchase-money security interest is perfected when the debtor receives possession  
3211 of the inventory;

3212 (b) the purchase-money secured party sends an authenticated notification to the holder of  
3213 the conflicting security interest;

3214 (c) the holder of the conflicting security interest receives the notification within five years  
3215 before the debtor receives possession of the inventory; and

3216 (d) the notification states that the person sending the notification has or expects to acquire  
3217 a purchase-money security interest in inventory of the debtor and describes the inventory.

3218 (3) Subsections (2)(b) through (d) apply only if the holder of the conflicting security  
3219 interest had filed a financing statement covering the same types of inventory:

3220 (a) if the purchase-money security interest is perfected by filing, before the date of the

3221 filing; or

3222 (b) if the purchase-money security interest is temporarily perfected without filing or  
3223 possession under Subsection 70A-9a-312(6), before the beginning of the 20-day period thereunder.

3224 (4) Subject to Subsection (5) and except as otherwise provided in Subsection (7), a  
3225 perfected purchase-money security interest in livestock that are farm products has priority over a  
3226 conflicting security interest in the same livestock, and, except as otherwise provided in Section  
3227 70A-9a-327, a perfected security interest in their identifiable proceeds and identifiable products  
3228 in their unmanufactured states also has priority, if:

3229 (a) the purchase-money security interest is perfected when the debtor receives possession  
3230 of the livestock;

3231 (b) the purchase-money secured party sends an authenticated notification to the holder of  
3232 the conflicting security interest;

3233 (c) the holder of the conflicting security interest receives the notification within six months  
3234 before the debtor receives possession of the livestock; and

3235 (d) the notification states that the person sending the notification has or expects to acquire  
3236 a purchase-money security interest in livestock of the debtor and describes the livestock.

3237 (5) Subsections (4)(b) through (d) apply only if the holder of the conflicting security  
3238 interest had filed a financing statement covering the same types of livestock:

3239 (a) if the purchase-money security interest is perfected by filing, before the date of the  
3240 filing; or

3241 (b) if the purchase-money security interest is temporarily perfected without filing or  
3242 possession under Subsection 70A-9a-312(6), before the beginning of the 20-day period thereunder.

3243 (6) Except as otherwise provided in Subsection (7), a perfected purchase-money security  
3244 interest in software has priority over a conflicting security interest in the same collateral, and,  
3245 except as otherwise provided in Section 70A-9a-327, a perfected security interest in its identifiable  
3246 proceeds also has priority, to the extent that the purchase-money security interest in the goods in  
3247 which the software was acquired for use has priority in the goods and proceeds of the goods under  
3248 this section.

3249 (7) If more than one security interest qualifies for priority in the same collateral under  
3250 Subsection (1), (2), (4), or (6):

3251 (a) a security interest securing an obligation incurred as all or part of the price of the

3252 collateral has priority over a security interest securing an obligation incurred for value given to  
3253 enable the debtor to acquire rights in or the use of collateral; and

3254 (b) in all other cases, Subsection 70A-9a-322(1) applies to the qualifying security interests.

3255 Section 85. Section **70A-9a-325** is enacted to read:

3256 **70A-9a-325. Priority of security interests in transferred collateral.**

3257 (1) Except as otherwise provided in Subsection (2), a security interest created by a debtor  
3258 is subordinate to a security interest in the same collateral created by another person if:

3259 (a) the debtor acquired the collateral subject to the security interest created by the other  
3260 person;

3261 (b) the security interest created by the other person was perfected when the debtor acquired  
3262 the collateral; and

3263 (c) there is no period thereafter when the security interest is unperfected.

3264 (2) Subsection (1) subordinates a security interest only if the security interest:

3265 (a) otherwise would have priority solely under Subsection 70A-9a-322(1) or Section  
3266 70A-9a-324; or

3267 (b) arose solely under Subsection 70A-2-711(3) or 70A-2a-508(5).

3268 Section 86. Section **70A-9a-326** is enacted to read:

3269 **70A-9a-326. Priority of security interests created by new debtor.**

3270 (1) Subject to Subsection (2), a security interest created by a new debtor which is perfected  
3271 by a filed financing statement that is effective solely under Section 70A-9a-508 in collateral in  
3272 which a new debtor has or acquires rights is subordinate to a security interest in the same collateral  
3273 which is perfected other than by a filed financing statement that is effective solely under Section  
3274 70A-9a-508.

3275 (2) The other provisions of this part determine the priority among conflicting security  
3276 interests in the same collateral perfected by filed financing statements that are effective solely  
3277 under Section 70A-9a-508. However, if the security agreements to which a new debtor became  
3278 bound as debtor were not entered into by the same original debtor, the conflicting security interests  
3279 rank according to priority in time of the new debtor's having become bound.

3280 Section 87. Section **70A-9a-327** is enacted to read:

3281 **70A-9a-327. Priority of security interests in deposit account.**

3282 The following rules govern priority among conflicting security interests in the same deposit

3283 account:

3284 (1) A security interest held by a secured party having control of the deposit account under  
3285 Section 70A-9a-104 has priority over a conflicting security interest held by a secured party that  
3286 does not have control.

3287 (2) Except as otherwise provided in Subsections (3) and (4), security interests perfected  
3288 by control under Section 70A-9a-314 rank according to priority in time of obtaining control.

3289 (3) Except as otherwise provided in Subsection (4), a security interest held by the bank  
3290 with which the deposit account is maintained has priority over a conflicting security interest held  
3291 by another secured party.

3292 (4) A security interest perfected by control under Subsection 70A-9a-104(1)(c) has priority  
3293 over a security interest held by the bank with which the deposit account is maintained.

3294 Section 88. Section **70A-9a-328** is enacted to read:

3295 **70A-9a-328. Priority of security interests in investment property.**

3296 The following rules govern priority among conflicting security interests in the same  
3297 investment property:

3298 (1) A security interest held by a secured party having control of investment property under  
3299 Section 70A-9a-106 has priority over a security interest held by a secured party that does not have  
3300 control of the investment property.

3301 (2) Except as otherwise provided in Subsections (3) and (4), conflicting security interests  
3302 held by secured parties each of which has control under Section 70A-9a-106 rank according to  
3303 priority in time of:

3304 (a) if the collateral is a security, obtaining control;

3305 (b) if the collateral is a security entitlement carried in a securities account and:

3306 (i) if the secured party obtained control under Subsection 70A-8-105(4)(a), the secured  
3307 party's becoming the person for which the securities account is maintained;

3308 (ii) if the secured party obtained control under Subsection 70A-8-105(4)(b), the securities  
3309 intermediary's agreement to comply with the secured party's entitlement orders with respect to  
3310 security entitlements carried or to be carried in the securities account; or

3311 (iii) if the secured party obtained control through another person under Subsection  
3312 70A-8-105(4)(c), the time on which priority would be based under this subsection if the other  
3313 person were the secured party; or

3314 (c) if the collateral is a commodity contract carried with a commodity intermediary, the  
3315 satisfaction of the requirement for control specified in Subsection 70A-9a-105(2)(b) with respect  
3316 to commodity contracts carried or to be carried with the commodity intermediary.

3317 (3) A security interest held by a securities intermediary in a security entitlement or a  
3318 securities account maintained with the securities intermediary has priority over a conflicting  
3319 security interest held by another secured party.

3320 (4) A security interest held by a commodity intermediary in a commodity contract or a  
3321 commodity account maintained with the commodity intermediary has priority over a conflicting  
3322 security interest held by another secured party.

3323 (5) A security interest in a certificated security in registered form which is perfected by  
3324 taking delivery under Subsection 70A-9a-313(1) and not by control under Section 70A-9a-314 has  
3325 priority over a conflicting security interest perfected by a method other than control.

3326 (6) Conflicting security interests created by a broker, securities intermediary, or  
3327 commodity intermediary which are perfected without control under Section 70A-9a-106 rank  
3328 equally.

3329 (7) In all other cases, priority among conflicting security interests in investment property  
3330 is governed by Sections 70A-9a-322 and 70A-9a-323.

3331 Section 89. Section **70A-9a-329** is enacted to read:

3332 **70A-9a-329. Priority of security interests in letter-of-credit right.**

3333 The following rules govern priority among conflicting security interests in the same  
3334 letter-of-credit right:

3335 (1) A security interest held by a secured party having control of the letter-of-credit right  
3336 under Section 70A-9a-107 has priority to the extent of its control over a conflicting security  
3337 interest held by a secured party that does not have control.

3338 (2) Security interests perfected by control under Section 70A-9a-314 rank according to  
3339 priority in time of obtaining control.

3340 Section 90. Section **70A-9a-330** is enacted to read:

3341 **70A-9a-330. Priority of purchaser of chattel paper or instrument.**

3342 (1) A purchaser of chattel paper has priority over a security interest in the chattel paper  
3343 which is claimed merely as proceeds of inventory subject to a security interest if:

3344 (a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives

3345 new value and takes possession of the chattel paper or obtains control of the chattel paper under  
3346 Section 70A-9a-105; and

3347 (b) the chattel paper does not indicate that it has been assigned to an identified assignee  
3348 other than the purchaser.

3349 (2) A purchaser of chattel paper has priority over a security interest in the chattel paper  
3350 which is claimed other than merely as proceeds of inventory subject to a security interest if the  
3351 purchaser gives new value and takes possession of the chattel paper or obtains control of the  
3352 chattel paper under Section 70A-9a-105 in good faith, in the ordinary course of the purchaser's  
3353 business, and without knowledge that the purchase violates the rights of the secured party.

3354 (3) Except as otherwise provided in Section 70A-9a-327, a purchaser having priority in  
3355 chattel paper under Subsection (1) or (2) also has priority in proceeds of the chattel paper to the  
3356 extent that:

3357 (a) Section 70A-9a-322 provides for priority in the proceeds; or

3358 (b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds  
3359 of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

3360 (4) Except as otherwise provided in Subsection 70A-9a-331(1), a purchaser of an  
3361 instrument has priority over a security interest in the instrument perfected by a method other than  
3362 possession if the purchaser gives value and takes possession of the instrument in good faith and  
3363 without knowledge that the purchase violates the rights of the secured party.

3364 (5) For purposes of Subsections (1) and (2), the holder of a purchase-money security  
3365 interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

3366 (6) For purposes of Subsections (2) and (4), if chattel paper or an instrument indicates that  
3367 it has been assigned to an identified secured party other than the purchaser, a purchaser of the  
3368 chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

3369 Section 91. Section **70A-9a-331** is enacted to read:

3370 **70A-9a-331. Priority of rights of purchasers of instruments, documents, and**  
3371 **securities under other chapters -- Priority of interests in financial assets and security**  
3372 **entitlements under Chapter 8.**

3373 (1) This chapter does not limit the rights of a holder in due course of a negotiable  
3374 instrument, a holder to which a negotiable document of title has been duly negotiated, or a  
3375 protected purchaser of a security. These holders or purchasers take priority over an earlier security

3376 interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.

3377 (2) This chapter does not limit the rights of or impose liability on a person to the extent  
3378 that the person is protected against the assertion of a claim under Chapter 8.

3379 (3) Filing under this chapter does not constitute notice of a claim or defense to the holders,  
3380 or purchasers, or persons described in Subsections (1) and (2).

3381 Section 92. Section **70A-9a-332** is enacted to read:

3382 **70A-9a-332. Transfer of money -- Transfer of funds from deposit account.**

3383 (1) A transferee of money takes the money free of a security interest unless the transferee  
3384 acts in collusion with the debtor in violating the rights of the secured party.

3385 (2) A transferee of funds from a deposit account takes the funds free of a security interest  
3386 in the deposit account unless the transferee acts in collusion with the debtor in violating the rights  
3387 of the secured party.

3388 Section 93. Section **70A-9a-333** is enacted to read:

3389 **70A-9a-333. Priority of certain liens arising by operation of law.**

3390 (1) In this section, "possessory lien" means an interest, other than a security interest or an  
3391 agricultural lien:

3392 (a) which secures payment or performance of an obligation for services or materials  
3393 furnished with respect to goods by a person in the ordinary course of the person's business;

3394 (b) which is created by statute or rule of law in favor of the person; and

3395 (c) whose effectiveness depends on the person's possession of the goods.

3396 (2) A possessory lien on goods has priority over a security interest in the goods unless the  
3397 lien is created by a statute that expressly provides otherwise.

3398 Section 94. Section **70A-9a-334** is enacted to read:

3399 **70A-9a-334. Priority of security interests in fixtures and crops.**

3400 (1) A security interest under this chapter may be created in goods that are fixtures or may  
3401 continue in goods that become fixtures. A security interest does not exist under this chapter in  
3402 ordinary building materials incorporated into an improvement on land.

3403 (2) This chapter does not prevent creation of an encumbrance upon fixtures under real  
3404 property law.

3405 (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is  
3406 subordinate to a conflicting interest of an encumbrancer or owner of the related real property other

3407 than the debtor.

3408 (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures  
3409 has priority over a conflicting interest of an encumbrancer or owner of the real property if the  
3410 debtor has an interest of record in or is in possession of the real property and:

3411 (a) the security interest is a purchase-money security interest;

3412 (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

3413 (c) the security interest is perfected by a fixture filing before the goods become fixtures  
3414 or within 20 days thereafter.

3415 (5) A perfected security interest in fixtures has priority over a conflicting interest of an  
3416 encumbrancer or owner of the real property if:

3417 (a) the debtor has an interest of record in the real property or is in possession of the real  
3418 property and the security interest:

3419 (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of  
3420 record; and

3421 (ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer  
3422 or owner;

3423 (b) before the goods become fixtures, the security interest is perfected by any method  
3424 permitted by this chapter and the fixtures are readily removable:

3425 (i) factory or office machines;

3426 (ii) equipment that is not primarily used or leased for use in the operation of the real  
3427 property; or

3428 (iii) replacements of domestic appliances that are consumer goods;

3429 (c) the conflicting interest is a lien on the real property obtained by legal or equitable  
3430 proceedings after the security interest was perfected by any method permitted by this chapter; or

3431 (d) the security interest is:

3432 (i) created in a manufactured home in a manufactured-home transaction; and

3433 (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).

3434 (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting  
3435 interest of an encumbrancer or owner of the real property if:

3436 (a) the encumbrancer or owner has, in an authenticated record, consented to the security  
3437 interest or disclaimed an interest in the goods as fixtures; or

3438 (b) the debtor has a right to remove the goods as against the encumbrancer or owner.

3439 (7) The priority of the security interest under Subsection (6) continues for a reasonable  
3440 time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

3441 (8) A mortgage is a construction mortgage to the extent that it secures an obligation  
3442 incurred for the construction of an improvement on land, including the acquisition cost of the land,  
3443 if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5)  
3444 and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the  
3445 mortgage is recorded before the goods become fixtures and the goods become fixtures before the  
3446 completion of the construction. A mortgage has this priority to the same extent as a construction  
3447 mortgage to the extent that it is given to refinance a construction mortgage.

3448 (9) A perfected security interest in crops growing on real property has priority over a  
3449 conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest  
3450 of record in or is in possession of the real property.

3451 Section 95. Section **70A-9a-335** is enacted to read:

3452 **70A-9a-335. Accessions.**

3453 (1) A security interest may be created in an accession and continues in collateral that  
3454 becomes an accession.

3455 (2) If a security interest is perfected when the collateral becomes an accession, the security  
3456 interest remains perfected in the collateral.

3457 (3) Except as otherwise provided in Subsection (4), the other provisions of this part  
3458 determine the priority of a security interest in an accession.

3459 (4) A security interest in an accession is subordinate to a security interest in the whole  
3460 which is perfected by compliance with the requirements of a certificate-of-title statute under  
3461 Subsection 70A-9a-311(2).

3462 (5) After default, subject to Part 6, a secured party may remove an accession from other  
3463 goods if the security interest in the accession has priority over the claims of every person having  
3464 an interest in the whole.

3465 (6) A secured party that removes an accession from other goods under Subsection (5) shall  
3466 promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of  
3467 the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or  
3468 the other goods. The secured party need not reimburse the holder or owner for any diminution in

3469 value of the whole or the other goods caused by the absence of the accession removed or by any  
3470 necessity for replacing it. A person entitled to reimbursement may refuse permission to remove  
3471 until the secured party gives adequate assurance for the performance of the obligation to reimburse.

3472 Section 96. Section **70A-9a-336** is enacted to read:

3473 **70A-9a-336. Commingled goods.**

3474 (1) In this section, "commingled goods" means goods that are physically united with other  
3475 goods in such a manner that their identity is lost in a product or mass.

3476 (2) A security interest does not exist in commingled goods as such. However, a security  
3477 interest may attach to a product or mass that results when goods become commingled goods.

3478 (3) If collateral becomes commingled goods, a security interest attaches to the product or  
3479 mass.

3480 (4) If a security interest in collateral is perfected before the collateral becomes commingled  
3481 goods, the security interest that attaches to the product or mass under Subsection (3) is perfected.

3482 (5) Except as otherwise provided in Subsection (6), the other provisions of this part  
3483 determine the priority of a security interest that attaches to the product or mass under Subsection  
3484 (3).

3485 (6) If more than one security interest attaches to the product or mass under Subsection (3),  
3486 the following rules determine priority:

3487 (a) A security interest that is perfected under Subsection (4) has priority over a security  
3488 interest that is unperfected at the time the collateral becomes commingled goods.

3489 (b) If more than one security interest is perfected under Subsection (4), the security  
3490 interests rank equally in proportion to the value of the collateral at the time it became commingled  
3491 goods.

3492 Section 97. Section **70A-9a-337** is enacted to read:

3493 **70A-9a-337. Priority of security interests in goods covered by certificate of title.**

3494 If, while a security interest in goods is perfected by any method under the law of another  
3495 jurisdiction, this state issues a certificate of title that does not show that the goods are subject to  
3496 the security interest or contain a statement that they may be subject to security interests not shown  
3497 on the certificate:

3498 (1) a buyer of the goods, other than a person in the business of selling goods of that kind,  
3499 takes free of the security interest if the buyer gives value and receives delivery of the goods after

3500 issuance of the certificate and without knowledge of the security interest; and

3501 (2) the security interest is subordinate to a conflicting security interest in the goods that  
3502 attaches, and is perfected under Subsection 70A-9a-311(2), after issuance of the certificate and  
3503 without the conflicting secured party's knowledge of the security interest.

3504 Section 98. Section **70A-9a-338** is enacted to read:

3505 **70A-9a-338. Priority of security interest or agricultural lien perfected by filed**  
3506 **financing statement providing certain incorrect information.**

3507 If a security interest or agricultural lien is perfected by a filed financing statement providing  
3508 information described in Subsection 70A-9a-516(2)(e) which is incorrect at the time the financing  
3509 statement is filed:

3510 (1) the security interest or agricultural lien is subordinate to a conflicting perfected security  
3511 interest in the collateral to the extent that the holder of the conflicting security interest gives value  
3512 in reasonable reliance upon the incorrect information; and

3513 (2) a purchaser, other than a secured party, of the collateral takes free of the security  
3514 interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information,  
3515 the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a  
3516 security certificate, receives delivery of the collateral.

3517 Section 99. Section **70A-9a-339** is enacted to read:

3518 **70A-9a-339. Priority subject to subordination.**

3519 This chapter does not preclude subordination by agreement by a person entitled to priority.

3520 Section 100. Section **70A-9a-340** is enacted to read:

3521 **70A-9a-340. Effectiveness of right of recoupment or set-off against deposit account.**

3522 (1) Except as otherwise provided in Subsection (3), a bank with which a deposit account  
3523 is maintained may exercise any right of recoupment or set-off against a secured party that holds  
3524 a security interest in the deposit account.

3525 (2) Except as otherwise provided in Subsection (3), the application of this chapter to a  
3526 security interest in a deposit account does not affect a right of recoupment or set-off of the secured  
3527 party as to a deposit account maintained with the secured party.

3528 (3) The exercise by a bank of a set-off against a deposit account is ineffective against a  
3529 secured party that holds a security interest in the deposit account which is perfected by control  
3530 under Subsection 70A-9a-104(1)(c), if the set-off is based on a claim against the debtor.

3531 Section 101. Section **70A-9a-341** is enacted to read:

3532 **70A-9a-341. Bank's rights and duties with respect to deposit account.**

3533 Except as otherwise provided in Subsection 70A-9a-340(3), and unless the bank otherwise  
3534 agrees in an authenticated record, a bank's rights and duties with respect to a deposit account  
3535 maintained with the bank are not terminated, suspended, or modified by:

3536 (1) the creation, attachment, or perfection of a security interest in the deposit account;

3537 (2) the bank's knowledge of the security interest; or

3538 (3) the bank's receipt of instructions from the secured party.

3539 Section 102. Section **70A-9a-342** is enacted to read:

3540 **70A-9a-342. Bank's right to refuse to enter into or disclose existence of control**  
3541 **agreement.**

3542 This chapter does not require a bank to enter into an agreement of the kind described in  
3543 Subsection 70A-9a-104(1)(b), even if its customer so requests or directs. A bank that has entered  
3544 into such an agreement is not required to confirm the existence of the agreement to another person  
3545 unless requested to do so by its customer.

3546 Section 103. Section **70A-9a-401** is enacted to read:

3547 **Part 4. Rights of Third Parties**

3548 **70A-9a-401. Alienability of debtor's rights.**

3549 (1) Except as otherwise provided in Subsection (2) and Sections 70A-9a-406, 70A-9a-407,  
3550 70A-9a-408, and 70A-9a-409, whether a debtor's rights in collateral may be voluntarily or  
3551 involuntarily transferred is governed by law other than this chapter.

3552 (2) An agreement between the debtor and secured party which prohibits a transfer of the  
3553 debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking  
3554 effect.

3555 Section 104. Section **70A-9a-402** is enacted to read:

3556 **70A-9a-402. Secured party not obligated on contract of debtor or in tort.**

3557 The existence of a security interest, agricultural lien, or authority given to a debtor to  
3558 dispose of or use collateral, without more, does not subject a secured party to liability in contract  
3559 or tort for the debtor's acts or omissions.

3560 Section 105. Section **70A-9a-403** is enacted to read:

3561 **70A-9a-403. Agreement not to assert defenses against assignee.**

3562 (1) In this section, "value" has the meaning provided in Subsection 70A-3-303(1).

3563 (2) Except as otherwise provided in this section, an agreement between an account debtor  
3564 and an assignor not to assert against an assignee any claim or defense that the account debtor may  
3565 have against the assignor is enforceable by an assignee that takes an assignment:

3566 (a) for value;

3567 (b) in good faith;

3568 (c) without notice of a claim of a property or possessory right to the property assigned; and

3569 (d) without notice of a defense or claim in recoupment of the type that may be asserted

3570 against a person entitled to enforce a negotiable instrument under Subsection 70A-3-305(1).

3571 (3) Subsection (2) does not apply to defenses of a type that may be asserted against a  
3572 holder in due course of a negotiable instrument under Subsection 70A-3-305(2).

3573 (4) In a consumer transaction, if a record evidences the account debtor's obligation, law  
3574 other than this chapter requires that the record include a statement to the effect that the rights of  
3575 an assignee are subject to claims or defenses that the account debtor could assert against the  
3576 original obligee, and the record does not include such a statement:

3577 (a) the record has the same effect as if the record included such a statement; and

3578 (b) the account debtor may assert against an assignee those claims and defenses that would  
3579 have been available if the record included such a statement.

3580 (5) This section is subject to law other than this chapter which establishes a different rule  
3581 for an account debtor who is an individual and who incurred the obligation primarily for personal,  
3582 family, or household purposes.

3583 (6) Except as otherwise provided in Subsection (4), this section does not displace law other  
3584 than this chapter which gives effect to an agreement by an account debtor not to assert a claim or  
3585 defense against an assignee.

3586 Section 106. Section **70A-9a-404** is enacted to read:

3587 **70A-9a-404. Rights acquired by assignee -- Claims and defenses against assignee.**

3588 (1) Unless an account debtor has made an enforceable agreement not to assert defenses or  
3589 claims, and subject to Subsections (2) through (5), the rights of an assignee are subject to:

3590 (a) all terms of the agreement between the account debtor and assignor and any defense  
3591 or claim in recoupment arising from the transaction that gave rise to the contract; and

3592 (b) any other defense or claim of the account debtor against the assignor which accrues

3593 before the account debtor receives a notification of the assignment authenticated by the assignor  
3594 or the assignee.

3595 (2) Subject to Subsection (3) and except as otherwise provided in Subsection (4), the claim  
3596 of an account debtor against an assignor may be asserted against an assignee under Subsection (1)  
3597 only to reduce the amount the account debtor owes.

3598 (3) This section is subject to law other than this chapter which establishes a different rule  
3599 for an account debtor who is an individual and who incurred the obligation primarily for personal,  
3600 family, or household purposes.

3601 (4) In a consumer transaction, if a record evidences the account debtor's obligation, law  
3602 other than this chapter requires that the record include a statement to the effect that the account  
3603 debtor's recovery against an assignee with respect to claims and defenses against the assignor may  
3604 not exceed amounts paid by the account debtor under the record, and the record does not include  
3605 such a statement, the extent to which a claim of an account debtor against the assignor may be  
3606 asserted against an assignee is determined as if the record included such a statement.

3607 (5) This section does not apply to an assignment of a health-care-insurance receivable.

3608 Section 107. Section **70A-9a-405** is enacted to read:

3609 **70A-9a-405. Modification of assigned contract.**

3610 (1) A modification of or substitution for an assigned contract is effective against an  
3611 assignee if made in good faith. The assignee acquires corresponding rights under the modified or  
3612 substituted contract. The assignment may provide that the modification or substitution is a breach  
3613 of contract by the assignor. This Subsection (1) is subject to Subsections (2) through (4).

3614 (2) Subsection (1) applies to the extent that:

3615 (a) the right to payment or a part thereof under an assigned contract has not been fully  
3616 earned by performance; or

3617 (b) the right to payment or a part thereof has been fully earned by performance and the  
3618 account debtor has not received notification of the assignment under Subsection 70A-9a-406(1).

3619 (3) This section is subject to law other than this chapter which establishes a different rule  
3620 for an account debtor who is an individual and who incurred the obligation primarily for personal,  
3621 family, or household purposes.

3622 (4) This section does not apply to an assignment of a health-care-insurance receivable.

3623 Section 108. Section **70A-9a-406** is enacted to read:

3624           **70A-9a-406. Discharge of account debtor -- Notification of assignment --**  
3625 **Identification and proof of assignment -- Restrictions on assignment of accounts, chattel**  
3626 **paper, payment intangibles, and promissory notes ineffective.**

3627           (1) Subject to Subsections (2) through (9), an account debtor on an account, chattel paper,  
3628 or a payment intangible may discharge its obligation by paying the assignor until, but not after, the  
3629 account debtor receives a notification, authenticated by the assignor or the assignee, that the  
3630 amount due or to become due has been assigned and that payment is to be made to the assignee.  
3631 After receipt of the notification, the account debtor may discharge its obligation by paying the  
3632 assignee and may not discharge the obligation by paying the assignor.

3633           (2) Subject to Subsection (8), notification is ineffective under Subsection (1):

3634           (a) if it does not reasonably identify the rights assigned;

3635           (b) to the extent that an agreement between an account debtor and a seller of a payment  
3636 intangible limits the account debtor's duty to pay a person other than the seller and the limitation  
3637 is effective under law other than this chapter; or

3638           (c) at the option of an account debtor, if the notification notifies the account debtor to  
3639 make less than the full amount of any installment or other periodic payment to the assignee, even  
3640 if:

3641           (i) only a portion of the account, chattel paper, or payment intangible has been assigned  
3642 to that assignee;

3643           (ii) a portion has been assigned to another assignee; or

3644           (iii) the account debtor knows that the assignment to that assignee is limited.

3645           (3) Subject to Subsection (8), if requested by the account debtor, an assignee shall  
3646 seasonably furnish reasonable proof that the assignment has been made. Unless the assignee  
3647 complies, the account debtor may discharge its obligation by paying the assignor, even if the  
3648 account debtor has received a notification under Subsection (1).

3649           (4) Except as otherwise provided in Subsection (5) and Sections 70A-2a-303 and  
3650 70A-9a-407, and subject to Subsection (8), a term in an agreement between an account debtor and  
3651 an assignor or in a promissory note is ineffective to the extent that it:

3652           (a) prohibits, restricts, or requires the consent of the account debtor or person obligated  
3653 on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or  
3654 enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory

3655 note; or

3656 (b) provides that the assignment or transfer or the creation, attachment, perfection, or  
3657 enforcement of the security interest may give rise to a default, breach, right of recoupment, claim,  
3658 defense, termination, right of termination, or remedy under the account, chattel paper, payment  
3659 intangible, or promissory note.

3660 (5) Subsection (4) does not apply to the sale of a payment intangible or promissory note.

3661 (6) Except as otherwise provided in Sections 70A-2a-303 and 70A-9a-407 and subject to  
3662 Subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or requires the  
3663 consent of a government, governmental body or official, or account debtor to the assignment or  
3664 transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the  
3665 extent that the rule of law, statute, or regulation:

3666 (a) prohibits, restricts, or requires the consent of the government, governmental body or  
3667 official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection,  
3668 or enforcement of a security interest in the account or chattel paper; or

3669 (b) provides that the assignment or transfer or the creation, attachment, perfection, or  
3670 enforcement of the security interest may give rise to a default, breach, right of recoupment, claim,  
3671 defense, termination, right of termination, or remedy under the account or chattel paper.

3672 (7) Subject to Subsection (8), an account debtor may not waive or vary its option under  
3673 Subsection (2)(c).

3674 (8) This section is subject to law other than this chapter which establishes a different rule  
3675 for an account debtor who is an individual and who incurred the obligation primarily for personal,  
3676 family, or household purposes.

3677 (9) This section does not apply to an assignment of a health-care-insurance receivable.

3678 Section 109. Section **70A-9a-407** is enacted to read:

3679 **70A-9a-407. Restrictions on creation or enforcement of security interest in leasehold**  
3680 **interest or in lessor's residual interest.**

3681 (1) Except as otherwise provided in Subsection (2), a term in a lease agreement is  
3682 ineffective to the extent that it:

3683 (a) prohibits, restricts, or requires the consent of a party to the lease to the assignment or  
3684 transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an  
3685 interest of a party under the lease contract or in the lessor's residual interest in the goods; or

3686 (b) provides that the assignment or transfer or the creation, attachment, perfection, or  
3687 enforcement of the security interest may give rise to a default, breach, right of recoupment, claim,  
3688 defense, termination, right of termination, or remedy under the lease.

3689 (2) Except as otherwise provided in Subsection 70A-2a-303(7), a term described in  
3690 Subsection (1)(b) is effective to the extent that there is:

3691 (a) a transfer by the lessee of the lessee's right of possession or use of the goods in  
3692 violation of the term; or

3693 (b) a delegation of a material performance of either party to the lease contract in violation  
3694 of the term.

3695 (3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's  
3696 interest under the lease contract or the lessor's residual interest in the goods is not a transfer that  
3697 materially impairs the lessee's prospect of obtaining return performance or materially changes the  
3698 duty of or materially increases the burden or risk imposed on the lessee within the purview of  
3699 Subsection 70A-2a-303(4) unless, and then only to the extent that, enforcement actually results in  
3700 a delegation of material performance of the lessor.

3701 Section 110. Section **70A-9a-408** is enacted to read:

3702 **70A-9a-408. Restrictions on assignment of promissory notes, health-care-insurance**  
3703 **receivables, and certain general intangibles ineffective.**

3704 (1) Except as otherwise provided in Subsection (2), a term in a promissory note or in an  
3705 agreement between an account debtor and a debtor which relates to a health-care-insurance  
3706 receivable or a general intangible, including a contract, permit, license, or franchise, and which  
3707 term prohibits, restricts, or requires the consent of the person obligated on the promissory note or  
3708 the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a  
3709 security interest in, the promissory note, health-care-insurance receivable, or general intangible,  
3710 is ineffective to the extent that the term:

3711 (a) would impair the creation, attachment, or perfection of a security interest; or

3712 (b) provides that the assignment or transfer or the creation, attachment, or perfection of  
3713 the security interest may give rise to a default, breach, right of recoupment, claim, defense,  
3714 termination, right of termination, or remedy under the promissory note, health-care-insurance  
3715 receivable, or general intangible.

3716 (2) Subsection (1) applies to a security interest in a payment intangible or promissory note

3717 only if the security interest arises out of a sale of the payment intangible or promissory note.

3718 (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of  
3719 a government, governmental body or official, person obligated on a promissory note, or account  
3720 debtor to the assignment or transfer of, or creation of a security interest in, a promissory note,  
3721 health-care-insurance receivable, or general intangible, including a contract, permit, license, or  
3722 franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law,  
3723 statute, or regulation:

3724 (a) would impair the creation, attachment, or perfection of a security interest; or

3725 (b) provides that the assignment or transfer or the creation, attachment, or perfection of  
3726 the security interest may give rise to a default, breach, right of recoupment, claim, defense,  
3727 termination, right of termination, or remedy under the promissory note, health-care-insurance  
3728 receivable, or general intangible.

3729 (4) To the extent that a term in a promissory note or in an agreement between an account  
3730 debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a  
3731 rule of law, statute, or regulation described in Subsection (3) would be effective under law other  
3732 than this chapter but is ineffective under Subsection (1) or (3), the creation, attachment, or  
3733 perfection of a security interest in the promissory note, health-care-insurance receivable, or general  
3734 intangible:

3735 (a) is not enforceable against the person obligated on the promissory note or the account  
3736 debtor;

3737 (b) does not impose a duty or obligation on the person obligated on the promissory note  
3738 or the account debtor;

3739 (c) does not require the person obligated on the promissory note or the account debtor to  
3740 recognize the security interest, pay or render performance to the secured party, or accept payment  
3741 or performance from the secured party;

3742 (d) does not entitle the secured party to use or assign the debtor's rights under the  
3743 promissory note, health-care-insurance receivable, or general intangible, including any related  
3744 information or materials furnished to the debtor in the transaction giving rise to the promissory  
3745 note, health-care-insurance receivable, or general intangible;

3746 (e) does not entitle the secured party to use, assign, possess, or have access to any trade  
3747 secrets or confidential information of the person obligated on the promissory note or the account

3748 debtor; and

3749 (f) does not entitle the secured party to enforce the security interest in the promissory note,  
3750 health-care-insurance receivable, or general intangible.

3751 Section 111. Section **70A-9a-409** is enacted to read:

3752 **70A-9a-409. Restrictions on assignment of letter-of-credit rights ineffective.**

3753 (1) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice  
3754 applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant,  
3755 issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a  
3756 letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation,  
3757 custom, or practice:

3758 (a) would impair the creation, attachment, or perfection of a security interest in the  
3759 letter-of-credit right; or

3760 (b) provides that the assignment or the creation, attachment, or perfection of the security  
3761 interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right  
3762 of termination, or remedy under the letter-of-credit right.

3763 (2) To the extent that a term in a letter of credit is ineffective under Subsection (1) but  
3764 would be effective under law other than this chapter or a custom or practice applicable to the letter  
3765 of credit, to the transfer of a right to draw or otherwise demand performance under the letter of  
3766 credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment,  
3767 or perfection of a security interest in the letter-of-credit right:

3768 (a) is not enforceable against the applicant, issuer, nominated person, or transferee  
3769 beneficiary;

3770 (b) imposes no duties or obligations on the applicant, issuer, nominated person, or  
3771 transferee beneficiary; and

3772 (c) does not require the applicant, issuer, nominated person, or transferee beneficiary to  
3773 recognize the security interest, pay or render performance to the secured party, or accept payment  
3774 or other performance from the secured party.

3775 Section 112. Section **70A-9a-501** is enacted to read:

3776 **Part 5. Filing**

3777 **70A-9a-501. Filing office.**

3778 (1) Except as otherwise provided in Subsection (2), if the local law of this state governs

3779 perfection of a security interest or agricultural lien, the office in which to file a financing statement  
3780 to perfect the security interest or agricultural lien is:

3781 (a) the office designated for the filing or recording of a record of a mortgage on the related  
3782 real property, if:

3783 (i) the collateral is as-extracted collateral or timber to be cut; or

3784 (ii) the financing statement is filed as a fixture filing and the collateral is goods that are  
3785 or are to become fixtures; or

3786 (b) the Division of Corporations and Commercial Code, in all other cases, including a case  
3787 in which the collateral is goods that are or are to become fixtures and the financing statement is  
3788 not filed as a fixture filing.

3789 (2) The office in which to file a financing statement to perfect a security interest in  
3790 collateral, including fixtures, of a transmitting utility is the Division of Corporations and  
3791 Commercial Code. The financing statement also constitutes a fixture filing as to the collateral  
3792 indicated in the financing statement which is or is to become fixtures.

3793 Section 113. Section **70A-9a-502** is enacted to read:

3794 **70A-9a-502. Contents of financing statement -- Record of mortgage as financing**  
3795 **statement -- Time of filing financing statement.**

3796 (1) Subject to Subsection (2), a financing statement is sufficient only if it:

3797 (a) provides the name of the debtor;

3798 (b) provides the name of the secured party or a representative of the secured party; and

3799 (c) indicates the collateral covered by the financing statement.

3800 (2) Except as otherwise provided in Subsection 70A-9a-501(2), to be sufficient, a  
3801 financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a  
3802 fixture filing and covers goods that are or are to become fixtures, must satisfy Subsection (1) and  
3803 also:

3804 (a) indicate that it covers this type of collateral;

3805 (b) indicate that it is to be filed for record in the real property records;

3806 (c) provide a legal description of the real property to which the collateral is related; and

3807 (d) if the debtor does not have an interest of record in the real property, provide the name  
3808 of a record owner.

3809 (3) A record of a mortgage is effective, from the date of recording, as a financing statement

3810 filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be  
3811 cut only if:

3812 (a) the record indicates the goods or accounts that it covers;

3813 (b) the goods are or are to become fixtures related to the real property described in the  
3814 record or the collateral is related to the real property described in the record and is as-extracted  
3815 collateral or timber to be cut;

3816 (c) the record satisfies the requirements for a financing statement in this section other than  
3817 an indication that it is to be filed in the real property records; and

3818 (d) the record is recorded.

3819 (4) A financing statement may be filed before a security agreement is made or a security  
3820 interest otherwise attaches.

3821 (5) (a) The requirements of Title 57 do not apply to a financing statement filed or recorded  
3822 in a filing office described in Subsection 70A-9a-501(1)(a) that:

3823 (i) covers as-extracted collateral or timber to be cut; or

3824 (ii) (A) is filed as a fixture filing; and

3825 (B) covers goods that are or are to become fixtures.

3826 (b) For purposes of Subsection (5)(a), the requirements of Title 57 include requirements  
3827 related to:

3828 (i) execution;

3829 (ii) acknowledgment;

3830 (iii) certification; and

3831 (iv) originality.

3832 Section 114. Section **70A-9a-503** is enacted to read:

3833 **70A-9a-503. Name of debtor and secured party.**

3834 (1) A financing statement sufficiently provides the name of the debtor:

3835 (a) if the debtor is a registered organization, only if the financing statement provides the  
3836 name of the debtor indicated on the public record of the debtor's jurisdiction of organization which  
3837 shows the debtor to have been organized;

3838 (b) if the debtor is a decedent's estate, only if the financing statement provides the name  
3839 of the decedent and indicates that the debtor is an estate;

3840 (c) if the debtor is a trust or a trustee acting with respect to property held in trust, only if

3841 the financing statement:

3842 (i) provides the name specified for the trust in its organic documents or, if no name is  
3843 specified, provides the name of the settlor and additional information sufficient to distinguish the  
3844 debtor from other trusts having one or more of the same settlors; and

3845 (ii) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee  
3846 acting with respect to property held in trust; and

3847 (d) in other cases:

3848 (i) if the debtor has a name, only if it provides the individual or organizational name of the  
3849 debtor; and

3850 (ii) if the debtor does not have a name, only if it provides the names of the partners,  
3851 members, associates, or other persons comprising the debtor.

3852 (2) A financing statement that provides the name of the debtor in accordance with  
3853 Subsection (1) is not rendered ineffective by the absence of:

3854 (a) a trade name or other name of the debtor; or

3855 (b) unless required under Subsection (1)(d)(ii), names of partners, members, associates,  
3856 or other persons comprising the debtor.

3857 (3) A financing statement that provides only the debtor's trade name does not sufficiently  
3858 provide the name of the debtor.

3859 (4) Failure to indicate the representative capacity of a secured party or representative of  
3860 a secured party does not affect the sufficiency of a financing statement.

3861 (5) A financing statement may provide the name of more than one debtor and the name of  
3862 more than one secured party.

3863 Section 115. Section **70A-9a-504** is enacted to read:

3864 **70A-9a-504. Indication of collateral.**

3865 A financing statement sufficiently indicates the collateral that it covers if the financing  
3866 statement provides:

3867 (1) a description of the collateral pursuant to Section 70A-9a-108; or

3868 (2) an indication that the financing statement covers all assets or all personal property.

3869 Section 116. Section **70A-9a-505**

3870 **70A-9a-505. Filing and compliance with other statutes and treaties for consignments,**  
3871 **leases, other bailments, and other transactions.**

3872 (1) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment  
3873 intangible or promissory note may file a financing statement, or may comply with a statute or treaty  
3874 described in Subsection 70A-9a-311(1), using the terms "consignor," "consignee," "lessor,"  
3875 "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller,"  
3876 or words of similar import, instead of the terms "secured party" and "debtor."

3877 (2) This part applies to the filing of a financing statement under Subsection (1) and, as  
3878 appropriate, to compliance that is equivalent to filing a financing statement under Subsection  
3879 70A-9a-311(2), but the filing or compliance is not of itself a factor in determining whether the  
3880 collateral secures an obligation. If it is determined for another reason that the collateral secures  
3881 an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer  
3882 which attaches to the collateral is perfected by the filing or compliance.

3883 Section 117. Section **70A-9a-506** is enacted to read:

3884 **70A-9a-506. Effect of errors or omissions.**

3885 (1) A financing statement substantially satisfying the requirements of this part is effective,  
3886 even if it has minor errors or omissions, unless the errors or omissions make the financing  
3887 statement seriously misleading.

3888 (2) Except as otherwise provided in Subsection (3), a financing statement that fails  
3889 sufficiently to provide the name of the debtor in accordance with Subsection 70A-9a-503(1) is  
3890 seriously misleading.

3891 (3) If a search of the records of the filing office under the debtor's correct name, using the  
3892 filing office's standard search logic, if any, would disclose a financing statement that fails  
3893 sufficiently to provide the name of the debtor in accordance with Subsection 70A-9a-503(1), the  
3894 name provided does not make the financing statement seriously misleading.

3895 (4) For purposes of Subsection 70A-9a-508(2), the "debtor's correct name" in Subsection  
3896 (3) means the correct name of the new debtor.

3897 Section 118. Section **70A-9a-507** is enacted to read:

3898 **70A-9a-507. Effect of certain events on effectiveness of financing statement.**

3899 (1) A filed financing statement remains effective with respect to collateral that is sold,  
3900 exchanged, leased, licensed, or otherwise disposed of and in which a security interest or  
3901 agricultural lien continues, even if the secured party knows of or consents to the disposition.

3902 (2) Except as otherwise provided in Subsection (3) and Section 70A-9a-508, a financing

3903 statement is not rendered ineffective if, after the financing statement is filed, the information  
3904 provided in the financing statement becomes seriously misleading under Section 70A-9a-506.

3905 (3) If a debtor so changes its name that a filed financing statement becomes seriously  
3906 misleading under Section 70A-9a-506:

3907 (a) the financing statement is effective to perfect a security interest in collateral acquired  
3908 by the debtor before, or within four months after, the change; and

3909 (b) the financing statement is not effective to perfect a security interest in collateral  
3910 acquired by the debtor more than four months after the change, unless an amendment to the  
3911 financing statement which renders the financing statement not seriously misleading is filed within  
3912 four months after the change.

3913 Section 119. Section **70A-9a-508** is enacted to read:

3914 **70A-9a-508. Effectiveness of financing statement if new debtor becomes bound by**  
3915 **security agreement.**

3916 (1) Except as otherwise provided in this section, a filed financing statement naming an  
3917 original debtor is effective to perfect a security interest in collateral in which a new debtor has or  
3918 acquires rights to the extent that the financing statement would have been effective had the original  
3919 debtor acquired rights in the collateral.

3920 (2) If the difference between the name of the original debtor and that of the new debtor  
3921 causes a filed financing statement that is effective under Subsection (1) to be seriously misleading  
3922 under Section 70A-9a-506:

3923 (a) the financing statement is effective to perfect a security interest in collateral acquired  
3924 by the new debtor before, and within four months after, the new debtor becomes bound under  
3925 Subsection 70A-9a-203(4); and

3926 (b) the financing statement is not effective to perfect a security interest in collateral  
3927 acquired by the new debtor more than four months after the new debtor becomes bound under  
3928 Subsection 70A-9a-203(4) unless an initial financing statement providing the name of the new  
3929 debtor is filed before the expiration of that time.

3930 (3) This section does not apply to collateral as to which a filed financing statement remains  
3931 effective against the new debtor under Subsection 70A-9a-507(1).

3932 Section 120. Section **70A-9a-509** is enacted to read:

3933 **70A-9a-509. Persons entitled to file a record.**

3934 (1) A person may file an initial financing statement, amendment that adds collateral  
3935 covered by a financing statement, or amendment that adds a debtor to a financing statement only  
3936 if:

3937 (a) the debtor authorizes the filing in an authenticated record or pursuant to Subsection (2)  
3938 or (3); or

3939 (b) the person holds an agricultural lien that has become effective at the time of filing and  
3940 the financing statement covers only collateral in which the person holds an agricultural lien.

3941 (2) By authenticating or becoming bound as debtor by a security agreement, a debtor or  
3942 new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

3943 (a) the collateral described in the security agreement; and

3944 (b) property that becomes collateral under Subsection 70A-9a-315(1)(b), whether or not  
3945 the security agreement expressly covers proceeds.

3946 (3) By acquiring collateral in which a security interest or agricultural lien continues under  
3947 Subsection 70A-9a-315(1)(a), a debtor authorizes the filing of an initial financing statement, and  
3948 an amendment, covering the collateral and property that becomes collateral under Subsection  
3949 70A-9a-315(1)(b).

3950 (4) A person may file an amendment other than an amendment that adds collateral covered  
3951 by a financing statement or an amendment that adds a debtor to a financing statement only if:

3952 (a) the secured party of record authorizes the filing; or

3953 (b) the amendment is a termination statement for a financing statement as to which the  
3954 secured party of record has failed to file or send a termination statement as required by Subsection  
3955 70A-9a-513(1) or (3), the debtor authorizes the filing, and the termination statement indicates that  
3956 the debtor authorized it to be filed.

3957 (5) If there is more than one secured party of record for a financing statement, each secured  
3958 party of record may authorize the filing of an amendment under Subsection (4).

3959 Section 121. Section **70A-9a-510** is enacted to read:

3960 **70A-9a-510. Effectiveness of filed record.**

3961 (1) A filed record is effective only to the extent that it was filed by a person that may file  
3962 it under Section 70A-9a-509.

3963 (2) A record authorized by one secured party of record does not affect the financing  
3964 statement with respect to another secured party of record.

3965 (3) A continuation statement that is not filed within the six-month period prescribed by  
3966 Subsection 70A-9a-515(4) is ineffective.

3967 Section 122. Section **70A-9a-511** is enacted to read:

3968 **70A-9a-511. Secured party of record.**

3969 (1) A secured party of record with respect to a financing statement is a person whose name  
3970 is provided as the name of the secured party or a representative of the secured party in an initial  
3971 financing statement that has been filed. If an initial financing statement is filed under Subsection  
3972 70A-9a-514(1), the assignee named in the initial financing statement is the secured party of record  
3973 with respect to the financing statement.

3974 (2) If an amendment of a financing statement which provides the name of a person as a  
3975 secured party or a representative of a secured party is filed, the person named in the amendment  
3976 is a secured party of record. If an amendment is filed under Subsection 70A-9a-514(2), the  
3977 assignee named in the amendment is a secured party of record.

3978 (3) A person remains a secured party of record until the filing of an amendment of the  
3979 financing statement which deletes the person.

3980 Section 123. Section **70A-9a-512** is enacted to read:

3981 **70A-9a-512. Amendment of financing statement.**

3982 (1) Subject to Section 70A-9a-509, a person may add or delete collateral covered by,  
3983 continue or terminate the effectiveness of, or, subject to Subsection (5), otherwise amend the  
3984 information provided in, a financing statement by filing an amendment that:

3985 (a) identifies, by its file number, the initial financing statement to which the amendment  
3986 relates; and

3987 (b) if the amendment relates to an initial financing statement filed or recorded in a filing  
3988 office described in Subsection 70A-9a-501(1)(a), provides:

3989 (i) (A) the entry number of the initial financing statement; or

3990 (B) the book and page where the initial financing statement was filed or recorded; and

3991 (ii) the information specified in Subsection 70A-9a-502(2).

3992 (2) Except as otherwise provided in Section 70A-9a-515, the filing of an amendment does  
3993 not extend the period of effectiveness of the financing statement.

3994 (3) A financing statement that is amended by an amendment that adds collateral is  
3995 effective as to the added collateral only from the date of the filing of the amendment.

3996 (4) A financing statement that is amended by an amendment that adds a debtor is effective  
3997 as to the added debtor only from the date of the filing of the amendment.

3998 (5) An amendment is ineffective to the extent it:

3999 (a) purports to delete all debtors and fails to provide the name of a debtor to be covered  
4000 by the financing statement; or

4001 (b) purports to delete all secured parties of record and fails to provide the name of a new  
4002 secured party of record.

4003 Section 124. Section **70A-9a-513** is enacted to read:

4004 **70A-9a-513. Termination statement.**

4005 (1) A secured party shall cause the secured party of record for a financing statement to file  
4006 a termination statement for the financing statement if the financing statement covers consumer  
4007 goods and:

4008 (a) there is no obligation secured by the collateral covered by the financing statement and  
4009 no commitment to make an advance, incur an obligation, or otherwise give value; or

4010 (b) the debtor did not authorize the filing of the initial financing statement.

4011 (2) To comply with Subsection (1), a secured party shall cause the secured party of record  
4012 to file the termination statement:

4013 (a) within one month after there is no obligation secured by the collateral covered by the  
4014 financing statement and no commitment to make an advance, incur an obligation, or otherwise give  
4015 value; or

4016 (b) if earlier, within 20 days after the secured party receives an authenticated demand from  
4017 a debtor.

4018 (3) In cases not governed by Subsection (1), within 20 days after a secured party receives  
4019 an authenticated demand from a debtor, the secured party shall cause the secured party of record  
4020 for a financing statement to send to the debtor a termination statement for the financing statement  
4021 or file the termination statement in the filing office if:

4022 (a) except in the case of a financing statement covering accounts or chattel paper that has  
4023 been sold or goods that are the subject of a consignment, there is no obligation secured by the  
4024 collateral covered by the financing statement and no commitment to make an advance, incur an  
4025 obligation, or otherwise give value;

4026 (b) the financing statement covers accounts or chattel paper that has been sold but as to

4027 which the account debtor or other person obligated has discharged its obligation;

4028 (c) the financing statement covers goods that were the subject of a consignment to the  
4029 debtor but are not in the debtor's possession; or

4030 (d) the debtor did not authorize the filing of the initial financing statement.

4031 (4) Except as otherwise provided in Section 70A-9a-510, upon the filing of a termination  
4032 statement with the filing office, the financing statement to which the termination statement relates  
4033 ceases to be effective. Except as otherwise provided in Section 70A-9a-510, for purposes of  
4034 Subsections 70A-9a-519(7), 70A-9a-522(1), and 70A-9a-525(3), the filing with the filing office  
4035 of a termination statement relating to a financing statement that indicates that the debtor is a  
4036 transmitting utility also causes the effectiveness of the financing statement to lapse.

4037 Section 125. Section **70A-9a-514** is enacted to read:

4038 **70A-9a-514. Assignment of powers of secured party of record.**

4039 (1) Except as otherwise provided in Subsection (3), an initial financing statement may  
4040 reflect an assignment of all of the secured party's power to authorize an amendment to the  
4041 financing statement by providing the name and mailing address of the assignee as the name and  
4042 address of the secured party.

4043 (2) Except as otherwise provided in Subsection (3), a secured party of record may assign  
4044 of record all or part of its power to authorize an amendment to a financing statement by filing in  
4045 the filing office an amendment of the financing statement which:

4046 (a) identifies, by its file number, the initial financing statement to which it relates;

4047 (b) provides the name of the assignor; and

4048 (c) provides the name and mailing address of the assignee.

4049 (3) An assignment of record of a security interest in a fixture covered by a record of a  
4050 mortgage which is effective as a financing statement filed as a fixture filing under Subsection  
4051 70A-9a-502(3) may be made only by an assignment of record of the mortgage in the manner  
4052 provided by law of this state other than this title.

4053 Section 126. Section **70A-9a-515** is enacted to read:

4054 **70A-9a-515. Duration and effectiveness of financing statement -- Effect of lapsed**  
4055 **financing statement.**

4056 (1) Except as otherwise provided in Subsections (2), (5), (6), and (7), a filed financing  
4057 statement is effective for a period of five years after the date of filing.

4058           (2) Except as otherwise provided in Subsections (5), (6), and (7), an initial financing  
4059 statement filed in connection with a public-finance transaction or manufactured-home transaction  
4060 is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection  
4061 with a public-finance transaction or manufactured-home transaction.

4062           (3) The effectiveness of a filed financing statement lapses on the expiration of the period  
4063 of its effectiveness unless before the lapse a continuation statement is filed pursuant to Subsection  
4064 (4). Upon lapse, a financing statement ceases to be effective and any security interest or  
4065 agricultural lien that was perfected by the financing statement becomes unperfected, unless the  
4066 security interest is perfected otherwise. If the security interest or agricultural lien becomes  
4067 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the  
4068 collateral for value.

4069           (4) A continuation statement may be filed only within six months before the expiration of  
4070 the five-year period specified in Subsection (1) or the 30-year period specified in Subsection (2),  
4071 whichever is applicable.

4072           (5) Except as otherwise provided in Section 70A-9a-510, upon timely filing of a  
4073 continuation statement, the effectiveness of the initial financing statement continues for a period  
4074 of five years commencing on the day on which the financing statement would have become  
4075 ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing  
4076 statement lapses in the same manner as provided in Subsection (3), unless, before the lapse,  
4077 another continuation statement is filed pursuant to Subsection (4). Succeeding continuation  
4078 statements may be filed in the same manner to continue the effectiveness of the initial financing  
4079 statement.

4080           (6) If a debtor is a transmitting utility and a filed financing statement so indicates, the  
4081 financing statement is effective until a termination statement is filed.

4082           (7) A record of a mortgage that is effective as a financing statement filed as a fixture filing  
4083 under Subsection 70A-9a-502(3) remains effective as a financing statement filed as a fixture filing  
4084 until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to  
4085 the real property.

4086           Section 127. Section **70A-9a-516** is enacted to read:

4087           **70A-9a-516. What constitutes filing -- Effectiveness of filing.**

4088           (1) Except as otherwise provided in Subsection (2), communication of a record to a filing

4089 office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

4090 (2) Filing does not occur with respect to a record that a filing office refuses to accept

4091 because:

4092 (a) the record is not communicated by a method or medium of communication authorized

4093 by the filing office;

4094 (b) an amount equal to or greater than the applicable filing fee is not tendered;

4095 (c) the filing office is unable to index the record because:

4096 (i) in the case of an initial financing statement, the record does not provide a name for the

4097 debtor;

4098 (ii) in the case of an amendment or correction statement, the record:

4099 (A) does not identify the initial financing statement as required by Section 70A-9a-512 or

4100 70A-9a-518, as applicable; or

4101 (B) identifies an initial financing statement whose effectiveness has lapsed under Section

4102 70A-9a-515;

4103 (iii) in the case of an initial financing statement that provides the name of a debtor

4104 identified as an individual or an amendment that provides a name of a debtor identified as an

4105 individual which was not previously provided in the financing statement to which the record

4106 relates, the record does not identify the debtor's last name; or

4107 (iv) in the case of a record filed or recorded in the filing office described in Subsection

4108 70A-9a-501(1)(a), the record does not provide a sufficient description of the real property to which

4109 it relates;

4110 (d) in the case of an initial financing statement or an amendment that adds a secured party

4111 of record, the record does not provide a name and mailing address for the secured party of record;

4112 (e) in the case of an initial financing statement or an amendment that provides a name of

4113 a debtor which was not previously provided in the financing statement to which the amendment

4114 relates, the record does not:

4115 (i) provide a mailing address for the debtor;

4116 (ii) indicate whether the debtor is an individual or an organization; or

4117 (iii) if the financing statement indicates that the debtor is an organization, provide:

4118 (A) a type of organization for the debtor;

4119 (B) a jurisdiction of organization for the debtor; or

4120 (C) an organizational identification number for the debtor or indicate that the debtor has  
4121 none;

4122 (f) in the case of an assignment reflected in an initial financing statement under Subsection  
4123 70A-9a-514(1) or an amendment filed under Subsection 70A-9a-514(2), the record does not  
4124 provide a name and mailing address for the assignee; or

4125 (g) in the case of a continuation statement, the record is not filed within the six-month  
4126 period prescribed by Subsection 70A-9a-515(4).

4127 (3) For purposes of Subsection (2):

4128 (a) a record does not provide information if the filing office is unable to read or decipher  
4129 the information; and

4130 (b) a record that does not indicate that it is an amendment or identify an initial financing  
4131 statement to which it relates, as required by Section 70A-9a-512, 70A-9a-514, or 70A-9a-518, is  
4132 an initial financing statement.

4133 (4) A record that is communicated to the filing office with tender of the filing fee, but  
4134 which the filing office refuses to accept for a reason other than one set forth in Subsection (2), is  
4135 effective as a filed record except as against a purchaser of the collateral which gives value in  
4136 reasonable reliance upon the absence of the record from the files.

4137 Section 128. Section **70A-9a-517** is enacted to read:

4138 **70A-9a-517. Effect of indexing errors.**

4139 The failure of the filing office to index a record correctly does not affect the effectiveness  
4140 of the filed record.

4141 Section 129. Section **70A-9a-518** is enacted to read:

4142 **70A-9a-518. Claim concerning inaccurate or wrongfully filed record.**

4143 (1) A person may file in the filing office a correction statement with respect to a record  
4144 indexed there under the person's name if the person believes that the record is inaccurate or was  
4145 wrongfully filed.

4146 (2) A correction statement must:

4147 (a) identify the record to which it relates by:

4148 (i) the file number assigned to the initial financing statement to which the record relates;

4149 and

4150 (ii) if the correction statement relates to a record filed or recorded in a filing office

4151 described in Subsection 70A-9a-501(1)(a):

4152 (A) (I) the entry number of the initial financing statement; or

4153 (II) the book and page where that the initial financing statement was filed or recorded; and

4154 (B) the information specified in Subsection 70A-9a-502(2);

4155 (b) indicate that it is a correction statement; and

4156 (c) provide the basis for the person's belief that the record is inaccurate and indicate the

4157 manner in which the person believes the record should be amended to cure any inaccuracy or

4158 provide the basis for the person's belief that the record was wrongfully filed.

4159 (3) The filing of a correction statement does not affect the effectiveness of an initial

4160 financing statement or other filed record.

4161 Section 130. Section **70A-9a-519** is enacted to read:

4162 **70A-9a-519. Numbering, maintaining, and indexing records -- Communicating**

4163 **information provided in records.**

4164 (1) For each record filed in a filing office, the filing office shall:

4165 (a) assign a unique number to the filed record;

4166 (b) create a record that bears the number assigned to the filed record and the date and time

4167 of filing;

4168 (c) maintain the filed record for public inspection; and

4169 (d) index the filed record in accordance with Subsections (3), (4), and (5).

4170 (2) A file number assigned after January 1, 2004, must include a digit that:

4171 (a) is mathematically derived from or related to the other digits of the file number; and

4172 (b) aids the filing office in determining whether a number communicated as the file

4173 number includes a single-digit or transpositional error.

4174 (3) Except as otherwise provided in Subsections (4) and (5), the filing office shall:

4175 (a) index an initial financing statement according to the name of the debtor and index all

4176 filed records relating to the initial financing statement in a manner that associates with one another

4177 an initial financing statement and all filed records relating to the initial financing statement; and

4178 (b) index a record that provides a name of a debtor which was not previously provided in

4179 the financing statement to which the record relates also according to the name that was not

4180 previously provided.

4181 (4) If a financing statement is filed as a fixture filing or covers as-extracted collateral or

4182 timber to be cut, it must be filed for record and the filing office shall index it:

4183 (a) under the names of the debtor and of each owner of record shown on the financing  
4184 statement as if they were the mortgagors under a mortgage of the real property described; and

4185 (b) to the extent that the law of this state provides for indexing of records of mortgages  
4186 under the name of the mortgagee, under the name of the secured party as if the secured party were  
4187 the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a  
4188 record of a mortgage of the real property described.

4189 (5) If a financing statement is filed as a fixture filing or covers as-extracted collateral or  
4190 timber to be cut, the filing office shall index an assignment filed under Subsection 70A-9a-514(1)  
4191 or an amendment filed under Subsection 70A-9a-514(2):

4192 (a) under the name of the assignor as grantor; and

4193 (b) to the extent that the law of this state provides for indexing a record of the assignment  
4194 of a mortgage under the name of the assignee, under the name of the assignee, or, if indexing is  
4195 by description, as if the financing statement were a record of a mortgage of the real property  
4196 described.

4197 (6) The filing office shall maintain a capability:

4198 (a) to retrieve a record by the name of the debtor and:

4199 (i) if the filing office is described in Section 70A-9a-501(1)(a):

4200 (A) by the entry number assigned to the initial financing statement to which the record  
4201 relates and the book and page that the record was filed or recorded; or

4202 (B) by the legal description of the real property; or

4203 (ii) if the filing office is described in Subsection 70A-9a-501(1)(b), by the file number  
4204 assigned to the initial financing statement to which the record relates; and

4205 (b) to associate and retrieve with one another an initial financing statement and each filed  
4206 record relating to the initial financing statement.

4207 (7) The filing office may not remove a debtor's name from the index until one year after  
4208 the effectiveness of a financing statement naming the debtor lapses under Section 70A-9a-515 with  
4209 respect to all secured parties of record.

4210 (8) The filing office shall perform the acts required by Subsections (1) through (5) at the  
4211 time and in the manner prescribed by filing-office rule, but not later than two business days after  
4212 the filing office receives the record in question.

4213 (9) Subsections (2) and (8) do not apply to a filing office described in Subsection  
4214 70A-9a-501(1)(a).

4215 Section 131. Section **70A-9a-520** is enacted to read:

4216 **70A-9a-520. Acceptance and refusal to accept record.**

4217 (1) A filing office shall refuse to accept a record for filing for a reason set forth in  
4218 Subsection 70A-9a-516(2) and may refuse to accept a record for filing only for a reason set forth  
4219 in Subsection 70A-9a-516(2).

4220 (2) If a filing office refuses to accept a record for filing, it shall communicate to the person  
4221 that presented the record the fact of and reason for the refusal and the date and time the record  
4222 would have been filed had the filing office accepted it. The communication must be made at the  
4223 time and in the manner prescribed by filing-office rule but, in the case of a filing office described  
4224 in Subsection 70A-9a-501(1)(b), in no event more than two business days after the filing office  
4225 receives the record.

4226 (3) A filed financing statement satisfying Subsections 70A-9a-502(1) and (2) is effective,  
4227 even if the filing office is required to refuse to accept it for filing under Subsection (1). However,  
4228 Section 70A-9a-338 applies to a filed financing statement providing information described in  
4229 Subsection 70A-9a-516(2)(e) which is incorrect at the time the financing statement is filed.

4230 (4) If a record communicated to a filing office provides information that relates to more  
4231 than one debtor, this part applies as to each debtor separately.

4232 Section 132. Section **70A-9a-521** is enacted to read:

4233 **70A-9a-521. Uniform form of written financing statement and amendment.**

4234 (1) A filing office that accepts written records may not refuse to accept a written initial  
4235 financing statement in the form and format set forth in the final official text of the 1999 revisions  
4236 to Article 9 of the Uniform Commercial Code promulgated by The American Law Institute and  
4237 the National Conference of Commissioners on Uniform State Laws, except for a reason set forth  
4238 in Subsection 70A-9a-516(2).

4239 (2) A filing office that accepts written records may not refuse to accept a written record  
4240 in the form and format set forth in the final official text of the 1999 revisions to Article 9 of the  
4241 Uniform Commercial Code promulgated by The American Law Institute and the National  
4242 Conference of Commissioners on Uniform State Laws, except for a reason set forth in Subsection  
4243 70A-9a-516(2).

4244 Section 133. Section **70A-9a-522** is enacted to read:

4245 **70A-9a-522. Maintenance and destruction of records.**

4246 (1) The filing office shall maintain a record of the information provided in a filed financing  
4247 statement for at least one year after the effectiveness of the financing statement has lapsed under  
4248 Section 70A-9a-515 with respect to all secured parties of record. The record must be retrievable  
4249 by using the name of the debtor and:

4250 (a) if the record was filed or recorded in the filing office described in Subsection  
4251 70A-9a-501(1)(a):

4252 (i) by using the entry number assigned to the initial financing statement to which the record  
4253 relates and the book and page that the record was filed or recorded; or

4254 (ii) by the legal description of the real property; or

4255 (b) if the record was filed in the filing office described in Subsection 70A-9a-501(1)(b),  
4256 by using the file number assigned to the initial financing statement to which the record relates.

4257 (2) Except to the extent that a statute governing disposition of public records provides  
4258 otherwise, the filing office immediately may destroy any written record evidencing a financing  
4259 statement. However, if the filing office destroys a written record, it shall maintain another record  
4260 of the financing statement which complies with Subsection (1).

4261 Section 134. Section **70A-9a-523** is enacted to read:

4262 **70A-9a-523. Information from filing office -- Sale or license of records.**

4263 (1) If a person that files a written record requests an acknowledgment of the filing, the  
4264 filing office shall send to the person an image of the record showing the number assigned to the  
4265 record pursuant to Subsection 70A-9a-519(1)(a) and the date and time of the filing of the record.  
4266 However, if the person furnishes a copy of the record to the filing office, the filing office may  
4267 instead:

4268 (a) note upon the copy the number assigned to the record pursuant to Subsection  
4269 70A-9a-519(1)(a) and the date and time of the filing of the record; and

4270 (b) send the copy to the person.

4271 (2) If a person files a record other than a written record, the filing office shall communicate  
4272 to the person an acknowledgment that provides:

4273 (a) the information in the record;

4274 (b) the number assigned to the record pursuant to Subsection 70A-9a-519(1)(a); and

4275 (c) the date and time of the filing of the record.

4276 (3) The filing office shall communicate or otherwise make available in a record the  
4277 following information to any person that requests it:

4278 (a) whether there is on file on a date and time specified by the filing office, but not a date  
4279 earlier than three business days before the filing office receives the request, any financing  
4280 statement that:

4281 (i) designates a particular debtor or, if the request so states, designates a particular debtor  
4282 at the address specified in the request;

4283 (ii) has not lapsed under Section 70A-9a-515 with respect to all secured parties of record;  
4284 and

4285 (iii) if the request so states, has lapsed under Section 70A-9a-515 and a record of which  
4286 is maintained by the filing office under Subsection 70A-9a-522(1);

4287 (b) the date and time of filing of each financing statement; and

4288 (c) the information provided in each financing statement.

4289 (4) In complying with its duty under Subsection (3), the filing office may communicate  
4290 information in any medium. However, if requested, the filing office shall communicate  
4291 information by issuing a record that can be admitted into evidence in the courts of this state  
4292 without extrinsic evidence of its authenticity.

4293 (5) The filing office shall perform the acts required by Subsections (1) through (4) at the  
4294 time and in the manner prescribed by filing-office rule, but in the case of a filing office described  
4295 in Subsection 70A-9a-501(1)(b) not later than two business days after the filing office receives the  
4296 request.

4297 (6) At least weekly, the Division of Corporations and Commercial Code shall offer to sell  
4298 or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this  
4299 part, in every medium from time to time available to the filing office.

4300 (7) (a) Subsections (1) through (6) apply only to records filed in the Division of  
4301 Corporations and Commercial Code.

4302 (b) With respect to financing statements filed with a county recorder under this chapter,  
4303 a county recorder shall provide receipts, acknowledgments of filings and copies, and permit  
4304 searches of the records of the county recorder's office in the same manner as if the financing  
4305 statements were records of mortgages.

4306 Section 135. Section **70A-9a-524** is enacted to read:

4307 **70A-9a-524. Delay by filing office.**

4308 Delay by the filing office beyond a time limit prescribed by this part is excused if:

4309 (1) the delay is caused by interruption of communication or computer facilities, war,  
 4310 emergency conditions, failure of equipment, or other circumstances beyond control of the filing  
 4311 office; and

4312 (2) the filing office exercises reasonable diligence under the circumstances.

4313 Section 136. Section **70A-9a-525** is enacted to read:

4314 **70A-9a-525. Fees.**

4315 (1) Except as otherwise provided in Subsection (3), the fee for the Division of  
 4316 Corporations and Commercial Code filing and indexing a record under this part, including an  
 4317 initial financing statement of the kind described in Subsection 70A-9a-502(3), shall h :

4317a (a) h be determined

4318 by the Division of Corporations and Commercial Code h [pursuant to Section ~~63-38-3.2~~ ] ;

4318a **(b) BE REASONABLE AND FAIR; AND**

4318b **(c) REFLECT THE COST OF SERVICES PROVIDED h .**

4319 (2) The fee for the Division of Corporations and Commercial Code responding to a request  
 4320 for information from the Division of Corporations and Commercial Code, including for issuing  
 4321 a record showing whether there is on file any financing statement naming a particular debtor shall h :

4321a (a) h

4322 be determined by the Division of Corporations and Commercial Code h [pursuant to Section  
 4323 ~~63-38-3.2~~ ] ;

4323a **(b) BE REASONABLE AND FAIR; AND**

4323b **(c) REFLECT THE COST OF SERVICES PROVIDED h .**

4324 (3) (a) This section does not require a fee with respect to a record of a mortgage which is  
 4325 effective as a financing statement filed as a fixture filing or as a financing statement covering  
 4326 as-extracted collateral or timber to be cut under Subsection 70A-9a-502(3). However, the  
 4327 recording and satisfaction fees that otherwise would be applicable to the record of the mortgage  
 4328 apply.

4329 (b) (i) This section does not apply to fees charged by a filing office described in Subsection  
 4330 70A-9a-501(1)(a).

4331 (ii) A filing office described in Subsection 70A-9a-501(1)(a) shall charge fees in  
 4332 accordance with Section 21-2-3.

4333 Section 137. Section **70A-9a-526** is enacted to read:

4334 **70A-9a-526. Filing-office rules.**

4335 (1) The Division of Corporations and Commercial Code shall adopt and publish rules to  
 4336 implement this chapter that apply to a filing office described in Subsection 70A-9a-501(1)(b). The

4337 filing-office rules must be:

4338 (a) consistent with this chapter; and

4339 (b) adopted and published in accordance with Title 63, Chapter 46a, Utah Administrative  
4340 Procedures Act.

4341 (2) To keep the filing-office rules and practices of the filing office in harmony with the  
4342 rules and practices of filing offices in other jurisdictions that enact substantially this part, and to  
4343 keep the technology used by the filing office compatible with the technology used by filing offices  
4344 in other jurisdictions that enact substantially this part, the Division of Corporations and  
4345 Commercial Code, so far as is consistent with the purposes, policies, and provisions of this  
4346 chapter, in adopting, amending, and repealing filing-office rules, shall:

4347 (a) consult with filing offices in other jurisdictions that enact substantially this part;

4348 (b) consult the most recent version of the Model Rules promulgated by the International  
4349 Association of Corporate Administrators or any successor organization; and

4350 (c) take into consideration the rules and practices of, and the technology used by, filing  
4351 offices in other jurisdictions that enact substantially this part.

4352 Section 138. Section **70A-9a-527** is enacted to read:

4353 **70A-9a-527. Duty to report.**

4354 (1) The Division of Corporations and Commercial Code shall report annually to the  
4355 Administrative Rules Review Committee created in Section 63-46a-11 on the operation of the  
4356 filing office. The report must contain a statement of the extent to which:

4357 (a) the filing-office rules are not in harmony with the rules of filing offices in other  
4358 jurisdictions that enact substantially this part and the reasons for these variations; and

4359 (b) the filing-office rules are not in harmony with the most recent version of the Model  
4360 Rules promulgated by the International Association of Corporate Administrators, or any successor  
4361 organization, and the reasons for these variations.

4362 (2) The report required by Subsection (1) is in addition to any report to the Administrative  
4363 Rules Review Committee required by Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

4364 Section 139. Section **70A-9a-601** is enacted to read:

4365 **Part 6. Default**

4366 **70A-9a-601. Rights after default -- Judicial enforcement -- Consignor or buyer of**  
4367 **accounts, chattel paper, payment intangibles, or promissory notes.**

4368 (1) After default, a secured party has the rights provided in this part and, except as  
4369 otherwise provided in Section 70A-9a-602, those provided by agreement of the parties. A secured  
4370 party:

4371 (a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security  
4372 interest, or agricultural lien by any available judicial procedure; and

4373 (b) if the collateral is documents, may proceed either as to the documents or as to the  
4374 goods they cover.

4375 (2) A secured party in possession of collateral or control of collateral under Section  
4376 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107 has the rights and duties provided in  
4377 Section 70A-9a-207.

4378 (3) The rights under Subsections (1) and (2) are cumulative and may be exercised  
4379 simultaneously.

4380 (4) Except as otherwise provided in Subsection (7) and Section 70A-9a-605, after default,  
4381 a debtor and an obligor have the rights provided in this part and by agreement of the parties.

4382 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be  
4383 made upon the collateral by virtue of an execution based upon the judgment relates back to the  
4384 earliest of:

4385 (a) the date of perfection of the security interest or agricultural lien in the collateral;

4386 (b) the date of filing a financing statement covering the collateral; or

4387 (c) any date specified in a statute under which the agricultural lien was created.

4388 (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural  
4389 lien by judicial procedure within the meaning of this section. A secured party may purchase at the  
4390 sale and thereafter hold the collateral free of any other requirements of this chapter.

4391 (7) Except as otherwise provided in Subsection 70A-9a-607(3), this part imposes no duties  
4392 upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment  
4393 intangibles, or promissory notes.

4394 Section 140. Section **70A-9a-602** is enacted to read:

4395 **70A-9a-602. Waiver and variance of rights and duties.**

4396 Except as otherwise provided in Section 70A-9a-624, to the extent that they give rights to  
4397 a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or  
4398 vary the rules stated in the following listed sections:

4399           (1) Subsection 70A-9a-207(2)(d)(iii), which deals with use and operation of the collateral  
4400 by the secured party;

4401           (2) Section 70A-9a-210, which deals with requests for an accounting and requests  
4402 concerning a list of collateral and statement of account;

4403           (3) Subsection 70A-9a-607(3), which deals with collection and enforcement of collateral;

4404           (4) Subsections 70A-9a-608(1) and 70A-9a-615(3) to the extent that they deal with  
4405 application or payment of noncash proceeds of collection, enforcement, or disposition;

4406           (5) Subsections 70A-9a-608(1) and 70A-9a-615(4) to the extent that they require  
4407 accounting for or payment of surplus proceeds of collateral;

4408           (6) Section 70A-9a-609 to the extent that it imposes upon a secured party that takes  
4409 possession of collateral without judicial process the duty to do so without breach of the peace;

4410           (7) Subsection 70A-9a-610(2) and Sections 70A-9a-611, 70A-9a-613, and 70A-9a-614,  
4411 which deal with disposition of collateral;

4412           (8) Subsection 70A-9a-615(6), which deals with calculation of a deficiency or surplus  
4413 when a disposition is made to the secured party, a person related to the secured party, or a  
4414 secondary obligor;

4415           (9) Section 70A-9a-616, which deals with explanation of the calculation of a surplus or  
4416 deficiency;

4417           (10) Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622, which deal with acceptance of  
4418 collateral in satisfaction of obligation;

4419           (11) Section 70A-9a-623, which deals with redemption of collateral;

4420           (12) Section 70A-9a-624, which deals with permissible waivers; and

4421           (13) Sections 70A-9a-625 and 70A-9a-626, which deal with the secured party's liability  
4422 for failure to comply with this chapter.

4423           Section 141. Section **70A-9a-603** is enacted to read:

4424           **70A-9a-603. Agreement on standards concerning rights and duties.**

4425           (1) The parties may determine by agreement the standards measuring the fulfillment of the  
4426 rights of a debtor or obligor and the duties of a secured party under a rule stated in Section  
4427 70A-9a-602 if the standards are not manifestly unreasonable.

4428           (2) Subsection (1) does not apply to the duty under Section 70A-9a-609 to refrain from  
4429 breaching the peace.

4430 Section 142. Section **70A-9a-604** is enacted to read:

4431 **70A-9a-604. Procedure if security agreement covers real property or fixtures.**

4432 (1) If a security agreement covers both personal and real property, a secured party may  
4433 proceed:

4434 (a) under this part as to the personal property without prejudicing any rights with respect  
4435 to the real property; or

4436 (b) as to both the personal property and the real property in accordance with the rights with  
4437 respect to the real property, in which case the other provisions of this part do not apply.

4438 (2) Subject to Subsection (3), if a security agreement covers goods that are or become  
4439 fixtures, a secured party may proceed:

4440 (a) under this part; or

4441 (b) in accordance with the rights with respect to real property, in which case the other  
4442 provisions of this part do not apply.

4443 (3) Subject to the other provisions of this part, if a secured party holding a security interest  
4444 in fixtures has priority over all owners and encumbrancers of the real property, the secured party,  
4445 after default, may remove the collateral from the real property.

4446 (4) A secured party that removes collateral shall promptly reimburse any encumbrancer  
4447 or owner of the real property, other than the debtor, for the cost of repair of any physical injury  
4448 caused by the removal. The secured party need not reimburse the encumbrancer or owner for any  
4449 diminution in value of the real property caused by the absence of the goods removed or by any  
4450 necessity of replacing them. A person entitled to reimbursement may refuse permission to remove  
4451 until the secured party gives adequate assurance for the performance of the obligation to reimburse.

4452 Section 143. Section **70A-9a-605** is enacted to read:

4453 **70A-9a-605. Unknown debtor or secondary obligor.**

4454 A secured party does not owe a duty based on its status as secured party:

4455 (1) to a person that is a debtor or obligor, unless the secured party knows:

4456 (a) that the person is a debtor or obligor;

4457 (b) the identity of the person; and

4458 (c) how to communicate with the person; or

4459 (2) to a secured party or lienholder that has filed a financing statement against a person,  
4460 unless the secured party knows:

4461 (a) that the person is a debtor; and

4462 (b) the identity of the person.

4463 Section 144. Section **70A-9a-606** is enacted to read:

4464 **70A-9a-606. Time of default for agricultural lien.**

4465 For purposes of this part, a default occurs in connection with an agricultural lien at the time  
4466 the secured party becomes entitled to enforce the lien in accordance with the statute under which  
4467 it was created.

4468 Section 145. Section **70A-9a-607** is enacted to read:

4469 **70A-9a-607. Collection and enforcement by secured party.**

4470 (1) If so agreed, and in any event after default, a secured party:

4471 (a) may notify an account debtor or other person obligated on collateral to make payment  
4472 or otherwise render performance to or for the benefit of the secured party;

4473 (b) may take any proceeds to which the secured party is entitled under Section  
4474 70A-9a-315;

4475 (c) may enforce the obligations of an account debtor or other person obligated on collateral  
4476 and exercise the rights of the debtor with respect to the obligation of the account debtor or other  
4477 person obligated on collateral to make payment or otherwise render performance to the debtor, and  
4478 with respect to any property that secures the obligations of the account debtor or other person  
4479 obligated on the collateral;

4480 (d) if it holds a security interest in a deposit account perfected by control under Subsection  
4481 70A-9a-104(1)(a), may apply the balance of the deposit account to the obligation secured by the  
4482 deposit account; and

4483 (e) if it holds a security interest in a deposit account perfected by control under Subsection  
4484 70A-9a-104(1)(b) or (c), may instruct the bank to pay the balance of the deposit account to or for  
4485 the benefit of the secured party.

4486 (2) If necessary to enable a secured party to exercise under Subsection (1)(c) the right of  
4487 a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which  
4488 a record of the mortgage is recorded:

4489 (a) a copy of the security agreement that creates or provides for a security interest in the  
4490 obligation secured by the mortgage; and

4491 (b) the secured party's sworn affidavit in recordable form stating that:

4492 (i) a default has occurred; and  
4493 (ii) the secured party is entitled to enforce the mortgage nonjudicially.  
4494 (3) A secured party shall proceed in a commercially reasonable manner if the secured  
4495 party:  
4496 (a) undertakes to collect from or enforce an obligation of an account debtor or other person  
4497 obligated on collateral; and  
4498 (b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse  
4499 against the debtor or a secondary obligor.  
4500 (4) A secured party may deduct from the collections made pursuant to Subsection (3)  
4501 reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal  
4502 expenses incurred by the secured party.  
4503 (5) This section does not determine whether an account debtor, bank, or other person  
4504 obligated on collateral owes a duty to a secured party.  
4505 Section 146. Section **70A-9a-608** is enacted to read:  
4506 **70A-9a-608. Application of proceeds of collection or enforcement -- Liability for**  
4507 **deficiency and right to surplus.**  
4508 (1) If a security interest or agricultural lien secures payment or performance of an  
4509 obligation, the following rules apply:  
4510 (a) A secured party shall apply or pay over for application the cash proceeds of collection  
4511 or enforcement under Section 70A-9a-607 in the following order to:  
4512 (i) the reasonable expenses of collection and enforcement and, to the extent provided for  
4513 by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by  
4514 the secured party;  
4515 (ii) the satisfaction of obligations secured by the security interest or agricultural lien under  
4516 which the collection or enforcement is made; and  
4517 (iii) the satisfaction of obligations secured by any subordinate security interest in or other  
4518 lien on the collateral subject to the security interest or agricultural lien under which the collection  
4519 or enforcement is made if the secured party receives an authenticated demand for proceeds before  
4520 distribution of the proceeds is completed.  
4521 (b) If requested by a secured party, a holder of a subordinate security interest or other lien  
4522 shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder

4523 complies, the secured party need not comply with the holder's demand under Subsection (1)(a)(iii).

4524 (c) A secured party need not apply or pay over for application noncash proceeds of  
4525 collection and enforcement under Section 70A-9a-607 unless the failure to do so would be  
4526 commercially unreasonable. A secured party that applies or pays over for application noncash  
4527 proceeds shall do so in a commercially reasonable manner.

4528 (d) A secured party shall account to and pay a debtor for any surplus, and the obligor is  
4529 liable for any deficiency.

4530 (2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles,  
4531 or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any  
4532 deficiency.

4533 Section 147. Section **70A-9a-609** is enacted to read:

4534 **70A-9a-609. Secured party's right to take possession after default.**

4535 (1) After default, a secured party:

4536 (a) may take possession of the collateral; and

4537 (b) without removal, may render equipment unusable and dispose of collateral on a  
4538 debtor's premises under Section 70A-9a-610.

4539 (2) A secured party may proceed under Subsection (1):

4540 (a) pursuant to judicial process; or

4541 (b) without judicial process, if it proceeds without breach of the peace.

4542 (3) If so agreed, and in any event after default, a secured party may require the debtor to  
4543 assemble the collateral and make it available to the secured party at a place to be designated by the  
4544 secured party which is reasonably convenient to both parties.

4545 Section 148. Section **70A-9a-610** is enacted to read:

4546 **70A-9a-610. Disposition of collateral after default.**

4547 (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or  
4548 all of the collateral in its present condition or following any commercially reasonable preparation  
4549 or processing.

4550 (2) Every aspect of a disposition of collateral, including the method, manner, time, place,  
4551 and other terms, must be commercially reasonable. If commercially reasonable, a secured party  
4552 may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or  
4553 in parcels, and at any time and place and on any terms.

4554 (3) A secured party may purchase collateral:

4555 (a) at a public disposition; or

4556 (b) at a private disposition only if the collateral is of a kind that is customarily sold on a  
4557 recognized market or the subject of widely distributed standard price quotations.

4558 (4) A contract for sale, lease, license, or other disposition includes the warranties relating  
4559 to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary  
4560 disposition of property of the kind subject to the contract.

4561 (5) A secured party may disclaim or modify warranties under Subsection (4):

4562 (a) in a manner that would be effective to disclaim or modify the warranties in a voluntary  
4563 disposition of property of the kind subject to the contract of disposition; or

4564 (b) by communicating to the purchaser a record evidencing the contract for disposition and  
4565 including an express disclaimer or modification of the warranties.

4566 (6) A record is sufficient to disclaim warranties under Subsection (5) if it indicates "There  
4567 is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses  
4568 words of similar import.

4569 Section 149. Section **70A-9a-611** is enacted to read:

4570 **70A-9a-611. Notification before disposition of collateral.**

4571 (1) In this section, "notification date" means the earlier of the date on which:

4572 (a) a secured party sends to the debtor and any secondary obligor an authenticated  
4573 notification of disposition; or

4574 (b) the debtor and any secondary obligor waive the right to notification.

4575 (2) Except as otherwise provided in Subsection (4), a secured party that disposes of  
4576 collateral under Section 70A-9a-610 shall send to the persons specified in Subsection (3) a  
4577 reasonable authenticated notification of disposition.

4578 (3) To comply with Subsection (2), the secured party shall send an authenticated  
4579 notification of disposition to:

4580 (a) the debtor;

4581 (b) any secondary obligor; and

4582 (c) if the collateral is other than consumer goods:

4583 (i) any other person from which the secured party has received, before the notification date,  
4584 an authenticated notification of a claim of an interest in the collateral;

4585 (ii) any other secured party or lienholder that, ten days before the notification date, held  
4586 a security interest in or other lien on the collateral perfected by the filing of a financing statement  
4587 that:

4588 (A) identified the collateral;

4589 (B) was indexed under the debtor's name as of that date; and

4590 (C) was filed in the office in which to file a financing statement against the debtor covering  
4591 the collateral as of that date; and

4592 (iii) any other secured party that, ten days before the notification date, held a security  
4593 interest in the collateral perfected by compliance with a statute, regulation, or treaty described in  
4594 Subsection 70A-9a-311(1).

4595 (4) Subsection (2) does not apply if the collateral is perishable or threatens to decline  
4596 speedily in value or is of a type customarily sold on a recognized market.

4597 (5) A secured party complies with the requirement for notification prescribed by Subsection  
4598 (3)(c)(ii) if:

4599 (a) not later than 20 days or earlier than 30 days before the notification date, the secured  
4600 party requests, in a commercially reasonable manner, information concerning financing statements  
4601 indexed under the debtor's name in the office indicated in Subsection (3)(c)(ii); and

4602 (b) before the notification date, the secured party:

4603 (i) did not receive a response to the request for information; or

4604 (ii) received a response to the request for information and sent an authenticated notification  
4605 of disposition to each secured party or other lienholder named in that response whose financing  
4606 statement covered the collateral.

4607 Section 150. Section **70A-9a-612** is enacted to read:

4608 **70A-9a-612. Timeliness of notification before disposition of collateral.**

4609 (1) Except as otherwise provided in Subsection (2), whether a notification is sent within  
4610 a reasonable time is a question of fact.

4611 (2) In a transaction other than a consumer transaction, a notification of disposition sent  
4612 after default and ten days or more before the earliest time of disposition set forth in the notification  
4613 is sent within a reasonable time before the disposition.

4614 Section 151. Section **70A-9a-613** is enacted to read:

4615 **70A-9a-613. Contents and form of notification before disposition of collateral:**

4616 **general.**

4617 Except in a consumer-goods transaction, the following rules apply:

4618 (1) The contents of a notification of disposition are sufficient if the notification:

4619 (a) describes the debtor and the secured party;

4620 (b) describes the collateral that is the subject of the intended disposition;

4621 (c) states the method of intended disposition;

4622 (d) states that the debtor is entitled to an accounting of the unpaid indebtedness and states  
4623 the charge, if any, for an accounting; and

4624 (e) states the time and place of a public disposition or the time after which any other  
4625 disposition is to be made.

4626 (2) Whether the contents of a notification that lacks any of the information specified in  
4627 Subsection (1) are nevertheless sufficient is a question of fact.

4628 (3) The contents of a notification providing substantially the information specified in  
4629 Subsection (1) are sufficient, even if the notification includes:

4630 (a) information not specified by that subsection; or

4631 (b) minor errors that are not seriously misleading.

4632 (4) A particular phrasing of the notification is not required.

4633 (5) The following form of notification and the form appearing in Subsection  
4634 70A-9a-614(3), when completed, each provides sufficient information:

4635 NOTIFICATION OF DISPOSITION OF COLLATERAL

4636 To: [Name of debtor, obligor, or other person to which the notification is sent]

4637 From: [Name, address, and telephone number of secured party]

4638 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

4639 [For a public disposition:]

4640 We will sell [or lease or license, as applicable] the [describe collateral] [to the highest  
4641 qualified bidder] in public as follows:

4642 Day and Date: [Insert day and date]

4643 Time: [Insert time]

4644 Place: [Insert place]

4645 [For a private disposition:]

4646 We will sell [or lease or license, as applicable] the [describe collateral] privately sometime

4647 after [day and date].

4648 You are entitled to an accounting of the unpaid indebtedness secured by the property that  
4649 we intend to sell [or lease or license, as applicable] [for a charge of \$[Insert amount] ]. You may  
4650 request an accounting by calling us at [telephone number].

4651 Section 152. Section **70A-9a-614** is enacted to read:

4652 **70A-9a-614. Contents and form of notification before disposition of collateral --**  
4653 **Consumer-goods transaction.**

4654 In a consumer-goods transaction, the following rules apply:

4655 (1) A notification of disposition must provide the following information:

4656 (a) the information specified in Subsection 70A-9a-613(1);

4657 (b) a description of any liability for a deficiency of the person to which the notification is  
4658 sent;

4659 (c) a telephone number from which the amount that must be paid to the secured party to  
4660 redeem the collateral under Section 70A-9a-623 is available; and

4661 (d) a telephone number or mailing address from which additional information concerning  
4662 the disposition and the obligation secured is available.

4663 (2) A particular phrasing of the notification is not required.

4664 (3) The following form of notification, when completed, provides sufficient information:

4665 [Name and address of secured party]

4666 [Date]

4667 NOTICE OF OUR PLAN TO SELL PROPERTY

4668 [Name and address of any obligor who is also a debtor]

4669 Subject: [Identification of Transaction]

4670 We have your [describe collateral], because you broke promises in our agreement.

4671 [For a public disposition:]

4672 We will sell [describe collateral] at public sale. A sale could include a lease or license.

4673 The sale will be held as follows:

4674 Date:

4675 Time:

4676 Place:

4677 You may attend the sale and bring bidders if you want.

4678 [For a private disposition:]

4679 We will sell [describe collateral] at private sale sometime after [date]. A sale could include  
4680 a lease or license.

4681 The money that we get from the sale (after paying our costs) will reduce the amount you  
4682 owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the  
4683 difference. If we get more money than you owe, you will get the extra money, unless we must pay  
4684 it to someone else.

4685 You can get the property back at any time before we sell it by paying us the full amount you  
4686 owe (not just the past due payments), including our expenses. To learn the exact amount you must  
4687 pay, call us at [telephone number].

4688 If you want us to explain to you in writing how we have figured the amount that you owe  
4689 us, you may call us at [telephone number] [or write us at [secured party's address] ] and request  
4690 a written explanation. [We will charge you \$[Insert Amount] for the explanation if we sent you  
4691 another written explanation of the amount you owe us within the last six months.]

4692 If you need more information about the sale call us at [telephone number] [or write us at  
4693 [secured party's address].

4694 We are sending this notice to the following other people who have an interest in [describe  
4695 collateral] or who owe money under your agreement:

4696 [Names of all other debtors and obligors, if any]

4697 (4) A notification in the form of Subsection (3) is sufficient, even if additional information  
4698 appears at the end of the form.

4699 (5) A notification in the form of Subsection (3) is sufficient, even if it includes errors in  
4700 information not required by Subsection (1), unless the error is misleading with respect to rights  
4701 arising under this chapter.

4702 (6) If a notification under this section is not in the form of Subsection (3), law other than  
4703 this chapter determines the effect of including information not required by Subsection (1).

4704 Section 153. Section **70A-9a-615** is enacted to read:

4705 **70A-9a-615. Application of proceeds of disposition -- Liability for deficiency and**  
4706 **right to surplus.**

4707 (1) A secured party shall apply or pay over for application the cash proceeds of disposition  
4708 under Section 70A-9a-610 in the following order to:

4709 (a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and  
4710 disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable  
4711 attorney's fees and legal expenses incurred by the secured party;

4712 (b) the satisfaction of obligations secured by the security interest or agricultural lien under  
4713 which the disposition is made;

4714 (c) the satisfaction of obligations secured by any subordinate security interest in or other  
4715 subordinate lien on the collateral if:

4716 (i) the secured party receives from the holder of the subordinate security interest or other  
4717 lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

4718 (ii) in a case in which a consignor has an interest in the collateral, the subordinate security  
4719 interest or other lien is senior to the interest of the consignor; and

4720 (d) a secured party that is a consignor of the collateral if the secured party receives from  
4721 the consignor an authenticated demand for proceeds before distribution of the proceeds is  
4722 completed.

4723 (2) If requested by a secured party, a holder of a subordinate security interest or other lien  
4724 shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder  
4725 does so, the secured party need not comply with the holder's demand under Subsection (1)(c).

4726 (3) A secured party need not apply or pay over for application noncash proceeds of  
4727 disposition under Section 70A-9a-610 unless the failure to do so would be commercially  
4728 unreasonable. A secured party that applies or pays over for application noncash proceeds shall do  
4729 so in a commercially reasonable manner.

4730 (4) If the security interest under which a disposition is made secures payment or  
4731 performance of an obligation, after making the payments and applications required by Subsection  
4732 (1) and permitted by Subsection (3):

4733 (a) unless Subsection (1)(d) requires the secured party to apply or pay over cash proceeds  
4734 to a consignor, the secured party shall account to and pay a debtor for any surplus; and

4735 (b) the obligor is liable for any deficiency.

4736 (5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles,  
4737 or promissory notes:

4738 (a) the debtor is not entitled to any surplus; and

4739 (b) the obligor is not liable for any deficiency.

4740 (6) The surplus or deficiency following a disposition is calculated based on the amount of  
4741 proceeds that would have been realized in a disposition complying with this part to a transferee  
4742 other than the secured party, a person related to the secured party, or a secondary obligor if:

4743 (a) the transferee in the disposition is the secured party, a person related to the secured  
4744 party, or a secondary obligor; and

4745 (b) the amount of proceeds of the disposition is significantly below the range of proceeds  
4746 that a complying disposition to a person other than the secured party, a person related to the  
4747 secured party, or a secondary obligor would have brought.

4748 (7) A secured party that receives cash proceeds of a disposition in good faith and without  
4749 knowledge that the receipt violates the rights of the holder of a security interest or other lien that  
4750 is not subordinate to the security interest or agricultural lien under which the disposition is made:

4751 (a) takes the cash proceeds free of the security interest or other lien;

4752 (b) is not obligated to apply the proceeds of the disposition to the satisfaction of  
4753 obligations secured by the security interest or other lien; and

4754 (c) is not obligated to account to or pay the holder of the security interest or other lien for  
4755 any surplus.

4756 Section 154. Section **70A-9a-616** is enacted to read:

4757 **70A-9a-616. Explanation of calculation of surplus or deficiency.**

4758 (1) In this section:

4759 (a) "Explanation" means a writing that:

4760 (i) states the amount of the surplus or deficiency;

4761 (ii) provides an explanation in accordance with Subsection (3) of how the secured party  
4762 calculated the surplus or deficiency;

4763 (iii) states, if applicable, that future debits, credits, charges, including additional credit  
4764 service charges or interest, rebates, and expenses may affect the amount of the surplus or  
4765 deficiency; and

4766 (iv) provides a telephone number or mailing address from which additional information  
4767 concerning the transaction is available.

4768 (b) "Request" means a record:

4769 (i) authenticated by a debtor or consumer obligor;

4770 (ii) requesting that the recipient provide an explanation; and

4771 (iii) sent after disposition of the collateral under Section 70A-9a-610.

4772 (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a  
4773 consumer obligor is liable for a deficiency under Section 70A-9a-615, the secured party shall:

4774 (a) send an explanation to the debtor or consumer obligor, as applicable, after the  
4775 disposition and:

4776 (i) before or when the secured party accounts to the debtor and pays any surplus or first  
4777 makes written demand on the consumer obligor after the disposition for payment of the deficiency;  
4778 and

4779 (ii) within 14 days after receipt of a request; or

4780 (b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after  
4781 receipt of a request, send to the consumer obligor a record waiving the secured party's right to a  
4782 deficiency.

4783 (3) To comply with Subsection (1)(a)(ii), a writing must provide the following information  
4784 in the following order:

4785 (a) the aggregate amount of obligations secured by the security interest under which the  
4786 disposition was made, and, if the amount reflects a rebate of unearned interest or credit service  
4787 charge, an indication of that fact, calculated as of a specified date:

4788 (i) if the secured party takes or receives possession of the collateral after default, not more  
4789 than 35 days before the secured party takes or receives possession; or

4790 (ii) if the secured party takes or receives possession of the collateral before default or does  
4791 not take possession of the collateral, not more than 35 days before the disposition;

4792 (b) the amount of proceeds of the disposition;

4793 (c) the aggregate amount of the obligations after deducting the amount of proceeds;

4794 (d) the amount, in the aggregate or by type, and types of expenses, including expenses of  
4795 retaking, holding, preparing for disposition, processing, and disposing of the collateral, and  
4796 attorney's fees secured by the collateral which are known to the secured party and relate to the  
4797 current disposition;

4798 (e) the amount, in the aggregate or by type, and types of credits, including rebates of  
4799 interest or credit service charges, to which the obligor is known to be entitled and which are not  
4800 reflected in the amount in Subsection (3)(a); and

4801 (f) the amount of the surplus or deficiency.

4802 (4) A particular phrasing of the explanation is not required. An explanation complying  
4803 substantially with the requirements of Subsection (1) is sufficient, even if it includes minor errors  
4804 that are not seriously misleading.

4805 (5) A debtor or consumer obligor is entitled without charge to one response to a request  
4806 under this section during any six-month period in which the secured party did not send to the  
4807 debtor or consumer obligor an explanation pursuant to Subsection (2)(a). The secured party may  
4808 require payment of a charge not exceeding \$25 for each additional response.

4809 Section 155. Section **70A-9a-617** is enacted to read:

4810 **70A-9a-617. Rights of transferee of collateral.**

4811 (1) A secured party's disposition of collateral after default:

4812 (a) transfers to a transferee for value all of the debtor's rights in the collateral;

4813 (b) discharges the security interest under which the disposition is made; and

4814 (c) discharges any subordinate security interest or other subordinate lien.

4815 (2) A transferee that acts in good faith takes free of the rights and interests described in  
4816 Subsection (1), even if the secured party fails to comply with this chapter or the requirements of  
4817 any judicial proceeding.

4818 (3) If a transferee does not take free of the rights and interests described in Subsection (1),  
4819 the transferee takes the collateral subject to:

4820 (a) the debtor's rights in the collateral;

4821 (b) the security interest or agricultural lien under which the disposition is made; and

4822 (c) any other security interest or other lien.

4823 Section 156. Section **70A-9a-618** is enacted to read:

4824 **70A-9a-618. Rights and duties of certain secondary obligors.**

4825 (1) A secondary obligor acquires the rights and becomes obligated to perform the duties  
4826 of the secured party after the secondary obligor:

4827 (a) receives an assignment of a secured obligation from the secured party;

4828 (b) receives a transfer of collateral from the secured party and agrees to accept the rights  
4829 and assume the duties of the secured party; or

4830 (c) is subrogated to the rights of a secured party with respect to collateral.

4831 (2) An assignment, transfer, or subrogation described in Subsection (1):

4832 (a) is not a disposition of collateral under Section 70A-9a-610; and

4833 (b) relieves the secured party of further duties under this chapter.

4834 Section 157. Section **70A-9a-619** is enacted to read:

4835 **70A-9a-619. Transfer of record or legal title.**

4836 (1) In this section, "transfer statement" means a record authenticated by a secured party  
4837 stating:

4838 (a) that the debtor has defaulted in connection with an obligation secured by specified  
4839 collateral;

4840 (b) that the secured party has exercised its post-default remedies with respect to the  
4841 collateral;

4842 (c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the  
4843 collateral; and

4844 (d) the name and mailing address of the secured party, debtor, and transferee.

4845 (2) A transfer statement entitles the transferee to the transfer of record of all rights of the  
4846 debtor in the collateral specified in the statement in any official filing, recording, registration, or  
4847 certificate-of-title system covering the collateral. If a transfer statement is presented with the  
4848 applicable fee and request form to the official or office responsible for maintaining the system, the  
4849 official or office shall:

4850 (a) accept the transfer statement;

4851 (b) promptly amend its records to reflect the transfer; and

4852 (c) if applicable, issue a new appropriate certificate of title in the name of the transferee.

4853 (3) A transfer of the record or legal title to collateral to a secured party under Subsection  
4854 (2) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself  
4855 relieve the secured party of its duties under this chapter.

4856 Section 158. Section **70A-9a-620** is enacted to read:

4857 **70A-9a-620. Acceptance of collateral in full or partial satisfaction of obligation --**  
4858 **Compulsory disposition of collateral.**

4859 (1) Except as otherwise provided in Subsection (7), a secured party may accept collateral  
4860 in full or partial satisfaction of the obligation it secures only if:

4861 (a) the debtor consents to the acceptance under Subsection (3);

4862 (b) the secured party does not receive, within the time set forth in Subsection (4), a  
4863 notification of objection to the proposal authenticated by:

4864 (i) a person to which the secured party was required to send a proposal under Section  
4865 70A-9a-621; or

4866 (ii) any other person, other than the debtor, holding an interest in the collateral subordinate  
4867 to the security interest that is the subject of the proposal;

4868 (c) if the collateral is consumer goods, the collateral is not in the possession of the debtor  
4869 when the debtor consents to the acceptance; and

4870 (d) Subsection (5) does not require the secured party to dispose of the collateral or the  
4871 debtor waives the requirement pursuant to Section 70A-9a-624.

4872 (2) A purported or apparent acceptance of collateral under this section is ineffective unless:

4873 (a) the secured party consents to the acceptance in an authenticated record or sends a  
4874 proposal to the debtor; and

4875 (b) the conditions of Subsection (1) are met.

4876 (3) For purposes of this section:

4877 (a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation  
4878 it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after  
4879 default; and

4880 (b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it  
4881 secures only if the debtor agrees to the terms of the acceptance in a record authenticated after  
4882 default or the secured party:

4883 (i) sends to the debtor after default a proposal that is unconditional or subject only to a  
4884 condition that collateral not in the possession of the secured party be preserved or maintained;

4885 (ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it  
4886 secures; and

4887 (iii) does not receive a notification of objection authenticated by the debtor within 20 days  
4888 after the proposal is sent.

4889 (4) To be effective under Subsection (1)(b), a notification of objection must be received  
4890 by the secured party:

4891 (a) in the case of a person to which the proposal was sent pursuant to Section 70A-9a-621,  
4892 within 20 days after notification was sent to that person; and

4893 (b) in other cases:

4894 (i) within 20 days after the last notification was sent pursuant to Section 70A-9a-621; or

4895 (ii) if a notification was not sent, before the debtor consents to the acceptance under  
4896 Subsection (3).

4897 (5) A secured party that has taken possession of collateral shall dispose of the collateral  
4898 pursuant to Section 70A-9a-610 within the time specified in Subsection (6) if:

4899 (a) 60% of the cash price has been paid in the case of a purchase-money security interest  
4900 in consumer goods; or

4901 (b) 60% of the principal amount of the obligation secured has been paid in the case of a  
4902 non-purchase-money security interest in consumer goods.

4903 (6) To comply with Subsection (5), the secured party shall dispose of the collateral:

4904 (a) within 90 days after taking possession; or

4905 (b) within any longer period to which the debtor and all secondary obligors have agreed  
4906 in an agreement to that effect entered into and authenticated after default.

4907 (7) In a consumer transaction, a secured party may not accept collateral in partial  
4908 satisfaction of the obligation it secures.

4909 Section 159. Section **70A-9a-621** is enacted to read:

4910 **70A-9a-621. Notification of proposal to accept collateral.**

4911 (1) A secured party that desires to accept collateral in full or partial satisfaction of the  
4912 obligation it secures shall send its proposal to:

4913 (a) any person from which the secured party has received, before the debtor consented to  
4914 the acceptance, an authenticated notification of a claim of an interest in the collateral;

4915 (b) any other secured party or lienholder that, ten days before the debtor consented to the  
4916 acceptance, held a security interest in or other lien on the collateral perfected by the filing of a  
4917 financing statement that:

4918 (i) identified the collateral;

4919 (ii) was indexed under the debtor's name as of that date; and

4920 (iii) was filed in the office or offices in which to file a financing statement against the  
4921 debtor covering the collateral as of that date; and

4922 (c) any other secured party that, ten days before the debtor consented to the acceptance,  
4923 held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty  
4924 described in Subsection 70A-9a-311(1).

4925 (2) A secured party that desires to accept collateral in partial satisfaction of the obligation

4926 it secures shall send its proposal to any secondary obligor in addition to the persons described in  
4927 Subsection (1).

4928 Section 160. Section **70A-9a-622** is enacted to read:

4929 **70A-9a-622. Effect of acceptance of collateral.**

4930 (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation  
4931 it secures:

4932 (a) discharges the obligation to the extent consented to by the debtor;

4933 (b) transfers to the secured party all of a debtor's rights in the collateral;

4934 (c) discharges the security interest or agricultural lien that is the subject of the debtor's  
4935 consent and any subordinate security interest or other subordinate lien; and

4936 (d) terminates any other subordinate interest.

4937 (2) A subordinate interest is discharged or terminated under Subsection (1), even if the  
4938 secured party fails to comply with this title.

4939 Section 161. Section **70A-9a-623** is enacted to read:

4940 **70A-9a-623. Right to redeem collateral.**

4941 (1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem  
4942 collateral.

4943 (2) To redeem collateral, a person shall tender:

4944 (a) fulfillment of all obligations secured by the collateral; and

4945 (b) the reasonable expenses and attorney's fees described in Subsection 70A-9a-615(1)(a).

4946 (3) A redemption may occur at any time before a secured party:

4947 (a) has collected collateral under Section 70A-9a-607;

4948 (b) has disposed of collateral or entered into a contract for its disposition under Section  
4949 70A-9a-610; or

4950 (c) has accepted collateral in full or partial satisfaction of the obligation it secures under  
4951 Section 70A-9a-622.

4952 Section 162. Section **70A-9a-624** is enacted to read:

4953 **70A-9a-624. Waiver.**

4954 (1) A debtor or secondary obligor may waive the right to notification of disposition of  
4955 collateral under Section 70A-9a-611 only by an agreement to that effect entered into and  
4956 authenticated after default.

4957 (2) A debtor may waive the right to require disposition of collateral under Subsection  
4958 70A-9a-620(5) only by an agreement to that effect entered into and authenticated after default.

4959 (3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the  
4960 right to redeem collateral under Section 70A-9a-623 only by an agreement to that effect entered  
4961 into and authenticated after default.

4962 Section 163. Section **70A-9a-625** is enacted to read:

4963 **70A-9a-625. Remedies for secured party's failure to comply with chapter.**

4964 (1) If it is established that a secured party is not proceeding in accordance with this  
4965 chapter, a court may order or restrain collection, enforcement, or disposition of collateral on  
4966 appropriate terms and conditions.

4967 (2) Subject to Subsections (3), (4), and (5), a person is liable for damages in the amount  
4968 of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may  
4969 include loss resulting from the debtor's inability to obtain, or increased costs of, alternative  
4970 financing.

4971 (3) Except as otherwise provided in Section 70A-9a-628:

4972 (a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security  
4973 interest in or other lien on the collateral may recover damages under Subsection (2) for its loss; and

4974 (b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor  
4975 at the time a secured party failed to comply with this part may recover for that failure in any event  
4976 an amount not less than the credit service charge plus 10% of the principal amount of the  
4977 obligation or the time-price differential plus 10% of the cash price.

4978 (4) A debtor whose deficiency is eliminated under Section 70A-9a-626 may recover  
4979 damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is  
4980 eliminated or reduced under Section 70A-9a-626 may not otherwise recover under Subsection (2)  
4981 for noncompliance with the provisions of this part relating to collection, enforcement, disposition,  
4982 or acceptance.

4983 (5) In addition to any damages recoverable under Subsection (2), the debtor, consumer  
4984 obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case  
4985 from a person that:

4986 (a) fails to comply with Section 70A-9a-208;

4987 (b) fails to comply with Section 70A-9a-209;

4988 (c) files a record that the person is not entitled to file under Subsection 70A-9a-509(1);

4989 (d) fails to cause the secured party of record to file or send a termination statement as  
4990 required by Subsection 70A-9a-513(1) or (3);

4991 (e) fails to comply with Subsection 70A-9a-616(2)(a) and whose failure is part of a pattern,  
4992 or consistent with a practice, of noncompliance; or

4993 (f) fails to comply with Subsection 70A-9a-616(2)(b).

4994 (6) A debtor or consumer obligor may recover damages under Subsection (2) and, in  
4995 addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a  
4996 request under Section 70A-9a-210. A recipient of a request under Section 70A-9a-210 which  
4997 never claimed an interest in the collateral or obligations that are the subject of a request under that  
4998 section has a reasonable excuse for failure to comply with the request within the meaning of this  
4999 Subsection (6).

5000 (7) If a secured party fails to comply with a request regarding a list of collateral or a  
5001 statement of account under Section 70A-9a-210, the secured party may claim a security interest  
5002 only as shown in the list or statement included in the request as against a person that is reasonably  
5003 misled by the failure.

5004 Section 164. Section **70A-9a-626** is enacted to read:

5005 **70A-9a-626. Action in which deficiency or surplus is in issue.**

5006 (1) In an action arising from a transaction, other than a consumer transaction, in which the  
5007 amount of a deficiency or surplus is in issue, the following rules apply:

5008 (a) A secured party need not prove compliance with the provisions of this part relating to  
5009 collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places  
5010 the secured party's compliance in issue.

5011 (b) If the secured party's compliance is placed in issue, the secured party has the burden  
5012 of establishing that the collection, enforcement, disposition, or acceptance was conducted in  
5013 accordance with this part.

5014 (c) Except as otherwise provided in Section 70A-9a-628, if a secured party fails to prove  
5015 that the collection, enforcement, disposition, or acceptance was conducted in accordance with the  
5016 provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability  
5017 of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the  
5018 secured obligation, expenses, and attorney's fees exceeds the greater of:

5019 (i) the proceeds of the collection, enforcement, disposition, or acceptance; or  
5020 (ii) the amount of proceeds that would have been realized had the noncomplying secured  
5021 party proceeded in accordance with the provisions of this part relating to collection, enforcement,  
5022 disposition, or acceptance.

5023 (d) For purposes of Subsection (1)(c)(ii), the amount of proceeds that would have been  
5024 realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the  
5025 secured party proves that the amount is less than that sum.

5026 (e) If a deficiency or surplus is calculated under Subsection 70A-9a-615(6), the debtor or  
5027 obligor has the burden of establishing that the amount of proceeds of the disposition is  
5028 significantly below the range of prices that a complying disposition to a person other than the  
5029 secured party, a person related to the secured party, or a secondary obligor would have brought.

5030 (2) The limitation of the rules in Subsection (1) to transactions other than consumer  
5031 transactions is intended to leave to the court the determination of the proper rules in consumer  
5032 transactions. The court may not infer from that limitation the nature of the proper rule in consumer  
5033 transactions and may continue to apply established approaches.

5034 Section 165. Section **70A-9a-627** is enacted to read:

5035 **70A-9a-627. Determination of whether conduct was commercially reasonable.**

5036 (1) The fact that a greater amount could have been obtained by a collection, enforcement,  
5037 disposition, or acceptance at a different time or in a different method from that selected by the  
5038 secured party is not of itself sufficient to preclude the secured party from establishing that the  
5039 collection, enforcement, disposition, or acceptance was made in a commercially reasonable  
5040 manner.

5041 (2) A disposition of collateral is made in a commercially reasonable manner if the  
5042 disposition is made:

5043 (a) in the usual manner on any recognized market;

5044 (b) at the price current in any recognized market at the time of the disposition; or

5045 (c) otherwise in conformity with reasonable commercial practices among dealers in the  
5046 type of property that was the subject of the disposition.

5047 (3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it  
5048 has been approved:

5049 (a) in a judicial proceeding;

5050 (b) by a bona fide creditors' committee;

5051 (c) by a representative of creditors; or

5052 (d) by an assignee for the benefit of creditors.

5053 (4) Approval under Subsection (3) need not be obtained, and lack of approval does not  
5054 mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

5055 Section 166. Section **70A-9a-628** is enacted to read:

5056 **70A-9a-628. Nonliability and limitation on liability of secured party -- Liability of**  
5057 **secondary obligor.**

5058 (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity  
5059 of the person, and knows how to communicate with the person:

5060 (a) the secured party is not liable to the person, or to a secured party or lienholder that has  
5061 filed a financing statement against the person, for failure to comply with this chapter; and

5062 (b) the secured party's failure to comply with this chapter does not affect the liability of  
5063 the person for a deficiency.

5064 (2) A secured party is not liable because of its status as secured party:

5065 (a) to a person that is a debtor or obligor, unless the secured party knows:

5066 (i) that the person is a debtor or obligor;

5067 (ii) the identity of the person; and

5068 (iii) how to communicate with the person; or

5069 (b) to a secured party or lienholder that has filed a financing statement against a person,  
5070 unless the secured party knows:

5071 (i) that the person is a debtor; and

5072 (ii) the identity of the person.

5073 (3) A secured party is not liable to any person, and a person's liability for a deficiency is  
5074 not affected, because of any act or omission arising out of the secured party's reasonable belief that

5075 a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not  
5076 consumer goods, if the secured party's belief is based on its reasonable reliance on:

5077 (a) a debtor's representation concerning the purpose for which collateral was to be used,  
5078 acquired, or held; or

5079 (b) an obligor's representation concerning the purpose for which a secured obligation was  
5080 incurred.

5081 (4) A secured party is not liable to any person under Subsection 70A-9a-625(3)(b) for its  
5082 failure to comply with Section 70A-9a-616.

5083 (5) A secured party is not liable under Section 70A-9a-625(3)(b) more than once with  
5084 respect to any one secured obligation.

5085 Section 167. Section **70A-9a-701** is enacted to read:

5086 **Part 7. Transition**

5087 **70A-9a-701. Effective date -- Terminology.**

5088 (1) This act takes effect on July 1, 2001.

5089 (2) References in this part to "former Chapter 9" are to Chapter 9 as in effect on June 31,  
5090 2001.

5091 Section 168. Section **70A-9a-702** is enacted to read:

5092 **70A-9a-702. Savings clause.**

5093 (1) Except as otherwise provided in this part, this act applies to a transaction or lien within  
5094 its scope, even if the transaction or lien was entered into or created before this act takes effect.

5095 (2) Except as otherwise provided in Subsection (3) and Sections 70A-9a-703 through  
5096 70A-9a-709:

5097 (a) transactions and liens that were not governed by former Chapter 9, were validly entered  
5098 into or created before this act takes effect, and would be subject to this act if they had been entered  
5099 into or created after this act takes effect, and the rights, duties, and interests flowing from those  
5100 transactions and liens remain valid after this act takes effect; and

5101 (b) the transactions and liens may be terminated, completed, consummated, and enforced  
5102 as required or permitted by this act or by the law that otherwise would apply if this act had not  
5103 taken effect.

5104 (3) This act does not affect an action, case, or proceeding commenced before this act takes  
5105 effect.

5106 Section 169. Section **70A-9a-703** is enacted to read:

5107 **70A-9a-703. Security interest perfected before effective date.**

5108 (1) A security interest that is enforceable immediately before this act takes effect and would  
5109 have priority over the rights of a person that becomes a lien creditor at that time is a perfected  
5110 security interest under this act if, when this act takes effect, the applicable requirements for  
5111 enforceability and perfection under this act are satisfied without further action.

5112 (2) Except as otherwise provided in Section 70A-9a-705, if, immediately before this act  
5113 takes effect, a security interest is enforceable and would have priority over the rights of a person  
5114 that becomes a lien creditor at that time, but the applicable requirements for enforceability or  
5115 perfection under this act are not satisfied when this act takes effect, the security interest:

5116 (a) is a perfected security interest for one year after this act takes effect;

5117 (b) remains enforceable thereafter only if the security interest becomes enforceable under  
5118 Section 70A-9a-203 before the year expires; and

5119 (c) remains perfected thereafter only if the applicable requirements for perfection under  
5120 this act are satisfied before the year expires.

5121 Section 170. Section **70A-9a-704** is enacted to read:

5122 **70A-9a-704. Security interest unperfected before effective date.**

5123 A security interest that is enforceable immediately before this act takes effect but which  
5124 would be subordinate to the rights of a person that becomes a lien creditor at that time:

5125 (1) remains an enforceable security interest for one year after this act takes effect;

5126 (2) remains enforceable thereafter if the security interest becomes enforceable under  
5127 Section 70A-9a-203 when this act takes effect or within one year thereafter; and

5128 (3) becomes perfected:

5129 (a) without further action, when this act takes effect if the applicable requirements for  
5130 perfection under this act are satisfied before or at that time; or

5131 (b) when the applicable requirements for perfection are satisfied if the requirements are  
5132 satisfied after that time.

5133 Section 171. Section **70A-9a-705** is enacted to read:

5134 **70A-9a-705. Effectiveness of action taken before effective date.**

5135 (1) If action, other than the filing of a financing statement, is taken before this act takes  
5136 effect and the action would have resulted in priority of a security interest over the rights of a person  
5137 that becomes a lien creditor had the security interest become enforceable before this act takes  
5138 effect, the action is effective to perfect a security interest that attaches under this act within one  
5139 year after this act takes effect. An attached security interest becomes unperfected one year after  
5140 this act takes effect unless the security interest becomes a perfected security interest under this act  
5141 before the expiration of that period.

5142 (2) The filing of a financing statement before this act takes effect is effective to perfect a

5143 security interest to the extent the filing would satisfy the applicable requirements for perfection  
5144 under this act.

5145 (3) This act does not render ineffective an effective financing statement that, before this  
5146 act takes effect, is filed and satisfies the applicable requirements for perfection under the law of  
5147 the jurisdiction governing perfection as provided in former Section 70A-9-103. However, except  
5148 as otherwise provided in Subsections (4) and (5) and Section 70A-9a-706, the financing statement  
5149 ceases to be effective at the earlier of:

5150 (a) the time the financing statement would have ceased to be effective under the law of the  
5151 jurisdiction in which it is filed; or

5152 (b) June 30, 2006.

5153 (4) The filing of a continuation statement after this act takes effect does not continue the  
5154 effectiveness of the financing statement filed before this act takes effect. However, upon the  
5155 timely filing of a continuation statement after this act takes effect and in accordance with the law  
5156 of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing  
5157 statement filed in the same office in that jurisdiction before this act takes effect continues for the  
5158 period provided by the law of that jurisdiction.

5159 (5) Subsection (3)(b) applies to a financing statement that, before this act takes effect, is  
5160 filed against a transmitting utility and satisfies the applicable requirements for perfection under the  
5161 law of the jurisdiction governing perfection as provided in former Section 70A-9-103 only to the  
5162 extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the  
5163 financing statement is filed governs perfection of a security interest in collateral covered by the  
5164 financing statement.

5165 (6) A financing statement that includes a financing statement filed before this act takes  
5166 effect and a continuation statement filed after this act takes effect is effective only to the extent that  
5167 it satisfies the requirements of Part 5 for an initial financing statement.

5168 Section 172. Section **70A-9a-706** is enacted to read:

5169 **70A-9a-706. When initial financing statement suffices to continue effectiveness of**  
5170 **financing statement.**

5171 (1) The filing of an initial financing statement in the office specified in Section  
5172 70A-9a-501 continues the effectiveness of a financing statement filed before this act takes effect  
5173 if:

5174 (a) the filing of an initial financing statement in that office would be effective to perfect  
5175 a security interest under this act;

5176 (b) the pre-effective-date financing statement was filed in an office in another state or  
5177 another office in this state; and

5178 (c) the initial financing statement satisfies Subsection (3).

5179 (2) The filing of an initial financing statement under Subsection (1) continues the  
5180 effectiveness of the pre-effective-date financing statement:

5181 (a) if the initial financing statement is filed before this act takes effect, for the period  
5182 provided in former Section 70A-9-403 with respect to a financing statement; and

5183 (b) if the initial financing statement is filed after this act takes effect, for the period  
5184 provided in Section 70A-9a-515 with respect to an initial financing statement.

5185 (3) To be effective for purposes of Subsection (1), an initial financing statement must:

5186 (a) satisfy the requirements of Part 5 for an initial financing statement;

5187 (b) identify the pre-effective-date financing statement by indicating the office in which the  
5188 financing statement was filed and providing the dates of filing and file numbers, if any, of the  
5189 financing statement and of the most recent continuation statement filed with respect to the  
5190 financing statement; and

5191 (c) indicate that the pre-effective-date financing statement remains effective.

5192 Section 173. Section **70A-9a-707** is enacted to read:

5193 **70A-9a-707. Amendment of pre-effective-date financing statement.**

5194 (1) In this section, "pre-effective-date financing statement" means a financing statement  
5195 filed before this act takes effect.

5196 (2) After this act takes effect, a person may add or delete collateral covered by, continue  
5197 or terminate the effectiveness of, or otherwise amend the information provided in, a  
5198 pre-effective-date financing statement only in accordance with the law of the jurisdiction  
5199 governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date  
5200 financing statement also may be terminated in accordance with the law of the jurisdiction in which  
5201 the financing statement is filed.

5202 (3) Except as otherwise provided in Subsection (4), if the law of this state governs  
5203 perfection of a security interest, the information in a pre-effective-date financing statement may  
5204 be amended after this act takes effect only if:

5205 (a) the pre-effective-date financing statement and an amendment are filed in the office  
5206 specified in Section 70A-9a-501;

5207 (b) an amendment is filed in the office specified in Section 70A-9a-501 concurrently with,  
5208 or after the filing in that office of, an initial financing statement that satisfies Subsection  
5209 70A-9a-706(3); or

5210 (c) an initial financing statement that provides the information as amended and satisfies  
5211 Subsection 70A-9a-706(3) is filed in the office specified in Section 70A-9a-501.

5212 (4) If the law of this state governs perfection of a security interest, the effectiveness of a  
5213 pre-effective-date financing statement may be continued only under Subsections 70A-9a-705(4)  
5214 and (6) or Section 70A-9a-706.

5215 (5) Whether or not the law of this state governs perfection of a security interest, the  
5216 effectiveness of a pre-effective-date financing statement filed in this state may be terminated after  
5217 this act takes effect by filing a termination statement in the office in which the pre-effective-date  
5218 financing statement is filed, unless an initial financing statement that satisfies Subsection  
5219 70A-9a-706(3) has been filed in the office specified by the law of the jurisdiction governing  
5220 perfection as provided in Part 3 as the office in which to file a financing statement.

5221 Section 174. Section **70A-9a-708** is enacted to read:

5222 **70A-9a-708. Persons entitled to file initial financing statement or continuation**  
5223 **statement.**

5224 A person may file an initial financing statement or a continuation statement under this part  
5225 if:

5226 (1) the secured party of record authorizes the filing; and

5227 (2) the filing is necessary under this part:

5228 (a) to continue the effectiveness of a financing statement filed before this act takes effect;

5229 or

5230 (b) to perfect or continue the perfection of a security interest.

5231 Section 175. Section **70A-9a-709** is enacted to read:

5232 **70A-9a-709. Priority.**

5233 (1) This act determines the priority of conflicting claims to collateral. However, if the  
5234 relative priorities of the claims were established before this act takes effect, former Chapter 9  
5235 determines priority.

5236           (2) For purposes of Subsection 70A-9a-322(1), the priority of a security interest that  
5237 becomes enforceable under Section 70A-9a-203 of this act dates from the time this act takes effect  
5238 if the security interest is perfected under this act by the filing of a financing statement before this  
5239 act takes effect which would not have been effective to perfect the security interest under former  
5240 Chapter 9. This Subsection (2) does not apply to conflicting security interests each of which is  
5241 perfected by the filing of such a financing statement.

5242           Section 176. **Repealer.**

5243           This act repeals:

5244           Section **70A-9-101, Short title.**

5245           Section **70A-9-102, Policy and subject matter of chapter.**

5246           Section **70A-9-103, Perfection of security interests in multiple state transactions.**

5247           Section **70A-9-104, Transactions excluded from chapter.**

5248           Section **70A-9-105, Definitions and index of definitions.**

5249           Section **70A-9-106, Definitions -- "Account" -- "General intangibles."**

5250           Section **70A-9-107, Definition -- "Purchase money security interest."**

5251           Section **70A-9-108, When after-acquired collateral not security for antecedent debt.**

5252           Section **70A-9-109, Classification of goods -- "Consumer goods" -- "Equipment" --**

5253 **"Farm products" -- "Inventory."**

5254           Section **70A-9-110, Sufficiency of description.**

5255           Section **70A-9-112, Where collateral is not owned by debtor.**

5256           Section **70A-9-113, Security interests arising under Chapter 2, Sales.**

5257           Section **70A-9-114, Consignment.**

5258           Section **70A-9-115, Investment property.**

5259           Section **70A-9-116, Security interest arising in purchase or delivery of financial asset.**

5260           Section **70A-9-201, General validity of security agreement.**

5261           Section **70A-9-202, Title to collateral immaterial.**

5262           Section **70A-9-203, Attachment and enforceability of security interest -- Proceeds --**

5263 **Formal requisites.**

5264           Section **70A-9-204, After-acquired property -- Future advances.**

5265           Section **70A-9-205, Use or disposition of collateral without accounting permissible.**

5266           Section **70A-9-206, Agreement not to assert defenses against assignee -- Modification**

5267 of sales warranties where security agreement exists.

5268 Section 70A-9-207, Rights and duties when collateral is in secured party's possession.

5269 Section 70A-9-208, Request for statement of account or list of collateral.

5270 Section 70A-9-301, Persons who take priority over unperfected security interests --

5271 Rights of "lien creditor."

5272 Section 70A-9-302, When filing is required to perfect security interest -- Security

5273 interests to which filing provisions of this chapter do not apply.

5274 Section 70A-9-303, When security interest is perfected -- Continuity of perfection.

5275 Section 70A-9-304, Perfection of security interest in instruments, documents, proceeds

5276 of a written letter of credit, and goods covered by documents -- Perfection by permissive

5277 filing-- Temporary perfection without filing or transfer of possession.

5278 Section 70A-9-305, When possession by secured party perfects security interest

5279 without filing.

5280 Section 70A-9-306, "Proceeds" -- Secured party's rights on disposition of collateral or

5281 debtor's insolvency.

5282 Section 70A-9-307, Protection of buyers of goods.

5283 Section 70A-9-308, Purchase of chattel paper and instruments.

5284 Section 70A-9-309, Protection of purchasers of instruments, documents, and

5285 securities.

5286 Section 70A-9-310, Priority of certain liens arising by operation of law.

5287 Section 70A-9-311, Alienability of debtor's rights -- Judicial process.

5288 Section 70A-9-312, Priorities among conflicting security interests in the same

5289 collateral.

5290 Section 70A-9-313, Priority of security interests in fixtures.

5291 Section 70A-9-314, Accessions.

5292 Section 70A-9-315, Priority when goods are commingled or processed.

5293 Section 70A-9-316, Priority subject to subordination.

5294 Section 70A-9-317, Secured party not obligated on contract of debtor.

5295 Section 70A-9-318, Defenses against assignee -- Modification of contract after

5296 notification of assignment -- Term prohibiting assignment ineffective -- Identification and

5297 proof of assignment.

- 5298           Section **70A-9-400, Rules to implement central filing system.**
- 5299           Section **70A-9-401, Place of filing -- Erroneous filing -- Removal of collateral.**
- 5300           Section **70A-9-402, Formal requisites of financing statement -- Amendments --**
- 5301 **Mortgage as financing statement -- Form of financing statement.**
- 5302           Section **70A-9-403, What constitutes filing -- Required statement -- Duration of filing**
- 5303 **-- Effect of lapsed filing -- Duties of filing officer.**
- 5304           Section **70A-9-404, Termination statement.**
- 5305           Section **70A-9-405, Assignment of security interest -- Duties of filing officer -- Fees.**
- 5306           Section **70A-9-406, Release of collateral -- Duties of filing officer -- Fees.**
- 5307           Section **70A-9-407, Information from filing officer -- Fees.**
- 5308           Section **70A-9-408, Financing statements covering consigned or leased goods.**
- 5309           Section **70A-9-409, Destruction of old records.**
- 5310           Section **70A-9-501, Default -- Procedure when security agreement covers both real and**
- 5311 **personal property.**
- 5312           Section **70A-9-502, Collection rights of secured party.**
- 5313           Section **70A-9-503, Secured party's right to take possession after default.**
- 5314           Section **70A-9-504, Secured party's right to dispose of collateral after default -- Effect**
- 5315 **of disposition.**
- 5316           Section **70A-9-505, Compulsory disposition of collateral -- Acceptance of the collateral**
- 5317 **as discharge of obligation.**
- 5318           Section **70A-9-506, Debtor's right to redeem collateral.**
- 5319           Section **70A-9-507, Secured party's liability for failure to comply with this part.**
- 5320           Section 177. **Effective date.**
- 5321           This act takes effect on July 1, 2001.

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**Legislative Review Note**  
**as of 2-3-00 3:25 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**