

# Uniform Commercial Code Modifications

## 2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Anthony E. Loubet**

**Senate Sponsor:**

## LONG TITLE

### **General Description:**

This bill enacts provisions within Title 70A, Uniform Commercial Code.

## Highlighted Provisions:

This bill:

- defines terms;
- amends the scope of Title 70A, Chapter 2, Uniform Commercial Code - Sales, and Title A, Chapter 2a, Uniform Commercial Code - Leases;
- replaces certain references to "writing" with "record" in Title 70A, Uniform Commercial Code;
- amends provisions relating to a funds transfer;
- amends provisions relating to hybrid transactions;
- enacts provisions relating to the control of a controllable electronic record;
- provides for the discharge of an account debtor's obligation on a controllable account or controllable payment intangible;
- establishes the governing law for a controllable electronic record;
- provides where a branch of a bank is considered to be located for a choice of law provision;
- amends provisions relating to control of an electronic document of title;
- provides what does not qualify as a financial asset;
- amends provisions relating to a purchaser's control of a security entitlement;
- amends provisions relating to the control of a deposit account;
- amends provisions relating to the control of an electronic copy of a record evidencing title paper;
- provides the circumstances under which a secured party has control of a controllable electronic record;
- provides a limitation on when a security interest does not attach;
- amends the duties of a secured party with control of collateral;

31        ▶ enacts provisions governing perfection and priority of security interests in chattel paper,  
32 controllable accounts, controllable electronic records, and controllable payment  
33 intangibles;  
34        ▶ amends provisions relating to perfection by control;  
35        ▶ enacts provisions governing perfection by possession and control of chattel paper;  
36        ▶ amends the contents of a notification of disposition of collateral;  
37        ▶ enacts transitional provisions for the Uniform Commercial Code Amendments (2022); and  
38        ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40        None

41 **Other Special Clauses:**

42        None

43 **Utah Code Sections Affected:**

44 AMENDS:

45        **15-8-4**, as last amended by Laws of Utah 2014, Chapter 189  
46        **32B-14-102**, as enacted by Laws of Utah 2010, Chapter 276  
47        **46-4-403**, as last amended by Laws of Utah 2007, Chapter 272  
48        **70A-1a-201**, as last amended by Laws of Utah 2024, Chapter 129  
49        **70A-1a-204**, as enacted by Laws of Utah 2007, Chapter 272  
50        **70A-1a-306**, as enacted by Laws of Utah 2007, Chapter 272  
51        **70A-2-102**, as enacted by Laws of Utah 1965, Chapter 154  
52        **70A-2-106**, as enacted by Laws of Utah 1965, Chapter 154  
53        **70A-2-201**, as enacted by Laws of Utah 1965, Chapter 154  
54        **70A-2-202**, as last amended by Laws of Utah 2007, Chapter 272  
55        **70A-2-203**, as enacted by Laws of Utah 1965, Chapter 154  
56        **70A-2-205**, as enacted by Laws of Utah 1965, Chapter 154  
57        **70A-2-209**, as enacted by Laws of Utah 1965, Chapter 154  
58        **70A-2a-102**, as enacted by Laws of Utah 1990, Chapter 197  
59        **70A-2a-103**, as last amended by Laws of Utah 2013, Chapter 225  
60        **70A-2a-107**, as enacted by Laws of Utah 1990, Chapter 197  
61        **70A-2a-201**, as enacted by Laws of Utah 1990, Chapter 197  
62        **70A-2a-202**, as enacted by Laws of Utah 1990, Chapter 197  
63        **70A-2a-203**, as enacted by Laws of Utah 1990, Chapter 197  
64        **70A-2a-205**, as enacted by Laws of Utah 1990, Chapter 197

65       **70A-2a-208**, as enacted by Laws of Utah 1990, Chapter 197  
66       **70A-3-104**, as last amended by Laws of Utah 1998, Chapter 60  
67       **70A-3-105**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
68       **70A-3-401**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
69       **70A-3-604**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
70       **70A-4a-103**, as last amended by Laws of Utah 1993, Chapter 237  
71       **70A-4a-201**, as enacted by Laws of Utah 1990, Chapter 294  
72       **70A-4a-202**, as enacted by Laws of Utah 1990, Chapter 294  
73       **70A-4a-203**, as enacted by Laws of Utah 1990, Chapter 294  
74       **70A-4a-207**, as last amended by Laws of Utah 2015, Chapter 258  
75       **70A-4a-208**, as last amended by Laws of Utah 1993, Chapter 237  
76       **70A-4a-210**, as last amended by Laws of Utah 1993, Chapter 237  
77       **70A-4a-211**, as last amended by Laws of Utah 1993, Chapter 237  
78       **70A-4a-305**, as last amended by Laws of Utah 1993, Chapter 237  
79       **70A-5-104**, as repealed and reenacted by Laws of Utah 1997, Chapter 241  
80       **70A-5-116**, as repealed and reenacted by Laws of Utah 1997, Chapter 241  
81       **70A-7a-102**, as last amended by Laws of Utah 2007, Chapter 272  
82       **70A-7a-106**, as enacted by Laws of Utah 2006, Chapter 42  
83       **70A-8-101**, as last amended by Laws of Utah 2012, Chapter 386  
84       **70A-8-102**, as last amended by Laws of Utah 2006, Chapter 42  
85       **70A-8-105**, as last amended by Laws of Utah 2000, Chapter 252  
86       **70A-8-303**, as last amended by Laws of Utah 2016, Chapter 22  
87       **70A-9a-102**, as last amended by Laws of Utah 2013, Chapter 225  
88       **70A-9a-102.1**, as last amended by Laws of Utah 2007, Chapter 272  
89       **70A-9a-104**, as enacted by Laws of Utah 2000, Chapter 252  
90       **70A-9a-203**, as last amended by Laws of Utah 2006, Chapter 42  
91       **70A-9a-204**, as enacted by Laws of Utah 2000, Chapter 252  
92       **70A-9a-207**, as last amended by Laws of Utah 2006, Chapter 42  
93       **70A-9a-208**, as last amended by Laws of Utah 2006, Chapter 42  
94       **70A-9a-209**, as enacted by Laws of Utah 2000, Chapter 252  
95       **70A-9a-210**, as enacted by Laws of Utah 2000, Chapter 252  
96       **70A-9a-301**, as last amended by Laws of Utah 2006, Chapter 42  
97       **70A-9a-304**, as enacted by Laws of Utah 2000, Chapter 252  
98       **70A-9a-305**, as enacted by Laws of Utah 2000, Chapter 252

99       **70A-9a-310**, as last amended by Laws of Utah 2006, Chapter 42  
100      **70A-9a-312**, as last amended by Laws of Utah 2006, Chapter 42  
101      **70A-9a-313**, as last amended by Laws of Utah 2006, Chapter 42  
102      **70A-9a-314**, as last amended by Laws of Utah 2006, Chapter 42  
103      **70A-9a-316**, as last amended by Laws of Utah 2013, Chapter 225  
104      **70A-9a-317**, as last amended by Laws of Utah 2013, Chapter 225  
105      **70A-9a-323**, as enacted by Laws of Utah 2000, Chapter 252  
106      **70A-9a-324**, as enacted by Laws of Utah 2000, Chapter 252  
107      **70A-9a-330**, as enacted by Laws of Utah 2000, Chapter 252  
108      **70A-9a-331**, as last amended by Laws of Utah 2006, Chapter 42  
109      **70A-9a-332**, as enacted by Laws of Utah 2000, Chapter 252  
110      **70A-9a-334**, as last amended by Laws of Utah 2001, Chapter 132  
111      **70A-9a-341**, as enacted by Laws of Utah 2000, Chapter 252  
112      **70A-9a-404**, as enacted by Laws of Utah 2000, Chapter 252  
113      **70A-9a-406**, as last amended by Laws of Utah 2013, Chapter 225  
114      **70A-9a-408**, as last amended by Laws of Utah 2013, Chapter 225  
115      **70A-9a-509**, as enacted by Laws of Utah 2000, Chapter 252  
116      **70A-9a-513**, as last amended by Laws of Utah 2024, Chapter 121  
117      **70A-9a-601**, as last amended by Laws of Utah 2006, Chapter 42  
118      **70A-9a-605**, as enacted by Laws of Utah 2000, Chapter 252  
119      **70A-9a-608**, as enacted by Laws of Utah 2000, Chapter 252  
120      **70A-9a-611**, as enacted by Laws of Utah 2000, Chapter 252  
121      **70A-9a-613**, as enacted by Laws of Utah 2000, Chapter 252  
122      **70A-9a-614**, as enacted by Laws of Utah 2000, Chapter 252  
123      **70A-9a-615**, as enacted by Laws of Utah 2000, Chapter 252  
124      **70A-9a-616**, as enacted by Laws of Utah 2000, Chapter 252  
125      **70A-9a-619**, as enacted by Laws of Utah 2000, Chapter 252  
126      **70A-9a-620**, as enacted by Laws of Utah 2000, Chapter 252  
127      **70A-9a-621**, as enacted by Laws of Utah 2000, Chapter 252  
128      **70A-9a-624**, as enacted by Laws of Utah 2000, Chapter 252  
129      **70A-9a-628**, as enacted by Laws of Utah 2000, Chapter 252  
130      **70C-2-204**, as last amended by Laws of Utah 2007, Chapter 272

131      ENACTS:

132      **70A-9a-105.1**, Utah Code Annotated 1953

133           **70A-9a-107.1**, Utah Code Annotated 1953  
134           **70A-9a-107.2**, Utah Code Annotated 1953  
135           **70A-9a-306.1**, Utah Code Annotated 1953  
136           **70A-9a-306.2**, Utah Code Annotated 1953  
137           **70A-9a-314.1**, Utah Code Annotated 1953  
138           **70A-9a-326.1**, Utah Code Annotated 1953  
139           **70A-12-101**, Utah Code Annotated 1953  
140           **70A-12-102**, Utah Code Annotated 1953  
141           **70A-12-103**, Utah Code Annotated 1953  
142           **70A-12-104**, Utah Code Annotated 1953  
143           **70A-12-105**, Utah Code Annotated 1953  
144           **70A-12-106**, Utah Code Annotated 1953  
145           **70A-12-107**, Utah Code Annotated 1953  
146           **70A-12a-101**, Utah Code Annotated 1953  
147           **70A-12a-102**, Utah Code Annotated 1953  
148           **70A-12a-201**, Utah Code Annotated 1953  
149           **70A-12a-301**, Utah Code Annotated 1953  
150           **70A-12a-302**, Utah Code Annotated 1953  
151           **70A-12a-303**, Utah Code Annotated 1953  
152           **70A-12a-304**, Utah Code Annotated 1953  
153           **70A-12a-305**, Utah Code Annotated 1953  
154           **70A-12a-306**, Utah Code Annotated 1953  
155           **70A-13-101**, Utah Code Annotated 1953  
156           **70A-14-101**, Utah Code Annotated 1953  
157           **70A-15-101**, Utah Code Annotated 1953  
158           **70A-16-101**, Utah Code Annotated 1953  
159           **70A-17-101**, Utah Code Annotated 1953  
160           **70A-18-101**, Utah Code Annotated 1953  
161           **70A-19-101**, Utah Code Annotated 1953

## REPEALS AND REENACTS:

**70A-9a-105**, as last amended by Laws of Utah 2013, Chapter 225

## RENUMBERS AND AMENDS:

**70A-20-101**, (Renumbered from 70A-10-103, as enacted by Laws of Utah 1965, Chapter 154)

167       **70A-20-102**, (Renumbered from 70A-10-104, as last amended by Laws of Utah 2007,  
168        Chapter 272)

169       REPEALS:

170       **70A-10-101**, as enacted by Laws of Utah 1965, Chapter 154

171       **70A-10-102**, as last amended by Laws of Utah 2007, Chapter 306

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

174       Section 1. Section **15-8-4** is amended to read:

175       **15-8-4 . Inapplicability of other laws -- Exempted transactions.**

176       (1) Rental purchase agreements that comply with this chapter are not governed by the laws  
177       relating to:  
178       (a) a security interest as that term is defined in [Subsection 70A-1a-201(2)(ii)] Section  
179       70A-1a-201; or  
180       (b) Title 70C, Utah Consumer Credit Code, except that Sections 70C-7-102 through  
181       70C-7-104 and 70C-2-205 shall apply to lessors as defined in this chapter to the same  
182       extent as they apply to creditors under Title 70C, Utah Consumer Credit Code.  
183       (2) The chapter does not apply to the following:  
184       (a) rental purchase agreements primarily for business, commercial, or agricultural  
185       purposes, or those made with governmental agencies or instrumentalities or with  
186       organizations;  
187       (b) a lease of a safe deposit box;  
188       (c) a lease or bailment of personal property which is incidental to the lease of real  
189       property and which provides that the consumer has no option to purchase the leased  
190       property; or  
191       (d) a lease of a motor vehicle, as defined in Section 41-1a-102.

192       Section 2. Section **32B-14-102** is amended to read:

193       **32B-14-102 . Definitions.**

194       As used in this chapter:

195       (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship  
196       agreement that a terminating party seeks to terminate or not renew.  
197       (2)(a) "Distributorship agreement" means a written agreement between a supplier and a  
198       wholesaler pursuant to which the wholesaler has the right to purchase, resell, and  
199       distribute in a designated geographical area any brand of beer manufactured,  
200       imported, or distributed by the supplier.

201 (b) For purposes of this chapter, a separate agreement between a supplier and a  
202 wholesaler is considered to be part of a distributorship agreement if it relates to:  
203 (i) the relationship between the supplier and the wholesaler; or  
204 (ii) the duties of either the supplier or the wholesaler under a distributorship  
205 agreement.

206 (3) "Good cause" means the material failure by a supplier or a wholesaler to comply with an  
207 essential, reasonable, and lawful requirement imposed by a distributorship agreement if  
208 the failure occurs after the supplier or wholesaler acting in good faith provides notice of  
209 deficiency and an opportunity to correct in accordance with Part 2, Termination.

210 (4) "Good faith" [is as] means the same as that terms is defined in [Subsektion  
211 70A-1a-201(2)(t)] Section 70A-1a-201.

212 (5) "Retailer" means a beer retailer.

213 (6) "Sales territory" means the geographic area of distribution and sale responsibility  
214 designated by a distributorship agreement.

215 (7) "Supplier," notwithstanding Section 32B-1-102, means a brewer or other person who  
216 sells beer to a wholesaler for resale in this state.

217 (8) "Terminating party" means a supplier or wholesaler who:  
218 (a) is a party to a distributorship agreement; and  
219 (b) seeks to terminate or not renew the distributorship agreement.

220 Section 3. Section **46-4-403** is amended to read:

221 **46-4-403 . Transferable records.**

222 (1) As used in this section, "transferable record" means an electronic record that:  
223 (a) would be a note under Title 70A, Chapter 3, Uniform Commercial Code - Negotiable  
224 Instruments, or a document under Title 70A, Chapter 7a, Uniform Commercial Code  
225 - Documents of Title, if the electronic record were in writing; and  
226 (b) the issuer of the electronic record expressly has agreed is a transferable record.

227 (2) A person has control of a transferable record if a system employed for evidencing the  
228 transfer of interests in the transferable record reliably establishes that person as the  
229 person to which the transferable record was issued or transferred.

230 (3) A system satisfies Subsection (2), and a person is deemed to have control of a  
231 transferable record, if the transferable record is created, stored, and assigned in such a  
232 manner that:  
233 (a) a single authoritative copy of the transferable record exists that is unique,  
234 identifiable, and, except as otherwise provided in Subsections (3)(d), (e), and (f),

unalterable;

- (b) the authoritative copy identifies the person asserting control as:
  - (i) the person to which the transferable record was issued; or
  - (ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;
- (c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
- (d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
- (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4)(a) Except as otherwise agreed, a person having control of a transferable record is the holder, as that term is defined in [Subsection 70A-1a-201(2)(u)] Section 70A-1a-201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 70A, Uniform Commercial Code, including, if the applicable statutory requirements under Subsection 70A-3-302(1), Section 70A-7a-501, or Section 70A-9a-308 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively.

(b) Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under Subsection (4)(a).

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 70A, Uniform Commercial Code.

(6)(a) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record.

(b) Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Section 4. Section **70A-1a-201** is amended to read:

269       **70A-1a-201 . General definitions.**

270       (1) Unless the context otherwise requires, words or phrases defined in this section, or in the  
271            additional definitions contained in other chapters of this title that apply to particular  
272            chapters or parts thereof, have the meanings stated.

273       (2) Subject to definitions contained in other chapters of this title that apply to particular  
274            chapters or parts thereof:

275           (a) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim,  
276              set-off, suit in equity, and any other proceeding in which rights are determined.

277           (b) "Aggrieved party" means a party entitled to pursue a remedy.

278           (c) "Agreement," as distinguished from "contract," means the bargain of the parties in  
279              fact, as found in their language or inferred from other circumstances, including  
280              course of performance, course of dealing, or usage of trade as provided in Section  
281              70A-1a-303.

282           (d) "Bank" means a person engaged in the business of banking and includes a savings  
283              bank, savings and loan association, credit union, and trust company.

284           (e) "Bearer" means a person in possession of a negotiable instrument, document of title,  
285              or certificated security that is payable to bearer or indorsed in blank.

286           (f) "Bill of lading" means a document evidencing the receipt of goods for shipment  
287              issued by a person engaged in the business of transporting or forwarding goods.

288           (g) "Branch" includes a separately incorporated foreign branch of a bank.

289           (h) "Burden of establishing" a fact means the burden of persuading the trier of fact that  
290              the existence of the fact is more probable than its nonexistence.

291           (i) "Buyer in ordinary course of business" means a person that buys goods in good faith,  
292              without knowledge that the sale violates the rights of another person in the goods,  
293              and in the ordinary course from a person, other than a pawnbroker, in the business of  
294              selling goods of that kind. A person buys goods in the ordinary course if the sale to  
295              the person comports with the usual or customary practices in the kind of business in  
296              which the seller is engaged or with the seller's own usual or customary practices. A  
297              person that sells oil, gas, or other minerals at the wellhead or minehead is a person in  
298              the business of selling goods of that kind. A buyer in ordinary course of business  
299              may buy for cash, by exchange of other property, or on secured or unsecured credit,  
300              and may acquire goods or documents of title under a preexisting contract for sale.  
301              Only a buyer that takes possession of the goods or has a right to recover the goods  
302              from the seller under Chapter 2, Uniform Commercial Code - Sales, may be a buyer

303 in ordinary course of business. "Buyer in ordinary course of business" does not  
304 include a person that acquires goods in a transfer in bulk or as security for or in total  
305 or partial satisfaction of a money debt.

306 (j) "Central bank digital currency" means a digital currency, a digital medium of  
307 exchange, or a digital monetary unit of account issued by the United States Federal  
308 Reserve System, a federal agency, a foreign government, a foreign central bank, or a  
309 foreign reserve system, that is:

310 (i) made directly available to a consumer by such entities; or  
311 (ii) processed or validated directly by such entities.

312 (k) "Conspicuous," with reference to a term, means so written, displayed, or presented  
313 that a reasonable person against which it is to operate ought to have noticed it.

314 Whether a term is conspicuous or not is a decision for the court.[-Conspicuous terms  
315 include the following:]

316 [(i) a heading in capitals equal to or greater in size than the surrounding text, or in  
317 contrasting type, font, or color to the surrounding text of the same or lesser size;  
318 and]

319 [(ii) language in the body of a record or display in larger type than the surrounding  
320 text, or in contrasting type, font, or color to the surrounding text of the same size,  
321 or set off from surrounding text of the same size by symbols or other marks that  
322 call attention to the language.]

323 (l) "Consumer" means an individual who enters into a transaction primarily for personal,  
324 family, or household purposes.

325 (m) "Contract," as distinguished from "agreement," means the total legal obligation that  
326 results from the parties' agreement as determined by this title as supplemented by any  
327 other applicable laws.

328 (n) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any  
329 representative of creditors, including an assignee for the benefit of creditors, a trustee  
330 in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent  
331 debtor's or assignor's estate.

332 (o) "Defendant" includes a person in the position of defendant in a counterclaim,  
333 cross-claim, or third-party claim.

334 (p) "Delivery," with respect to an instrument, document of title, or an authoritative  
335 tangible copy of a record evidencing chattel paper, means voluntary transfer of  
336 possession.

337 (q) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse  
338 receipt or order for the delivery of goods, and also any other document which in the  
339 regular course of business or financing is treated as adequately evidencing that the  
340 person in possession of it is entitled to receive, hold, and dispose of the document and  
341 the goods it covers. To be a document of title, a document must purport to be issued  
342 by or addressed to a bailee and purport to cover goods in the bailee's possession  
343 which are either identified or are fungible portions of an identified mass.

344 (r) "Electronic" means relating to technology having electrical, digital, magnetic,  
345 wireless, optical, electromagnetic, or similar capabilities.

346 [(t)] (s) "Fault" means a default, breach, or wrongful act or omission.

347 [(s)] (t) "Fungible goods" means:

348 (i) goods of which any unit, by nature or usage of trade, is the equivalent of any other  
349 like unit; or  
350 (ii) goods that by agreement are treated as equivalent.

351 [(t)] (u) "Genuine" means free of forgery or counterfeiting.

352 [(u)] (v) "Good faith" means honesty in fact in the conduct or transaction concerned.

353 [(v)] (w) "Holder" means:

354 (i) the person in possession of a negotiable instrument that is payable either to bearer  
355 or to an identified person that is the person in possession; or  
356 (ii) the person in possession of a document of title if the goods are deliverable either  
357 to bearer or to the order of the person in possession.

358 [(w)] (x) "Insolvency proceeding" includes an assignment for the benefit of creditors or  
359 other proceeding intended to liquidate or rehabilitate the estate of the person involved.

360 [(x)] (y) "Insolvent" means:

361 (i) having generally ceased to pay debts in the ordinary course of business other than  
362 as a result of bona fide dispute;  
363 (ii) being unable to pay debts as they become due; or  
364 (iii) being insolvent within the meaning of federal bankruptcy law.

365 [(y)] (z)(i) "Money" means a medium of exchange that is currently authorized or  
366 adopted by a domestic or foreign government.

367 (ii) "Money" includes a monetary unit of account established by an  
368 intergovernmental organization or by agreement between two or more countries.

369 (iii) "Money" does not include:

370 (A) [-]a central bank digital currency[-] ; or

(B) an electronic record that is a medium of exchange recorded and transferable in a system that existed and operated for the medium of exchange before the medium of exchange was authorized or adopted by the government.

[(z)] (aa) "Organization" means a person other than an individual.

[(aa)] (bb) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

[¶b] (cc)(i) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, [public corporation,] or any other legal or commercial entity.

(ii) "Person" includes a protected series, however denominated, of an entity if the protected series is established under law other than this title that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

[(ee)] (dd) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

[(dd)] (ee) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

[(ee)] (ff) "Purchaser" means a person that takes by purchase.

[ff) (gg) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[(gg)] (hh) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

[~~(hh)~~] (ii) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

[(ii)] (ji) "Right" includes remedy.

[(j)] (kk)(i) "Security interest" means an interest in personal property or fixtures

405 which secures payment or performance of an obligation.

406 (ii) [–]"Security interest" includes any interest of a consignor and a buyer of  
407 accounts, chattel paper, a payment intangible, or a promissory note in a  
408 transaction that is subject to Chapter 9a, Uniform Commercial Code - Secured  
409 Transactions.

410 (iii) [–]"Security interest" does not include the special property interest of a buyer of  
411 goods on identification of those goods to a contract for sale under Section  
412 70A-2-401, but a buyer may also acquire a "security interest" by complying with  
413 Chapter 9a, Uniform Commercial Code - Secured Transactions. Except as  
414 otherwise provided in Section 70A-2-505, the right of a seller or lessor of goods  
415 under Chapter 2, Uniform Commercial Code - Sales, or Chapter 2a, Uniform  
416 Commercial Code - Leases, to retain or acquire possession of the goods is not a  
417 "security interest," but a seller or lessor may also acquire a "security interest" by  
418 complying with Chapter 9a, Uniform Commercial Code - Secured Transactions.

419 (iv) [–]The retention or reservation of title by a seller of goods notwithstanding  
420 shipment or delivery to the buyer under Section 70A-2-401 is limited in effect to a  
421 reservation of a "security interest."

422 (v) [–]Whether a transaction in the form of a lease creates a "security interest" is  
423 determined pursuant to Section 70A-1a-203.

424 [(kk)] (ll) "Send" in connection with a [writing,] record[,] or [notice] notification, means:

425 (i) to deposit in the mail[–or–] , deliver for transmission, or transmit by any other usual  
426 means of communication with postage or cost of transmission provided for[–and  
427 properly addressed and, in the case of an instrument, to an address specified  
428 thereon or otherwise agreed, or if there be none] , addressed to any address  
429 reasonable under the circumstances; or

430 (ii) [in any other way to cause to be received any record or notice within the time it  
431 would have arrived if properly sent.] to cause the record or notification to be  
432 received within the time the record or notification would have been received if  
433 properly sent under Subsection (2)(ll)(i).

434 [(ll)] (mm)(i) ["Signed" includes using any symbol executed or adopted with present  
435 intention to adopt or accept a writing.] "Sign" means, with present intent to  
436 authenticate or adopt a record:

437 (A) execute or adopt a tangible symbol; or

438 (B) attach to or logically associate with the record an electronic symbol, sound, or

process.

(ii) "Signed," "signing," and "signature" have corresponding meanings.

[(mm)] [(nn)] "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

[(nn)] (oo) "Surety" includes a guarantor or other secondary obligor.

[~~(oo)~~] (pp) "Term" means a portion of an agreement that relates to a particular matter.

[pp] [qq] "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

[(qq)] (rr) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

[~~(rr)~~] (ss) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

Section 5. Section **70A-1a-204** is amended to read:

## 70A-1a-204 . Value.

Except as otherwise provided in Chapter 3, Uniform Commercial Code - Negotiable Instruments, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, [and] Chapter 5, Uniform Commercial Code - Letters of Credit, and Chapter 12, Uniform Commercial Code - Controllable Electronic Records, a person gives value for rights if the person acquires them:

- (1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) as security for, or in total or partial satisfaction of, a preexisting claim;
- (3) by accepting delivery under a preexisting contract for purchase; or
- (4) in return for any consideration sufficient to support a simple contract.

Section 6. Section **70A-1a-306** is amended to read:

### **70A-1a-306 . Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in [an authenticated] a signed record.

Section 7. Section **70A-2-102** is amended to read:

**70A-2-102 . Scope -- Certain security and other transactions excluded from this chapter.**

[Unless the context otherwise requires, this chapter applies to transactions in goods; it

- 473 ~~does not apply to any transaction which although in the form of an unconditional contract to~~  
- 474 ~~sell or present sale is intended to operate only as a security transaction nor does this chapter~~  
- 475 ~~impair or repeal any statute regulating sales to consumers, farmers or other specified classes of~~  
- 476 ~~buyers.]~~

477 (1) Unless the context otherwise requires, and except as provided in Subsection (3), this  
478 chapter applies to transactions in goods and, in the case of a hybrid transaction, this  
479 chapter applies to the extent provided in Subsection (2).

480 (2) In a hybrid transaction:

- 481 (a) if the sale-of-goods aspects do not predominate, only the provisions of this chapter  
482 which relate primarily to the sale-of-goods aspects of the transaction apply, and the  
483 provisions that relate primarily to the transaction as a whole do not apply; or
- 484 (b) if the sale-of-goods aspects predominate, this chapter applies to the transaction but  
485 does not preclude application in appropriate circumstances of other law to aspects of  
486 the transaction which do not relate to the sale of goods.

487 (3) This chapter does not:

- 488 (a) apply to a transaction that, even though in the form of an unconditional contract to  
489 sell or present sale, operates only to create a security interest; or
- 490 (b) impair or repeal a statute regulating sales to consumers, farmers, or other specified  
491 classes of buyers.

492 Section 8. Section **70A-2-106** is amended to read:

493 **70A-2-106 . Definitions -- "Contract" -- "Agreement" -- "Contract for sale" --**  
494 **"Sale" -- "Present sale" -- "Conforming" to contract -- "Termination" -- "Cancellation"**  
495 **-- "Hybrid transaction."**

- 496 (1) In this chapter unless the context otherwise requires "contract" and "agreement" are  
497 limited to those relating to the present or future sale of goods. "Contract for sale"  
498 includes both a present sale of goods and a contract to sell goods at a future time. A  
499 "sale" consists in the passing of title from the seller to the buyer for a price (Section  
500 70A-2-401). A "present sale" means a sale which is accomplished by the making of the  
501 contract.
- 502 (2) Goods or conduct including any part of a performance are "conforming" or conform to  
503 the contract when [they] the goods or conduct are in accordance with the obligations  
504 under the contract.
- 505 (3) "Termination" occurs when either party pursuant to a power created by agreement or  
506 law puts an end to the contract otherwise than for its breach. On "termination" all

507 obligations which are still executory on both sides are discharged but any right based on  
508 prior breach or performance survives.

509 (4) "Cancellation" occurs when either party puts an end to the contract for breach by the  
510 other and its effect is the same as that of "termination" except that the canceling party  
511 also retains any remedy for breach of the whole contract or any unperformed balance.

512 (5) "Hybrid transaction" means a single transaction involving a sale of goods and:

513 (a) the provision of services;

514 (b) a lease of other goods; or

515 (c) a sale, lease, or license of property other than goods.

516 Section 9. Section **70A-2-201** is amended to read:

517 **70A-2-201 . Formal requirements -- Statute of frauds.**

518 (1) Except as otherwise provided in this section a contract for the sale of goods for the price  
519 of \$500 or more is not enforceable by way of action or defense unless there is [some  
520 writing] a record sufficient to indicate that a contract for sale has been made between the  
521 parties and signed by the party against whom enforcement is sought or by [his] the party's  
522 authorized agent or broker. A [writing] record is not insufficient because it omits or  
523 incorrectly states a term agreed upon but the contract is not enforceable under this [  
524 paragraph] Subsection (1) beyond the quantity of goods shown in [such writing] the record.

525 (2) Between merchants if within a reasonable time a [writing] record in confirmation of the  
526 contract and sufficient against the sender is received and the party receiving it has reason  
527 to know its contents, it satisfies the requirements of Subsection (1) against [such] the  
528 party unless [written] notice in a record of objection to its contents is given within 10  
529 days after it is received.

530 (3) A contract which does not satisfy the requirements of Subsection (1) but which is valid  
531 in other respects is enforceable:

532 (a) if the goods are to be specially manufactured for the buyer and are not suitable for  
533 sale to others in the ordinary course of the seller's business and the seller, before  
534 notice of repudiation is received and under circumstances which reasonably indicate  
535 that the goods are for the buyer, has made either a substantial beginning of their  
536 manufacture or commitments for their procurement;[-or]

537 (b) if the party against whom enforcement is sought admits in his pleading, testimony or  
538 otherwise in court that a contract for sale was made, but the contract is not  
539 enforceable under this provision beyond the quantity of goods admitted; or

540 (c) with respect to goods for which payment has been made and accepted or which have

541                   been received and accepted (Section 70A-2-606).

542                   Section 10. Section **70A-2-202** is amended to read:

543                   **70A-2-202 . Final expression -- Parol or extrinsic evidence.**

544                   Terms with respect to which the confirmatory memoranda of the parties agree or which  
545                   are otherwise set forth in a [writing] record intended by the parties as a final expression of their  
546                   agreement with respect to such terms as are included therein may not be contradicted by  
547                   evidence of any prior agreement or of a contemporaneous oral agreement but may be  
548                   explained or supplemented:

549                   (1) by course of performance, course of dealing, or usage of trade (Section 70A-1a-303) or  
550                   by course of performance (Section 70A-2-208); and  
551                   (2) by evidence of consistent additional terms unless the court finds the [writing] record to  
552                   have been intended also as a complete and exclusive statement of the terms of the  
553                   agreement.

554                   Section 11. Section **70A-2-203** is amended to read:

555                   **70A-2-203 . Seals inoperative.**

556                   The affixing of a seal to a [writing] record evidencing a contract for sale or an offer to  
557                   buy or sell goods does not constitute the [writing] record a sealed instrument and the law with  
558                   respect to sealed instruments does not apply to such a contract or offer.

559                   Section 12. Section **70A-2-205** is amended to read:

560                   **70A-2-205 . Firm offers.**

561                   An offer by a merchant to buy or sell goods in a signed [writing] record which by its  
562                   terms gives assurance that it will be held open is not revocable, for lack of consideration,  
563                   during the time stated or if no time is stated for a reasonable time, but in no event may such  
564                   period of irrevocability exceed three months; but any such term of assurance on a form  
565                   supplied by the offeree must be separately signed by the offeror.

566                   Section 13. Section **70A-2-209** is amended to read:

567                   **70A-2-209 . Modification, rescission, and waiver.**

568                   (1) An agreement modifying a contract within this chapter needs no consideration to be  
569                   binding.  
570                   (2) A signed agreement which excludes modification or rescission except by a signed  
571                   writing or other signed record cannot be otherwise modified or rescinded, but except as  
572                   between merchants such a requirement on a form supplied by the merchant must be  
573                   separately signed by the other party.  
574                   (3) The requirements of the statute of frauds section of this chapter (Section 70A-2-201)

575 must be satisfied if the contract as modified is within its provisions.

576 (4) Although an attempt at modification or rescission does not satisfy the requirements of  
577 Subsection (2) or (3) it can operate as a waiver.

578 (5) A party who has made a waiver affecting an executory portion of the contract may  
579 retract the waiver by reasonable notification received by the other party that strict  
580 performance will be required of any term waived, unless the retraction would be unjust  
581 in view of a material change of position in reliance on the waiver.

582 Section 14. Section **70A-2a-102** is amended to read:

583 **70A-2a-102 . Scope.**

584 (1) This chapter applies to any transaction, regardless of form, that creates a lease and,  
585 in the case of a hybrid lease, it applies to the extent provided in Subsection (2).

586 (2) In a hybrid lease:

587 (a) if the lease-of-goods aspects do not predominate:

588 (i) only the provisions of this chapter which relate primarily to the lease-of-goods  
589 aspects of the transaction apply, and the provisions that relate primarily to the  
590 transaction as a whole do not apply;

591 (ii) Section 70A-2a-209 applies if the lease is a finance lease; and

592 (iii) Section 70A-2a-407 applies to the promises of the lessee in a finance lease to the  
593 extent the promises are consideration for the right to possession and use of the  
594 leased goods; and

595 (b) if the lease-of-goods aspects predominate, this chapter applies to the transaction, but  
596 does not preclude application in appropriate circumstances of other law to aspects of  
597 the lease which do not relate to the lease of goods.

598 Section 15. Section **70A-2a-103** is amended to read:

599 **70A-2a-103 . Definitions -- Index of definitions.**

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

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

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

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

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

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

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

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

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

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

627 (iii) one of the following occurs:

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

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

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

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

643 (I) of the identity of the person supplying the goods to the lessor, unless the  
644 lessee has selected that person and directed the lessor to acquire the goods  
645 or the right to possession and use of the goods from that person;  
646 (II) that the lessee is entitled under this chapter to the promises and warranties,  
647 including those of any third party, provided to the lessor by the person  
648 supplying the goods in connection with or as part of the contract by which  
649 the lessor acquired the goods or the right to possession and use of the goods;  
650 and  
651 (III) that the lessee may communicate with the person supplying the goods to  
652 the lessor and receive an accurate and complete statement of those promises  
653 and warranties, including any disclaimers and limitations of them or of  
654 remedies.

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

659 (i) "Hybrid lease" means a single transaction involving a lease of goods and:  
660 (i) the provision of services;  
661 (ii) a sale of other goods; or  
662 (iii) a sale, lease, or license of property other than goods.

663 [(i)] (j) "Installment lease contract" means a lease contract that authorizes or requires the  
664 delivery of goods in separate lots to be separately accepted, even though the lease  
665 contract contains a clause stating "each delivery is a separate lease" or its equivalent.

666 [(j)] (k) "Lease" means a transfer of the right to possession and use of goods for a term,  
667 in return for consideration. Unless the context clearly indicates otherwise, the term  
668 includes a sublease. But a sale, including a sale on approval or a sale or return, or  
669 retention or creation of a security interest is not a lease.

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

675 [(l)] (m) "Lease contract" means the total legal obligation that results from the lease  
676 agreement as affected by this chapter and any other applicable rules of law. Unless

677 the context clearly indicates otherwise, the term includes a sublease contract.

678 [(m)] (n) "Leasehold interest" means the interest of the lessor or the lessee under a lease  
679 contract.

680 [(n)] (o) "Lessee" means a person who acquires the right to possession and use of goods  
681 under a lease. Unless the context clearly indicates otherwise, the term includes a  
682 sublessee.

683 [(o)] (p) "Lessee in ordinary course of business" means a person who in good faith and  
684 without knowledge that the lease to him is in violation of the ownership rights,  
685 security interest, or leasehold interest of a third party in the goods, leases in ordinary  
686 course from a person in the business of selling or leasing goods of that kind, but does  
687 not include a pawnbroker. "Leasing" may be for cash or by exchange of other  
688 property, or on secured or unsecured credit, and includes acquiring goods or  
689 documents of title under a preexisting lease contract. "Leasing" does not include a  
690 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

691 [(p)] (q) "Lessor" means a person who transfers the right to possession and use of goods  
692 under a lease. Unless the context clearly indicates otherwise, the term includes a  
693 sublessor.

694 [(q)] (r) "Lessor's residual interest" means the lessor's interest in the goods after  
695 expiration, termination, or cancellation of the lease contract.

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

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

700 [(t)] (u) "Merchant lessee" means a lessee that is a merchant with respect to goods of the  
701 kind subject to the lease.

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

708 [(v)] (w) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge,  
709 gift, or any other voluntary transaction creating an interest in goods.

710 [(w)] (x) "Sublease" means a lease of goods, the right to possession and use of which was



745 contains general definitions and principles of construction and interpretation applicable  
746 throughout this chapter.

747 Section 16. Section **70A-2a-107** is amended to read:

748 **70A-2a-107 . Waiver or renunciation of claim or right after default.**

749 Any claim or right arising out of an alleged default or breach of warranty may be  
750 discharged in whole or in part without consideration by a [written] waiver or renunciation in a  
751 signed [and] record delivered by the aggrieved party.

752 Section 17. Section **70A-2a-201** is amended to read:

753 **70A-2a-201 . Statute of frauds.**

754 (1) A lease contract is not enforceable by way of action or defense unless:

755 (a) in a lease contract that is not a consumer lease, the total payments to be made under  
756 the lease contract, excluding payments for options to renew or buy, are less than  
757 \$1,000; or

758 (b) there is a [writing] record, signed by the party against whom enforcement is sought or  
759 by that party's authorized agent, sufficient to indicate that a lease contract has been  
760 made between the parties and to describe the goods leased and the lease term.

761 (2) Any description of leased goods or of the lease term is sufficient and satisfies  
762 Subsection (1)(b), whether or not it is specific, if it reasonably identifies what is  
763 described.

764 (3) A [writing] record is not insufficient because it omits or incorrectly states a term agreed  
765 upon, but the lease contract is not enforceable under Subsection (1)(b) beyond the lease  
766 term and the quantity of goods shown in the [writing] record.

767 (4) A lease contract that does not satisfy the requirements of Subsection (1), but which is  
768 valid in other respects, is enforceable:

769 (a) if the goods are to be specially manufactured or obtained for the lessee and are not  
770 suitable for lease or sale to others in the ordinary course of the lessor's business, and  
771 the lessor, before notice of repudiation is received and under circumstances that  
772 reasonably indicate that the goods are for the lessee, has made either a substantial  
773 beginning of their manufacture or commitments for their procurement;

774 (b) if the party against whom enforcement is sought admits in that party's pleading,  
775 testimony, or otherwise in court that a lease contract was made, but the lease contract  
776 is not enforceable under this provision beyond the quantity of goods admitted; or

777 (c) with respect to goods that have been received and accepted by the lessee.

778 (5) The lease term under a lease contract referred to in Subsection (4) is enforceable:

779 (a) if there is a [writing] record signed by the party against whom enforcement is sought  
780 or by that party's authorized agent specifying the lease term, the term so specified;  
781 (b) if the party against whom enforcement is sought admits in that party's pleading,  
782 testimony, or otherwise in court a lease term, the term so admitted; or  
783 (c) if there is a reasonable lease term.

784 Section 18. Section **70A-2a-202** is amended to read:

785 **70A-2a-202 . Final expression -- Parol or extrinsic evidence.**

786 Terms with respect to which the confirmatory memoranda of the parties agree or which  
787 are otherwise set forth in a [writing] record intended by the parties as a final expression of their  
788 agreement with respect to such terms as are included therein may not be contradicted by  
789 evidence of any prior agreement or of a contemporaneous oral agreement, but may be  
790 explained or supplemented:

791 (1) by course of dealing or usage of trade or by course of performance; and  
792 (2) by evidence of consistent additional terms unless the court finds the [writing] record to  
793 have been intended also as a complete and exclusive statement of the terms of the  
794 agreement.

795 Section 19. Section **70A-2a-203** is amended to read:

796 **70A-2a-203 . Seals inoperative.**

797 The affixing of a seal to a [writing] record evidencing a lease contract or an offer to enter  
798 into a lease contract does not render the [writing] record a sealed instrument and the law with  
799 respect to sealed instruments does not apply to the lease contract or offer.

800 Section 20. Section **70A-2a-205** is amended to read:

801 **70A-2a-205 . Firm offers.**

802 An offer by a merchant to lease goods to or from another person in a signed [writing]  
803 record that by its terms gives assurance it will be held open is not revocable for lack of  
804 consideration during the time stated or, if no time is stated, for a reasonable time, but in no  
805 event may the period of irrevocability exceed three months. Any such term of assurance on a  
806 form supplied by the offeree must be separately signed by the offeror.

807 Section 21. Section **70A-2a-208** is amended to read:

808 **70A-2a-208 . Modification, rescission, and waiver.**

809 (1) An agreement modifying a lease contract needs no consideration to be binding.  
810 (2) A signed lease agreement that excludes modification or rescission except by a signed [  
811 writing] record may not be otherwise modified or rescinded.  
812 (3) Although an attempt at modification or rescission does not satisfy the requirements of

813 Subsection (2), it may operate as a waiver.

814 (4) A party who has made a waiver affecting an executory portion of a lease contract may  
815 retract the waiver by reasonable notification received by the other party that strict  
816 performance will be required of any term waived, unless the retraction would be unjust  
817 in view of a material change of position in reliance on the waiver.

818 Section 22. Section **70A-3-104** is amended to read:

819 **70A-3-104 . Negotiable instrument.**

820 (1) Except as provided in Subsections (3) and (4), "negotiable instrument" means an  
821 unconditional promise or order to pay a fixed amount of money, with or without interest  
822 or other charges described in the promise or order, if it:  
823 (a) is payable to bearer or to order at the time it is issued or first comes into possession  
824 of a holder;  
825 (b) is payable on demand or at a definite time; and  
826 (c) does not state any other undertaking or instruction by the person promising or  
827 ordering payment to do any act in addition to the payment of money, but the promise  
828 or order may contain:  
829 (i) an undertaking or power to give, maintain, or protect collateral to secure payment;  
830 (ii) an authorization or power to the holder to confess judgment or realize on or  
831 dispose of collateral;[–or]  
832 (iii) a waiver of the benefit of any law intended for the advantage or protection of an  
833 obligor[.]:  
834 (iv) a term that specifies the law that governs the promise or order; or  
835 (v) an undertaking to resolve in a specified forum a dispute concerning the promise  
836 or order.

837 (2) "Instrument" means a negotiable instrument.

838 (3) An order that meets all of the requirements of Subsection (1), except Subsection (1)(a),  
839 and otherwise falls within the definition of "check" in Subsection (6) is a negotiable  
840 instrument and a check.

841 (4) A promise or order other than a check is not an instrument if, at the time it is issued or  
842 first comes into possession of a holder, it contains a conspicuous statement, however  
843 expressed, to the effect that the promise or order is not negotiable or is not an instrument  
844 governed by this chapter.

845 (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an  
846 instrument falls within the definition of both "note" and "draft," a person entitled to

847 enforce the instrument may treat it as either.

848 (6)(a) "Check" means:

849 (i) a draft, other than a documentary draft, payable on demand and drawn on a bank;

850 (ii) a cashier's check or teller's check; or

851 (iii) a demand draft.

852 (b) An instrument may be a check even though it is described on its face by another  
853 term, such as "money order."

854 (7) "Cashier's check" means a draft with respect to which the drawer and drawee are the  
855 same bank or branches of the same bank.

856 (8) "Teller's check" means a draft drawn by a bank either on another bank, or payable at or  
857 through a bank.

858 (9) "Traveler's check" means an instrument that:

859 (a) is payable on demand;

860 (b) is drawn on or payable at or through a bank;

861 (c) is designated by the term "traveler's check" or by a substantially similar term; and

862 (d) requires, as a condition to payment, a countersignature by a person whose specimen  
863 signature appears on the instrument.

864 (10) "Certificate of deposit" means an instrument containing an acknowledgment by a bank  
865 that a sum of money has been received by the bank and a promise by the bank to repay  
866 the sum of money. A certificate of deposit is a note of the bank.

867 (11)(a) "Demand draft" means a writing not signed by a customer that is created by a  
868 third party under the purported authority of the customer for the purpose of charging  
869 the customer's account with a bank.

870 (b) A demand draft:

871 (i) shall contain the customer's account number;

872 (ii) may contain any or all of the following:

873 (A) the customer's printed or typewritten name;

874 (B) a notation that the customer authorized the draft; or

875 (C) the statement "No Signature Required" or words to that effect; and

876 (iii) may not include a check purportedly drawn by and bearing the signature of a  
877 fiduciary, as defined in Section 70A-3-307.

878 Section 23. Section **70A-3-105** is amended to read:

879 **70A-3-105 . Issue of instrument.**

880 (1) "Issue" means:

881 (a) [-]the first delivery of an instrument by the maker or drawer, whether to a holder or  
882 nonholder, for the purpose of giving rights on the instrument to any person[.] ; or  
883 (b) if agreed by the payee, the first transmission by the drawer to the payee of an image  
884 of an item and information derived from the item that enables the depositary bank to  
885 collect the item by transferring or presenting under federal law an electronic check.

886 (2) An unissued instrument, or an unissued incomplete instrument that is completed, is  
887 binding on the maker or drawer, but nonissuance is a defense. An instrument that is  
888 conditionally issued or is issued for a special purpose is binding on the maker or drawer,  
889 but failure of the condition or special purpose to be fulfilled is a defense.  
890 (3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an  
891 instrument.

892 Section 24. Section **70A-3-401** is amended to read:

893 **70A-3-401 . Signature necessary for liability on instrument.**

894 [(1)] A person is not liable on an instrument unless:

895 [(a)] (1) the person signed the instrument; or  
896 [(b)] (2) the person is represented by an agent or representative who signed the instrument  
897 and the signature is binding on the represented person under Section 70A-3-402.

898 [(2) ~~A signature may be made:~~]

899 [(a) ~~manually or by means of a device or machine; and~~]  
900 [(b) ~~by the use of any name, including a trade or assumed name, or by a word, mark, or~~  
901 ~~symbol executed or adopted by a person with present intention to authenticate a~~  
902 ~~writing.~~]

903 Section 25. Section **70A-3-604** is amended to read:

904 **70A-3-604 . Discharge by cancellation or renunciation.**

905 (1)(a) A person entitled to enforce an instrument, with or without consideration, may  
906 discharge the obligation of a party to pay the instrument by:

907 (i) [-]an intentional voluntary act, such as surrender of the instrument to the party,  
908 destruction, mutilation, or cancellation of the instrument, cancellation or striking  
909 out of the party's signature, or the addition of words to the instrument indicating  
910 discharge[.] ; or  
911 (ii) [-]by agreeing not to sue or otherwise renouncing rights against the party by a  
912 signed [writing] record.

913 (b) The obligation of a party to pay a check is not discharged solely by destruction of the  
914 check in connection with a process in which information is extracted from the check

915 and an image of the check is made and, subsequently, the information and image are  
916 transmitted for payment.

917 (2) Cancellation or striking out of an indorsement pursuant to Subsection (1) does not affect  
918 the status and rights of a party derived from the indorsement.

919 Section 26. Section **70A-4a-103** is amended to read:

920 **70A-4a-103 . Payment order -- Definitions.**

921 (1) "Beneficiary" means the person to be paid by the beneficiary's bank.

922 (2) "Beneficiary's bank" means the bank identified in a payment order in which an account  
923 of the beneficiary is to be credited pursuant to the order or which otherwise is to make  
924 payment to the beneficiary if the order does not provide for payment to an account.

925 (3) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally[,] [  
926 electronically, or in writing,] or in a record to pay, or to cause another bank to pay, a  
927 fixed or determinable amount of money to a beneficiary if:

928 (a) the instruction does not state a condition to payment to the beneficiary other than  
929 time of payment;

930 (b) the receiving bank is to be reimbursed by debiting an account of, or otherwise  
931 receiving payment from, the sender; and

932 (c) the instruction is transmitted by the sender directly to the receiving bank or to an  
933 agent, funds transfer system, or communication system for transmittal to the  
934 receiving bank.

935 (4) "Receiving bank" means the bank to which the sender's instruction is addressed.

936 (5) "Sender" means the person giving the instruction to the receiving bank.

937 (6) If an instruction complying with Subsection (3) is to make more than one payment to a  
938 beneficiary, the instruction is a separate payment order with respect to each of the  
939 payments.

940 (7) A payment order is issued when it is sent to the receiving bank.

941 Section 27. Section **70A-4a-201** is amended to read:

942 **70A-4a-201 . Security procedure.**

943 (1) "Security procedure" means a procedure established by agreement of a customer and a  
944 receiving bank for the purpose of:

945 (a) verifying that a payment order or communication amending or canceling a payment  
946 order is that of the customer; or

947 (b) detecting error in the transmission or the content of the payment order or  
948 communication.

949 (2) A security procedure may impose an obligation on the receiving bank or the customer  
950 and may require the use of algorithms or other codes, identifying words[-or], numbers,  
951 symbols, sounds, biometrics, encryption, callback procedures, or similar security  
952 devices. Comparison of a signature on a payment order or communication with an  
953 authorized specimen signature of the customer or requiring payment order to be sent  
954 from a known email address, IP address, or telephone number is not by itself a security  
955 procedure.

956 Section 28. Section **70A-4a-202** is amended to read:

957 **70A-4a-202 . Authorized and verified payment orders.**

958 (1) A payment order received by the receiving bank is the authorized order of the person  
959 identified as sender if that person authorized the order or is otherwise bound by it under  
960 the law of agency.

961 (2)(a) If a bank and its customer have agreed that the authenticity of payment orders  
962 issued to the bank in the name of the customer as sender will be verified pursuant to a  
963 security procedure, a payment order received by the receiving bank is effective as the  
964 order of the customer, whether or not authorized, if:

965 (i) the security procedure is a commercially reasonable method of providing security  
966 against unauthorized payment orders; and

967 (ii) the bank proves that it accepted the payment order in good faith and in  
968 compliance with the bank's obligations under the security procedure and any [  
969 written]agreement or instruction of the customer, evidenced by a record,  
970 restricting acceptance of payment orders issued in the name of the customer.

971 (b) The bank is not required to follow an instruction that violates [awritten] an  
972 agreement with the customer, evidenced by a record, or notice of which is not  
973 received at a time and in a manner affording the bank a reasonable opportunity to act  
974 on it before the payment order is accepted.

975 (3) Commercial reasonableness of a security procedure is a question of law to be  
976 determined by considering the wishes of the customer expressed to the bank, the  
977 circumstances of the customer known to the bank, including the size, type, and  
978 frequency of payment orders normally issued by the customer to the bank, alternative  
979 security procedures offered to the customer, and security procedures in general use by  
980 customers and receiving banks similarly situated. A security procedure is considered to  
981 be commercially reasonable if:

982 (a) the security procedure was chosen by the customer after the bank offered, and the

customer refused, a security procedure that was commercially reasonable for that customer; and

(b) the customer expressly agreed in [writing] a record to be bound by any payment order, whether or not authorized, issued in its name, and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

(4) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under Subsection (1), or it is effective as the order of the customer under Subsection (2).

(5) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(6) Except as provided in this section and in Subsection 70A-4a-203(2), rights and obligations arising under this section or Section 70A-4a-203 may not be varied by agreement.

Section 29. Section **70A-4a-203** is amended to read:

## **70A-4a-203 . Unenforceability of certain verified payment orders.**

(1) This section applies to an accepted payment order that, pursuant to Subsection 70A-4a-202(1), is not an authorized order of a customer identified as sender, but which is effective as the order of the customer pursuant to Subsection 70A-4a-202(2).

(2) By express [written]agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(3)(a) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by

- (i) a person entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or
- (ii) a person who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault.

(b) Information includes any access device, computer software or the like.

(4) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 30. Section **70A-4a-207** is amended to read:

1017       **70A-4a-207 . Misdescription of beneficiary.**

1018       (1) Subject to Subsection (2), if, in a payment order received by the beneficiary's bank, the  
1019           name, bank account number, or other identification of the beneficiary refers to a  
1020           nonexistent or unidentifiable person or account, no person has rights as a beneficiary of  
1021           the order and acceptance of the order cannot occur.

1022       (2) If a payment order received by the beneficiary's bank identifies the beneficiary both by  
1023           name and by an identifying or bank account number and the name and number identify  
1024           different persons then the following rules apply:

1025           (a) Except as otherwise provided in Subsection (3), the beneficiary's bank may treat the  
1026           person identified by number as the beneficiary of the order if the bank does not know  
1027           that the name and number refer to different persons, it may rely on the number as the  
1028           proper identification of the beneficiary of the order. The beneficiary's bank need not  
1029           determine whether the name and number refer to the same person.

1030           (b) If the beneficiary's bank pays the person identified by name or knows that the name  
1031           and number identify different persons, no person has rights as beneficiary except the  
1032           person paid by the beneficiary's bank if that person was entitled to receive payment  
1033           from the originator of the funds transfer. If no person has rights as beneficiary,  
1034           acceptance of the order cannot occur.

1035       (3) If the conditions listed in Subsections (3)(a), (b), and (c) are present, the rules listed in  
1036           Subsections (4) and (5) apply:

1037           (a) a payment order described in Subsection (2) is accepted;

1038           (b) the originator's payment order described the beneficiary inconsistently by name and  
1039           number; and

1040           (c) the beneficiary's bank pays the person identified by number as permitted by  
1041           Subsection (2)(a).

1042       (4) If the originator is a bank, the originator is obliged to pay its order.

1043       (5) If the originator is not a bank and proves that the person identified by number was not  
1044           entitled to receive payment from the originator, the originator is not obliged to pay its  
1045           order unless the originator's bank proves that the originator, before acceptance of the  
1046           originator's order, had notice that payment of a payment order issued by the originator  
1047           might be made by the beneficiary's bank on the basis of an identifying or bank account  
1048           number even if it identifies a person different from the named beneficiary. Proof of  
1049           notice may be made by any admissible evidence. The originator's bank satisfies the  
1050           burden of proof it if proves that the originator, before the payment order was accepted,

1051 signed a [writing] record stating the information to which the notice relates.

1052 (6) In a case governed by Subsection (2)(a), if the beneficiary's bank rightfully pays the  
1053 person identified by number and that person was not entitled to receive payment from  
1054 the originator, the amount paid may be recovered from that person to the extent allowed  
1055 by the law governing mistake and rescission as follows:  
1056 (a) If the originator is obliged to pay its payment order as stated in Subsection (3), the  
1057 originator has the right to recover.  
1058 (b) If the originator is not a bank and is not obliged to pay its payment order, the  
1059 originator's bank has the right to recover.

1060 Section 31. Section **70A-4a-208** is amended to read:

1061 **70A-4a-208 . Misdescription of intermediary bank or beneficiary's bank.**

1062 (1) This subsection applies to a payment order identifying an intermediary bank or  
1063 beneficiary's bank by an identifying number.  
1064 (a) The receiving bank may rely on the number as the proper identification of the  
1065 intermediary or beneficiary's bank and need not determine whether the number  
1066 identifies a bank.  
1067 (b) The sender is obliged to compensate the receiving bank for any loss and expenses  
1068 incurred by the receiving bank as a result of its reliance on the number in executing  
1069 or attempting to execute the order.

1070 (2) This subsection applies to a payment order identifying an intermediary bank or  
1071 beneficiary's bank both by name and an identifying number if the name and number  
1072 identify different persons.  
1073 (a) If the sender is a bank, the receiving bank may rely on the number as the proper  
1074 identification of the intermediary or beneficiary's bank if the receiving bank, when it  
1075 executes the sender's order, does not know that the name and number identify  
1076 different persons. The receiving bank need not determine whether the name and  
1077 number refer to the same person or whether the number refers to a bank. The sender  
1078 is obliged to compensate the receiving bank for any loss and expenses incurred by the  
1079 receiving bank as a result of its reliance on the number in executing or attempting to  
1080 execute the order.  
1081 (b) If the sender is not a bank and the receiving bank proves that the sender, before the  
1082 payment order was accepted, had notice that the receiving bank might rely on the  
1083 number as the proper identification of the intermediary or beneficiary's bank even if it  
1084 identifies a person different from the bank identified by name, the rights and

1085 obligations of the sender and the receiving bank are governed by Subsection (2)(a),  
1086 as though the sender were a bank. Proof of notice may be made by any admissible  
1087 evidence. The receiving bank satisfies the burden of proof if it proves that the  
1088 sender, before the payment order was accepted, signed a [writing] record stating the  
1089 information to which the notice relates.

1090 (c) Regardless of whether the sender is a bank, the receiving bank may rely on the name  
1091 as the proper identification of the intermediary or beneficiary's bank if the receiving  
1092 bank, at the time it executes the sender's order, does not know that the name and  
1093 number identify different persons. The receiving bank need not determine whether  
1094 the name and number refer to the same person.

1095 (d) If the receiving bank knows that the name and number identify different persons,  
1096 reliance on either the name or the number in executing the sender's payment order is  
1097 a breach of the obligation stated in Subsection 70A-4a-302(1)(a).

1098 Section 32. Section **70A-4a-210** is amended to read:

1099 **70A-4a-210 . Rejection of payment order.**

1100 (1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to  
1101 the sender orally[,-electronically,] or in [writing] a record. A notice of rejection need not  
1102 use any particular words and is sufficient if it indicates that the receiving bank is  
1103 rejecting the order or will not execute or pay the order. Rejection is effective when the  
1104 notice is given if transmission is by a means that is reasonable in the circumstances. If  
1105 notice of rejection is given by a means that is not commercially reasonable, rejection is  
1106 effective when the notice is received. If an agreement of the sender and receiving bank  
1107 establishes the means to be used to reject a payment order:  
1108 (a) any means complying with the agreement is commercially reasonable; and  
1109 (b) any means not complying is not commercially reasonable unless no significant delay  
1110 in receipt of the notice resulted from the use of the noncomplying means.

1111 (2) This subsection applies if a receiving bank other than the beneficiary's bank fails to  
1112 execute a payment order despite the existence on the execution date of a withdrawable  
1113 credit balance in an authorized account of the sender sufficient to cover the order. If the  
1114 sender does not receive notice of rejection of the order on the execution date and the  
1115 authorized account of the sender does not bear interest, the bank is obliged to pay  
1116 interest to the sender on the amount of the order for the number of days elapsing after  
1117 the execution date to the earlier of the day the order is canceled pursuant to Section  
1118 70A-4a-211 or the day the sender receives notice or learns that the order was not

1119       executed, counting the final day of the period as an elapsed day. If the withdrawable  
1120       credit balance during that period falls below the amount of the order, the amount of  
1121       interest is reduced accordingly.

1122       (3) If a receiving bank suspends payments, all unaccepted payment orders issued to the  
1123       bank are deemed rejected at the time the bank suspends payments.  
1124       (4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a  
1125       payment order precludes a later acceptance of the order.

1126       Section 33. Section **70A-4a-211** is amended to read:

1127       **70A-4a-211 . Cancellation and amendment of payment order.**

1128       (1) A communication of the sender of a payment order canceling or amending the order  
1129       may be transmitted to the receiving bank orally[,-eletronically,] or in [writing] a record.  
1130       If a security procedure is in effect between the sender and the receiving bank, the  
1131       communication is not effective to cancel or amend the order unless the communication  
1132       is verified pursuant to the security procedure or the bank agrees to the cancellation or  
1133       amendment.  
1134       (2) Subject to Subsection (1), a communication by the sender canceling or amending a  
1135       payment order is effective to cancel or amend the order if notice of the communication  
1136       is received at a time and in a manner affording the receiving bank a reasonable  
1137       opportunity to act on the communication before the bank accepts the payment order.  
1138       (3) After a payment order has been accepted, cancellation or amendment of the order is not  
1139       effective unless the receiving bank agrees or a funds transfer system rule allows  
1140       cancellation or amendment without agreement of the bank:  
1141           (a) With respect to a payment order accepted by a receiving bank other than the  
1142           beneficiary's bank, cancellation or amendment is not effective unless a conforming  
1143           cancellation or amendment of the payment order issued by the receiving bank is also  
1144           made.  
1145           (b) With respect to a payment order accepted by the beneficiary's bank, cancellation or  
1146           amendment is not effective unless the order was issued in execution of an  
1147           unauthorized payment order, or because of a mistake by a sender in the funds transfer  
1148           which resulted in the issuance of a payment order:  
1149              (i) that is a duplicate of a payment order previously issued by the sender;  
1150              (ii) that orders payment to a beneficiary not entitled to receive payment from the  
1151               originator; or  
1152              (iii) that orders payment in an amount greater than the amount the beneficiary was

entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

- (4) An unaccepted payment order is canceled by operation of law at the close of the fifth funds transfer business day of the receiving bank after the execution date or payment date of the order.
- (5) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.
- (6) Unless otherwise provided in an agreement of the parties or in a funds transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorneys' fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.
- (7) A payment order is not revoked by death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.
- (8) A funds transfer system rule is not effective to the extent it conflicts with Subsection (3)(b).

Section 34. Section **70A-4a-305** is amended to read:

## **70A-4a-305 . Liability for late or improper execution or failure to execute court order.**

(1) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 70A-4a-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in Subsection (3), additional damages are not recoverable.

(2)(a) If execution of a payment order by a receiving bank in breach of Section

1187 70A-4a-302 results in noncompletion of the funds transfer, failure to use an  
1188 intermediary bank designated by the originator, or issuance of a payment order that  
1189 does not comply with the terms of the payment order of the originator, the bank is  
1190 liable to the originator for its expenses in the funds transfer and for incidental  
1191 expenses and interest losses, to the extent not covered by Subsection (1), resulting  
1192 from the improper execution.

1193 (b) Except as provided in Subsection (3), additional damages are not recoverable.

1194 (3) In addition to the amounts payable under Subsections (1) and (2), damages, including  
1195 consequential damages, are recoverable to the extent provided in an express [written-]  
1196 agreement of the receiving bank, evidenced by a record.

1197 (4) If a receiving bank fails to execute a payment order it was obliged by express agreement  
1198 to execute, the receiving bank is obliged to compensate the sender for its expenses in the  
1199 transaction and for incidental expenses and interest losses resulting from the failure to  
1200 execute. Additional damages, including consequential damages, are recoverable to the  
1201 extent provided in an express [written-]agreement of the receiving bank, evidenced by a  
1202 record, but are not otherwise recoverable.

1203 (5) Reasonable attorneys' fees are recoverable if demand for compensation under  
1204 Subsection (1) or (2) is made and refused before an action is brought on the claim. If a  
1205 claim is made for breach of the agreement under Subsection (4) and the agreement does  
1206 not provide for damages, reasonable attorneys' fees are recoverable if demand for  
1207 compensation under Subsection (4) is made and refused before an action is brought on  
1208 the claim.

1209 (6) Except as stated in this section, the liability of a receiving bank under Subsections (1)  
1210 and (2) may not be varied by agreement.

1211 Section 35. Section **70A-5-104** is amended to read:

1212 **70A-5-104 . Formal requirements.**

1213 A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be  
1214 issued in any form that is a signed record.[-and is authenticated:]

1215 [(1) by a signature; or]

1216 [(2) in accordance with the agreement of the parties or the standard practice referred to in  
1217 Subsection 70A-5-108(5).]

1218 Section 36. Section **70A-5-116** is amended to read:

1219 **70A-5-116 . Choice of law and forum.**

1220 (1) The liability of an issuer, nominated person, or adviser for action or omission is

1221 governed by the law of the jurisdiction chosen by an agreement in the form of a record  
1222 signed [or otherwise authenticated] by the affected parties [in the manner provided in  
1223 Section 70A-5-104] or by a provision in the person's letter of credit, confirmation, or  
1224 other undertaking. The jurisdiction whose law is chosen need not bear any relation to  
1225 the transaction.

1226 (2) Unless Subsection (1) applies, the liability of an issuer, nominated person, or adviser for  
1227 action or omission is governed by the law of the jurisdiction in which the person is  
1228 located. The person is considered to be located at the address indicated in the person's  
1229 undertaking. If more than one address is indicated, the person is considered to be  
1230 located at the address from which the person's undertaking was issued.

1231 (3) [–]For the purpose of jurisdiction, choice of law, and recognition of interbranch letters  
1232 of credit, but not enforcement of a judgment, all branches of a bank are considered  
1233 separate juridical entities and a bank is considered to be located at the place where its  
1234 relevant branch is considered to be located under [this]Subsection [(2)] (4).

1235 (4) A branch of a bank is considered to be located at the address indicated in the branch's  
1236 undertaking. If more than one address is indicated, the branch is considered to be located  
1237 at the address from which the undertaking was issued.

1238 [(3)] (5)(a) Except as otherwise provided in this Subsection [(3)(a)] (5)(a), the liability of  
1239 an issuer, nominated person, or adviser is governed by any rules of custom or  
1240 practice, such as the Uniform Customs and Practice for Documentary Credits, to  
1241 which the letter of credit, confirmation, or other undertaking is expressly made  
1242 subject.

1243 (b) If this chapter would govern the liability of an issuer, nominated person, or adviser  
1244 under Subsection (1) or (2):  
1245 (i) the relevant undertaking incorporates rules of custom or practice; and  
1246 (ii) there is conflict between this chapter and those rules as applied to that  
1247 undertaking, those rules govern except to the extent of any conflict with the  
1248 nonvariable provisions specified in Subsection 70A-5-103(3).

1249 [(4)] (6) If there is conflict between this chapter and Title 70A, Chapter 3, Uniform  
1250 Commercial Code - Negotiable Instruments, Chapter 4, Uniform Commercial Code -  
1251 Bank Deposits and Collections, Chapter 4a, Uniform Commercial Code - Funds  
1252 Transfers, or Chapter 9a, Uniform Commercial Code - Secured Transactions, this  
1253 chapter governs.

1254 [(5)] (7) The forum for settling disputes arising out of an undertaking within this chapter

1255 may be chosen in the manner and with the binding effect that governing law may be  
1256 chosen in accordance with Subsection (1).

1257 Section 37. Section **70A-7a-102** is amended to read:

1258 **70A-7a-102 . Definitions and index of definitions.**

1259 (1) In this chapter, unless the context otherwise requires:

1260 (a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other  
1261 document of title acknowledges possession of goods and contracts to deliver them.

1262 (b) "Carrier" means a person that issues a bill of lading.

1263 (c) "Consignee" means a person named in a bill of lading to which or to whose order the  
1264 bill promises delivery.

1265 (d) "Consignor" means a person named in a bill of lading as the person from which the  
1266 goods have been received for shipment.

1267 (e) "Delivery order" means a record that contains an order to deliver goods directed to a  
1268 warehouse, carrier, or other person that in the ordinary course of business issues  
1269 warehouse receipts or bills of lading.

1270 (f) "Good faith" means honesty in fact and the observance of reasonable commercial  
1271 standards of fair dealing.

1272 (g) "Goods" means all things that are treated as movable for the purposes of a contract  
1273 for storage or transportation.

1274 (h) "Issuer" means a bailee that issues a document of title or, in the case of an  
1275 unaccepted delivery order, the person that orders the possessor of goods to deliver.  
1276 The term includes a person for which an agent or employee purports to act in issuing  
1277 a document if the agent or employee has real or apparent authority to issue  
1278 documents, even if the issuer did not receive any goods, the goods were  
1279 misdescribed, or in any other respect the agent or employee violated the issuer's  
1280 instructions.

1281 (i) "Person entitled under the document" means the holder, in the case of a negotiable  
1282 document of title, or the person to which delivery of the goods is to be made by the  
1283 terms of, or pursuant to instructions in a record under, a nonnegotiable document of  
1284 title.

1285 [ (j) "Record" means information that is inscribed on a tangible medium or that is stored  
1286 in an electronic or other medium and is retrievable in perceivable form.]

1287 [ (k) (j) "Shipper" means a person that enters into a contract of transportation with a  
1288 carrier.

1289 [~~(i)~~ "Sign" means, with present intent to authenticate or adopt a record:]  
1290 [~~(i)~~ to execute or adopt a tangible symbol; or]  
1291 [~~(ii)~~ to attach to or logically associate with the record an electronic sound, symbol, or  
1292 process.]

1293 [~~(m)~~] (k) "Warehouse" means a person engaged in the business of storing goods for hire.

1294 (2) Definitions in other chapters applying to this chapter and the sections in which they  
1295 appear are:

1296 (a) "Contract for sale," Section 70A-2-106.  
1297 (b) "Lessee in the ordinary course of business," Section 70A-2a-103.  
1298 (c) "Receipt" of goods, Section 70A-2-103.

1299 (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains  
1300 general definitions and principles of construction and interpretation applicable  
1301 throughout this chapter.

1302 Section 38. Section **70A-7a-106** is amended to read:

1303 **70A-7a-106 . Control of electronic document of title.**

1304 (1) A person has control of an electronic document of title if a system employed for  
1305 evidencing the transfer of interests in the electronic document reliably establishes that  
1306 person as the person to which the electronic document was issued or transferred.  
1307 (2) A system satisfies Subsection (1), and a person [~~is considered to have~~] has control of an  
1308 electronic document of title, if the document is created, stored, and [~~assigned~~] transferred  
1309 in [~~such~~]a manner that:  
1310 (a) a single authoritative copy of the document exists which is unique, identifiable, and,  
1311 except as otherwise provided in Subsections (2)(d), (e), and (f), unalterable;  
1312 (b) the authoritative copy identifies the person asserting control as:  
1313 (i) the person to which the document was issued; or  
1314 (ii) if the authoritative copy indicates that the document has been transferred, the  
1315 person to which the document was most recently transferred;  
1316 (c) the authoritative copy is communicated to and maintained by the person asserting  
1317 control or its designated custodian;  
1318 (d) copies or amendments that add or change an identified [~~assignee~~] transferee of the  
1319 authoritative copy can be made only with the consent of the person asserting control;  
1320 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a  
1321 copy that is not the authoritative copy; and  
1322 (f) any amendment of the authoritative copy is readily identifiable as authorized or

1323 unauthorized.

1324 (3) A system satisfies Subsection (1) and a person has control of an electronic document of  
1325 title, if an authoritative electronic copy of the document, a record attached to or logically  
1326 associated with the electronic copy, or a system in which the electronic copy is recorded:  
1327 (a) enables the person to readily identify each electronic copy as either an authoritative  
1328 copy or a nonauthoritative copy;  
1329 (b) enables the person to readily identify itself in any way, including by name,  
1330 identifying number, cryptographic key, office, or account number, as the person to  
1331 which each authoritative electronic copy was issued or transferred; and  
1332 (c) gives the person exclusive power, subject to Subsection (4), to:  
1333 (i) prevent others from adding or changing the person to which each authoritative  
1334 electronic copy has been issued or transferred; and  
1335 (ii) transfer control of each authoritative electronic copy.

1336 (4) Subject to Subsection (5), a power is exclusive under Subsections (3)(c)(i) and (ii) even  
1337 if:  
1338 (a) the authoritative electronic copy, a record attached to or logically associated with the  
1339 authoritative electronic copy, or a system in which the authoritative electronic copy is  
1340 recorded limits the use of the document of title or has a protocol that is programmed  
1341 to cause a change, including a transfer or loss of control; or  
1342 (b) the power is shared with another person.

1343 (5) A power of a person is not shared with another person under Subsection (4)(b) and the  
1344 person's power is not exclusive if:  
1345 (a) the person can exercise the power only if the power also is exercised by the other  
1346 person; and  
1347 (b) the other person:  
1348 (i) can exercise the power without exercise of the power by the person; or  
1349 (ii) is the transferor to the person of an interest in the document of title.

1350 (6) If a person has the powers specified in Subsections (3)(c)(i) and (ii), the powers are  
1351 presumed to be exclusive.  
1352 (7) A person has control of an electronic document of title if another person, other than the  
1353 transferor to the person of an interest in the document:  
1354 (a) has control of the document and acknowledges that it has control on behalf of the  
1355 person; or  
1356 (b) obtains control of the document after having acknowledged that it will obtain control

1357                   of the document on behalf of the person.

1358                   (8) A person that has control under this section is not required to acknowledge that it has  
1359                   control on behalf of another person.

1360                   (9) If a person acknowledges that it has or will obtain control on behalf of another person,  
1361                   unless the person otherwise agrees or law other than this chapter or Chapter 9a, Uniform  
1362                   Commercial Code - Secured Transactions, otherwise provides, the person does not owe  
1363                   any duty to the other person and is not required to confirm the acknowledgment to any  
1364                   other person.

1365                   Section 39. Section **70A-8-101** is amended to read:

1366                   **70A-8-101 . Definitions.**

1367                   (1) As used in this chapter:

1368                   (a) "Adverse claim" means a claim that a claimant has a property interest in a financial  
1369                   asset and that it is a violation of the rights of the claimant for another person to hold,  
1370                   transfer, or deal with the financial asset.

1371                   (b) "Bearer form," as applied to a certificated security, means a form in which the  
1372                   security is payable to the bearer of the security certificate according to its terms but  
1373                   not by reason of an indorsement.

1374                   (c) "Broker" means a person defined as a broker or dealer under the federal securities  
1375                   laws, but without excluding a bank acting in that capacity.

1376                   (d) "Certificated security" means a security that is represented by a certificate.

1377                   (e) "Clearing corporation" means:

1378                   (i) a person that is registered as a "clearing agency" under the federal securities laws;  
1379                   (ii) a federal reserve bank; or

1380                   (iii) any other person that provides clearance or settlement services with respect to  
1381                   financial assets that would require it to register as a clearing agency under the  
1382                   federal securities laws but for an exclusion or exemption from the registration  
1383                   requirement, if its activities as a clearing corporation, including promulgation of  
1384                   rules, are subject to regulation by a federal or state governmental authority.

1385                   (f) "Communicate" means to:

1386                   (i) send a signed [writing] record; or  
1387                   (ii) transmit information by any mechanism agreed upon by the persons transmitting  
1388                   and receiving the information.

1389                   (g) "Entitlement holder" means a person identified in the records of a securities  
1390                   intermediary as the person having a security entitlement against the securities

1391 intermediary. If a person acquired a security entitlement by virtue of Subsection  
1392 70A-8-501(2)(b) or (c), that person is the entitlement holder.

1393 (h) "Entitlement order" means a notification communicated to a securities intermediary  
1394 directing transfer or redemption of a financial asset to which the entitlement holder  
1395 has a security entitlement.

1396 (i)(i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:

1397 (A) a security;

1398 (B) an obligation of a person or a share, participation, or other interest in a person  
1399 or in property or an enterprise of a person, which is or is of a type, dealt in or  
1400 traded on financial markets, or which is recognized in any area in which it is  
1401 issued or dealt in as a medium for investment; or

1402 (C) any property that is held by a securities intermediary for another person in a  
1403 securities account if that securities intermediary has expressly agreed with the  
1404 other person that the property is to be treated as a financial asset under this  
1405 chapter.

1406 (ii) As context requires, "financial asset" means either the interest itself or the means  
1407 by which a person's claim to it is evidenced, including a certificated or  
1408 uncertificated security, a security certificate, or a security entitlement.

1409 (j) "Good faith," for purposes of the obligation of good faith in the performance or  
1410 enforcement of contracts or duties within this chapter, means honesty in fact and the  
1411 observance of reasonable commercial standards of fair dealing.

1412 (k) "Indorsement" means a signature that alone or accompanied by other words is made  
1413 on a security certificate in registered form or on a separate document for the purpose  
1414 of assigning, transferring, or redeeming the security or granting a power to assign,  
1415 transfer, or redeem it.

1416 (l) "Instruction" means a notification communicated to the issuer of an uncertificated  
1417 security which directs that the transfer of the security be registered or that the  
1418 security be redeemed.

1419 (m) "Land company" means a mutual benefit corporation, as defined in Section  
1420 16-6a-102, that bases the use of the corporation's land on issued share ownership.

1421 (n) "Registered form," as applied to a certificated security, means a form in which:  
1422 (i) the security certificate specifies a person entitled to the security; and  
1423 (ii) a transfer of the security may be registered upon books maintained for that  
1424 purpose by or on behalf of the issuer, or the security certificate so states.

1425 (o) "Securities intermediary" means:  
1426 (i) a clearing corporation; or  
1427 (ii) a person, including a bank or broker, that in the ordinary course of its business  
1428 maintains securities accounts for others and is acting in that capacity.

1429 (p) "Security," except as otherwise provided in Section 70A-8-102, means an obligation  
1430 of an issuer or a share, participation, or other interest in an issuer or in property or an  
1431 enterprise of an issuer that:  
1432 (i) is represented by a security certificate in bearer or registered form, or the transfer  
1433 of which may be registered upon books maintained for that purpose by or on  
1434 behalf of the issuer;  
1435 (ii) is one of a class or series or by its terms is divisible into a class or series of  
1436 shares, participations, interests, or obligations; and  
1437 (iii)(A) is, or is of a type, dealt in or traded on securities exchanges or securities  
1438 markets; or  
1439 (B) is a medium for investment and by its terms expressly provides that it is a  
1440 security governed by this chapter.

1441 (q) "Security certificate" means a certificate representing a security.  
1442 (r) "Security entitlement" means the rights and property interest of an entitlement holder  
1443 with respect to a financial asset specified in Part 5, Security Entitlements.  
1444 (s) "Uncertificated security" means a security that is not represented by a certificate.  
1445 (t) "Water company" is as defined in Section 16-4-102.

1446 (2) ~~[Other] The following definitions [applying to] in this chapter and [the sections in which  
1447 they appear are] other chapters apply to this chapter:~~  
1448 (a) "Appropriate person," Section 70A-8-106.  
1449 (b) "Control," Section 70A-8-105.  
1450 (c) "Controllable account," Section 70A-9a-102.  
1451 (d) "Controllable electronic record," Section 70A-12-102.  
1452 (e) "Controllable payment intangible," Section 70A-9a-102.  
1453 [(e)] (f) "Delivery," Section 70A-8-301.  
1454 [(d)] (g) "Investment company security," Section 70A-8-102.  
1455 [(e)] (h) "Issuer," Section 70A-8-201.  
1456 [(f)] (i) "Overissue," Section 70A-8-210.  
1457 [(g)] (j) "Protected purchaser," Section 70A-8-303.  
1458 [(h)] (k) "Securities account," Section 70A-8-501.

1459 (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains  
1460 general definitions and principles of construction and interpretation applicable  
1461 throughout this chapter.  
1462 (4) The characterization of a person, business, or transaction for purposes of this chapter  
1463 does not determine the characterization of the person, business, or transaction for  
1464 purposes of any other law, regulation, or rule.

1465 Section 40. Section **70A-8-102** is amended to read:

1466 **70A-8-102 . Rules for determining whether certain obligations and interests are**  
1467 **securities or financial assets.**

1468 (1) A share or similar equity interest issued by a corporation, business trust, joint stock  
1469 company, or similar entity is a security.  
1470 (2) An "investment company security" is a security. "Investment company security" means  
1471 a share or similar equity interest issued by an entity that is registered as an investment  
1472 company under the federal investment company laws, an interest in a unit investment  
1473 trust that is so registered, or a face-amount certificate issued by a face-amount certificate  
1474 company that is so registered. Investment company security does not include an  
1475 insurance policy or endowment policy or annuity contract issued by an insurance  
1476 company.  
1477 (3) An interest in a partnership or limited liability company is not a security unless it is  
1478 dealt in or traded on securities exchanges or in securities markets, its terms expressly  
1479 provide that it is a security governed by this chapter, or it is an investment company  
1480 security. However, an interest in a partnership or limited liability company is a financial  
1481 asset if it is held in a securities account.  
1482 (4) A writing that is a security certificate is governed by this chapter and not by Chapter 3,  
1483 Uniform Commercial Code - Negotiable Instruments, even though it also meets the  
1484 requirements of that chapter. However, a negotiable instrument governed by Chapter 3,  
1485 Uniform Commercial Code - Negotiable Instruments, is a financial asset if it is held in a  
1486 securities account.  
1487 (5) An option or similar obligation issued by a clearing corporation to its participants is not  
1488 a security, but is a financial asset.  
1489 (6) A commodity contract, as defined in [Subsection 70A-9a-102(15)] Section 70A-9a-102,  
1490 is not a security or a financial asset.  
1491 (7) A document of title is not a financial asset unless Subsection 70A-8-101(1)(i)(i)(C)  
1492 applies.

1493 (8) A controllable account, controllable electronic record, or controllable payment  
1494 intangible is not a financial asset unless Subsection 70A-8-101(1)(i)(C) applies.

1495 Section 41. Section **70A-8-105** is amended to read:

1496 **70A-8-105 . Control.**

1497 (1) A purchaser has "control" of a certificated security in bearer form if the certificated  
1498 security is delivered to the purchaser.

1499 (2) A purchaser has "control" of a certificated security in registered form if the certificated  
1500 security is delivered to the purchaser, and:

1501 (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or  
1502 (b) the certificate is registered in the name of the purchaser, upon original issue or  
1503 registration of transfer by the issuer.

1504 (3) A purchaser has "control" of an uncertificated security if:

1505 (a) the uncertificated security is delivered to the purchaser; or  
1506 (b) the issuer has agreed that it will comply with instructions originated by the purchaser  
1507 without further consent by the registered owner.

1508 (4) A purchaser has "control" of a security entitlement if:

1509 (a) the purchaser becomes the entitlement holder;

1510 (b) the securities intermediary has agreed that it will comply with entitlement orders  
1511 originated by the purchaser without further consent by the entitlement holder; or

1512 (c) another person[~~has control of the security entitlement on behalf of the purchaser or,~~  
1513 ~~having previously acquired control of the security entitlement, acknowledges that it~~  
1514 ~~has control on behalf of the purchaser] , other than the transferor to the purchaser of~~  
1515 ~~an interest in the security entitlement:~~

1516 (i) has control of the security entitlement and acknowledges that it has control on  
1517 behalf of the purchaser; or

1518 (ii) obtains control of the security entitlement after having acknowledged that it will  
1519 obtain control of the security entitlement on behalf of the purchaser.

1520 (5) If an interest in a security entitlement is granted by the entitlement holder to the  
1521 entitlement holder's own securities intermediary, the securities intermediary has control.

1522 (6) A purchaser who has satisfied the requirements of Subsection (3)(b) or (4)(b) has  
1523 control even if the registered owner in the case of Subsection (3)(b) or the entitlement  
1524 holder in the case of Subsection (4)(b) retains the right to make substitutions for the  
1525 uncertificated security or security entitlement, to originate instructions or entitlement  
1526 orders to the issuer or securities intermediary, or otherwise to deal with the

1527                   uncertificated security or security entitlement.

1528                   (7) An issuer or a securities intermediary may not enter into an agreement of the kind  
1529                   described in Subsection (3)(b) or (4)(b) without the consent of the registered owner or  
1530                   entitlement holder, but an issuer or a securities intermediary is not required to enter into  
1531                   such an agreement even though the registered owner or entitlement holder so directs.  
1532                   An issuer or securities intermediary that has entered into such an agreement is not  
1533                   required to confirm the existence of the agreement to another party unless requested to  
1534                   do so by the registered owner or entitlement holder.

1535                   (8) A person that has control under this section is not required to acknowledge that it has  
1536                   control on behalf of a purchaser.

1537                   (9) If a person acknowledges that it has or will obtain control on behalf of a purchaser,  
1538                   unless the person otherwise agrees or law other than this chapter or Chapter 9a, Uniform  
1539                   Commercial Code - Secured Transactions, otherwise provides, the person does not owe  
1540                   any duty to the purchaser and is not required to confirm the acknowledgment to any  
1541                   other person.

1542                   Section 42. Section **70A-8-303** is amended to read:

1543                   **70A-8-303 . Protected purchaser.**

1544                   (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or  
1545                   of an interest in the security, who:  
1546                   (a) gives value;  
1547                   (b) does not have notice of an adverse claim to the security;  
1548                   (c) obtains control of the security; and  
1549                   (d) for a share of stock issued by a land company or a water company:  
1550                   (i) pays, or whose predecessors in interest paid, an assessment levied against the  
1551                   share of stock for at least four of the immediate past seven years by the land  
1552                   company or the water company; or  
1553                   (ii) has used, or whose predecessors in interest have used, either directly or indirectly,  
1554                   the water available under the share of stock issued by a water company for at least  
1555                   four of the immediate past seven years.

1556                   (2) ~~[In addition to acquiring the rights of a purchaser, a]~~ A protected purchaser acquires the  
1557                   purchaser's interest in the certificated or uncertificated security, share of stock in a land  
1558                   company, or share of stock in a water company free of any adverse claim.

1559                   Section 43. Section **70A-9a-102** is amended to read:

1560                   **70A-9a-102 . Definitions and index of definitions.**

1561 In this chapter:

1562 (1) "Accession" means goods that are physically united with other goods in such a manner  
1563 that the identity of the original goods is not lost.

1564 (2)(a) "Account," except as used in "account for[;]", "account to," "commodity account"  
1565 in Subsection (15), "customer's account," "deposit account" in Subsection (32), "on  
1566 account of," and "statement of account," means a right to payment of a monetary  
1567 obligation, whether or not earned by performance:

1568 (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise  
1569 disposed of;

1570 (ii) for services rendered or to be rendered;

1571 (iii) for a policy of insurance issued or to be issued;

1572 (iv) for a secondary obligation incurred or to be incurred;

1573 (v) for energy provided or to be provided;

1574 (vi) for the use or hire of a vessel under a charter or other contract;

1575 (vii) arising out of the use of a credit or charge card or information contained on or  
1576 for use with the card; or

1577 (viii) as winnings in a lottery or other game of chance operated or sponsored by a  
1578 state, governmental unit of a state, or person licensed or authorized to operate the  
1579 game by a state or governmental unit of a state.

1580 (b) "Account" includes controllable account and health-care-insurance receivables.

1581 (c) "Account" does not include:

1582 (i) [rights to payment evidenced by chattel paper or an instrument] chattel paper;

1583 (ii) commercial tort claims;

1584 (iii) deposit accounts;

1585 (iv) investment property;

1586 (v) letter-of-credit rights or letters of credit;[-or]

1587 (vi) rights to payment for money or funds advanced or sold, other than rights arising  
1588 out of the use of a credit or charge card or information contained on or for use  
1589 with the card[.] ; or

1590 (vii) rights to payment evidenced by an instrument.

1591 (3)(a) "Account debtor" means a person obligated on an account, chattel paper, or  
1592 general intangible.

1593 (b) "Account debtor" does not include persons obligated to pay a negotiable instrument,  
1594 even if the negotiable instrument [e]nstitutes part of] evidences chattel paper.

1595 (4) "Accounting," except as used in "accounting for," means a record:

1596 (a) [authenticated-] signed by a secured party;

1597 (b) indicating the aggregate unpaid secured obligations as of a date not more than 35  
1598 days earlier or 35 days later than the date of the record; and

1599 (c) identifying the components of the obligations in reasonable detail.

1600 (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

1601 (a) which secures payment or performance of an obligation for:

1602 (i) goods or services furnished in connection with a debtor's farming operation; or

1603 (ii) rent on real property leased by a debtor in connection with its farming operation;

1604 (b) which is created by statute in favor of a person that:

1605 (i) in the ordinary course of its business furnished goods or services to a debtor in  
1606 connection with a debtor's farming operation; or

1607 (ii) leased real property to a debtor in connection with the debtor's farming operation;  
1608 and

1609 (c) whose effectiveness does not depend on the person's possession of the personal  
1610 property.

1611 (6) "As-extracted collateral" means:

1612 (a) oil, gas, or other minerals that are subject to a security interest that:

1613 (i) is created by a debtor having an interest in the minerals before extraction; and

1614 (ii) attaches to the minerals as extracted; or

1615 (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other  
1616 minerals in which the debtor had an interest before extraction.

1617 [(7) "Authenticate" means:]

1618 [(a) to sign; or]

1619 [(b) with present intent to adopt or accept a record, to attach to or logically associate  
1620 with the record an electronic sound, symbol, or process.]

1621 (7)(a) "Assignee," except as used in "assignee for benefit of creditors," means a person:

1622 (i) in whose favor a security interest that secures an obligation is created or provided  
1623 for under a security agreement, whether or not the obligation is outstanding; or

1624 (ii) to which an account, chattel paper, payment intangible, or promissory note has  
1625 been sold.

1626 (b) "Assignee" includes a person to which a security interest has been transferred by a  
1627 secured party.

1628 (8)(a) "Assignor" means a person that:

1629 (i) under a security agreement creates or provides for a security interest that secures  
1630 an obligation; or

1631 (ii) sells an account, chattel paper, payment intangible, or promissory note.

1632 (b) "Assignor" includes a secured party that has transferred a security interest to another  
1633 person.

1634 [(8)] (9)(a) "Bank" means an organization that is engaged in the business of banking.

1635 (b) "Bank" includes:

1636 (i) a depository institution as defined in Section 7-1-103; and

1637 (ii) a trust company.

1638 [(9)] (10) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the  
1639 like.

1640 [(10)] (11)(a) "Certificate of title" means a certificate of title with respect to which a  
1641 statute provides for the security interest in question to be indicated on the certificate  
1642 as a condition or result of the security interest's obtaining priority over the rights of a  
1643 lien creditor with respect to the collateral.

1644 (b) "Certificate of title" includes another record maintained as an alternative to a  
1645 certificate of title by the governmental unit that issues certificates of title if a statute  
1646 permits the security interest in question to be indicated on the record as a condition or  
1647 result of the security interest's obtaining priority over the rights of a lien creditor with  
1648 respect to the collateral.

1649 [(11)(a) "Chattel paper" means a record or records that evidence both a monetary  
1650 obligation and a security interest in specific goods, a security interest in specific  
1651 goods and software used in the goods, a security interest in specific goods and license  
1652 of software used in the goods, a lease of specific goods, or a lease of specific goods  
1653 and license of software used in the goods. In this Subsection (11), "monetary  
1654 obligation" means a monetary obligation secured by the goods or owed under a lease  
1655 of the goods and includes a monetary obligation with respect to software used in the  
1656 goods.]

1657 [(b) "Chattel paper" does not include:]

1658 [(i) charters or other contracts involving the use or hire of a vessel; or]

1659 [(ii) records that evidence a right to payment arising out of the use of a credit or  
1660 charge card or information contained or for use with the card.]

1661 [(c) If a transaction is evidenced by records that include an instrument or series of  
1662 instruments, the group of records taken together constitutes chattel paper.]

1663 (12)(a) "Chattel paper" means:

1664 (i) a right to payment of a monetary obligation secured by specific goods, if the right  
1665 to payment and security agreement are evidenced by a record; or

1666 (ii) a right to payment of a monetary obligation owed by a lessee under a lease  
1667 agreement with respect to specific goods and a monetary obligation owed by the  
1668 lessee in connection with the transaction giving rise to the lease, if:

1669 (A) the right to payment and lease agreement are evidenced by a record; and

1670 (B) the predominant purpose of the transaction giving rise to the lease was to give  
1671 the lessee the right to possession and use of the goods.

1672 (b) "Chattel paper" does not include a right to payment arising out of a charter or other  
1673 contract involving the use or hire of a vessel or a right to payment arising out of the  
1674 use of a credit or charge card or information contained on or for use with the card.

1675 [(12)] (13) "Collateral" means the property subject to a security interest or agricultural lien.

1676 "Collateral" includes:

1677 (a) proceeds to which a security interest attaches;

1678 (b) accounts, chattel paper, payment intangibles, and promissory notes that have been  
1679 sold; and

1680 (c) goods that are the subject of a consignment.

1681 [(13)] (14) "Commercial tort claim" means a claim arising in tort with respect to which:

1682 (a) the claimant is an organization; or

1683 (b) the claimant is an individual and the claim:

1684 (i) arose in the course of the claimant's business or profession; and

1685 (ii) does not include damages arising out of personal injury to or the death of an  
1686 individual.

1687 [(14)] (15) "Commodity account" means an account maintained by a commodity  
1688 intermediary in which a commodity contract is carried for a commodity customer.

1689 [(15)] (16) "Commodity contract" means a commodity futures contract, an option on a  
1690 commodity futures contract, a commodity option, or another contract if the contract or  
1691 option is:

1692 (a) traded on or subject to the rules of a board of trade that has been designated as a  
1693 contract market for such a contract pursuant to federal commodities laws; or

1694 (b) traded on a foreign commodity board of trade, exchange, or market, and is carried on  
1695 the books of a commodity intermediary for a commodity customer.

1696 [(16)] (17) "Commodity customer" means a person for which a commodity intermediary

1697 carries a commodity contract on its books.

1698 [(17)] (18) "Commodity intermediary" means a person that:

- 1699 (a) is registered as a futures commission merchant under federal commodities law; or
- 1700 (b) in the ordinary course of its business provides clearance or settlement services for a
- 1701 board of trade that has been designated as a contract market pursuant to federal
- 1702 commodities law.

1703 [(18)] (19) "Communicate" means:

- 1704 (a) to send a written or other tangible record;
- 1705 (b) to transmit a record by any means agreed upon by the persons sending and receiving
- 1706 the record; or
- 1707 (c) in the case of transmission of a record to or by a filing office, to transmit a record by
- 1708 any means prescribed by filing-office rule.

1709 [(19)] (20) "Consignee" means a merchant to which goods are delivered in a consignment.

1710 [(20)] (21) "Consignment" means a transaction, regardless of its form, in which a person

1711 delivers goods to a merchant for the purpose of sale and:

- 1712 (a) the merchant:
  - 1713 (i) deals in goods of that kind under a name other than the name of the person making
  - 1714 delivery;
  - 1715 (ii) is not an auctioneer; and
  - 1716 (iii) is not generally known by its creditors to be substantially engaged in selling the
  - 1717 goods of others;
- 1718 (b) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at
- 1719 the time of delivery;
- 1720 (c) the goods are not consumer goods immediately before delivery; and
- 1721 (d) the transaction does not create a security interest that secures an obligation.

1722 [(21)] (22) "Consignor" means a person that delivers goods to a consignee in a consignment.

1723 [(22)] (23) "Consumer debtor" means a debtor in a consumer transaction.

1724 [(23)] (24) "Consumer goods" means goods that are used or bought for use primarily for

1725 personal, family, or household purposes.

1726 [(24)] (25) "Consumer-goods transaction" means a consumer transaction in which:

- 1727 (a) an individual incurs an obligation primarily for personal, family, or household
- 1728 purposes; and
- 1729 (b) a security interest in consumer goods secures the obligation.

1730 [(25)] (26) "Consumer obligor" means an obligor who is an individual and who incurred the

1731 obligation as part of a transaction entered into primarily for personal, family, or  
1732 household purposes.

1733 [(26)] (27)(a) "Consumer transaction" means a transaction in which:

1734 (i) an individual incurs an obligation primarily for personal, family, or household  
1735 purposes;  
1736 (ii) a security interest secures the obligation; and  
1737 (iii) the collateral is held or acquired primarily for personal, family, or household  
1738 purposes.

1739 (b) "Consumer transaction" includes consumer-goods transactions.

1740 [(27)] (28) "Continuation statement" means an amendment of a financing statement which:

1741 (a) identifies, by its file number, the initial financing statement to which it relates; and  
1742 (b) indicates that it is a continuation statement for, or that it is filed to continue the  
1743 effectiveness of, the identified financing statement.

1744 (29) "Controllable account" means an account evidenced by a controllable electronic record  
1745 that provides that the account debtor undertakes to pay the person that has control under  
1746 Section 70A-12-105 of the controllable electronic record.

1747 (30) "Controllable payment intangible" means a payment intangible evidenced by a  
1748 controllable electronic record that provides that the account debtor undertakes to pay the  
1749 person that has control under Section 70A-12-105 of the controllable electronic record.

1750 [(28)] (31) "Debtor" means:

1751 (a) a person having an interest, other than a security interest or other lien, in the  
1752 collateral, whether or not the person is an obligor;  
1753 (b) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or  
1754 (c) a consignee.

1755 [(29)] (32)(a) "Deposit account" means a demand, time, savings, passbook, or similar  
1756 account maintained with a bank.

1757 (b) "Deposit account" does not include investment property or accounts evidenced by an  
1758 instrument.

1759 [(30)] (33) "Document" means a document of title or a receipt of the type described in  
1760 Subsection 70A-7a-201(2).

1761 [(31) "Electronic chattel paper" means chattel paper evidenced by a record or records  
1762 consisting of information stored in an eleetronic medium.]

1763 (34) "Electronic money" means money in an electronic form.

1764 [(32)] (35) "Encumbrance" means a right, other than an ownership interest, in real property.

1765        "Encumbrance" includes mortgages and other liens on real property.

1766        [(33)] (36) "Equipment" means goods other than inventory, farm products, or consumer  
1767        goods.

1768        [(34)] (37) "Farm products" means goods, other than standing timber, with respect to which  
1769        the debtor is engaged in a farming operation and which are:

1770        (a) crops grown, growing, or to be grown, including:  
1771            (i) crops produced on trees, vines, and bushes; and  
1772            (ii) aquatic goods produced in aquacultural operations;

1773        (b) livestock, born or unborn, including aquatic goods produced in aquacultural  
1774        operations;

1775        (c) supplies used or produced in a farming operation; or  
1776        (d) products of crops or livestock in their unmanufactured states.

1777        [(35)] (38) "Farming operation" means raising, cultivating, propagating, fattening, grazing,  
1778        or any other farming, livestock, or aquacultural operation.

1779        [(36)] (39) "File number" means the number assigned to an initial financing statement  
1780        pursuant to Subsection 70A-9a-519(1).

1781        [(37)] (40) "Filing office" means an office designated in Section 70A-9a-501 as the place to  
1782        file a financing statement.

1783        [(38)] (41) "Filing-office rule" means a rule adopted pursuant to Section 70A-9a-526.

1784        [(39)] (42) "Financing statement" means a record or records composed of an initial  
1785        financing statement and any filed record relating to the initial financing statement.

1786        [(40)] (43)(a) "Fixture filing" means the filing of a financing statement covering goods  
1787        that are or are to become fixtures and satisfying Subsections 70A-9a-502(1) and (2).

1788        (b) "Fixture filing" includes the filing of a financing statement covering goods of a  
1789        transmitting utility which are or are to become fixtures.

1790        [(41)] (44) "Fixtures" means goods that have become so related to particular real property  
1791        that an interest in them arises under real property law.

1792        [(42)] (45)(a) "General intangible" means any personal property, including things in  
1793        action, other than accounts, chattel paper, commercial tort claims, deposit accounts,  
1794        documents, goods, instruments, investment property, letter-of-credit rights, letters of  
1795        credit, money, and oil, gas, or other minerals before extraction.

1796        (b) "General intangible" includes controllable electronic records, payment intangibles,  
1797        and software.

1798        [(43)] (46) "Good faith" means honesty in fact and the observance of reasonable commercial

1799 standards of fair dealing.

1800 [44] (47)(a) "Goods" means all things that are movable when a security interest  
1801 attaches.

1802 (b) "Goods" includes:

1803 (i) fixtures;

1804 (ii) standing timber that is to be cut and removed under a conveyance or contract for  
1805 sale;

1806 (iii) the unborn young of animals;

1807 (iv) crops grown, growing, or to be grown, even if the crops are produced on trees,  
1808 vines, or bushes; and

1809 (v) manufactured homes.

1810 (c) "Goods" also includes a computer program embedded in goods and any supporting  
1811 information provided in connection with a transaction relating to the program if:

1812 (i) the program is associated with the goods in such a manner that it customarily is  
1813 considered part of the goods; or

1814 (ii) by becoming the owner of the goods, a person acquires a right to use the program  
1815 in connection with the goods.

1816 (d) "Goods" does not include a computer program embedded in goods that consist solely  
1817 of the medium in which the program is embedded.

1818 (e) "Goods" also does not include accounts, chattel paper, commercial tort claims,  
1819 deposit accounts, documents, general intangibles, instruments, investment property,  
1820 letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before  
1821 extraction.

1822 [45] (48)(a) "Governmental unit" means a subdivision, agency, department, county,  
1823 parish, municipality, or other unit of the government of the United States, a state, or a  
1824 foreign country.

1825 (b) "Governmental unit" includes an organization having a separate corporate existence  
1826 if the organization is eligible to issue debt on which interest is exempt from income  
1827 taxation under the laws of the United States.

1828 [46] (49) "Health-care-insurance receivable" means an interest in or claim under a policy  
1829 of insurance which is a right to payment of a monetary obligation for health-care goods  
1830 or services provided.

1831 [47] (50)(a) "Instrument" means a negotiable instrument or any other writing that  
1832 evidences a right to the payment of a monetary obligation, is not itself a security

1833 agreement or lease, and is of a type that in ordinary course of business is transferred  
1834 by delivery with any necessary indorsement or assignment.

1835 (b) "Instrument" does not include:

1836 (i) investment property;

1837 (ii) letters of credit;[-or]

1838 (iii) writings that evidence a right to payment arising out of the use of a credit or  
1839 charge card or information contained on or for use with the card[-] ; or

1840 (iv) writings that evidence chattel paper.

1841 [(48)] (51) "Inventory" means goods, other than farm products, which:

1842 (a) are leased by a person as lessor;

1843 (b) are held by a person for sale or lease or to be furnished under a contract of service;

1844 (c) are furnished by a person under a contract of service; or

1845 (d) consist of raw materials, work in process, or materials used or consumed in a  
1846 business.

1847 [(49)] (52) "Investment property" means a security, whether certificated or uncertificated,  
1848 security entitlement, securities account, commodity contract, or commodity account.

1849 [(50)] (53) "Jurisdiction of organization," with respect to a registered organization, means  
1850 the jurisdiction under whose law the organization is formed or organized.

1851 [(51)] (54)(a) "Letter-of-credit right" means a right to payment or performance under a  
1852 letter of credit, whether or not the beneficiary has demanded or is at the time entitled  
1853 to demand payment or performance.

1854 (b) "Letter-of-credit right" does not include the right of a beneficiary to demand payment  
1855 or performance under a letter of credit.

1856 [(52)] (55) "Lien creditor" means:

1857 (a) a creditor that has acquired a lien on the property involved by attachment, levy, or  
1858 the like;

1859 (b) an assignee for benefit of creditors from the time of assignment;

1860 (c) a trustee in bankruptcy from the date of the filing of the petition; or

1861 (d) a receiver in equity from the time of appointment.

1862 [(53)] (56)(a) "Manufactured home" means a structure, transportable in one or more  
1863 sections, which, in the traveling mode, is eight body feet or more in width or 40 body  
1864 feet or more in length, or, when erected on site, is 320 or more square feet, and which  
1865 is built on a permanent chassis and designed to be used as a dwelling with or without  
1866 a permanent foundation when connected to the required utilities, and includes the

1867 plumbing, heating, air-conditioning, and electrical systems contained therein.

1868 (b) "Manufactured home" includes any structure that meets all of the requirements of  
1869 this Subsection [(53)] (56) except the size requirements and with respect to which the  
1870 manufacturer voluntarily files a certification required by the United States Secretary  
1871 of Housing and Urban Development and complies with the standards established  
1872 under Title 42 of the United States Code.

1873 [(54)] (57) "Manufactured-home transaction" means a secured transaction:

1874 (a) that creates a purchase-money security interest in a manufactured home, other than a  
1875 manufactured home held as inventory; or  
1876 (b) in which a manufactured home, other than a manufactured home held as inventory, is  
1877 the primary collateral.

1878 (58) "Money" has the meaning in Section 70A-1a-201, but does not include:

1879 (a) a deposit account; or  
1880 (b) money in an electronic form that cannot be subjected to control under Section  
1881 70A-9a-105.1.

1882 [(55)] (59) "Mortgage" means a consensual interest in real property, including fixtures,  
1883 which secures payment or performance of an obligation.

1884 [(56)] (60) "New debtor" means a person that becomes bound as debtor under Subsection  
1885 70A-9a-203(4) by a security agreement previously entered into by another person.

1886 [(57)] (61)(a) "New value" means:

1887 (i) money;  
1888 (ii) money's worth in property, services, or new credit; or  
1889 (iii) release by a transferee of an interest in property previously transferred to the  
1890 transferee.

1891 (b) "New value" does not include an obligation substituted for another obligation.

1892 [(58)] (62) "Noncash proceeds" means proceeds other than cash proceeds.

1893 [(59)] (63)(a) "Obligor" means a person that, with respect to an obligation secured by a  
1894 security interest in or an agricultural lien on the collateral:

1895 (i) owes payment or other performance of the obligation;  
1896 (ii) has provided property other than the collateral to secure payment or other  
1897 performance of the obligation; or  
1898 (iii) is otherwise accountable in whole or in part for payment or other performance of  
1899 the obligation.

1900 (b) "Obligor" does not include issuers or nominated persons under a letter of credit.

1901 [({60})] (64) "Original debtor," except as used in Subsection 70A-9a-310(3), means a person  
1902 that, as debtor, entered into a security agreement to which a new debtor has become  
1903 bound under Subsection 70A-9a-203(4).

1904 [({61})] (65)(a) "Payment intangible" means a general intangible under which the account  
1905 debtor's principal obligation is a monetary obligation.

1906 (b) "Payment intangible" includes a controllable payment intangible.

1907 [({62})] (66) "Person related to," with respect to an individual, means:

1908 (a) the spouse of the individual;  
1909 (b) a brother, brother-in-law, sister, or sister-in-law of the individual;  
1910 (c) an ancestor or lineal descendant of the individual or the individual's spouse; or  
1911 (d) any other relative, by blood or marriage, of the individual or the individual's spouse  
1912 who shares the same home with the individual.

1913 [({63})] (67) "Person related to," with respect to an organization, means:

1914 (a) a person directly or indirectly controlling, controlled by, or under common control  
1915 with the organization;  
1916 (b) an officer or director of, or a person performing similar functions with respect to, the  
1917 organization;  
1918 (c) an officer or director of, or a person performing similar functions with respect to, a  
1919 person described in Subsection [({63})(a)] (67)(a);  
1920 (d) the spouse of an individual described in Subsection [({63})(a)] (67)(a), (b), or (c); or  
1921 (e) an individual who is related by blood or marriage to an individual described in  
1922 Subsection [({63})(a)] (67)(a), (b), (c), or (d) and shares the same home with the  
1923 individual.

1924 [({64})] (68) "Proceeds," except as used in Subsection 70A-9a-609(2), means the following  
1925 property:

1926 (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of  
1927 collateral;  
1928 (b) whatever is collected on, or distributed on account of, collateral;  
1929 (c) rights arising out of collateral;  
1930 (d) to the extent of the value of collateral, claims arising out of the loss, nonconformity,  
1931 or interference with the use of, defects or infringement of rights in, or damage to, the  
1932 collateral; or  
1933 (e) to the extent of the value of collateral and to the extent payable to the debtor or the  
1934 secured party, insurance payable by reason of the loss or nonconformity of, defects or

1935 infringement of rights in, or damage to, the collateral.

1936 [({65})] (69) "Promissory note" means an instrument that evidences a promise to pay a  
1937 monetary obligation, does not evidence an order to pay, and does not contain an  
1938 acknowledgment by a bank that the bank has received for deposit a sum of money or  
1939 funds.

1940 [({66})] (70) "Proposal" means a record authenticated by a secured party which includes the  
1941 terms on which the secured party is willing to accept collateral in full or partial  
1942 satisfaction of the obligation it secures pursuant to Sections 70A-9a-620, 70A-9a-621,  
1943 and 70A-9a-622.

1944 [({67})] (71) "Public-finance transaction" means a secured transaction in connection with  
1945 which:

- 1946 (a) debt securities are issued;
- 1947 (b) all or a portion of the securities issued have an initial stated maturity of at least 20  
1948 years; and
- 1949 (c) the debtor, obligor, secured party, account debtor or other person obligated on  
1950 collateral, assignor or assignee of a secured obligation, or assignor or assignee of a  
1951 security interest is a state or a governmental unit of a state.

1952 [({68})] (72) "Public organic record" means a record that is available to the public for  
1953 inspection and is:

- 1954 (a) a record consisting of the record initially filed with or issued by a state or the United  
1955 States to form or organize an organization and any record filed with or issued by the  
1956 state or the United States which amends or restates the initial record;
- 1957 (b) an organic record of a business trust consisting of the record initially filed with a  
1958 state and any record filed with the state which amends or restates the initial record, if  
1959 a statute of the state governing business trusts requires that the record be filed with  
1960 the state; or
- 1961 (c) a record consisting of legislation enacted by the legislature of a state or the Congress  
1962 of the United States which forms or organizes an organization, any record amending  
1963 the legislation, and any record filed with or issued by the state or the United States  
1964 which amends or restates the name of the organization.

1965 [({69})] (73) "Pursuant to commitment," with respect to an advance made or other value given  
1966 by a secured party, means pursuant to the secured party's obligation, whether or not a  
1967 subsequent event of default or other event not within the secured party's control has  
1968 relieved or may relieve the secured party from its obligation.

1969 [({70})] (74) "Record," except as used in "for record," "of record," "record or legal title," and  
1970 "record owner," means information that is inscribed on a tangible medium or which is  
1971 stored in an electronic or other medium and is retrievable in perceivable form.

1972 [({71})] (75)(a) "Registered organization" means an organization formed or organized  
1973 solely under the law of a single state or the United States by the filing of a public  
1974 organic record with, the issuance of a public organic record by, or the enactment of  
1975 legislation by the state or the United States.

1976 (b) "Registered organization" includes a business trust that is formed or organized under  
1977 the law of a single state if a statute of the state governing business trusts requires that  
1978 the business trust's organic record be filed with the state.

1979 [({72})] (76) "Secondary obligor" means an obligor to the extent that:

1980 (a) the obligor's obligation is secondary; or  
1981 (b) the obligor has a right of recourse with respect to an obligation secured by collateral  
1982 against the debtor, another obligor, or property of either.

1983 [({73})] (77) "Secured party" means:

1984 (a) a person in whose favor a security interest is created or provided for under a security  
1985 agreement, whether or not any obligation to be secured is outstanding;  
1986 (b) a person that holds an agricultural lien;  
1987 (c) a consignor;  
1988 (d) a person to which accounts, chattel paper, payment intangibles, or promissory notes  
1989 have been sold;  
1990 (e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose  
1991 favor a security interest or agricultural lien is created or provided for; or  
1992 (f) a person that holds a security interest arising under Section 70A-2-401, 70A-2-505,  
1993 70A-4-210, or 70A-5-118 or Subsection 70A-2-711(3) or 70A-2a-508(5).

1994 [({74})] (78) "Security agreement" means an agreement that creates or provides for a security  
1995 interest.

1996 [({75})] "Send," in connection with a record or notification, means:]

1997 [(a) to deposit in the mail, deliver for transmission, or transmit by any other usual means  
1998 of communication, with postage or cost of transmission provided for, addressed to  
1999 any address reasonable under the circumstances; or]

2000 [(b) to cause the record or notification to be received within the time that it would have  
2001 been received if properly sent under Subsection (75)(a).]

2002 [({76})] (79)(a) "Software" means a computer program and any supporting information

2003 provided in connection with a transaction relating to the program.

2004 (b) "Software" does not include a computer program that is included in the definition of  
2005 goods.

2006 [77] (80) "State" means a state of the United States, the District of Columbia, Puerto Rico,  
2007 the United States Virgin Islands, or any territory or insular possession subject to the  
2008 jurisdiction of the United States.

2009 [78] (81) "Supporting obligation" means a letter-of-credit right or secondary obligation  
2010 that supports the payment or performance of an account, chattel paper, a document, a  
2011 general intangible, an instrument, or investment property.

2012 [79) "Tangible chattel paper" means chattel paper evidenced by a record or records  
2013 consisting of information that is inscribed on a tangible medium.]

2014 (82) "Tangible money" means money in a tangible form.

2015 [80) (83) "Termination statement" means an amendment of a financing statement which:  
2016 (a) identifies, by its file number, the initial financing statement to which it relates; and  
2017 (b) indicates either that it is a termination statement or that the identified financing  
2018 statement is no longer effective.

2019 [81) (84) "Transmitting utility" means a person primarily engaged in the business of:  
2020 (a) operating a railroad, subway, street railway, or trolley bus;  
2021 (b) transmitting communications electrically, electromagnetically, or by light;  
2022 (c) transmitting goods by pipeline or sewer; or  
2023 (d) transmitting or producing and transmitting electricity, steam, gas, or water.

2024 Section 44. Section **70A-9a-102.1** is amended to read:

2025 **70A-9a-102.1 . Definitions from other chapters.**

2026 [(1) "Control" as provided in Section 70A-7a-106 and the following definitions in other  
2027 chapters of this title apply to this chapter:

2028 [(a) (1) "Applicant" Section 70A-5-102.

2029 [(b) (2) "Beneficiary" Section 70A-5-102.

2030 [(c) (3) "Broker" Section 70A-8-101.

2031 [(d) (4) "Certificated security" Section 70A-8-101.

2032 [(e) (5) "Check" Section 70A-3-104.

2033 [(f) (6) "Clearing corporation" Section 70A-8-101.

2034 [(g) (7) "Contract for sale" Section 70A-2-106.

2035 (8) "Controllable electronic record" Section 70A-12-102.

2036 [(h) (9) "Customer" Section 70A-4-104.

2037 [~~(i)~~] (10) "Entitlement holder" Section 70A-8-101.  
2038 [~~(j)~~] (11) "Financial asset" Section 70A-8-101.  
2039 [~~(k)~~] (12) "Holder in due course" Section 70A-3-302.  
2040 [~~(l)~~] (13)[~~(i)~~] (a) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section  
2041 70A-5-102.  
2042 [~~(ii)~~] (b) "Issuer" (with respect to a security) Section 70A-8-201.  
2043 [~~(ii)~~] (c) "Issuer" (with respect to documents of title) Section 70A-7a-102.  
2044 [~~(m)~~] (14) "Lease" Section 70A-2a-103.  
2045 [~~(n)~~] (15) "Lease agreement" Section 70A-2a-103.  
2046 [~~(o)~~] (16) "Lease contract" Section 70A-2a-103.  
2047 [~~(p)~~] (17) "Leasehold interest" Section 70A-2a-103.  
2048 [~~(q)~~] (18) "Lessee" Section 70A-2a-103.  
2049 [~~(r)~~] (19) "Lessee in ordinary course of business" Section 70A-2a-103.  
2050 [~~(s)~~] (20) "Lessor" Section 70A-2a-103.  
2051 [~~(t)~~] (21) "Lessor's residual interest" Section 70A-2a-103.  
2052 [~~(u)~~] (22) "Letter of credit" Section 70A-5-102.  
2053 [~~(v)~~] (23) "Merchant" Section 70A-2-104.  
2054 [~~(w)~~] (24) "Negotiable instrument" Section 70A-3-104.  
2055 [~~(x)~~] (25) "Nominated person" Section 70A-5-102.  
2056 [~~(y)~~] (26) "Note" Section 70A-3-104.  
2057 [~~(z)~~] (27) "Proceeds of a letter of credit" Section 70A-5-114.  
2058 (28) Protected purchase Section 70A-8-303.  
2059 [~~(aa)~~] (29) "Prove" Section 70A-3-103.  
2060 (30) Qualifying purchaser Section 70A-12-102.  
2061 [~~(bb)~~] (31) "Sale" Section 70A-2-106.  
2062 [~~(ee)~~] (32) "Securities account" Section 70A-8-501.  
2063 [~~(dd)~~] (33) "Securities intermediary" Section 70A-8-101.  
2064 [~~(ee)~~] (34) "Security" Section 70A-8-101.  
2065 [~~(ff)~~] (35) "Security certificate" Section 70A-8-101.  
2066 [~~(gg)~~] (36) "Security entitlement" Section 70A-8-101.  
2067 [~~(hh)~~] (37) "Uncertificated security" Section 70A-8-101.  
2068 [~~(2)~~] (38) Chapter 1a, Uniform Commercial Code - General Provisions, contains general  
2069 definitions and principles of construction and interpretation applicable throughout this  
2070 chapter.

2071       Section 45. Section **70A-9a-104** is amended to read:

2072       **70A-9a-104 . Control of deposit account.**

2073       (1) A secured party has control of a deposit account if:

2074           (a) the secured party is the bank with which the deposit account is maintained;

2075           (b) the debtor, secured party, and bank have agreed in [an authenticated] a signed record  
2076           that the bank will comply with instructions originated by the secured party directing  
2077           disposition of the funds in the deposit account without further consent by the debtor;[  
2078           or]

2079           (c) the secured party becomes the bank's customer with respect to the deposit account[.];  
2080           or

2081           (d) another person, other than the debtor:

2082           (i) has control of the deposit account and acknowledges that it has control on behalf  
2083           of the secured party; or  
2084           (ii) obtains control of the deposit account after having acknowledged that it will  
2085           obtain control of the deposit account on behalf of the secured party.

2086       (2) A secured party that has satisfied Subsection (1) has control, even if the debtor retains  
2087           the right to direct the disposition of funds from the deposit account.

2088       Section 46. Section **70A-9a-105** is repealed and reenacted to read:

2089       **70A-9a-105 . Control of electronic copy of record evidencing chattel paper.**

2090       (1) A purchaser has control of an authoritative electronic copy of a record evidencing  
2091           chattel paper if a system employed for evidencing the assignment of interests in the  
2092           chattel paper reliably establishes the purchaser as the person to which the authoritative  
2093           electronic copy was assigned.

2094       (2) A system satisfies Subsection (1) if the record or records evidencing the chattel paper  
2095           are created, stored, and assigned in a manner that:

2096           (a) a single authoritative copy of the record or records exists which is unique,  
2097           identifiable, and except as otherwise provided in Subsections (2)(d), (e), and (f),  
2098           unalterable;

2099           (b) the authoritative copy identifies the purchaser as the assignee of the record or records;

2100           (c) the authoritative copy is communicated to and maintained by the purchaser or its  
2101           designated custodian;

2102           (d) copies or amendments that add or change an identified assignee of the authoritative  
2103           copy can be made only with the consent of the purchaser;

2104           (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a

2105 copy that is not the authoritative copy; and

2106 (f) any amendment to the authoritative copy is readily identifiable as authorized or  
2107 unauthorized.

2108 (3) A system satisfies Subsection (1), and a purchaser has control of an authoritative  
2109 electronic copy of a record evidencing chattel paper, if the electronic copy, a record  
2110 attached to or logically associated with the electronic copy, or a system in which the  
2111 electronic copy is recorded:

2112 (a) enables the purchaser readily to identify each electronic copy as either an  
2113 authoritative copy or a nonauthoritative copy;

2114 (b) enables the purchaser readily to identify itself in any way, including by name,  
2115 identifying number, cryptographic key, office, or account number, as the assignee of  
2116 the authoritative electronic copy; and

2117 (c) gives the purchaser exclusive power, subject to Subsection (4), to:

2118 (i) prevent others from adding or changing an identified assignee of the authoritative  
2119 electronic copy; and

2120 (ii) transfer control of the authoritative electronic copy.

2121 (4) Subject to Subsection (5), a power is exclusive under Subsections (3)(c)(i) and (ii) even  
2122 if:

2123 (a) the authoritative electronic copy, a record attached to or logically associated with the  
2124 authoritative electronic copy, or a system in which the authoritative electronic copy is  
2125 recorded limits the use of the authoritative electronic copy or has a protocol  
2126 programmed to cause a change, including a transfer or loss of control; or

2127 (b) the power is shared with another person.

2128 (5) A power of a purchaser is not shared with another person under Subsection (4)(a) and  
2129 the purchaser's power is not exclusive if:

2130 (a) the purchaser can exercise the power only if the power also is exercised by the other  
2131 person; and

2132 (b) the other person:

2133 (i) can exercise the power without exercise of the power by the purchaser; or

2134 (ii) is the transferor to the purchaser of an interest in the chattel paper.

2135 (6) If a purchaser has the powers specified in Subsections (3)(c)(i) and (ii), the powers are  
2136 presumed to be exclusive.

2137 (7) A purchaser has control of an authoritative electronic copy of a record evidencing  
2138 chattel paper if another person, other than the transferor to the purchaser of an interest in

2139       the chattel paper:

2140       (a) has control of the authoritative electronic copy and acknowledges that it has control  
2141           on behalf of the purchaser; or  
2142       (b) obtains control of the authoritative electronic copy after having acknowledged that it  
2143           will obtain control of the electronic copy on behalf of the purchaser.

2144       Section 47. Section **70A-9a-105.1** is enacted to read:

2145       **70A-9a-105.1 . Control of electronic money.**

2146       (1) A person has control of electronic money if:

2147           (a) the electronic money, a record attached to or logically associated with the electronic  
2148           money, or a system in which the electronic money is recorded gives the person:  
2149              (i) power to avail itself of substantially all the benefit from the electronic money; and  
2150              (ii) exclusive power, subject to Subsection (2), to:  
2151                 (A) prevent others from availing themselves of substantially all the benefit from  
2152                 the electronic money; and  
2153                 (B) transfer control of the electronic money to another person or cause another  
2154                 person to obtain control of other electronic money as a result of the transfer of  
2155                 the electronic money; and  
2156           (b) the electronic money, a record attached to or logically associated with the electronic  
2157           money, or a system in which the electronic money is recorded enables the person  
2158           readily to identify itself in any way, including by name, identifying number,  
2159           cryptographic key, office, or account number, as having the powers under Subsection  
2160           (1)(a).

2161       (2) Subject to Subsection (3), a power is exclusive under Subsections (1)(a)(ii)(A) and (B)  
2162           even if:

2163           (a) the electronic money, a record attached to or logically associated with the electronic  
2164           money, or a system in which the electronic money is recorded limits the use of the  
2165           electronic money or has a protocol programmed to cause a change, including a  
2166           transfer or loss of control; or  
2167           (b) the power is shared with another person.

2168       (3) A power of a person is not shared with another person under Subsection (2)(b) and the  
2169           person's power is not exclusive if:

2170           (a) the person can exercise the power only if the power also is exercised by the other  
2171           person; and  
2172           (b) the other person:

- (i) can exercise the power without exercise of the power by the person; or
- (ii) is the transferor to the person of an interest in the electronic money.

(4) If a person has the powers specified in Subsections (1)(a)(ii)(A) and (B), the powers are presumed to be exclusive.

(5) A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:

- (a) has control of the electronic money and acknowledges that it has control on behalf of the person; or
- (b) obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

Section 48. Section **70A-9a-107.1** is enacted to read:

**70A-9a-107.1 . Control of controllable electronic record, controllable account, or controllable payment intangible.**

- (1) A secured party has control of a controllable electronic record as provided in Section 70A-12-105.
- (2) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

Section 49. Section **70A-9a-107.2** is enacted to read:

**70A-9a-107.2 . No requirement to acknowledge or confirm -- No duties.**

(1) A person that has control under Section 70A-9a-104, 70A-9a-105, or 70A-9a-105.1 is not required to acknowledge that it has control on behalf of another person.

(2) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgment to any other person.

Section 50. Section **70A-9a-203** is amended to read:

**70A-9a-203 . Attachment and enforceability of security interest -- Proceeds -- Supporting obligations -- Formal requisites.**

- (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
- (2) Except as otherwise provided in Subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

2207 (a) value has been given;

2208 (b) the debtor has rights in the collateral or the power to transfer rights in the collateral

2209 to a secured party; and

2210 (c) one of the following conditions is met:

2211 (i) the debtor has [authenticated] signed a security agreement that provides a

2212 description of the collateral and, if the security interest covers timber to be cut, a

2213 description of the land concerned;

2214 (ii) the collateral is not a certificated security and is in the possession of the secured

2215 party under Section 70A-9a-313 pursuant to the debtor's security agreement;

2216 (iii) the collateral is a certificated security in registered form and the security

2217 certificate has been delivered to the secured party under Section 70A-8-301

2218 pursuant to the debtor's security agreement;[ or]

2219 (iv) the collateral is controllable accounts, controllable electronic records,

2220 controllable payment intangibles, deposit accounts, [electronic chattel paper]

2221 electronic documents, electronic money, investment property, or letter-of-credit

2222 rights[, or electronic documents,] and the secured party has control under Section

2223 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, [or] 70A-9a-107, or

2224 70A-9a-107.1 pursuant to the debtor's security agreement[.] ; or

2225 (v) the collateral is chattel paper and the secured party has possession and control

2226 under Section 70A-9a-314.1 pursuant to the debtor's security agreement.

2227 (3) Subsection (2) is subject to Section 70A-4-210 on the security interest of a collecting

2228 bank, Section 70A-5-118 on the security interest of a letter-of-credit issuer or nominated

2229 person, Section 70A-9a-110 on a security interest arising under Chapter 2, Uniform

2230 Commercial Code - Sales or Chapter 2a, Uniform Commercial Code - Leases, and

2231 Section 70A-9a-206 on security interests in investment property.

2232 (4) A person becomes bound as debtor by a security agreement entered into by another

2233 person if, by operation of law other than this chapter or by contract:

2234 (a) the security agreement becomes effective to create a security interest in the person's

2235 property; or

2236 (b) the person becomes generally obligated for the obligations of the other person,

2237 including the obligation secured under the security agreement, and acquires or

2238 succeeds to all or substantially all of the assets of the other person.

2239 (5) If a new debtor becomes bound as debtor by a security agreement entered into by

2240 another person:

2241 (a) the agreement satisfies Subsection (2)(c) with respect to existing or after-acquired  
2242 property of the new debtor to the extent the property is described in the agreement;  
2243 and  
2244 (b) another agreement is not necessary to make a security interest in the property  
2245 enforceable.

2246 (6) The attachment of a security interest in collateral gives the secured party the rights to  
2247 proceeds provided by Section 70A-9a-315 and is also attachment of a security interest in  
2248 a supporting obligation for the collateral.

2249 (7) The attachment of a security interest in a right to payment or performance secured by a  
2250 security interest or other lien on personal or real property is also attachment of a security  
2251 interest in the security interest, mortgage, or other lien.

2252 (8) The attachment of a security interest in a securities account is also attachment of a  
2253 security interest in the security entitlements carried in the securities account.

2254 (9) The attachment of a security interest in a commodity account is also attachment of a  
2255 security interest in the commodity contracts carried in the commodity account.

2256 Section 51. Section **70A-9a-204** is amended to read:

2257 **70A-9a-204 . After-acquired property -- Future advances.**

2258 (1) Except as otherwise provided in Subsection (2), a security agreement may create or  
2259 provide for a security interest in after-acquired collateral.

2260 (2)(a) [A] Subject to Subsection (2)(b), a security interest does not attach under a term  
2261 constituting an after-acquired property clause to:

2262     [(a)] (i) consumer goods, other than an accession when given as additional security,  
2263         unless the debtor acquires rights in them within 10 days after the secured party  
2264         gives value; or

2265     [(b)] (ii) a commercial tort claim.

2266 (b) Subsection (2)(a) does not prevent a security interest from attaching:

2267     (i) to consumer goods as proceeds under Subsection 70A-9a-315(a) or commingled  
2268         goods under Section 70A-9a-336;

2269     (ii) to a commercial tort claim as proceeds under Section 70A-9a-315; or

2270     (iii) under an after-acquired property clause to property that is proceeds of consumer  
2271         goods or a commercial tort claim.

2272 (3) A security agreement may provide that collateral secures, or that accounts, chattel paper,  
2273 payment intangibles, or promissory notes are sold in connection with, future advances or  
2274 other value, whether or not the advances or value are given pursuant to commitment.

2275       Section 52. Section **70A-9a-207** is amended to read:

2276       **70A-9a-207 . Rights and duties of secured party having possession or control of**  
2277       **collateral.**

2278       (1) Except as otherwise provided in Subsection (4), a secured party shall use reasonable  
2279       care in the custody and preservation of collateral in the secured party's possession. In  
2280       the case of chattel paper or an instrument, reasonable care includes taking necessary  
2281       steps to preserve rights against prior parties unless otherwise agreed.

2282       (2) Except as otherwise provided in Subsection (4), if a secured party has possession of  
2283       collateral:

2284           (a) reasonable expenses, including the cost of insurance and payment of taxes or other  
2285           charges, incurred in the custody, preservation, use, or operation of the collateral are  
2286           chargeable to the debtor and are secured by the collateral;

2287           (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in  
2288           any effective insurance coverage;

2289           (c) the secured party shall keep the collateral identifiable, but fungible collateral may be  
2290           commingled; and

2291           (d) the secured party may use or operate the collateral:

2292              (i) for the purpose of preserving the collateral or its value;

2293              (ii) as permitted by an order of a court having competent jurisdiction; or

2294              (iii) except in the case of consumer goods, in the manner and to the extent agreed by  
2295              the debtor.

2296       (3) Except as otherwise provided in Subsection (4), a secured party having possession of  
2297       collateral or control of collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105,  
2298       70A-9a-105.1, 70A-9a-106, ~~[or]~~70A-9a-107, or 70A-9a-107.1:

2299           (a) may hold as additional security any proceeds, except money or funds, received from  
2300           the collateral;

2301           (b) shall apply money or funds received from the collateral to reduce the secured  
2302           obligation, unless remitted to the debtor; and

2303           (c) may create a security interest in the collateral.

2304       (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or  
2305       promissory notes or a consignor:

2306           (a) Subsection (1) does not apply unless the secured party is entitled under an agreement:

2307              (i) to charge back uncollected collateral; or

2308              (ii) otherwise to full or limited recourse against the debtor or a secondary obligor

2309 based on the nonpayment or other default of an account debtor or other obligor on  
2310 the collateral; and

2311 (b) Subsections (2) and (3) do not apply.

2312 Section 53. Section **70A-9a-208** is amended to read:

2313 **70A-9a-208 . Additional duties of secured party having control of collateral.**

2314 (1) This section applies to cases in which there is no outstanding secured obligation and the  
2315 secured party is not committed to make advances, incur obligations, or otherwise give  
2316 value.

2317 (2) Within 10 days after receiving [an authenticated] a signed demand by the debtor:

2318 (a) a secured party having control of a deposit account under Subsection

2319 70A-9a-104(1)(b) shall send to the bank with which the deposit account is  
2320 maintained [an authenticated statement] a signed record that releases the bank from  
2321 any further obligation to comply with instructions originated by the secured party;

2322 (b) a secured party having control of a deposit account under Subsection

2323 70A-9a-104(1)(c) shall:

2324 (i) pay the debtor the balance on deposit in the deposit account; or

2325 (ii) transfer the balance on deposit into a deposit account in the debtor's name;

2326 [(e) ~~a secured party, other than a buyer, having control of electronic chattel paper under~~  
2327 ~~Section 70A-9a-105 shall:~~]

2328 [(i) ~~communicate the authoritative copy of the electronic chattel paper to the debtor~~  
2329 ~~or its designated custodian;~~]

2330 [(ii) ~~if the debtor designates a custodian that is the designated custodian with which~~  
2331 ~~the authoritative copy of the electronic chattel paper is maintained for the secured~~  
2332 ~~party, communicate to the custodian an authenticated record releasing the~~  
2333 ~~designated custodian from any further obligation to comply with instructions~~  
2334 ~~originated by the secured party and instructing the custodian to comply with~~  
2335 ~~instructions originated by the debtor; and~~]

2336 [(iii) ~~take appropriate action to enable the debtor or its designated custodian to make~~  
2337 ~~copies of or revisions to the authoritative copy which add or change an identified~~  
2338 ~~assignee of the authoritative copy without the consent of the secured party;~~]

2339 (c) a secured party, other than a buyer, having control under Section 70A-9a-105 of an  
2340 authoritative electronic copy of a record evidencing chattel paper shall transfer  
2341 control of the electronic copy to the debtor or a person designated by the debtor;

2342 (d) a secured party having control of investment property under Subsection

2343 70A-8-105(4)(b) or 70A-9a-106(2) shall send to the securities intermediary or  
2344 commodity intermediary with which the security entitlement or commodity contract  
2345 is maintained [an authenticated] a signed record that releases the securities  
2346 intermediary or commodity intermediary from any further obligation to comply with  
2347 entitlement orders or directions originated by the secured party;

2348 (e) a secured party having control of a letter-of-credit right under Section 70A-9a-107  
2349 shall send to each person having an unfulfilled obligation to pay or deliver proceeds  
2350 of the [letter of credit] letter-of-credit to the secured party [an authenticated] a signed  
2351 release from any further obligation to pay or deliver proceeds of the letter of credit to  
2352 the secured party;[and]

2353 (f) a secured party having control under Section 70A-9a-105 of an authoritative  
2354 electronic copy of an electronic document shall transfer control of the electronic copy  
2355 to the debtor or a person designated by the debtor;

2356 (g) a secured party having control under Section 70A-9a-105.1 of electronic money shall  
2357 transfer control of the electronic money to the debtor or a person designated by the  
2358 debtor; and

2359 (h) a secured party having control under Section 70A-12-105 of a controllable electronic  
2360 record, other than a buyer of a controllable account or controllable payment  
2361 intangible evidenced by the controllable electronic record, shall transfer control of  
2362 the controllable electronic record to the debtor or a person designated by the debtor.

2363 [(f) a secured party having control of an electronic document shall:]

2364 [(i) give control of the electronic document to the debtor or the debtor's designated  
2365 custodian;]

2366 [(ii) if the debtor designates a custodian that is the designated custodian with which  
2367 the authoritative copy of the electronic document is maintained for the secured  
2368 party, communicate to the custodian an authenticated record releasing the  
2369 designated custodian from any further obligation to comply with instructions  
2370 originated by the secured party and instructing the custodian to comply with  
2371 instructions originated by the debtor; and]

2372 [(iii) take appropriate action to enable to the debtor or its designated custodian to  
2373 make copies of or revisions to the authoritative copy without the consent of the  
2374 secured party.]

2375 Section 54. Section **70A-9a-209** is amended to read:

2376 **70A-9a-209 . Duties of secured party if account debtor has been notified of**

2377 **assignment.**

2378 (1) Except as otherwise provided in Subsection (3), this section applies if:

2379 (a) there is no outstanding secured obligation; and

2380 (b) the secured party is not committed to make advances, incur obligations, or otherwise

2381 give value.

2382 (2) Within 10 days after receiving [an authenticated] a signed demand by the debtor, a

2383 secured party shall send to an account debtor that has received notification under

2384 Subsection 70A-9a-406(1) or 70A-12-106(2) of an assignment to the secured party as

2385 assignee [under Subsection 70A-9a-406(1) an authenticated] a signed record that releases

2386 the account debtor from any further obligation to the secured party.

2387 (3) This section does not apply to an assignment constituting the sale of an account, chattel

2388 paper, or payment intangible.

2389 Section 55. Section **70A-9a-210** is amended to read:

2390 **70A-9a-210 . Request for accounting -- Request regarding list of collateral or**

2391 **statement of account.**

2392 (1) In this section:

2393 (a) "Request" means a record of a type described in Subsection (1)(b), (c), or (d).

2394 (b) "Request for an accounting" means a record [authenticated] signed by a debtor

2395 requesting that the recipient provide an accounting of the unpaid obligations secured

2396 by collateral and reasonably identifying the transaction or relationship that is the

2397 subject of the request.

2398 (c) "Request regarding a list of collateral" means a record [authenticated] signed by a

2399 debtor requesting that the recipient approve or correct a list of what the debtor

2400 believes to be the collateral securing an obligation and reasonably identifying the

2401 transaction or relationship that is the subject of the request.

2402 (d) "Request regarding a statement of account" means a record [authenticated] signed by

2403 a debtor requesting that the recipient approve or correct a statement indicating what

2404 the debtor believes to be the aggregate amount of unpaid obligations secured by

2405 collateral as of a specified date and reasonably identifying the transaction or

2406 relationship that is the subject of the request.

2407 (2) Subject to Subsections (3), (4), (5), and (6), a secured party, other than a buyer of

2408 accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall

2409 comply with a request within 14 days after receipt:

2410 (a) in the case of a request for an accounting, by [authenticating] signing and sending to

the debtor an accounting; and

(b) in the case of a request regarding a list of collateral or a request regarding a statement of account, by [authenticating] signing and sending to the debtor an approval or correction.

A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor [an authenticated] a signed record including a statement to that effect within 14 days after receipt.

A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [an authenticated] a signed record:

- disclaiming any interest in the collateral; and
- if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor [an authenticated] a signed record:

- disclaiming any interest in the obligations; and
- if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 56. Section **70A-9a-301** is amended to read:

## 70A-9a-301 . Law governing perfection and priority of security interests.

Except as otherwise provided in Sections 70A-9a-303 through [70A-9a-306]

70A-9a-306.2, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

- (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
- (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs

2445       perfection, the effect of perfection or nonperfection, and the priority of a possessory  
2446       security interest in that collateral.

2447       (3) Except as otherwise provided in Subsection (4), while [tangible]negotiable tangible  
2448       documents, goods, instruments, [money,]or tangible [chattel paper] money is located in  
2449       a jurisdiction, the local law of that jurisdiction governs:  
2450           (a) perfection of a security interest in the goods by filing a fixture filing;  
2451           (b) perfection of a security interest in timber to be cut; and  
2452           (c) the effect of perfection or nonperfection and the priority of a nonpossessory security  
2453       interest in the collateral.

2454       (4) The local law of the jurisdiction in which the wellhead or minehead is located governs  
2455       perfection, the effect of perfection or nonperfection, and the priority of a security interest  
2456       in as-extracted collateral.

2457       Section 57. Section **70A-9a-304** is amended to read:

2458       **70A-9a-304 . Law governing perfection and priority of security interests in  
2459       deposit accounts.**

2460       (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or  
2461       nonperfection, and the priority of a security interest in a deposit account maintained with  
2462       that bank even if the transaction does not bear any relation to the bank's jurisdiction.

2463       (2) The following rules determine a bank's jurisdiction for purposes of this part:  
2464           (a) If an agreement between the bank and the debtor governing the deposit account  
2465           expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes  
2466           of this part, this chapter, or this title, that jurisdiction is the bank's jurisdiction.

2467           (b) If Subsection (2)(a) does not apply and an agreement between the bank and its  
2468           customer governing the deposit account expressly provides that the agreement is  
2469           governed by the law of a particular jurisdiction, that jurisdiction is the bank's  
2470           jurisdiction.

2471           (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between  
2472           the bank and its customer governing the deposit account expressly provides that the  
2473           deposit account is maintained at an office in a particular jurisdiction, that jurisdiction  
2474           is the bank's jurisdiction.

2475           (d) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction  
2476           in which the office identified in an account statement as the office serving the  
2477           customer's account is located.

2478           (e) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction

2479 in which the chief executive office of the bank is located.

2480 Section 58. Section **70A-9a-305** is amended to read:

2481 **70A-9a-305 . Law governing perfection and priority of security interests in**  
2482 **investment property.**

2483 (1) Except as otherwise provided in Subsection (3), the following rules apply:

- 2484 (a) While a security certificate is located in a jurisdiction, the local law of that  
2485 jurisdiction governs perfection, the effect of perfection or nonperfection, and the  
2486 priority of a security interest in the certificated security represented thereby.
- 2487 (b) The local law of the issuer's jurisdiction as specified in Subsection 70A-8-109(4)  
2488 governs perfection, the effect of perfection or nonperfection, and the priority of a  
2489 security interest in an uncertificated security.
- 2490 (c) The local law of the securities intermediary's jurisdiction as specified in Subsection  
2491 70A-8-109(5) governs perfection, the effect of perfection or nonperfection, and the  
2492 priority of a security interest in a security entitlement or securities account.
- 2493 (d) The local law of the commodity intermediary's jurisdiction governs perfection, the  
2494 effect of perfection or nonperfection, and the priority of a security interest in a  
2495 commodity contract or commodity account.
- 2496 (e) Subsections (1)(b), (c), and (d) apply even if the transaction does not bear any  
2497 relation to the jurisdiction.

2498 (2) The following rules determine a commodity intermediary's jurisdiction for purposes of  
2499 this part:

- 2500 (a) If an agreement between the commodity intermediary and commodity customer  
2501 governing the commodity account expressly provides that a particular jurisdiction is  
2502 the commodity intermediary's jurisdiction for purposes of this part, this chapter, or  
2503 this title, that jurisdiction is the commodity intermediary's jurisdiction.
- 2504 (b) If Subsection (2)(a) does not apply and an agreement between the commodity  
2505 intermediary and commodity customer governing the commodity account expressly  
2506 provides that the agreement is governed by the law of a particular jurisdiction, that  
2507 jurisdiction is the commodity intermediary's jurisdiction.
- 2508 (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between  
2509 the commodity intermediary and commodity customer governing the commodity  
2510 account expressly provides that the commodity account is maintained at an office in a  
2511 particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- 2512 (d) If none of the Subsections (2)(a) through (c) applies, the commodity intermediary's

2513 jurisdiction is the jurisdiction in which the office identified in an account statement as  
2514 the office serving the commodity customer's account is located.

2515 (e) If none of the Subsections (2)(a) through (d) applies, the commodity intermediary's  
2516 jurisdiction is the jurisdiction in which the chief executive office of the commodity  
2517 intermediary is located.

2518 (3) The local law of the jurisdiction in which the debtor is located governs:

2519 (a) perfection of a security interest in investment property by filing;  
2520 (b) automatic perfection of a security interest in investment property created by a broker  
2521 or securities intermediary; and  
2522 (c) automatic perfection of a security interest in a commodity contract or commodity  
2523 account created by a commodity intermediary.

2524 Section 59. Section **70A-9a-306.1** is enacted to read:

2525 **70A-9a-306.1 . Law governing perfection and priority of security interests in  
2526 chattel paper.**

2527 (1) Except as provided in Subsection (4), if chattel paper is evidenced only by an  
2528 authoritative electronic copy of the chattel paper or is evidenced by an authoritative  
2529 electronic copy and an authoritative tangible copy, the local law of the chattel papers  
2530 jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority  
2531 of a security interest in the chattel paper, even if the transaction does not bear any  
2532 relation to the chattel paper's jurisdiction.

2533 (2) The following rules determine the chattel paper's jurisdiction under this section:

2534 (a) If the authoritative electronic copy of the record evidencing chattel paper, or a record  
2535 attached to or logically associated with the electronic copy and readily available for  
2536 review, expressly provides that a particular jurisdiction is the chattel papers  
2537 jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the  
2538 chattel paper's jurisdiction.

2539 (b) If Subsection (2)(b) does not apply and the rules of the system in which the  
2540 authoritative electronic copy is recorded are readily available for review and  
2541 expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for  
2542 purposes of this part, this chapter, or this title, that jurisdiction is the chattel paper's  
2543 jurisdiction.

2544 (c) If Subsections (2)(a) and (b) do not apply and the authoritative electronic copy, or a  
2545 record attached to or logically associated with the electronic copy and readily  
2546 available for review, expressly provides that the chattel paper is governed by the law

of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

- (d) If Subsections (2)(a), (b), and (c) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.
- (e) If Subsections (2)(a) through (d) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(3) If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

- (a) perfection of a security interest in the chattel paper by possession under Section 70A-9a-314.1; and
- (b) the effect of perfection or nonperfection and the priority of a security interest in chattel paper.

(4) The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

Section 60. Section **70A-9a-306.2** is enacted to read:

**70A-9a-306.2 . Law governing perfection and priority of security interests in controllable accounts, controllable electronic records, and controllable payment intangibles.**

(1) Except as provided in Subsection (2), the local law of the controllable electronic record's jurisdiction specified in Subsections 70A-12-107(3) and (4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(2) The local law of the jurisdiction in which the debtor is located governs:

- (a) perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and
- (b) automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

Section 61. Section **70A-9a-310** is amended to read:

**70A-9a-310 . When filing required to perfect security interest or agricultural lien**

-- Security interests and agricultural liens to which filing provisions do not apply.

2581 (1) Except as otherwise provided in Subsection (2) and Subsection 70A-9a-312(2), a  
2582 financing statement must be filed to perfect all security interests and agricultural liens.  
2583 (2) The filing of a financing statement is not necessary to perfect a security interest:  
2584 (a) that is perfected under Subsection 70A-9a-308(4), (5), (6), or (7);  
2585 (b) that is perfected under Section 70A-9a-309 when it attaches;  
2586 (c) in property subject to a statute, regulation, or treaty described in Subsection  
2587 70A-9a-311(1);  
2588 (d) in goods in possession of a bailee which is perfected under Subsection  
2589 70A-9a-312(4)(a) or (b);  
2590 (e) in certificated securities, documents, goods, or instruments which is perfected  
2591 without filing, control, or possession under Subsection 70A-9a-312(5), (6), or (7);  
2592 (f) in collateral in the secured party's possession under Section 70A-9a-313;  
2593 (g) in a certificated security which is perfected by delivery of the security certificate to  
2594 the secured party under Section 70A-9a-313;  
2595 (h) in controllable accounts, controllable electronic records, controllable payment  
2596 intangibles, deposit accounts, [electronic chattel paper,] electronic documents,  
2597 investment property, or letter-of-credit rights which is perfected by control under  
2598 Section 70A-9a-314;  
2599 (i) in chattel paper which is perfected by possession and control under Section  
2600 70A-9a-314.1;  
2601 [ (i) ] (j) in proceeds which is perfected under Section 70A-9a-315; or  
2602 [ (j) ] (k) that is perfected under Section 70A-9a-316.

2603 (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under  
2604 this chapter is not required to continue the perfected status of the security interest against  
2605 creditors of and transferees from the original debtor.

2606 Section 62. Section **70A-9a-312** is amended to read:

2607 **70A-9a-312 . Perfection of security interests in chattel paper, controllable**  
2608 **accounts, controllable electronic records, controllable payment intangibles, deposit**  
2609 **accounts, negotiable documents, goods covered by documents, instruments, investment**  
2610 **property, letter-of-credit rights, and money -- Perfection by permissive filing --**  
2611 **Temporary perfection without filing or transfer of possession.**

2612 (1) A security interest in chattel paper, [negotiable documents,] controllable accounts,  
2613 controllable electronic records, controllable payment intangibles, instruments, [or]  
2614 investment property, or negotiable documents may be perfected by filing.

2615 (2) Except as otherwise provided in Subsections 70A-9a-315(3) and (4) for proceeds:

2616 (a) a security interest in a deposit account may be perfected only by control under

2617 Section 70A-9a-314;

2618 (b) and except as otherwise provided in Subsection 70A-9a-308(4), a security interest in

2619 a letter-of-credit right may be perfected only by control under Section 70A-9a-314;[

2620 and]

2621 (c) a security interest in tangible money may be perfected only by the secured party's

2622 taking possession under Section 70A-9a-313[.] ; and

2623 (d) a security interest in electronic money may be perfected only by control under

2624 Section 70A-9a-314.

2625 (3) While goods are in the possession of a bailee that has issued a negotiable document

2626 covering the goods:

2627 (a) a security interest in the goods may be perfected by perfecting a security interest in

2628 the document; and

2629 (b) a security interest perfected in the document has priority over any security interest

2630 that becomes perfected in the goods by another method during that time.

2631 (4) While goods are in the possession of a bailee that has issued a nonnegotiable document

2632 covering the goods, a security interest in the goods may be perfected by:

2633 (a) issuance of a document in the name of the secured party;

2634 (b) the bailee's receipt of notification of the secured party's interest; or

2635 (c) filing as to the goods.

2636 (5) A security interest in certificated securities, negotiable documents, or instruments is

2637 perfected without filing or the taking of possession or control for a period of 20 days

2638 from the time it attaches to the extent that it arises for new value given under [an

2639 authenticated] a signed security agreement.

2640 (6) A perfected security interest in a negotiable document or goods in possession of a

2641 bailee, other than one that has issued a negotiable document for the goods, remains

2642 perfected for 20 days without filing if the secured party makes available to the debtor the

2643 goods or documents representing the goods for the purpose of:

2644 (a) ultimate sale or exchange; or

2645 (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or

2646 otherwise dealing with them in a manner preliminary to their sale or exchange.

2647 (7) A perfected security interest in a certificated security or instrument remains perfected

2648 for 20 days without filing if the secured party delivers the security certificate or

2649 instrument to the debtor for the purpose of:

2650 (a) ultimate sale or exchange; or

2651 (b) presentation, collection, enforcement, renewal, or registration of transfer.

2652 (8) After the 20-day period specified in Subsection (5), (6), or (7) expires, perfection  
2653 depends upon compliance with this chapter.

2654 Section 63. Section **70A-9a-313** is amended to read:

2655 **70A-9a-313 . When possession by or delivery to secured party perfects security  
2656 interest without filing.**

2657 (1) Except as otherwise provided in Subsection (2), a secured party may perfect a security  
2658 interest in ~~tangible negotiable documents~~ goods, instruments, negotiable tangible  
2659 documents, or tangible money~~, or tangible chattel paper~~ by taking possession of the  
2660 collateral. A secured party may perfect a security interest in certificated securities by  
2661 taking delivery of the certificated securities under Section 70A-8-301.

2662 (2) With respect to goods covered by a certificate of title issued by this state, a secured  
2663 party may perfect a security interest in the goods by taking possession of the goods only  
2664 in the circumstances described in Subsection 70A-9a-316(4).

2665 (3) With respect to collateral other than certificated securities and goods covered by a  
2666 document, a secured party takes possession of collateral in the possession of a person  
2667 other than the debtor, the secured party, or a lessee of the collateral from the debtor in  
2668 the ordinary course of the debtor's business, when:

2669 (a) the person in possession ~~authenticates~~ signs a record acknowledging that it holds  
2670 possession of the collateral for the secured party's benefit; or

2671 (b) the person takes possession of the collateral after having ~~authenticated~~ signed a  
2672 record acknowledging that it will hold possession of the collateral for the secured  
2673 party's benefit.

2674 (4) If perfection of a security interest depends upon possession of the collateral by a secured  
2675 party, perfection occurs ~~no~~ not earlier than the time the secured party takes possession  
2676 and continues only while the secured party retains possession.

2677 (5) A security interest in a certificated security in registered form is perfected by delivery  
2678 when delivery of the certificated security occurs under Section 70A-8-301 and remains  
2679 perfected by delivery until the debtor obtains possession of the security certificate.

2680 (6) A person in possession of collateral is not required to acknowledge that it holds  
2681 possession for a secured party's benefit.

2682 (7) If a person acknowledges that it holds possession for the secured party's benefit:

2683 (a) the acknowledgment is effective under Subsection (3) or Subsection 70A-8-301(1),  
2684 even if the acknowledgment violates the rights of a debtor; and  
2685 (b) unless the person otherwise agrees or law other than this chapter otherwise provides,  
2686 the person does not owe any duty to the secured party and is not required to confirm  
2687 the acknowledgment to another person.

2688 (8) A secured party having possession of collateral does not relinquish possession by  
2689 delivering the collateral to a person other than the debtor or a lessee of the collateral  
2690 from the debtor in the ordinary course of the debtor's business if the person was  
2691 instructed before the delivery or is instructed contemporaneously with the delivery:  
2692 (a) to hold possession of the collateral for the secured party's benefit; or  
2693 (b) to redeliver the collateral to the secured party.

2694 (9) A secured party does not relinquish possession, even if a delivery under Subsection (8)  
2695 violates the rights of a debtor. A person to which collateral is delivered under  
2696 Subsection (8) does not owe any duty to the secured party and is not required to confirm  
2697 the delivery to another person unless the person otherwise agrees or law other than this  
2698 chapter otherwise provides.

2699 Section 64. Section **70A-9a-314** is amended to read:

2700 **70A-9a-314 . Perfection by control.**

2701 (1) A security interest in ~~investment property, deposit accounts, letter-of-credit rights, or~~  
2702 ~~electronic chattel paper, or electronic documents~~ controllable accounts, controllable  
2703 electronic records, controllable payment intangibles, deposit accounts, electronic  
2704 documents, electronic money, investment property, or letter-of-credit rights may be  
2705 perfected by control of the collateral under Section 70A-7a-106, 70A-9a-104, [  
2706 ~~70A-9a-105~~] 70A-9a-105.1, 70A-9a-106, ~~[or]~~ 70A-9a-107, or 70A-9a-107.1.

2707 (2) A security interest in ~~deposit accounts, electronic chattel paper, or letter-of-credit~~  
2708 ~~rights, or electronic documents~~ controllable accounts, controllable electronic records,  
2709 controllable payment intangibles, deposit accounts, electronic documents, electronic  
2710 money, or letter-of-credit rights is perfected by control under Section 70A-7a-106,  
2711 70A-9a-104, [~~70A-9a-105~~] 70A-9a-105.1, ~~[or]~~ 70A-9a-107, or 70A-9a-107.1 ~~[when]~~ not  
2712 earlier than the time the secured party obtains control and remains perfected by control  
2713 only while the secured party retains control.

2714 (3) A security interest in investment property is perfected by control under Section  
2715 70A-9a-106 ~~[from]~~ not earlier than the time the secured party obtains control and  
2716 remains perfected by control until:

2717 (a) the secured party does not have control; and  
2718 (b) one of the following occurs:  
2719 (i) if the collateral is a certificated security, the debtor has or acquires possession of  
2720 the security certificate;  
2721 (ii) if the collateral is an uncertificated security, the issuer has registered or registers  
2722 the debtor as the registered owner; or  
2723 (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement  
2724 holder.

2725 Section 65. Section **70A-9a-314.1** is enacted to read:

2726 **70A-9a-314.1 . Perfection by possession and control of chattel paper.**

2727 (1) A secured party may perfect a security interest in chattel paper by taking possession of  
2728 each authoritative tangible copy of the record evidencing the chattel paper and obtaining  
2729 control of each authoritative electronic copy of the electronic record evidencing the  
2730 chattel paper.

2731 (2) A security interest is perfected under Subsection (1) not earlier than the time the secured  
2732 party takes possession and obtains control and remains perfected under Subsection (1)  
2733 only while the secured party retains possession and control.

2734 (3) Subsections 70A-9a-313(3) and (6) through (9) apply to perfection by possession of an  
2735 authoritative tangible copy of a record evidencing chattel paper.

2736 Section 66. Section **70A-9a-316** is amended to read:

2737 **70A-9a-316 . Effect of change in governing law.**

2738 (1) A security interest perfected pursuant to the law of the jurisdiction designated in  
2739 Subsection 70A-9a-301(1)[-or-], 70A-9a-305(3), 70A-9a-306.1(4), or 70A-9a-306.2(2)  
2740 remains perfected until the earliest of:  
2741 (a) the time perfection would have ceased under the law of that jurisdiction;  
2742 (b) the expiration of four months after a change of the debtor's location to another  
2743 jurisdiction; or  
2744 (c) the expiration of one year after a transfer of collateral to a person that thereby  
2745 becomes a debtor and is located in another jurisdiction.

2746 (2) If a security interest described in Subsection (1) becomes perfected under the law of the  
2747 other jurisdiction before the earliest time or event described in that subsection, it remains  
2748 perfected thereafter. If the security interest does not become perfected under the law of  
2749 the other jurisdiction before the earliest time or event, it becomes unperfected and is  
2750 deemed never to have been perfected as against a purchaser of the collateral for value.

2751 (3) A possessory security interest in collateral, other than goods covered by a certificate of  
2752 title and as-extracted collateral consisting of goods, remains continuously perfected if:  
2753 (a) the collateral is located in one jurisdiction and subject to a security interest perfected  
2754 under the law of that jurisdiction;  
2755 (b) thereafter the collateral is brought into another jurisdiction; and  
2756 (c) upon entry into the other jurisdiction, the security interest is perfected under the law  
2757 of the other jurisdiction.

2758 (4) Except as otherwise provided in Subsection (5), a security interest in goods covered by  
2759 a certificate of title which is perfected by any method under the law of another  
2760 jurisdiction when the goods become covered by a certificate of title from this state  
2761 remains perfected until the security interest would have become unperfected under the  
2762 law of the other jurisdiction had the goods not become so covered.

2763 (5) A security interest described in Subsection (4) becomes unperfected as against a  
2764 purchaser of the goods for value and is deemed never to have been perfected as against a  
2765 purchaser of the goods for value if the applicable requirements for perfection under  
2766 Subsection 70A-9a-311(2) or Section 70A-9a-313 are not satisfied before the earlier of:  
2767 (a) the time the security interest would have become unperfected under the law of the  
2768 other jurisdiction had the goods not become covered by a certificate of title from this  
2769 state; or  
2770 (b) the expiration of four months after the goods had become so covered.

2771 (6) A security interest in chattel paper, controllable accounts, controllable electronic  
2772 records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or  
2773 investment property which is perfected under the law of the chattel paper's jurisdiction,  
2774 the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's  
2775 jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction,  
2776 or the commodity intermediary's jurisdiction, as applicable, remains perfected until the  
2777 earlier of:  
2778 (a) the time the security interest would have become unperfected under the law of that  
2779 jurisdiction; or  
2780 (b) the expiration of four months after a change of the applicable jurisdiction to another  
2781 jurisdiction.

2782 (7) If a security interest described in Subsection (6) becomes perfected under the law of the  
2783 other jurisdiction before the earlier of the time or the end of the period described in that  
2784 subsection, it remains perfected thereafter. If the security interest does not become

2785 perfected under the law of the other jurisdiction before the earlier of that time or the end  
2786 of that period, it becomes unperfected and is deemed never to have been perfected as  
2787 against a purchaser of the collateral for value.

2788 (8) The following rules apply to collateral to which a security interest attaches within four  
2789 months after the debtor changes its location to another jurisdiction:

2790 (a) A financing statement filed before the change pursuant to the law of the jurisdiction  
2791 designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) is effective to perfect a  
2792 security interest in the collateral if the financing statement would have been effective  
2793 to perfect a security interest in the collateral had the debtor not changed its location.

2794 (b) If a security interest perfected by a financing statement that is effective under  
2795 Subsection (8)(a) becomes perfected under the law of the other jurisdiction before the  
2796 earlier of the time the financing statement would have been ineffective under the law  
2797 of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the  
2798 expiration of the four-month period, it remains perfected thereafter. If the security  
2799 interest does not become perfected under the law of the other jurisdiction before the  
2800 earlier time or event, it becomes unperfected and is deemed never to have been  
2801 perfected as against a purchaser of the collateral for value.

2802 (9) If a financing statement naming an original debtor is filed pursuant to the law of the  
2803 jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) and the new  
2804 debtor is located in another jurisdiction, the following rules apply:

2805 (a) The financing statement is effective to perfect a security interest in collateral  
2806 acquired by the new debtor before, and within four months after, the new debtor  
2807 becomes bound under Subsection 70A-9a-203(4), if the financing statement would  
2808 have been effective to perfect a security interest in the collateral had the collateral  
2809 been acquired by the original debtor.

2810 (b) A security interest perfected by the financing statement and which becomes  
2811 perfected under the law of the other jurisdiction before the earlier of the time the  
2812 financing statement would have been ineffective under the law of the jurisdiction  
2813 designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the expiration of the  
2814 four-month period remains perfected thereafter. A security interest that is perfected  
2815 by the financing statement but which does not become perfected under the law of the  
2816 other jurisdiction before the earlier time or event becomes unperfected and is deemed  
2817 never to have been perfected as against a purchaser of the collateral for value.

2818 Section 67. Section **70A-9a-317** is amended to read:

2819       **70A-9a-317 . Interests that take priority over or take free of security interest or**  
2820       **agricultural lien.**

2821       (1) A security interest or agricultural lien is subordinate to the rights of:  
2822           (a) a person entitled to priority under Section 70A-9a-322; and  
2823           (b) except as otherwise provided in Subsection (5), a person that becomes a lien creditor  
2824              before the earlier of the time:  
2825               (i) the security interest or agricultural lien is perfected; or  
2826               (ii) one of the conditions specified in Subsection 70A-9a-203(2)(c) is met and a  
2827              financing statement covering the collateral is filed.

2828       (2) Except as otherwise provided in Subsection (5), a buyer, other than a secured party, [of  
2829              tangible chattel paper, tangible documents,] of goods, instruments, tangible documents,  
2830              or a certificated security takes free of a security interest or agricultural lien if the buyer  
2831              gives value and receives delivery of the collateral without knowledge of the security  
2832              interest or agricultural lien and before it is perfected.

2833       (3) Except as otherwise provided in Subsection (5), a lessee of goods takes free of a  
2834              security interest or agricultural lien if the lessee gives value and receives delivery of the  
2835              collateral without knowledge of the security interest or agricultural lien and before it is  
2836              perfected.

2837       (4) [A] Subject to Subsections (6) through (9), a licensee of a general intangible or a buyer,  
2838              other than a secured party, of collateral other than [tangible chattel paper] electronic  
2839              money, [tangible documents,] goods, instruments, tangible documents, or a certificated  
2840              security takes free of a security interest if the licensee or buyer gives value without  
2841              knowledge of the security interest and before it is perfected.

2842       (5) Except as otherwise provided in Sections 70A-9a-320 and 70A-9a-321, if a person files  
2843              a financing statement with respect to a purchase-money security interest before or within  
2844              20 days after the debtor receives delivery of the collateral, the security interest takes  
2845              priority over the rights of a buyer, lessee, or lien creditor which arise between the time  
2846              the security interest attaches and the time of filing.

2847       (6) A buyer, other than a secured party, of chattel paper takes free of a security interest if  
2848              without knowledge of the security interest and before it is perfected, the buyer gives  
2849              value and:  
2850               (a) receives delivery of each authoritative tangible copy of the record evidencing the  
2851                  chattel paper; and  
2852               (b) if each authoritative electronic copy of the record evidencing the chattel paper can be

2853                   subjected to control under Section 70A-9a-105, obtains control of each authoritative  
2854                   electronic copy.

2855                   (7) A buyer of an electronic document takes free of a security interest if, without  
2856                   knowledge of the security interest and before it is perfected, the buyer gives value and, if  
2857                   each authoritative electronic copy of the document can be subjected to control under  
2858                   Section 70A-12-105, obtains control of each authoritative electronic copy.

2859                   (8) A buyer of a controllable electronic record takes free of a security interest if, without  
2860                   knowledge of the security interest and before it is perfected, the buyer gives value and  
2861                   obtains control of the controllable electronic record.

2862                   (9) A buyer, other than a secured party, of a controllable account or a controllable payment  
2863                   intangible takes free of a security interest if, without knowledge of the security interest  
2864                   and before it is perfected, the buyer gives value and obtains control of the controllable  
2865                   account or controllable payment intangible.

2866                   Section 68. Section **70A-9a-323** is amended to read:

2867                   **70A-9a-323 . Future advances.**

2868                   (1) Except as otherwise provided in Subsection (3), for purposes of determining the priority  
2869                   of a perfected security interest under Subsection 70A-9a-322(1)(a), perfection of the  
2870                   security interest dates from the time an advance is made to the extent that the security  
2871                   interest secures an advance that:

2872                   (a) is made while the security interest is perfected only:

2873                    (i) under Section 70A-9a-309 when it attaches; or  
2874                    (ii) temporarily under Subsection 70A-9a-312(5), (6), or (7); and

2875                   (b) is not made pursuant to a commitment entered into before or while the security  
2876                   interest is perfected by a method other than under Section 70A-9a-309 or Subsection  
2877                   70A-9a-312(5), (6), or (7).

2878                   (2) Except as otherwise provided in Subsection (3), a security interest is subordinate to the  
2879                   rights of a person that becomes a lien creditor to the extent that the security interest  
2880                   secures an advance made more than 45 days after the person becomes a lien creditor  
2881                   unless the advance is made:

2882                   (a) without knowledge of the lien; or

2883                   (b) pursuant to a commitment entered into without knowledge of the lien.

2884                   (3) Subsections (1) and (2) do not apply to a security interest held by a secured party that is  
2885                   a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a  
2886                   consignor.

2887 (4) Except as otherwise provided in Subsection (5), a buyer of goods [~~other than a buyer in~~ in  
2888 ~~ordinary course of business~~] takes free of a security interest to the extent that it secures  
2889 advances made after the earlier of:  
2890 (a) the time the secured party acquires knowledge of the buyer's purchase; or  
2891 (b) 45 days after the purchase.  
2892 (5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered  
2893 into without knowledge of the buyer's purchase and before the expiration of the 45-day  
2894 period.  
2895 (6) Except as otherwise provided in Subsection (7), a lessee of goods[~~, other than a lessee in~~ in  
2896 ~~ordinary course of business~~,] takes the leasehold interest free of a security interest to the  
2897 extent that it secures advances made after the earlier of:  
2898 (a) the time the secured party acquires knowledge of the lease; or  
2899 (b) 45 days after the lease contract becomes enforceable.  
2900 (7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered  
2901 into without knowledge of the lease and before the expiration of the 45-day period.

2902 Section 69. Section **70A-9a-324** is amended to read:

2903 **70A-9a-324 . Priority of purchase-money security interests.**

2904 (1) Except as otherwise provided in Subsection (7), a perfected purchase-money security  
2905 interest in goods other than inventory or livestock has priority over a conflicting security  
2906 interest in the same goods, and, except as otherwise provided in Section 70A-9a-327, a  
2907 perfected security interest in its identifiable proceeds also has priority, if the  
2908 purchase-money security interest is perfected when the debtor receives possession of the  
2909 collateral or within 20 days thereafter.  
2910 (2) Subject to Subsection (3) and except as otherwise provided in Subsection (7), a  
2911 perfected purchase-money security interest in inventory has priority over a conflicting  
2912 security interest in the same inventory, has priority over a conflicting security interest in  
2913 chattel paper or an instrument constituting proceeds of the inventory and in proceeds of  
2914 the chattel paper, if so provided in Section 70A-9a-330, and, except as otherwise  
2915 provided in Section 70A-9a-327, also has priority in identifiable cash proceeds of the  
2916 inventory to the extent the identifiable cash proceeds are received on or before the  
2917 delivery of the inventory to a buyer, if:  
2918 (a) the purchase-money security interest is perfected when the debtor receives  
2919 possession of the inventory;  
2920 (b) the purchase-money secured party sends [~~an authenticated~~] a signed notification to

the holder of the conflicting security interest;

- (c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

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

- (a) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (b) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection 70A-9a-312(6), before the beginning of the 20-day period thereunder.

(4) Subject to Subsection (5) and except as otherwise provided in Subsection (7), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (a) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (b) the purchase-money secured party sends [an authenticated] a signed notification to the holder of the conflicting security interest;
- (c) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
- (d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

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

- (a) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (b) if the purchase-money security interest is temporarily perfected without filing or possession under Subsection 70A-9a-312(6), before the beginning of the 20-day

2955 period thereunder.

2956 (6) Except as otherwise provided in Subsection (7), a perfected purchase-money security  
2957 interest in software has priority over a conflicting security interest in the same collateral,  
2958 and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in  
2959 its identifiable proceeds also has priority, to the extent that the purchase-money security  
2960 interest in the goods in which the software was acquired for use has priority in the goods  
2961 and proceeds of the goods under this section.

2962 (7) If more than one security interest qualifies for priority in the same collateral under  
2963 Subsection (1), (2), (4), or (6):

2964 (a) a security interest securing an obligation incurred as all or part of the price of the  
2965 collateral has priority over a security interest securing an obligation incurred for  
2966 value given to enable the debtor to acquire rights in or the use of collateral; and

2967 (b) in all other cases, Subsection 70A-9a-322(1) applies to the qualifying security  
2968 interests.

2969 Section 70. Section **70A-9a-326.1** is enacted to read:

2970 **70A-9a-326.1 . Priority of security interest in controllable account, controllable**  
2971 **electronic record, and controllable payment intangible.**

2972 A security interest in a controllable account, controllable electronic record, or  
2973 controllable payment intangible held by a secured party having control of the account,  
2974 electronic record, or payment intangible has priority over a conflicting security interest held by  
2975 a secured party that does not have control.

2976 Section 71. Section **70A-9a-330** is amended to read:

2977 **70A-9a-330 . Priority of purchaser of chattel paper or instrument.**

2978 (1) A purchaser of chattel paper has priority over a security interest in the chattel paper  
2979 which is claimed merely as proceeds of inventory subject to a security interest if:

2980 (a) in good faith and in the ordinary course of the purchaser's business, the purchaser  
2981 gives new value[-and] , takes possession of each authoritative tangible copy of the  
2982 record evidencing the chattel paper, [or] and obtains control [or] under Section  
2983 70A-9a-105 of each authoritative electronic copy of the record evidencing the chattel  
2984 paper[under Section 70A-9a-105]; and

2985 (b) the [chattel paper does] authoritative copies of the record evidencing the chattel paper  
2986 do not indicate that [it] the chattel paper has been assigned to an identified assignee  
2987 other than the purchaser.

2988 (2) A purchaser of chattel paper has priority over a security interest in the chattel paper

2989 which is claimed other than merely as proceeds of inventory subject to a security interest  
2990 if the purchaser gives new value, [and] takes possession of each authoritative tangible  
2991 copy of the record evidencing the chattel paper, [or] and obtains control [of the chattel  
2992 paper] under Section 70A-9a-105 of each authoritative electronic copy of the record  
2993 evidencing the chattel paper in good faith, in the ordinary course of the purchaser's  
2994 business, and without knowledge that the purchase violates the rights of the secured  
2995 party.

2996 (3) Except as otherwise provided in Section 70A-9a-327, a purchaser having priority in  
2997 chattel paper under Subsection (1) or (2) also has priority in proceeds of the chattel  
2998 paper to the extent that:

2999 (a) Section 70A-9a-322 provides for priority in the proceeds; or  
3000 (b) the proceeds consist of the specific goods covered by the chattel paper or cash  
3001 proceeds of the specific goods, even if the purchaser's security interest in the  
3002 proceeds is unperfected.

3003 (4) Except as otherwise provided in Subsection 70A-9a-331(1), a purchaser of an  
3004 instrument has priority over a security interest in the instrument perfected by a method  
3005 other than possession if the purchaser gives value and takes possession of the instrument  
3006 in good faith and without knowledge that the purchase violates the rights of the secured  
3007 party.

3008 (5) For purposes of Subsections (1) and (2), the holder of a purchase-money security  
3009 interest in inventory gives new value for chattel paper constituting proceeds of the  
3010 inventory.

3011 (6) For purposes of Subsections (2) and (4), if the authoritative copies of the record  
3012 evidencing chattel paper or an instrument [indicates] indicate that [it] the chattel paper or  
3013 instrument has been assigned to an identified secured party other than the purchaser, a  
3014 purchaser of the chattel paper or instrument has knowledge that the purchase violates the  
3015 rights of the secured party.

3016 Section 72. Section **70A-9a-331** is amended to read:

3017 **70A-9a-331 . Priority of rights of purchasers of controllable accounts,**  
3018 **controllable electronic records, controllable payment intangibles, documents,**  
3019 **instruments, and securities under other chapters -- Priority of interests in financial assets**  
3020 **and security entitlements and protection against assertion of claim under Chapter 8,**  
3021 **Uniform Commercial Code -- Investment Securities, and Chapter 12, Uniform**  
3022 **Commercial Code - Controllable Electronic Records.**

3023 (1) This chapter does not limit the rights of a holder in due course of a negotiable  
3024 instrument, a holder to which a negotiable document of title has been duly negotiated, [ or ]a protected purchaser of a security, or a qualifying purchaser of a controllable  
3025 account, controllable electronic record, or controllable payment intangible. These  
3026 holders or purchasers take priority over an earlier security interest, even if perfected, to  
3027 the extent provided in Chapter 3, Uniform Commercial Code - Negotiable Instruments,  
3028 Chapter 7a, Uniform Commercial Code - Documents of Title, [and]Chapter 8, Uniform  
3029 Commercial Code - Investment Securities, and Chapter 12, Uniform Commercial Code -  
3030 Controllable Electronic Records.

3032 (2) This chapter does not limit the rights of or impose liability on a person to the extent that  
3033 the person is protected against the assertion of a claim under Chapter 8, Uniform  
3034 Commercial Code - Investment Securities, or Chapter 12, Uniform Commercial Code -  
3035 Controllable Electronic Records.

3036 (3) Filing under this chapter does not constitute notice of a claim or defense to the holders,  
3037 or purchasers, or persons described in Subsections (1) and (2).

3038 Section 73. Section **70A-9a-332** is amended to read:

3039 **70A-9a-332 . Transfer of money -- Transfer of funds from deposit account.**

3040 (1) A transferee of tangible money takes the money free of a security interest [unless the  
3041 transferee acts] if the transferee receives possession of the money without acting in  
3042 collusion with the debtor in violating the rights of the secured party.

3043 (2) A transferee of funds from a deposit account takes the funds free of a security interest in  
3044 the deposit account [unless the transferee acts] if the transferee receives the funds  
3045 without acting in collusion with the debtor in violating the rights of the secured party.

3046 (3) A transferee of electronic money takes the money free of a security interest if the  
3047 transferee obtains control of the money without acting in collusion with the debtor in  
3048 violating the rights of the secured party.

3049 Section 74. Section **70A-9a-334** is amended to read:

3050 **70A-9a-334 . Priority of security interests in fixtures and crops.**

3051 (1) A security interest under this chapter may be created in goods that are fixtures or may  
3052 continue in goods that become fixtures. A security interest does not exist under this  
3053 chapter in ordinary building materials incorporated into an improvement on land.

3054 (2) This chapter does not prevent creation of an encumbrance upon fixtures under real  
3055 property law.

3056 (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is

3057 subordinate to a conflicting interest of an encumbrancer or owner of the related real  
3058 property other than the debtor.

3059 (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures  
3060 has priority over a conflicting interest of an encumbrancer or owner of the real property  
3061 if the debtor has an interest of record in or is in possession of the real property and:

- 3062 (a) the security interest is a purchase-money security interest;
- 3063 (b) the interest of the encumbrancer or owner arises before the goods become fixtures;  
3064 and
- 3065 (c) the security interest is perfected by a fixture filing before the goods become fixtures  
3066 or within 20 days thereafter.

3067 (5) A perfected security interest in fixtures has priority over a conflicting interest of an  
3068 encumbrancer or owner of the real property if:

- 3069 (a) the debtor has an interest of record in the real property or is in possession of the real  
3070 property and the security interest:
  - 3071 (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is  
3072 of record; and
  - 3073 (ii) has priority over any conflicting interest of a predecessor in title of the  
3074 encumbrancer or owner;
- 3075 (b) before the goods become fixtures, the security interest is perfected by any method  
3076 permitted by this chapter and the fixtures are readily removable:
  - 3077 (i) factory or office machines;
  - 3078 (ii) equipment that is not primarily used or leased for use in the operation of the real  
3079 property; or
  - 3080 (iii) replacements of domestic appliances that are consumer goods;
- 3081 (c) the conflicting interest is a lien on the real property obtained by legal or equitable  
3082 proceedings after the security interest was perfected by any method permitted by this  
3083 chapter; or
- 3084 (d) the security interest is:
  - 3085 (i) created in a manufactured home in a manufactured-home transaction; and
  - 3086 (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).

3087 (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting  
3088 interest of an encumbrancer or owner of the real property if:

- 3089 (a) the encumbrancer or owner has, in [an authenticated] a signed record, consented to  
3090 the security interest or disclaimed an interest in the goods as fixtures; or

3091 (b) the debtor has a right to remove the goods as against the encumbrancer or owner.

3092 (7) The priority of the security interest under Subsection (6)(b) continues for a reasonable

3093 time if the debtor's right to remove the goods as against the encumbrancer or owner

3094 terminates.

3095 (8) A mortgage is a construction mortgage to the extent that it secures an obligation

3096 incurred for the construction of an improvement on land, including the acquisition cost

3097 of the land, if a recorded record of the mortgage so indicates. Except as otherwise

3098 provided in Subsections (5) and (6), a security interest in fixtures is subordinate to a

3099 construction mortgage if a record of the mortgage is recorded before the goods become

3100 fixtures and the goods become fixtures before the completion of the construction. A

3101 mortgage has this priority to the same extent as a construction mortgage to the extent

3102 that it is given to refinance a construction mortgage.

3103 (9) A perfected security interest in crops growing on real property has priority over a

3104 conflicting interest of an encumbrancer or owner of the real property if the debtor has an

3105 interest of record in or is in possession of the real property.

3106 Section 75. Section **70A-9a-341** is amended to read:

3107 **70A-9a-341 . Bank's rights and duties with respect to deposit account.**

3108 Except as otherwise provided in Subsection 70A-9a-340(3), and unless the bank

3109 otherwise agrees in [an authenticated] a signed record, a bank's rights and duties with respect to

3110 a deposit account maintained with the bank are not terminated, suspended, or modified by:

3111 (1) the creation, attachment, or perfection of a security interest in the deposit account;

3112 (2) the bank's knowledge of the security interest; or

3113 (3) the bank's receipt of instructions from the secured party.

3114 Section 76. Section **70A-9a-404** is amended to read:

3115 **70A-9a-404 . Rights acquired by assignee -- Claims and defenses against assignee.**

3116 (1) Unless an account debtor has made an enforceable agreement not to assert defenses or

3117 claims, and subject to Subsections (2) through (5), the rights of an assignee are subject

3118 to:

3119 (a) all terms of the agreement between the account debtor and assignor and any defense

3120 or claim in recoupment arising from the transaction that gave rise to the contract; and

3121 (b) any other defense or claim of the account debtor against the assignor which accrues

3122 before the account debtor receives a notification of the assignment [authenticated]

3123 signed by the assignor or the assignee.

3124 (2) Subject to Subsection (3) and except as otherwise provided in Subsection (4), the claim

3125 of an account debtor against an assignor may be asserted against an assignee under  
3126 Subsection (1) only to reduce the amount the account debtor owes.  
3127 (3) This section is subject to law other than this chapter which establishes a different rule  
3128 for an account debtor who is an individual and who incurred the obligation primarily for  
3129 personal, family, or household purposes.  
3130 (4) In a consumer transaction, if a record evidences the account debtor's obligation, law  
3131 other than this chapter requires that the record include a statement to the effect that the  
3132 account debtor's recovery against an assignee with respect to claims and defenses against  
3133 the assignor may not exceed amounts paid by the account debtor under the record, and  
3134 the record does not include such a statement, the extent to which a claim of an account  
3135 debtor against the assignor may be asserted against an assignee is determined as if the  
3136 record included such a statement.  
3137 (5) This section does not apply to an assignment of a health-care-insurance receivable.

3138 Section 77. Section **70A-9a-406** is amended to read:

3139 **70A-9a-406 . Discharge of account debtor -- Notification of assignment --**

3140 **Identification and proof of assignment -- Restrictions on assignment of accounts, chattel**  
3141 **paper, payment intangibles, and promissory notes ineffective.**

3142 (1) Subject to Subsections (2) through (9), an account debtor on an account, chattel paper,  
3143 or a payment intangible may discharge its obligation by paying the assignor until, but  
3144 not after, the account debtor receives a notification, authenticated by the assignor or the  
3145 assignee, that the amount due or to become due has been assigned and that payment is to  
3146 be made to the assignee. After receipt of the notification, the account debtor may  
3147 discharge its obligation by paying the assignee and may not discharge the obligation by  
3148 paying the assignor.  
3149 (2) Subject to [Subseetion] Subsections (8) and (10), notification is ineffective under  
3150 Subsection (1):  
3151 (a) if it does not reasonably identify the rights assigned;  
3152 (b) to the extent that an agreement between an account debtor and a seller of a payment  
3153 intangible limits the account debtor's duty to pay a person other than the seller and  
3154 the limitation is effective under law other than this chapter; or  
3155 (c) at the option of an account debtor, if the notification notifies the account debtor to  
3156 make less than the full amount of any installment or other periodic payment to the  
3157 assignee, even if:  
3158 (i) only a portion of the account, chattel paper, or payment intangible has been

3159 assigned to that assignee;

3160 (ii) a portion has been assigned to another assignee; or

3161 (iii) the account debtor knows that the assignment to that assignee is limited.

3162 (3) Subject to Subsection (8), if requested by the account debtor, an assignee shall  
3163 seasonably furnish reasonable proof that the assignment has been made. Unless the  
3164 assignee complies, the account debtor may discharge its obligation by paying the  
3165 assignor, even if the account debtor has received a notification under Subsection (1).

3166 (4) In this subsection, "promissory note" includes a negotiable instrument that evidences  
3167 chattel paper. Except as otherwise provided in Subsection (5) and Sections 70A-2a-303  
3168 and 70A-9a-407, and subject to Subsection (8), a term in an agreement between an  
3169 account debtor and an assignor or in a promissory note is ineffective to the extent that it:

3170 (a) prohibits, restricts, or requires the consent of the account debtor or person obligated  
3171 on the promissory note to the assignment or transfer of, or the creation, attachment,  
3172 perfection, or enforcement of a security interest in, the account, chattel paper,  
3173 payment intangible, or promissory note; or

3174 (b) provides that the assignment or transfer or the creation, attachment, perfection, or  
3175 enforcement of the security interest may give rise to a default, breach, right of  
3176 recoupment, claim, defense, termination, right of termination, or remedy under the  
3177 account, chattel paper, payment intangible, or promissory note.

3178 (5) Subsection (4) does not apply to the sale of a payment intangible or promissory note,  
3179 other than a sale pursuant to a disposition under Section 70A-9a-610 or an acceptance of  
3180 collateral under Section 70A-9a-620.

3181 (6) Except as otherwise provided in Sections 70A-2a-303 and 70A-9a-407 and subject to  
3182 Subsections (8) and (9), a rule of law, statute, or regulation that prohibits, restricts, or  
3183 requires the consent of a government, governmental body or official, or account debtor  
3184 to the assignment or transfer of, or creation of a security interest in, an account or chattel  
3185 paper is ineffective to the extent that the rule of law, statute, or regulation:

3186 (a) prohibits, restricts, or requires the consent of the government, governmental body or  
3187 official, or account debtor to the assignment or transfer of, or the creation,  
3188 attachment, perfection, or enforcement of a security interest in the account or chattel  
3189 paper; or

3190 (b) provides that the assignment or transfer or the creation, attachment, perfection, or  
3191 enforcement of the security interest may give rise to a default, breach, right of  
3192 recoupment, claim, defense, termination, right of termination, or remedy under the

3193 account or chattel paper.

3194 (7) Subject to [Subsection] Subsections (8) and (10), an account debtor may not waive or  
3195 vary its option under Subsection (2)(c).

3196 (8) This section is subject to law other than this chapter which establishes a different rule  
3197 for an account debtor who is an individual and who incurred the obligation primarily for  
3198 personal, family, or household purposes.

3199 (9) This section does not apply to an assignment of a health-care-insurance receivable.

3200 (10) Subsections (1) through (3) and (7) do not apply to a controllable account or  
3201 controllable payment intangible.

3202 Section 78. Section **70A-9a-408** is amended to read:

3203 **70A-9a-408 . Restrictions on assignment of promissory notes,**

3204 **health-care-insurance receivables, and certain general intangibles ineffective.**

3205 (1) Except as otherwise provided in Subsection (2), a term in a promissory note or in an  
3206 agreement between an account debtor and a debtor which relates to a  
3207 health-care-insurance receivable or a general intangible, including a contract, permit,  
3208 license, or franchise, and which term prohibits, restricts, or requires the consent of the  
3209 person obligated on the promissory note or the account debtor to, the assignment or  
3210 transfer of, or creation, attachment, or perfection of a security interest in, the promissory  
3211 note, health-care-insurance receivable, or general intangible, is ineffective to the extent  
3212 that the term:

3213 (a) would impair the creation, attachment, or perfection of a security interest; or  
3214 (b) provides that the assignment or transfer or the creation, attachment, or perfection of  
3215 the security interest may give rise to a default, breach, right of recoupment, claim,  
3216 defense, termination, right of termination, or remedy under the promissory note,  
3217 health-care-insurance receivable, or general intangible.

3218 (2) Subsection (1) applies to a security interest in a payment intangible or promissory note  
3219 only if the security interest arises out of a sale of the payment intangible or promissory  
3220 note, other than a sale pursuant to a disposition under Section 70A-9a-610 or an  
3221 acceptance of collateral under Section 70A-9a-620.

3222 (3) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a  
3223 government, governmental body or official, person obligated on a promissory note, or  
3224 account debtor to the assignment or transfer of, or creation of a security interest in, a  
3225 promissory note, health-care-insurance receivable, or general intangible, including a  
3226 contract, permit, license, or franchise between an account debtor and a debtor, is

3227 ineffective to the extent that the rule of law, statute, or regulation:

3228 (a) would impair the creation, attachment, or perfection of a security interest; or

3229 (b) provides that the assignment or transfer or the creation, attachment, or perfection of

3230 the security interest may give rise to a default, breach, right of recoupment, claim,

3231 defense, termination, right of termination, or remedy under the promissory note,

3232 health-care-insurance receivable, or general intangible.

3233 (4) To the extent that a term in a promissory note or in an agreement between an account

3234 debtor and a debtor which relates to a health-care-insurance receivable or general

3235 intangible or a rule of law, statute, or regulation described in Subsection (3) would be

3236 effective under law other than this chapter but is ineffective under Subsection (1) or (3),

3237 the creation, attachment, or perfection of a security interest in the promissory note,

3238 health-care-insurance receivable, or general intangible:

3239 (a) is not enforceable against the person obligated on the promissory note or the account

3240 debtor;

3241 (b) does not impose a duty or obligation on the person obligated on the promissory note

3242 or the account debtor;

3243 (c) does not require the person obligated on the promissory note or the account debtor to

3244 recognize the security interest, pay or render performance to the secured party, or

3245 accept payment or performance from the secured party;

3246 (d) does not entitle the secured party to use or assign the debtor's rights under the

3247 promissory note, health-care-insurance receivable, or general intangible, including

3248 any related information or materials furnished to the debtor in the transaction giving

3249 rise to the promissory note, health-care-insurance receivable, or general intangible;

3250 (e) does not entitle the secured party to use, assign, possess, or have access to any trade

3251 secrets or confidential information of the person obligated on the promissory note or

3252 the account debtor; and

3253 (f) does not entitle the secured party to enforce the security interest in the promissory

3254 note, health-care-insurance receivable, or general intangible.

3255 (5) In this section, "promissory note" includes a negotiable instrument that evidences  
chattel paper.

3257 Section 79. Section **70A-9a-509** is amended to read:

3258 **70A-9a-509 . Persons entitled to file a record.**

3259 (1) A person may file an initial financing statement, amendment that adds collateral

3260 covered by a financing statement, or amendment that adds a debtor to a financing

3261 statement only if:

3262 (a) the debtor authorizes the filing in [an authenticated] a signed record or pursuant to  
3263 Subsection (2) or (3); or

3264 (b) the person holds an agricultural lien that has become effective at the time of filing  
3265 and the financing statement covers only collateral in which the person holds an  
3266 agricultural lien.

3267 (2) By [authenticating] signing or becoming bound as debtor by a security agreement, a  
3268 debtor or new debtor authorizes the filing of an initial financing statement, and an  
3269 amendment, covering:

3270 (a) the collateral described in the security agreement; and

3271 (b) property that becomes collateral under Subsection 70A-9a-315(1)(b), whether or not  
3272 the security agreement expressly covers proceeds.

3273 (3) By acquiring collateral in which a security interest or agricultural lien continues under  
3274 Subsection 70A-9a-315(1)(a), a debtor authorizes the filing of an initial financing  
3275 statement, and an amendment, covering the collateral and property that becomes  
3276 collateral under Subsection 70A-9a-315(1)(b).

3277 (4) A person may file an amendment other than an amendment that adds collateral covered  
3278 by a financing statement or an amendment that adds a debtor to a financing statement  
3279 only if:

3280 (a) the secured party of record authorizes the filing; or

3281 (b) the amendment is a termination statement for a financing statement as to which the  
3282 secured party of record has failed to file or send a termination statement as required  
3283 by Subsection 70A-9a-513(1) or (3), the debtor authorizes the filing, and the  
3284 termination statement indicates that the debtor authorized it to be filed.

3285 (5) If there is more than one secured party of record for a financing statement, each secured  
3286 party of record may authorize the filing of an amendment under Subsection (4).

3287 Section 80. Section **70A-9a-513** is amended to read:

3288 **70A-9a-513 . Termination statement.**

3289 (1) A secured party shall cause the secured party of record for a financing statement to file a  
3290 termination statement for the financing statement if the financing statement covers  
3291 consumer goods and:

3292 (a) there is no obligation secured by the collateral covered by the financing statement  
3293 and no commitment to make an advance, incur an obligation, or otherwise give value;  
3294 or

3295 (b) the debtor did not authorize the filing of the initial financing statement.

3296 (2) To comply with Subsection (1), a secured party shall cause the secured party of record

3297 to file the termination statement:

3298 (a) within one month after there is no obligation secured by the collateral covered by the

3299 financing statement and no commitment to make an advance, incur an obligation, or

3300 otherwise give value; or

3301 (b) if earlier, within 20 days after the secured party receives [an authenticated] a signed

3302 demand from a debtor.

3303 (3) In cases not governed by Subsection (1), within 20 days after a secured party receives [

3304 an authenticated] a signed demand from a debtor, the secured party shall cause the

3305 secured party of record for a financing statement to send to the debtor a termination

3306 statement for the financing statement or file the termination statement in the filing office

3307 if:

3308 (a) except in the case of a financing statement covering accounts or chattel paper that has

3309 been sold or goods that are the subject of a consignment, there is no obligation

3310 secured by the collateral covered by the financing statement and no commitment to

3311 make an advance, incur an obligation, or otherwise give value;

3312 (b) the financing statement covers accounts or chattel paper that has been sold but as to

3313 which the account debtor or other person obligated has discharged its obligation;

3314 (c) the financing statement covers goods that were the subject of a consignment to the

3315 debtor but are not in the debtor's possession; or

3316 (d) the debtor did not authorize the filing of the initial financing statement.

3317 (4) Except as otherwise provided in Section 70A-9a-510, upon the filing of a termination

3318 statement with the filing office, the financing statement to which the termination

3319 statement relates ceases to be effective. Except as otherwise provided in Section

3320 70A-9a-510, for purposes of Subsections 70A-9a-519(7), 70A-9a-522(1), and

3321 70A-9a-525(3), the filing with the filing office of a termination statement relating to a

3322 financing statement that indicates that the debtor is a transmitting utility also causes the

3323 effectiveness of the financing statement to lapse.

3324 (5)(a) If a debtor files a termination statement, the filing office shall send to the secured

3325 party of record for the financing statement to which the termination statement relates,

3326 a notice stating that the termination statement has been filed.

3327 (b) The filing office shall send notice described in Subsection (5)(a):

3328 (i)(A) by mail to the address provided for the secured party of record in the

3329 financing statement; or  
3330 (B) by electronic mail to the electronic mail address provided by the secured party  
3331 of record, if any; and  
3332 (ii) no later than 14 days after the day on which the termination statement is filed.

3333 Section 81. Section **70A-9a-601** is amended to read:

3334 **70A-9a-601 . Rights after default -- Judicial enforcement -- Consignor or buyer  
3335 of accounts, chattel paper, payment intangibles, or promissory notes.**

3336 (1) After default, a secured party has the rights provided in this part and, except as  
3337 otherwise provided in Section 70A-9a-602, those provided by agreement of the parties.  
3338 A secured party:

3339 (a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security  
3340 interest, or agricultural lien by any available judicial procedure; and  
3341 (b) if the collateral is documents, may proceed either as to the documents or as to the  
3342 goods they cover.

3343 (2) A secured party in possession of collateral or control of collateral under Section  
3344 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-105.1, 70A-9a-106, [or] 70A-9a-107, or  
3345 70A-9a-107.1 has the rights and duties provided in Section 70A-9a-207.

3346 (3) The rights under Subsections (1) and (2) are cumulative and may be exercised  
3347 simultaneously.

3348 (4) Except as otherwise provided in Subsection (7) and Section 70A-9a-605, after default, a  
3349 debtor and an obligor have the rights provided in this part and by agreement of the  
3350 parties.

3351 (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be  
3352 made upon the collateral by virtue of an execution based upon the judgment relates back  
3353 to the earliest of:

3354 (a) the date of perfection of the security interest or agricultural lien in the collateral;  
3355 (b) the date of filing a financing statement covering the collateral; or  
3356 (c) any date specified in a statute under which the agricultural lien was created.

3357 (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural  
3358 lien by judicial procedure within the meaning of this section. A secured party may  
3359 purchase at the sale and thereafter hold the collateral free of any other requirements of  
3360 this chapter.

3361 (7) Except as otherwise provided in Subsection 70A-9a-607(3), this part imposes no duties  
3362 upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment

3363 intangibles, or promissory notes.

3364 Section 82. Section **70A-9a-605** is amended to read:

3365 **70A-9a-605 . Unknown debtor or secondary obligor.**

3366 [A]

3367 (1) Except as provided in Subsection (2), a secured party does not owe a duty based on its  
3368 status as secured party:

3369 [({1})] (a) to a person that is a debtor or obligor, unless the secured party knows:

3370 [({a})] (i) that the person is a debtor or obligor;

3371 [({b})] (ii) the identity of the person; and

3372 [({e})] (iii) how to communicate with the person; or

3373 [({2})] (b) to a secured party or lienholder that has filed a financing statement against a  
3374 person, unless the secured party knows:

3375 [({a})] (i) that the person is a debtor; and

3376 [({b})] (ii) the identity of the person.

3377 (2) A secured party owes a duty based on its status as a secured party to a person if, at the  
3378 time the secured party obtains control of collateral that is a controllable account,  
3379 controllable electronic record, or controllable payment intangible or at the time the  
3380 security interest attaches to the collateral, whichever is later:

3381 (a) the person is a debtor or obligor; and

3382 (b) the secured party knows that the information in Subsection (1)(a)(i), (ii), or (iii)  
3383 relating to the person is not provided by the collateral, a record attached to or  
3384 logically associated with the collateral, or the system in which the collateral is  
3385 recorded.

3386 Section 83. Section **70A-9a-608** is amended to read:

3387 **70A-9a-608 . Application of proceeds of collection or enforcement -- Liability for**  
3388 **deficiency and right to surplus.**

3389 (1) If a security interest or agricultural lien secures payment or performance of an  
3390 obligation, the following rules apply:

3391 (a) A secured party shall apply or pay over for application the cash proceeds of  
3392 collection or enforcement under Section 70A-9a-607 in the following order to:

3393 (i) the reasonable expenses of collection and enforcement and, to the extent provided  
3394 for by agreement and not prohibited by law, reasonable attorney's fees and legal  
3395 expenses incurred by the secured party;

3396 (ii) the satisfaction of obligations secured by the security interest or agricultural lien

3397 under which the collection or enforcement is made; and  
3398 (iii) the satisfaction of obligations secured by any subordinate security interest in or  
3399 other lien on the collateral subject to the security interest or agricultural lien under  
3400 which the collection or enforcement is made if the secured party receives [an  
3401 ~~authenticated~~] a signed demand for proceeds before distribution of the proceeds is  
3402 completed.

3403 (b) If requested by a secured party, a holder of a subordinate security interest or other  
3404 lien shall furnish reasonable proof of the interest or lien within a reasonable time.  
3405 Unless the holder complies, the secured party need not comply with the holder's  
3406 demand under Subsection (1)(a)(iii).

3407 (c) A secured party need not apply or pay over for application noncash proceeds of  
3408 collection and enforcement under Section 70A-9a-607 unless the failure to do so  
3409 would be commercially unreasonable. A secured party that applies or pays over for  
3410 application noncash proceeds shall do so in a commercially reasonable manner.

3411 (d) A secured party shall account to and pay a debtor for any surplus, and the obligor is  
3412 liable for any deficiency.

3413 (2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or  
3414 promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable  
3415 for any deficiency.

3416 Section 84. Section **70A-9a-611** is amended to read:

3417 **70A-9a-611 . Notification before disposition of collateral.**

3418 (1) In this section, "notification date" means the earlier of the date on which:  
3419 (a) a secured party sends to the debtor and any secondary obligor [an ~~authenticated~~] a  
3420 signed notification of disposition; or  
3421 (b) the debtor and any secondary obligor waive the right to notification.

3422 (2) Except as otherwise provided in Subsection (4), a secured party that disposes of  
3423 collateral under Section 70A-9a-610 shall send to the persons specified in Subsection (3)  
3424 a reasonable [authenticated] signed notification of disposition.

3425 (3) To comply with Subsection (2), the secured party shall send [an ~~authenticated~~] a signed  
3426 notification of disposition to:  
3427 (a) the debtor;  
3428 (b) any secondary obligor; and  
3429 (c) if the collateral is other than consumer goods:  
3430 (i) any other person from which the secured party has received, before the

3431 notification date, [an authenticated] a signed notification of a claim of an interest  
3432 in the collateral;

3433 (ii) any other secured party or lienholder that, 10 days before the notification date,  
3434 held a security interest in or other lien on the collateral perfected by the filing of a  
3435 financing statement that:  
3436 (A) identified the collateral;  
3437 (B) was indexed under the debtor's name as of that date; and  
3438 (C) was filed in the office in which to file a financing statement against the debtor  
3439 covering the collateral as of that date; and  
3440 (iii) any other secured party that, 10 days before the notification date, held a security  
3441 interest in the collateral perfected by compliance with a statute, regulation, or  
3442 treaty described in Subsection 70A-9a-311(1).

3443 (4) Subsection (2) does not apply if the collateral is perishable or threatens to decline  
3444 speedily in value or is of a type customarily sold on a recognized market.

3445 (5) A secured party complies with the requirement for notification prescribed by Subsection  
3446 (3)(c)(ii) if:

3447 (a) not later than 20 days or earlier than 30 days before the notification date, the secured  
3448 party requests, in a commercially reasonable manner, information concerning  
3449 financing statements indexed under the debtor's name in the office indicated in  
3450 Subsection (3)(c)(ii); and  
3451 (b) before the notification date, the secured party:  
3452 (i) did not receive a response to the request for information; or  
3453 (ii) received a response to the request for information and sent [an authenticated] a  
3454 signed notification of disposition to each secured party or other lienholder named  
3455 in that response whose financing statement covered the collateral.

3456 Section 85. Section **70A-9a-613** is amended to read:

3457 **70A-9a-613 . Contents and form of notification before disposition of collateral --**

3458 **General.**

3459 (1) Except in a consumer-goods transaction, the following rules apply:

3460 [(1)] (a) The contents of a notification of disposition are sufficient if the notification:  
3461 [(a)] (i) describes the debtor and the secured party;  
3462 [(b)] (ii) describes the collateral that is the subject of the intended disposition;  
3463 [(c)] (iii) states the method of intended disposition;  
3464 [(d)] (iv) states that the debtor is entitled to an accounting of the unpaid indebtedness

3465 and states the charge, if any, for an accounting; and

3466 [e] (v) states the time and place of a public disposition or the time after which any  
3467 other disposition is to be made.

3468 [(2)] (b) Whether the contents of a notification that lacks any of the information specified  
3469 in Subsection (1) are nevertheless sufficient is a question of fact.

3470 [(3)] (c) The contents of a notification providing substantially the information specified  
3471 in Subsection (1) are sufficient, even if the notification includes:

3472 [a] (i) information not specified by that subsection; or  
3473 [b] (ii) minor errors that are not seriously misleading.

3474 [(4)] (d) A particular phrasing of the notification is not required.

3475 [(5)] (e) The following form of notification and the form appearing in Subsection [  
3476 70A-9a-614(3)] 70A-9a-614(3), when completed in accordance with the instructions  
3477 in Subsection (2) and Subsection 70A-9a-104(2), each provides sufficient  
3478 information:

3479 **[NOTIFICATION OF DISPOSITION OF COLLATERAL]**

3480 To: [Name of debtor, obligor, or other person to which the notification is sent]

3481 From: [Name, address, and telephone number of secured party]

3482 Name of Debtor(s): [Include only if debtor(s) are not an addressee]

3483 [For a public disposition:]

3484 We will sell [or lease or license, as applicable] the [describe collateral] [to the  
3485 highest qualified bidder] in public as follows:

3486 Day and Date: [Insert day and date]

3487 Time: [Insert time]

3488 Place: [Insert place]

3489 [For a private disposition:]

3490 We will sell [or lease or license, as applicable] the [describe collateral]  
3491 privately sometime after [day and date]].

3492 You are entitled to an accounting of the unpaid indebtedness secured by the  
3493 property that we intend to sell [or lease or license, as applicable] [for a charge of  
3494 \$[Insert amount]]. You may request an accounting by calling us at [telephone  
3495 number].

3496 ] **NOTIFICATION OF DISPOSITION OF COLLATERAL**

3497 To: (Name of debtor, obligor, or other person to which the notification is sent)

3498 From: (Name, address, and telephone number of secured party)

3499 {1} Name of any debtor that is not an addressee: (Name of each debtor)  
3500 {2} We will sell (describe collateral) (to the highest qualified bidder) at public  
3501 sale. A sale could include a lease or license. The sale will be held as follows:  
3502 (Date)  
3503 (Time)  
3504 (Place)  
3505 {3} We will sell (describe collateral) at private sale sometime after (date). A sale  
3506 could include a lease or license.  
3507 {4} You are entitled to an accounting of the unpaid indebtedness secured by the  
3508 property that we intend to sell or, as applicable, lease or license.  
3509 {5} If you request an accounting you must pay a charge of \$ (amount).  
3510 {6} You may request an accounting by calling us at (telephone number).  
3511 [End of Form]

3512 (2) The following instructions apply to the form of notification in Subsection (1)(e):  
3513 (a) The instructions in this subsection refer to the numbers in braces before items in the  
3514 form of notification in Subsection (1)(e). Do not include the numbers or braces in the  
3515 notification. The numbers and braces are used only for the purpose of these  
3516 instructions.  
3517 (b) Include and complete item {1} only if there is a debtor that is not an addressee of the  
3518 notification and list the name or names.  
3519 (c) Include and complete either item {2}, if the notification relates to a public  
3520 disposition of the collateral, or item {3}, if the notification relates to a private  
3521 disposition of the collateral. If item {2} is included, include the words to the highest  
3522 qualified bidder only if applicable.  
3523 (d) Include and complete items {4} and {6}.  
3524 (e) Include and complete item {5} only if the sender will charge the recipient for an  
3525 accounting.

3526 Section 86. Section **70A-9a-614** is amended to read:

3527 **70A-9a-614 . Contents and form of notification before disposition of collateral --**  
3528 **Consumer-goods transaction.**

3529 In a consumer-goods transaction, the following rules apply:

3530 (1) A notification of disposition must provide the following information:  
3531 (a) the information specified in Subsection [70A-9a-613(1)] **70A-9a-613(1)(a)**;  
3532 (b) a description of any liability for a deficiency of the person to which the notification

is sent;

- (c) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 70A-9a-623 is available; and
- (d) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed in accordance with Subsection (4), provides sufficient information:

[Name and address of secured party]

[Date]

# NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

~~We have your [describe collateral], because you broke promises in our agreement.~~

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license.

The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address] ] and request a written explanation. [We will charge you \$[insert amount] for the explanation if we

3567 sent you another written explanation of the amount you owe us within the last six months.]

3568 If you need more information about the sale call us at [telephone number] [or write us  
3569 at [secured party's address]].

3570 We are sending this notice to the following other people who have an interest in  
3571 [describe collateral] or who owe money under your agreement:

3572 [Names of all other debtors and obligors, if any].

3573 ]

3574 (Name and address of secured party)

3575 (Date)

3576 **NOTICE OF OUR PLAN TO SELL PROPERTY**

3577 (Name and address of any obligor who is also a debtor)

3578 Subject: (Identify transaction)

3579 We have your (describe collateral), because you broke promises in our agreement.

3580 {1} We will sell (describe collateral) at public sale. A sale could include a lease or license.

3581 The sale will be held as follows:

3582 (Date)

3583 (Time)

3584 (Place)

3585 You may attend the sale and bring bidders if you want.

3586 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could  
3587 include a lease or license.

3588 {3} The money that we get from the sale, after paying our costs, will reduce the amount  
3589 you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us  
3590 the difference. If we get more money than you owe, you will get the extra money, unless we  
3591 must pay it to someone else.

3592 {4} You can get the property back at any time before we sell it by paying us the full amount  
3593 you owe, not just the past due payments, including our expenses. To learn the exact amount  
3594 you must pay, call us at (telephone number).

3595 {5} If you want us to explain to you in (writing) (writing or in (description of electronic  
3596 record)) (description of electronic record) how we have figured the amount that you owe us,

3597 {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us  
3598 by (description of electronic communication method))

3599 {7} and request (a written explanation) (a written explanation or an explanation in

3601 (description of electronic record)) (an explanation in (description of electronic record)).  
3602 {8} We will charge you \$ (amount) for the explanation if we sent you another written  
3603 explanation of the amount you owe us within the last six months.  
3604 {9} If you need more information about the sale (call us at (telephone number)) (or) (write  
3605 us at (secured party's address)) (or contact us by (description of electronic communication  
3606 method)).  
3607 {10} We are sending this notice to the following other people who have an interest in  
3608 (describe collateral) or who owe money under your agreement:  
3609 (Names of all other debtors and obligors, if any)  
3610 [End of Form]

3611 (4) The following instructions apply to the form of notification in Subsection (3):

3612 (a) The instructions in this subsection refer to the numbers in braces before items in the  
3613 form of notification in Subsection (3). Do not include the numbers or braces in the  
3614 notification. The numbers and braces are used only for the purpose of these  
3615 instructions.

3616 (b) Include and complete either item {1}, if the notification relates to a public  
3617 disposition of the collateral, or item {2}, if the notification relates to a private  
3618 disposition of the collateral.

3619 (c) Include and complete items {3}, {4}, {5}, {6}, and {7}.

3620 (d) In item {5}, include and complete any one of the three alternative methods for the  
3621 explanation -- writing, writing or electronic record, or electronic record.

3622 (e) In item {6}, include the telephone number. In addition, the sender may include and  
3623 complete either or both of the two additional alternative methods of communication  
3624 -- writing or electronic communication -- for the recipient of the notification to  
3625 communicate with the sender. Neither of the two additional methods of  
3626 communication is required to be included.

3627 (f) In item {7}, include and complete the method or methods for the explanation --  
3628 writing, writing or electronic record, or electronic record -- included in item {5}.

3629 (g) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the  
3630 recipient for another written explanation.

3631 (h) In item {9}, include either the telephone number or the address or both the telephone  
3632 number and the address. In addition, the sender may include and complete the  
3633 additional method of communication -- electronic communication -- for the recipient

3634

3635                   of the notification to communicate with the sender. The additional method of  
3636                   electronic communication is not required to be included.

3637                   (i) If item {10} does not apply, insert "None" after "agreement:".

3638                   [(4)] (5) A notification in the form of Subsection (3) is sufficient, even if additional  
3639                   information appears at the end of the form.

3640                   [(5)] (6) A notification in the form of Subsection (3) is sufficient, even if it includes errors in  
3641                   information not required by Subsection (1), unless the error is misleading with respect to  
3642                   rights arising under this chapter.

3643                   [(6)] (7) If a notification under this section is not in the form of Subsection (3), law other  
3644                   than this chapter determines the effect of including information not required by  
3645                   Subsection (1).

3646                   Section 87. Section **70A-9a-615** is amended to read:

3647                   **70A-9a-615 . Application of proceeds of disposition -- Liability for deficiency and  
3648                   right to surplus.**

3649                   (1) A secured party shall apply or pay over for application the cash proceeds of disposition  
3650                   under Section 70A-9a-610 in the following order to:

3651                   (a) the reasonable expenses of retaking, holding, preparing for disposition, processing,  
3652                   and disposing, and, to the extent provided for by agreement and not prohibited by  
3653                   law, reasonable attorney's fees and legal expenses incurred by the secured party;

3654                   (b) the satisfaction of obligations secured by the security interest or agricultural lien  
3655                   under which the disposition is made;

3656                   (c) the satisfaction of obligations secured by any subordinate security interest in or other  
3657                   subordinate lien on the collateral if:

3658                   (i) the secured party receives from the holder of the subordinate security interest or  
3659                   other lien ~~[an authenticated]~~ a signed demand for proceeds before distribution of  
3660                   the proceeds is completed; and

3661                   (ii) in a case in which a consignor has an interest in the collateral, the subordinate  
3662                   security interest or other lien is senior to the interest of the consignor; and

3663                   (d) a secured party that is a consignor of the collateral if the secured party receives from  
3664                   the consignor ~~[an authenticated]~~ a signed demand for proceeds before distribution of  
3665                   the proceeds is completed.

3666                   (2) If requested by a secured party, a holder of a subordinate security interest or other lien  
3667                   shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the  
3668                   holder does so, the secured party need not comply with the holder's demand under

3669 Subsection (1)(c).

3670 (3) A secured party need not apply or pay over for application noncash proceeds of  
3671 disposition under Section 70A-9a-610 unless the failure to do so would be commercially  
3672 unreasonable. A secured party that applies or pays over for application noncash  
3673 proceeds shall do so in a commercially reasonable manner.

3674 (4) If the security interest under which a disposition is made secures payment or  
3675 performance of an obligation, after making the payments and applications required by  
3676 Subsection (1) and permitted by Subsection (3):

3677 (a) unless Subsection (1)(d) requires the secured party to apply or pay over cash  
3678 proceeds to a consignor, the secured party shall account to and pay a debtor for any  
3679 surplus; and

3680 (b) the obligor is liable for any deficiency.

3681 (5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or  
3682 promissory notes:

3683 (a) the debtor is not entitled to any surplus; and  
3684 (b) the obligor is not liable for any deficiency.

3685 (6) The surplus or deficiency following a disposition is calculated based on the amount of  
3686 proceeds that would have been realized in a disposition complying with this part to a  
3687 transferee other than the secured party, a person related to the secured party, or a  
3688 secondary obligor if:

3689 (a) the transferee in the disposition is the secured party, a person related to the secured  
3690 party, or a secondary obligor; and  
3691 (b) the amount of proceeds of the disposition is significantly below the range of  
3692 proceeds that a complying disposition to a person other than the secured party, a  
3693 person related to the secured party, or a secondary obligor would have brought.

3694 (7) A secured party that receives cash proceeds of a disposition in good faith and without  
3695 knowledge that the receipt violates the rights of the holder of a security interest or other  
3696 lien that is not subordinate to the security interest or agricultural lien under which the  
3697 disposition is made:

3698 (a) takes the cash proceeds free of the security interest or other lien;  
3699 (b) is not obligated to apply the proceeds of the disposition to the satisfaction of  
3700 obligations secured by the security interest or other lien; and  
3701 (c) is not obligated to account to or pay the holder of the security interest or other lien  
3702 for any surplus.

3703       Section 88. Section **70A-9a-616** is amended to read:

3704       **70A-9a-616 . Explanation of calculation of surplus or deficiency.**

3705       (1) In this section:

3706           (a) "Explanation" means a [writing] record that:

3707              (i) states the amount of the surplus or deficiency;

3708              (ii) provides an explanation in accordance with Subsection (3) of how the secured

3709                party calculated the surplus or deficiency;

3710              (iii) states, if applicable, that future debits, credits, charges, including additional

3711                credit service charges or interest, rebates, and expenses may affect the amount of

3712                the surplus or deficiency; and

3713              (iv) provides a telephone number or mailing address from which additional

3714                information concerning the transaction is available.

3715           (b) "Request" means a record:

3716              (i) [authenticated] signed by a debtor or consumer obligor;

3717              (ii) requesting that the recipient provide an explanation; and

3718              (iii) sent after disposition of the collateral under Section 70A-9a-610.

3719       (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a

3720        consumer obligor is liable for a deficiency under Section 70A-9a-615, the secured party

3721        shall:

3722           (a) send an explanation to the debtor or consumer obligor, as applicable, after the

3723            disposition and:

3724              (i) before or when the secured party accounts to the debtor and pays any surplus or

3725                first makes [written] demand in a record on the consumer obligor after the

3726                disposition for payment of the deficiency; and

3727              (ii) within 14 days after receipt of a request; or

3728           (b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after

3729            receipt of a request, send to the consumer obligor a record waiving the secured party's

3730            right to a deficiency.

3731       (3) To comply with Subsection (1)(a)(ii), [a writing] an explanation must provide the

3732        following information in the following order:

3733           (a) the aggregate amount of obligations secured by the security interest under which the

3734            disposition was made, and, if the amount reflects a rebate of unearned interest or

3735            credit service charge, an indication of that fact, calculated as of a specified date:

3736              (i) if the secured party takes or receives possession of the collateral after default, not

more than 35 days before the secured party takes or receives possession; or

(ii) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(b) the amount of proceeds of the disposition;

(c) the aggregate amount of the obligations after deducting the amount of proceeds;

(d) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Subsection (3)(a); and

(f) the amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of Subsection (1) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to Subsection (2)(a). The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 89. Section **70A-9a-619** is amended to read:

**70A-9a-619 . Transfer of record or legal title.**

- (1) In this section, "transfer statement" means a record [authenticated] signed by a secured party stating:
  - (a) that the debtor has defaulted in connection with an obligation secured by specified collateral;
  - (b) that the secured party has exercised its post-default remedies with respect to the collateral;
  - (c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
  - (d) the name and mailing address of the secured party, debtor, and transferee.
- (2) A transfer statement entitles the transferee to the transfer of record of all rights of the

3771 debtor in the collateral specified in the statement in any official filing, recording,  
3772 registration, or certificate-of-title system covering the collateral. If a transfer statement  
3773 is presented with the applicable fee and request form to the official or office responsible  
3774 for maintaining the system, the official or office shall:

3775 (a) accept the transfer statement;  
3776 (b) promptly amend its records to reflect the transfer; and  
3777 (c) if applicable, issue a new appropriate certificate of title in the name of the transferee.

3778 (3) A transfer of the record or legal title to collateral to a secured party under Subsection (2)  
3779 or otherwise is not of itself a disposition of collateral under this chapter and does not of  
3780 itself relieve the secured party of its duties under this chapter.

3781 Section 90. Section **70A-9a-620** is amended to read:

3782 **70A-9a-620 . Acceptance of collateral in full or partial satisfaction of obligation --**

3783 **Compulsory disposition of collateral.**

3784 (1) Except as otherwise provided in Subsection (7), a secured party may accept collateral in  
3785 full or partial satisfaction of the obligation it secures only if:  
3786 (a) the debtor consents to the acceptance under Subsection (3);  
3787 (b) the secured party does not receive, within the time set forth in Subsection (4), a  
3788 notification of objection to the proposal [authenticated] signed by:  
3789 (i) a person to which the secured party was required to send a proposal under Section  
3790 70A-9a-621; or  
3791 (ii) any other person, other than the debtor, holding an interest in the collateral  
3792 subordinate to the security interest that is the subject of the proposal;  
3793 (c) if the collateral is consumer goods, the collateral is not in the possession of the  
3794 debtor when the debtor consents to the acceptance; and  
3795 (d) Subsection (5) does not require the secured party to dispose of the collateral or the  
3796 debtor waives the requirement pursuant to Section 70A-9a-624.

3797 (2) A purported or apparent acceptance of collateral under this section is ineffective unless:  
3798 (a) the secured party consents to the acceptance in [an authenticated] a signed record or  
3799 sends a proposal to the debtor; and  
3800 (b) the conditions of Subsection (1) are met.

3801 (3) For purposes of this section:  
3802 (a) a debtor consents to an acceptance of collateral in partial satisfaction of the  
3803 obligation it secures only if the debtor agrees to the terms of the acceptance in a  
3804 record [authenticated] signed after default; and

3805 (b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it  
3806 secures only if the debtor agrees to the terms of the acceptance in a record [  
3807 ~~authenticated~~] signed after default or the secured party:  
3808 (i) sends to the debtor after default a proposal that is unconditional or subject only to  
3809 a condition that collateral not in the possession of the secured party be preserved  
3810 or maintained;  
3811 (ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation  
3812 it secures; and  
3813 (iii) does not receive a notification of objection [~~authenticated~~] signed by the debtor  
3814 within 20 days after the proposal is sent.

3815 (4) To be effective under Subsection (1)(b), a notification of objection must be received by  
3816 the secured party:  
3817 (a) in the case of a person to which the proposal was sent pursuant to Section  
3818 70A-9a-621, within 20 days after notification was sent to that person; and  
3819 (b) in other cases:  
3820 (i) within 20 days after the last notification was sent pursuant to Section 70A-9a-621;  
3821 or  
3822 (ii) if a notification was not sent, before the debtor consents to the acceptance under  
3823 Subsection (3).

3824 (5) A secured party that has taken possession of collateral shall dispose of the collateral  
3825 pursuant to Section 70A-9a-610 within the time specified in Subsection (6) if:  
3826 (a) 60% of the cash price has been paid in the case of a purchase-money security interest  
3827 in consumer goods; or  
3828 (b) 60% of the principal amount of the obligation secured has been paid in the case of a  
3829 non-purchase-money security interest in consumer goods.

3830 (6) To comply with Subsection (5), the secured party shall dispose of the collateral:  
3831 (a) within 90 days after taking possession; or  
3832 (b) within any longer period to which the debtor and all secondary obligors have agreed  
3833 in an agreement to that effect entered into and [~~authenticated~~] signed after default.

3834 (7) In a consumer transaction, a secured party may not accept collateral in partial  
3835 satisfaction of the obligation it secures.

3836 Section 91. Section **70A-9a-621** is amended to read:

3837 **70A-9a-621 . Notification of proposal to accept collateral.**

3838 (1) A secured party that desires to accept collateral in full or partial satisfaction of the

3839 obligation it secures shall send its proposal to:

3840 (a) any person from which the secured party has received, before the debtor consented to  
3841 the acceptance, [an authenticated] signed notification of a claim of an interest in the  
3842 collateral;

3843 (b) any other secured party or lienholder that, 10 days before the debtor consented to the  
3844 acceptance, held a security interest in or other lien on the collateral perfected by the  
3845 filing of a financing statement that:

3846 (i) identified the collateral;

3847 (ii) was indexed under the debtor's name as of that date; and

3848 (iii) was filed in the office or offices in which to file a financing statement against the  
3849 debtor covering the collateral as of that date; and

3850 (c) any other secured party that, 10 days before the debtor consented to the acceptance,  
3851 held a security interest in the collateral perfected by compliance with a statute,  
3852 regulation, or treaty described in Subsection 70A-9a-311(1).

3853 (2) A secured party that desires to accept collateral in partial satisfaction of the obligation it  
3854 secures shall send its proposal to any secondary obligor in addition to the persons  
3855 described in Subsection (1).

3856 Section 92. Section **70A-9a-624** is amended to read:

3857 **70A-9a-624 . Waiver.**

3858 (1) A debtor or secondary obligor may waive the right to notification of disposition of  
3859 collateral under Section 70A-9a-611 only by an agreement to that effect entered into and [  
3860 authenticated] signed after default.

3861 (2) A debtor may waive the right to require disposition of collateral under Subsection  
3862 70A-9a-620(5) only by an agreement to that effect entered into and [authenticated] signed  
3863 after default.

3864 (3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the  
3865 right to redeem collateral under Section 70A-9a-623 only by an agreement to that effect  
3866 entered into and [authenticated] signed after default.

3867 Section 93. Section **70A-9a-628** is amended to read:

3868 **70A-9a-628 . Nonliability and limitation on liability of secured party -- Liability  
3869 of secondary obligor.**

3870 (1) [Unless] Subject to Subsection (6), unless a secured party knows that a person is a debtor  
3871 or obligor, knows the identity of the person, and knows how to communicate with the  
3872 person:

3873 (a) the secured party is not liable to the person, or to a secured party or lienholder that  
3874 has filed a financing statement against the person, for failure to comply with this  
3875 chapter; and

3876 (b) the secured party's failure to comply with this chapter does not affect the liability of  
3877 the person for a deficiency.

3878 (2) [A] Subject to Subsection (6), a secured party is not liable because of its status as  
3879 secured party:

3880 (a) to a person that is a debtor or obligor, unless the secured party knows:

3881 (i) that the person is a debtor or obligor;

3882 (ii) the identity of the person; and

3883 (iii) how to communicate with the person; or

3884 (b) to a secured party or lienholder that has filed a financing statement against a person,  
3885 unless the secured party knows:

3886 (i) that the person is a debtor; and

3887 (ii) the identity of the person.

3888 (3) A secured party is not liable to any person, and a person's liability for a deficiency is not  
3889 affected, because of any act or omission arising out of the secured party's reasonable  
3890 belief that a transaction is not a consumer-goods transaction or a consumer transaction  
3891 or that goods are not consumer goods, if the secured party's belief is based on its  
3892 reasonable reliance on:

3893 (a) a debtor's representation concerning the purpose for which collateral was to be used,  
3894 acquired, or held; or

3895 (b) an obligor's representation concerning the purpose for which a secured obligation  
3896 was incurred.

3897 (4) A secured party is not liable to any person under Subsection 70A-9a-625(3)(b) for its  
3898 failure to comply with Section 70A-9a-616.

3899 (5) A secured party is not liable under Section 70A-9a-625(3)(b) more than once with  
3900 respect to any one secured obligation.

3901 (6) Subsections (1) and (2) do not apply to limit the liability of a secured party to a person  
3902 if, at the time the secured party obtains control of collateral that is a controllable  
3903 account, controllable electronic record, or controllable payment intangible or at the time  
3904 the security interest attaches to the collateral, whichever is later:

3905 (a) the person is a debtor or obligor; and

3906 (b) the secured party knows that the information in Subsection (2)(a)(i), (ii), or (iii)

3907 relating to the person is not provided by the collateral, a record attached to or  
3908 logically associated with the collateral, or the system in which the collateral is  
3909 recorded.

3910 Section 94. Section **70A-12-101** is enacted to read:

3911 **CHAPTER 12. Uniform Commercial Code - Controllable Electronic Records**

3912 **70A-12-101 . Title.**

3913 This chapter may be cited as Uniform Commercial Code - Controllable Electronic  
3914 Records.

3915 Section 95. Section **70A-12-102** is enacted to read:

3916 **70A-12-102 . Definitions.**

3917 (1) In this chapter:

3918 (a)(i) "Controllable electronic record" means a record stored in an electronic medium  
3919 that can be subjected to control under Section 70A-9b-105.  
3920 (ii) "Controllable electronic record" does not include a controllable account, a  
3921 controllable payment intangible, a deposit account, an electronic copy of a record  
3922 evidencing chattel paper, an electronic document of title, electronic money,  
3923 investment property, or a transferable record.

3924 (b) "Qualifying purchaser" means a purchaser of a controllable electronic record or an  
3925 interest in a controllable electronic record that obtains control of the controllable  
3926 electronic record for value, in good faith, and without notice of a claim of a property  
3927 right in the controllable electronic record.

3928 (c) "Transferable record" has the meaning provided for that term in:  
3929 (i) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce  
3930 Act, 15 U.S.C. Sec. 7021(a)(1); or  
3931 (ii) Section 46-4-403.  
3932 (d) "Value" has the meaning provided in Subsection 70A-3-303(1), as if references in  
3933 that subsection to an instrument were references to a controllable account,  
3934 controllable electronic record, or controllable payment intangible.

3935 (2) The definitions in Chapter 9a, Uniform Commercial Code - Secured Transactions, of  
3936 "account debtor," "controllable account," "controllable payment intangible," "chattel  
3937 paper," "deposit account," "electronic money," and "investment property" apply to this  
3938 chapter.

3939 (3) Chapter 1a, Uniform Commercial Code - General Provisions, contains general  
3940 definitions and principles of construction and interpretation applicable throughout this

3941 chapter.

3942 Section 96. Section **70A-12-103** is enacted to read:

3943 **70A-12-103 . Relation to Chapter 9a, Uniform Commercial Code - Secured**  
3944 **Transactions and consumer laws.**

3945 (1) If there is conflict between this chapter and Chapter 9a, Uniform Commercial Code -  
3946 Secured Transactions, Chapter 9a, Uniform Commercial Code - Secured Transactions,  
3947 governs.

3948 (2) A transaction subject to this chapter is subject to any applicable rule of law that  
3949 establishes a different rule for consumers and Title 70C, Utah Consumer Credit Code.

3950 Section 97. Section **70A-12-104** is enacted to read:

3951 **70A-12-104 . Rights in controllable account, controllable electronic record, and**  
3952 **controllable payment intangible.**

3953 (1) This section applies to the acquisition and purchase of rights in a controllable account or  
3954 controllable payment intangible, including the rights and benefits under Subsections (3),  
3955 (4), (5), (7), and (8), of a purchaser and qualifying purchaser, in the same manner this  
3956 section applies to a controllable electronic record.

3957 (2) To determine whether a purchaser of a controllable account or a controllable payment  
3958 intangible is a qualifying purchaser, the purchaser obtains control of the account or  
3959 payment intangible if it obtains control of the controllable electronic record that  
3960 evidences the account or payment intangible.

3961 (3) Except as provided in this section, law other than this chapter determines whether a  
3962 person acquires a right in a controllable electronic record and the right the person  
3963 acquires.

3964 (4) A purchaser of a controllable electronic record acquires all rights in the controllable  
3965 electronic record that the transferor had or had power to transfer, except that a purchaser  
3966 of a limited interest in a controllable electronic record acquires rights only to the extent  
3967 of the interest purchased.

3968 (5) A qualifying purchaser acquires its rights in the controllable electronic record free of a  
3969 claim of a property right in the controllable electronic record.

3970 (6) Except as provided in Subsections (1) and (5) for a controllable account and a  
3971 controllable payment intangible or law other than this chapter, a qualifying purchaser  
3972 takes a right to payment, right to performance, or other interest in property evidenced by  
3973 the controllable electronic record subject to a claim of a property right in the right to  
3974 payment, right to performance, or other interest in property.

3975 (7) An action may not be asserted against a qualifying purchaser based on both a purchase  
3976 by the qualifying purchaser of a controllable electronic record and a claim of a property  
3977 right in another controllable electronic record, whether the action is framed in  
3978 conversion, replevin, constructive trust, equitable lien, or other theory.

3979 (8) Filing of a financing statement under Chapter 9a, Uniform Commercial Code - Secured  
3980 Transactions, is not notice of a claim of a property right in a controllable electronic  
3981 record.

3982 Section 98. Section **70A-12-105** is enacted to read:

3983 **70A-12-105 . Control of controllable electronic record.**

3984 (1) A person has control of a controllable electronic record if the electronic record, a record  
3985 attached to or logically associated with the electronic record, or a system in which the  
3986 electronic record is recorded:

3987 (a) gives the person:

3988 (i) power to avail itself of substantially all the benefit from the electronic record; and

3989 (ii) exclusive power, subject to Subsection (2), to:

3990 (A) prevent others from availing themselves of substantially all the benefit from  
3991 the electronic record; and

3992 (B) transfer control of the electronic record to another person or cause another  
3993 person to obtain control of another controllable electronic record as a result of  
3994 the transfer of the electronic record; and

3995 (b) enables the person readily to identify itself in any way, including by name,  
3996 identifying number, cryptographic key, office, or account number, as having the  
3997 powers specified in Subsection (1)(a).

3998 (2) Subject to Subsection (3), a power is exclusive under Subsections (1)(a)(ii)(A) and (B)  
3999 even if:

4000 (a) the controllable electronic record, a record attached to or logically associated with  
4001 the electronic record, or a system in which the electronic record is recorded limits the  
4002 use of the electronic record or has a protocol programmed to cause a change,  
4003 including a transfer or loss of control or a modification of benefits afforded by the  
4004 electronic record; or

4005 (b) the power is shared with another person.

4006 (3) A power of a person is not shared with another person under Subsection (2)(b) and the  
4007 person's power is not exclusive if:

4008 (a) the person can exercise the power only if the power also is exercised by the other

4009                   person; and

4010                   (b) the other person:

4011                    (i) can exercise the power without exercise of the power by the person; or

4012                    (ii) is the transferor to the person of an interest in the controllable electronic record or  
4013                   a controllable account or controllable payment intangible evidenced by the  
4014                   controllable electronic record.

4015                   (4) If a person has the powers specified in Subsections (1)(a)(ii)(A) and (B), the powers are  
4016                   presumed to be exclusive.

4017                   (5) A person has control of a controllable electronic record if another person, other than the  
4018                   transferor to the person of an interest in the controllable electronic record or a  
4019                   controllable account or controllable payment intangible evidenced by the controllable  
4020                   electronic record:

4021                    (a) has control of the electronic record and acknowledges that it has control on behalf of  
4022                   the person; or

4023                    (b) obtains control of the electronic record after having acknowledged that it will obtain  
4024                   control of the electronic record on behalf of the person.

4025                   (6) A person that has control under this section is not required to acknowledge that it has  
4026                   control on behalf of another person.

4027                   (7) If a person acknowledges that it has or will obtain control on behalf of another person,  
4028                   unless the person otherwise agrees or law other than this chapter or Chapter 9a, Uniform  
4029                   Commercial Code - Secured Transactions, otherwise provides, the person does not owe  
4030                   any duty to the other person and is not required to confirm the acknowledgment to any  
4031                   other person.

4032                   Section 99. Section **70A-12-106** is enacted to read:

4033                   **70A-12-106 . Discharge of account debtor on controllable account or controllable**  
4034                   **payment intangible.**

4035                   (1) An account debtor on a controllable account or controllable payment intangible may  
4036                   discharge its obligation by paying:

4037                    (a) the person having control of the controllable electronic record that evidences the  
4038                   controllable account or controllable payment intangible; or

4039                    (b) except as provided in Subsection (2), a person that formerly had control of the  
4040                   controllable electronic record.

4041                   (2) Subject to Subsection (4), the account debtor may not discharge its obligation by paying  
4042                   a person that formerly had control of the controllable electronic record if the account

4043 debtor receives a notification that:

4044 (a) is signed by a person that formerly had control or the person to which control was  
4045 transferred;

4046 (b) reasonably identifies the controllable account or controllable payment intangible;

4047 (c) notifies the account debtor that control of the controllable electronic record that  
4048 evidences the controllable account or controllable payment intangible was transferred;

4049 (d) identifies the transferee, in any reasonable way, including by name, identifying  
4050 number, cryptographic key, office, or account number; and

4051 (e) provides a commercially reasonable method by which the account debtor is to pay  
4052 the transferee.

4053 (3) After receipt of a notification that complies with Subsection (2), the account debtor may  
4054 discharge its obligation by paying in accordance with the notification and may not  
4055 discharge the obligation by paying a person that formerly had control.

4056 (4) Subject to Subsection (8), notification is ineffective under Subsection (2):

4057 (a) unless, before the notification is sent, the account debtor and the person that, at that  
4058 time, had control of the controllable electronic record that evidences the controllable  
4059 account or controllable payment intangible agree in a signed record to a  
4060 commercially reasonable method by which a person may furnish reasonable proof  
4061 that control has been transferred;

4062 (b) to the extent an agreement between the account debtor and seller of a payment  
4063 intangible limits the account debtors duty to pay a person other than the seller and the  
4064 limitation is effective under law other than this article; or

4065 (c) at the option of the account debtor, if the notification notifies the account debtor to:  
4066 (i) divide a payment;  
4067 (ii) make less than the full amount of an installment or other periodic payment; or  
4068 (iii) pay any part of a payment by more than one method or to more than one person.

4069 (5) Subject to Subsection (8), if requested by the account debtor, the person giving the  
4070 notification under Subsection (2) seasonably shall furnish reasonable proof, using the  
4071 method in the agreement referred to in Subsection (4)(a), that control of the controllable  
4072 electronic record has been transferred. Unless the person complies with the request, the  
4073 account debtor may discharge its obligation by paying a person that formerly had  
4074 control, even if the account debtor has received a notification under Subsection (2).

4075 (6) A person furnishes reasonable proof under Subsection (5) that control has been  
4076 transferred if the person demonstrates, using the method in the agreement referred to in

4077      Subsection (4)(a), that the transferee has the power to:

4078      (a) avail itself of substantially all the benefit from the controllable electronic record;

4079      (b) prevent others from availing themselves of substantially all the benefit from the  
4080      controllable electronic record; and

4081      (c) transfer the powers specified in Subsection (6)(a) and (b) to another person.

4082      (7) Subject to Subsection (8), an account debtor may not waive or vary its rights under  
4083      Subsections (4)(a) and (5) or its option under Subsection (4)(c).

4084      (8) This section is subject to law other than this article which establishes a different rule for  
4085      an account debtor who is an individual and who incurred the obligation primarily for  
4086      personal, family, or household purposes.

4087      Section 100. Section **70A-12-107** is enacted to read:

4088      **70A-12-107 . Governing law.**

4089      (1) Except as provided in Subsection (2), the local law of a controllable electronic records  
4090      jurisdiction governs a matter covered by this article.

4091      (2) For a controllable electronic record that evidences a controllable account or controllable  
4092      payment intangible, the local law of the controllable electronic records jurisdiction  
4093      governs a matter covered by Section 70A-9b-106 unless an effective agreement  
4094      determines that the local law of another jurisdiction governs.

4095      (3) The following rules determine a controllable electronic records jurisdiction under this  
4096      section:

4097      (a) If the controllable electronic record, or a record attached to or logically associated  
4098      with the controllable electronic record and readily available for review, expressly  
4099      provides that a particular jurisdiction is the controllable electronic records  
4100      jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable  
4101      electronic records jurisdiction.

4102      (b) Subsection (3)(a) does not apply and the rules of the system in which the controllable  
4103      electronic record is recorded are readily available for review and expressly provide  
4104      that a particular jurisdiction is the controllable electronic records jurisdiction for  
4105      purposes of this chapter or title, that jurisdiction is the controllable electronic records  
4106      jurisdiction.

4107      (c) If Subsections (3)(a) and (b) do not apply and the controllable electronic record, or a  
4108      record attached to or logically associated with the controllable electronic record and  
4109      readily available for review, expressly provides that the controllable electronic record  
4110      is governed by the law of a particular jurisdiction, that jurisdiction is the controllable

### electronic records jurisdiction.

(d) If Subsections (3)(a) through (c) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic records jurisdiction.

(e) If Subsections (3)(a) through (d) do not apply, the controllable electronic records jurisdiction is the District of Columbia.

If Subsection (3)(e) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this article is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

To the extent Subsections (1) and (2) provide that the local law of the controllable electronic records jurisdiction governs a matter covered by this article, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic records jurisdiction.

The rights acquired under Section 70A-12-104 by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

Section 101. Section **70A-12a-101** is enacted to read:

## CHAPTER 12a. Uniform Commercial Code - Transitional Provisions for Uniform

## Commercial Code Amendments (2022)

## **Part 1. General Provisions and Definitions**

70A-12a-101 . Title.

This article may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

Section 102. Section **70A-12a-102** is enacted to read:

## **70A-12a-102 . Definitions.**

(1) In this chapter:

- (a) "Adjustment date" means July 1, 2025, or the date that is one year after May 6, 2026, whichever is later.
- (b) "Article 12" means Chapter 12, Uniform Commercial Code - Controllable Electronic

## Records.

(c) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

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

(a) "Controllable account," Section 70A-9a-102.

(b) "Controllable electronic record," Section 70A-12-102.

(c) "Controllable payment intangible," Section 70A-9a-102.

(d) "Electronic money," Section 70A-9a-102.

(e) "Financing statement," Section 70A-9a-102.

(3) Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 103. Section **70A-12a-201** is enacted to read:

## Part 2. General Transitional Provision

## 70A-12a-201 . Saving clause.

Except as provided in Part 3, Transitional Provisions for Chapter 9a, Uniform Commercial Code - Secured Transactions, and Chapter 12, Uniform Commercial Code - Controllable Electronic Records, a transaction validly entered into before May 6, 2026, and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than this title or, if applicable, this title, as though this chapter had not taken effect.

Section 104. Section **70A-12a-301** is enacted to read:

### **Part 3. Transitional Provisions for Chapter 9a, Uniform Commercial Code - Secured**

## **Transactions and Chapter 12, Uniform Commercial Code - Controllable Electronic**

## Records

## **70A-12a-301 . Saving clause.**

(1) Except as provided in this part, Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter and Chapter 12, Uniform Commercial Code - Controllable Electronic Records, apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before May 6, 2026.

4174 (2) Except as provided in Subsection (3) and Sections 70A-12a-302 through 306:

4175 (a) a transaction, lien, or interest in property that was validly entered into, created, or  
4176 transferred before May 6, 2026, and was not governed by this title, but would be  
4177 subject to Chapter 9a, Uniform Commercial Code - Secured Transactions, as  
4178 amended by this chapter or Chapter 12, Uniform Commercial Code - Controllable  
4179 Electronic Records, if it had been entered into, created, or transferred on or after May  
4180 6, 2026, including the rights, duties, and interests flowing from the transaction, lien,  
4181 or interest, remains valid on and after May 6, 2026; and

4182 (b) the transaction, lien, or interest may be terminated, completed, consummated, and  
4183 enforced as required or permitted by this chapter or by the law that would apply if  
4184 this chapter had not taken effect.

4185 (3) This chapter does not affect an action, case, or proceeding commenced before May 6,  
4186 2026.

4187 Section 105. Section **70A-12a-302** is enacted to read:

4188 **70A-12a-302 . Security interest perfected before effective date.**

4189 (1) A security interest that is enforceable and perfected immediately before May 6, 2026, is  
4190 a perfected security interest under this chapter if, on May 6, 2026, the requirements for  
4191 enforceability and perfection under this chapter are satisfied without further action.

4192 (2) If a security interest is enforceable and perfected immediately before May 6, 2026, but  
4193 the requirements for enforceability or perfection under this chapter are not satisfied on  
4194 May 6, 2026, the security interest:

4195 (a) is a perfected security interest until the earlier of the time perfection would have  
4196 ceased under the law in effect immediately before May 6, 2026 or the adjustment  
4197 date;

4198 (b) remains enforceable thereafter only if the security interest satisfies the requirements  
4199 for enforceability under Section 70A-9a-203, as amended by this chapter, before the  
4200 adjustment date; and

4201 (c) remains perfected thereafter only if the requirements for perfection under this chapter  
4202 are satisfied before the time specified in Subsection (2)(a).

4203 Section 106. Section **70A-12a-303** is enacted to read:

4204 **70A-12a-303 . Security interest unperfected before effective date.**

4205 A security interest that is enforceable immediately before May 6, 2026, but is  
4206 unperfected at that time:

4207 (1) remains an enforceable security interest until the adjustment date;

4208 (2) remains enforceable thereafter if the security interest becomes enforceable under  
4209 Section 70A-9a-203, as amended by this chapter, on May 6, 2026, or before the  
4210 adjustment date; and  
4211 (3) becomes perfected:  
4212 (a) without further action, on May 6, 2026, if the requirements for perfection under this  
4213 chapter are satisfied before or at that time; or  
4214 (b) when the requirements for perfection are satisfied if the requirements are satisfied  
4215 after that time.

4216 Section 107. Section **70A-12a-304** is enacted to read:

4217 **70A-12a-304 . Effectiveness of actions taken before effective date.**

4218 (1) If action, other than the filing of a financing statement, is taken before May 6, 2026, and  
4219 the action would have resulted in perfection of the security interest had the security  
4220 interest become enforceable before May 6, 2026, the action is effective to perfect a  
4221 security interest that attaches under this chapter before the adjustment date. An attached  
4222 security interest becomes unperfected on the adjustment date unless the security interest  
4223 becomes a perfected security interest under this chapter before the adjustment date.

4224 (2) The filing of a financing statement before May 6, 2026, is effective to perfect a security  
4225 interest on May 6, 2026, to the extent the filing would satisfy the requirements for  
4226 perfection under this chapter.

4227 (3) The taking of an action before May 6, 2026, is sufficient for the enforceability of a  
4228 security interest on May 6, 2026, if the action would satisfy the requirements for  
4229 enforceability under this chapter.

4230 Section 108. Section **70A-12a-305** is enacted to read:

4231 **70A-12a-305 . Priority.**

4232 (1) Subject to Subsections (2) and (3), this chapter determines the priority of conflicting  
4233 claims to collateral.

4234 (2) Subject to Subsection (3), if the priorities of claims to collateral were established before  
4235 May 6, 2026, Chapter 9a, Uniform Commercial Code - Secured Transactions, as in  
4236 effect before May 6, 2026, determines priority.

4237 (3) On the adjustment date, to the extent the priorities determined by Chapter 9a, Uniform  
4238 Commercial Code - Secured Transactions, as amended by this chapter modify the  
4239 priorities established before May 6, 2026, the priorities of claims to Article 12 property  
4240 and electronic money established before May 6, 2026, cease to apply.

4241 Section 109. Section **70A-12a-306** is enacted to read:

**70A-12a-306 . Priority of claims when priority rules of Chapter 9a, Uniform**

## Commercial Code - Secured Transactions, do not apply.

(1) Subject to Subsections (2) and (3), Chapter 12, Uniform Commercial Code - Controllable Electronic Records, determines the priority of conflicting claims to Article 12 property when the priority rules of Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter do not apply.

(2) Subject to Subsection (3), when the priority rules of Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter do not apply and the priorities of claims to Article 12 property were established before May 6, 2026, law other than Chapter 12, Uniform Commercial Code - Controllable Electronic Records, determines priority.

(3) When the priority rules of Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter do not apply, to the extent the priorities determined by this chapter modify the priorities established before May 6, 2026, the priorities of claims to Article 12 property established before May 6, 2026, cease to apply on the adjustment date.

Section 110. Section **70A-13-101** is enacted to read:

## CHAPTER 13. Reserved

70A-13-101 . Reserved.

Reserved.

Section 111. Section **70A-14-101** is enacted to read:

## CHAPTER 14. Reserved

70A-14-101 . Reserved.

Reserved.

Section 112. Section **70A-15-101** is enacted to read:

## CHAPTER 15. Reserved

70A-15-101 . Reserved.

Reserved.

Section 113. Section **70A-16-101** is enacted to read:

## CHAPTER 16. Reserved

70A-16-101 . Reserved.

Reserved.

Section 114. Section **70A-17-101** is enacted to read:

4275

**CHAPTER 17. Reserved**

4276

**70A-17-101 . Reserved.**

4277

Reserved.

4278

Section 115. Section **70A-18-101** is enacted to read:

4279

**CHAPTER 18. Reserved**

4280

**70A-18-101 . Reserved.**

4281

Reserved.

4282

Section 116. Section **70A-19-101** is enacted to read:

4283

**CHAPTER 19. Reserved**

4284

**70A-19-101 . Reserved.**

4285

Reserved.

4286

Section 117. Section **70A-20-101**, which is renumbered from Section 70A-10-103 is renumbered and amended to read:

4288

**CHAPTER 20. Repealer**

4289

**[70A-10-103] 70A-20-101 . General repealer.**

4290

Except as provided in the following section, all acts and parts of acts inconsistent with this act are hereby repealed.

4292

Section 118. Section **70A-20-102**, which is renumbered from Section 70A-10-104 is renumbered and amended to read:

4294

**[70A-10-104] 70A-20-102 . Laws not repealed.**

4295

Chapter 7a, Uniform Commercial Code - Documents of Title, does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title as defined in Section 70A-1a-201.

4301

Section 119. Section **70C-2-204** is amended to read:

4302

**70C-2-204 . Certain negotiable instruments prohibited.**

4303

(1) With respect to a consumer credit sale not involving real property, the seller may not take a negotiable instrument under Section 70A-3-104 other than a check as evidence of the obligation of the buyer.

4306

(2) [-]A holder is not in good faith [under Subsection 70A-1a-201(2)(t)] as that term is defined in Section 70A-1a-201 if [he] the holder takes a negotiable instrument with

4308 notice that [it] the negotiable instrument is issued in violation of this section.[-]

4309 (3) A holder in due course under Section 70A-3-302 is not subject to the liabilities set forth  
4310 in the provisions on the effect of violations on rights of parties under Section 70C-7-201.

4311 Section 120. **Repealer.**

4312 This bill repeals:

4313 Section **70A-10-101, Effective date.**

4314 Section **70A-10-102, Specific repealer -- Provision for transition.**

4315 Section 121. **Effective Date.**

4316 This bill takes effect on May 6, 2026.