

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 70A, 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 chattel 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;

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

- 15-8-4**, as last amended by Laws of Utah 2014, Chapter 189
- 32B-14-102**, as enacted by Laws of Utah 2010, Chapter 276
- 46-4-403**, as last amended by Laws of Utah 2007, Chapter 272
- 70A-1a-201**, as last amended by Laws of Utah 2024, Chapter 129
- 70A-1a-204**, as enacted by Laws of Utah 2007, Chapter 272
- 70A-1a-306**, as enacted by Laws of Utah 2007, Chapter 272
- 70A-2-102**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2-106**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2-201**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2-202**, as last amended by Laws of Utah 2007, Chapter 272
- 70A-2-203**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2-205**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2-209**, as enacted by Laws of Utah 1965, Chapter 154
- 70A-2a-102**, as enacted by Laws of Utah 1990, Chapter 197
- 70A-2a-103**, as last amended by Laws of Utah 2013, Chapter 225
- 70A-2a-107**, as enacted by Laws of Utah 1990, Chapter 197
- 70A-2a-201**, as enacted by Laws of Utah 1990, Chapter 197
- 70A-2a-202**, as enacted by Laws of Utah 1990, Chapter 197
- 70A-2a-203**, as enacted by Laws of Utah 1990, Chapter 197
- 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

162 **REPEALS AND REENACTS:**

163 **70A-9a-105**, as last amended by Laws of Utah 2013, Chapter 225

164 **RENUMBERS AND AMENDS:**

165 **70A-20-101**, (Renumbered from 70A-10-103, as enacted by Laws of Utah 1965,
166 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

172

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.

(b) For purposes of this chapter, a separate agreement between a supplier and a wholesaler is considered to be part of a distributorship agreement if it relates to:

(i) the relationship between the supplier and the wholesaler; or

(ii) the duties of either the supplier or the wholesaler under a distributorship agreement.

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

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

(5) "Retailer" means a beer retailer.

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

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

(8) "Terminating party" means a supplier or wholesaler who:

(a) is a party to a distributorship agreement; and

(b) seeks to terminate or not renew the distributorship agreement.

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

46-4-403 . Transferable records.

(1) As used in this section, "transferable record" means an electronic record that:

(a) would be a note under Title 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, or a document under Title 70A, Chapter 7a, Uniform Commercial Code - Documents of Title, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

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

(3) A system satisfies Subsection (2), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(a) a single authoritative copy of the transferable record exists that is unique,

identifiable, and, except as otherwise provided in Subsections (3)(d), (e), and (f),

- 235 unalterable;
- 236 (b) the authoritative copy identifies the person asserting control as:
- 237 (i) the person to which the transferable record was issued; or
- 238 (ii) if the authoritative copy indicates that the transferable record has been
- 239 transferred, the person to which the transferable record was most recently
- 240 transferred;
- 241 (c) the authoritative copy is communicated to and maintained by the person asserting
- 242 control or its designated custodian;
- 243 (d) copies or revisions that add or change an identified assignee of the authoritative copy
- 244 can be made only with the consent of the person asserting control;
- 245 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a
- 246 copy that is not the authoritative copy; and
- 247 (f) any revision of the authoritative copy is readily identifiable as authorized or
- 248 unauthorized.
- 249 (4)(a) Except as otherwise agreed, a person having control of a transferable record is the
- 250 holder, as that term is defined in [Subsection 70A-1a-201(2)(u)] Section 70A-1a-201,
- 251 of the transferable record and has the same rights and defenses as a holder of an
- 252 equivalent record or writing under Title 70A, Uniform Commercial Code, including,
- 253 if the applicable statutory requirements under Subsection 70A-3-302(1), Section
- 254 70A-7a-501, or Section 70A-9a-308 are satisfied, the rights and defenses of a holder
- 255 in due course, a holder to which a negotiable document of title has been duly
- 256 negotiated, or a purchaser, respectively.
- 257 (b) Delivery, possession, and indorsement are not required to obtain or exercise any of
- 258 the rights under Subsection (4)(a).
- 259 (5) Except as otherwise agreed, an obligor under a transferable record has the same rights
- 260 and defenses as an equivalent obligor under equivalent records or writings under Title
- 261 70A, Uniform Commercial Code.
- 262 (6)(a) If requested by a person against which enforcement is sought, the person seeking
- 263 to enforce the transferable record shall provide reasonable proof that the person is in
- 264 control of the transferable record.
- 265 (b) Proof may include access to the authoritative copy of the transferable record and
- 266 related business records sufficient to review the terms of the transferable record and
- 267 to establish the identity of the person having control of the transferable record.
- 268 Section 4. Section **70A-1a-201** is amended to read:

70A-1a-201 . General definitions.

- (1) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this title that apply to particular chapters or parts thereof, have the meanings stated.
- (2) Subject to definitions contained in other chapters of this title that apply to particular chapters or parts thereof:
- (a) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.
 - (b) "Aggrieved party" means a party entitled to pursue a remedy.
 - (c) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 70A-1a-303.
 - (d) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.
 - (e) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.
 - (f) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.
 - (g) "Branch" includes a separately incorporated foreign branch of a bank.
 - (h) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
 - (i) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2, Uniform Commercial Code - Sales, may be a buyer

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

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

(i) made directly available to a consumer by such entities; or

(ii) processed or validated directly by such entities.

(k) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is conspicuous or not is a decision for the court. [~~Conspicuous terms include the following:~~]

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

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

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

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

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

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

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

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

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

~~(+)~~ (s) "Fault" means a default, breach, or wrongful act or omission.

~~(+)~~ (t) "Fungible goods" means:

(i) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(ii) goods that by agreement are treated as equivalent.

~~(+)~~ (u) "Genuine" means free of forgery or counterfeiting.

~~(+)~~ (v) "Good faith" means honesty in fact in the conduct or transaction concerned.

~~(+)~~ (w) "Holder" means:

(i) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(ii) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

~~(+)~~ (x) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

~~(+)~~ (y) "Insolvent" means:

(i) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(ii) being unable to pay debts as they become due; or

(iii) being insolvent within the meaning of federal bankruptcy law.

~~(+)~~ (z)(i) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government.

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

(iii) "Money" does not include:

(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.

~~[(bb)]~~ (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)]~~ (jj) "Right" includes remedy.

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

which secures payment or performance of an obligation.

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

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

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

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

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

- (i) to deposit in the mail~~[-or-]~~ , ~~deliver for transmission, or transmit~~ by any other usual means of communication with postage or cost of transmission provided for~~[-and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none]~~ , addressed to any address reasonable under the circumstances; or
- (ii) ~~[in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.]~~ to cause the record or notification to be received within the time the record or notification would have been received if properly sent under Subsection (2)(ll)(i).

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

(A) execute or adopt a tangible symbol; or

(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~~

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

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

(2) In a hybrid transaction:

(a) if the sale-of-goods aspects do not predominate, only the provisions of this chapter which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply; or

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

(3) This chapter does not:

(a) apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

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

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

(1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 70A-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when [they] the goods or conduct are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all

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

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

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

- (a) the provision of services;
- (b) a lease of other goods; or
- (c) a sale, lease, or license of property other than goods.

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

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

- (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is ~~[some writing]~~ a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~[his]~~ the party's authorized agent or broker. A ~~[writing]~~ record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~[paragraph]~~ Subsection (1) beyond the quantity of goods shown in ~~[such writing]~~ the record.
- (2) Between merchants if within a reasonable time a ~~[writing]~~ record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (1) against ~~[such]~~ the party unless ~~[written-]~~ notice in a record of objection to its contents is given within 10 days after it is received.
- (3) A contract which does not satisfy the requirements of Subsection (1) but which is valid in other respects is enforceable:
- (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement;~~[-or]~~
 - (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
 - (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)

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

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

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

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

70A-2a-102 . Scope.

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

(2) In a hybrid lease:

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

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

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

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

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

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

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

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

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

- (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
- (c) "Commercial unit" means a unit of goods which by commercial usage is a single whole for purposes of lease, and the division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, such as a machine, or a set of articles, such as a suite of furniture or a line of machinery, or a quantity, such as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
- (d) "Conforming goods or performance under a lease contract" means goods or performance that are in accordance with the obligations under the lease contract.
- (e) "Consumer lease" means a lease that a lessor, regularly engaged in the business of leasing or selling, makes to a lessee, who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
- (f) "Fault" means wrongful act, omission, breach, or default.
- (g) "Finance lease" means a lease in which:
- (i) the lessor does not select, manufacture, or supply the goods;
 - (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - (iii) one of the following occurs:
 - (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

- (I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;
- (II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and
- (III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.
- (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures. The term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- (i) "Hybrid lease" means a single transaction involving a lease of goods and:
- (i) the provision of services;
 - (ii) a sale of other goods; or
 - (iii) a sale, lease, or license of property other than goods.
- [~~(f)~~] (~~j~~) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause stating "each delivery is a separate lease" or its equivalent.
- [~~(f)~~] (~~k~~) "Lease" means a transfer of the right to possession and use of goods for a term, in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease. But a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease.
- [~~(k)~~] (~~l~~) "Lease agreement" with respect to the lease, means the bargain of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- [~~(f)~~] (~~m~~) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless

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

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

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

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

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

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

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

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

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

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

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

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

acquired by the lessor as a lessee under an existing lease.

~~[(x)]~~ (y) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

~~[(y)]~~ (z) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

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

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

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

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

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

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

(e) "Fixture filing," Section 70A-2a-309.

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

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

(a) "Account," ~~[Subsection 70A-9a-102(2)]~~ Section 70A-9a-102.

(b) "Between merchants," Section 70A-2-104.

(c) "Buyer," Section 70A-2-103.

(d) "Chattel paper," ~~[Subsection 70A-9a-102(11)]~~ Section 70A-9a-102.

(e) "Consumer goods," ~~[Subsection 70A-9a-102(23)]~~ Section 70A-9a-102.

(f) "Document," ~~[Subsection 70A-9a-102(30)]~~ Section 70A-9a-102.

(g) "Entrusting," Section 70A-2-403.

(h) "General intangible," ~~[Subsection 70A-9a-102(42)]~~ Section 70A-9a-102.

(i) "Good faith," Section 70A-2-103.

(j) "Instrument," ~~[Subsection 70A-9a-102(47)]~~ Section 70A-9a-102.

(k) "Merchant," Section 70A-2-104.

(l) "Mortgage," ~~[Subsection 70A-9a-102(55)]~~ Section 70A-9a-102.

(m) "Pursuant to commitment," ~~[Subsection 70A-9a-102(69)]~~ Section 70A-9a-102.

(n) "Receipt," Section 70A-2-103.

(o) "Sale," Section 70A-2-106.

(p) "Sale on approval," Section 70A-2-326.

(q) "Sale or return," Section 70A-2-326.

(r) "Seller," Section 70A-2-103.

(4) In addition, Title 70A, Chapter 1a, Uniform Commercial Code - General Provisions,

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

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

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

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

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

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

- (1) A lease contract is not enforceable by way of action or defense unless:
 - (a) in a lease contract that is not a consumer lease, the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than \$1,000; or
 - (b) there is a [~~writing~~] record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.
- (2) Any description of leased goods or of the lease term is sufficient and satisfies Subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.
- (3) A [~~writing~~] record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under Subsection (1)(b) beyond the lease term and the quantity of goods shown in the [~~writing~~] record.
- (4) A lease contract that does not satisfy the requirements of Subsection (1), but which is valid in other respects, is enforceable:
 - (a) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
 - (b) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
 - (c) with respect to goods that have been received and accepted by the lessee.
- (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

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

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

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

70A-3-104 . Negotiable instrument.

- (1) Except as provided in Subsections (3) and (4), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
- (a) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - (b) is payable on demand or at a definite time; and
 - (c) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:
 - (i) an undertaking or power to give, maintain, or protect collateral to secure payment;
 - (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral;[-or]
 - (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor[-] ;
 - (iv) a term that specifies the law that governs the promise or order; or
 - (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.
- (2) "Instrument" means a negotiable instrument.
- (3) An order that meets all of the requirements of Subsection (1), except Subsection (1)(a), and otherwise falls within the definition of "check" in Subsection (6) is a negotiable instrument and a check.
- (4) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.
- (5) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an 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:

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

(2) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(3) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

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

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

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

~~[(a)]~~ (1) the person signed the instrument; or

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

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

~~[(a) manually or by means of a device or machine; and]~~

~~[(b) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.]~~

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

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

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

(i) [-]an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge[-] ; or

(ii) [-]by agreeing not to sue or otherwise renouncing rights against the party by a signed [writing] record.

(b) The obligation of a party to pay a check is not discharged solely by destruction of the 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.

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

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

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

- (1) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.
- (2)(a) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if:
- (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders; and
 - (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any [written]agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer.
- (b) The bank is not required to follow an instruction that violates [a-written] an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.
- (3) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is considered to be commercially reasonable if:
- (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:

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

- (1) Subject to Subsection (2), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.
- (2) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons then the following rules apply:
 - (a) Except as otherwise provided in Subsection (3), the beneficiary's bank may treat the person identified by number as the beneficiary of the order if the bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.
 - (b) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.
- (3) If the conditions listed in Subsections (3)(a), (b), and (c) are present, the rules listed in Subsections (4) and (5) apply:
 - (a) a payment order described in Subsection (2) is accepted;
 - (b) the originator's payment order described the beneficiary inconsistently by name and number; and
 - (c) the beneficiary's bank pays the person identified by number as permitted by Subsection (2)(a).
- (4) If the originator is a bank, the originator is obliged to pay its order.
- (5) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted,

signed a ~~writing~~ record stating the information to which the notice relates.

- (6) In a case governed by Subsection (2)(a), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and rescission as follows:

(a) If the originator is obliged to pay its payment order as stated in Subsection (3), the originator has the right to recover.

(b) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

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

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

- (1) This subsection applies to a payment order identifying an intermediary bank or beneficiary's bank by an identifying number.

(a) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(b) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

- (2) This subsection applies to a payment order identifying an intermediary bank or beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(a) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and

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

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

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

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

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

(1) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally~~[-electronically,-]~~ or in ~~[writing]~~ a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not commercially reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

- (a) any means complying with the agreement is commercially reasonable; and
- (b) any means not complying is not commercially reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

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

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

(3) If a receiving bank suspends payments, all unaccepted payment orders issued to the bank are deemed rejected at the time the bank suspends payments.

(4) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

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

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

(1) A communication of the sender of a payment order canceling or amending the order may be transmitted to the receiving bank orally~~[-electronically,]~~ or in ~~[writing]~~ a record.

If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(2) Subject to Subsection (1), a communication by the sender canceling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(3) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds transfer system rule allows cancellation or amendment without agreement of the bank:

(a) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(b) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order:

(i) that is a duplicate of a payment order previously issued by the sender;

(ii) that orders payment to a beneficiary not entitled to receive payment from the originator; or

(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 payment 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

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

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

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

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

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

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

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

70A-5-104 . Formal requirements.

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

~~[(1) by a signature; or]~~

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

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

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

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

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

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

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

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

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

(b) If this chapter would govern the liability of an issuer, nominated person, or adviser under Subsection (1) or (2):

(i) the relevant undertaking incorporates rules of custom or practice; and

(ii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Subsection 70A-5-103(3).

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

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

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

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

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

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

- (a) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.
- (b) "Carrier" means a person that issues a bill of lading.
- (c) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.
- (d) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.
- (e) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.
- (f) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (g) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.
- (h) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.
- (i) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.
- ~~[(j)] "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.]~~
- ~~[(k)]~~ (j) "Shipper" means a person that enters into a contract of transportation with a carrier.

1289 ~~[(t) "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

of the document on behalf of the person.

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

(9) 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 chapter or Chapter 9a, Uniform Commercial Code - Secured Transactions, 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 39. Section **70A-8-101** is amended to read:

70A-8-101 . Definitions.

(1) As used in this chapter:

- (a) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.
- (b) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.
- (c) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.
- (d) "Certificated security" means a security that is represented by a certificate.
- (e) "Clearing corporation" means:
 - (i) a person that is registered as a "clearing agency" under the federal securities laws;
 - (ii) a federal reserve bank; or
 - (iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.
- (f) "Communicate" means to:
 - (i) send a signed ~~writing~~ record; or
 - (ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.
- (g) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities

- intermediary. If a person acquired a security entitlement by virtue of Subsection 70A-8-501(2)(b) or (c), that person is the entitlement holder.
- (h) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.
- (i)(i) "Financial asset," except as otherwise provided in Section 70A-8-102, means:
- (A) a security;
 - (B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
 - (C) any property that is held by a securities intermediary for another person in a securities account if that securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.
- (ii) As context requires, "financial asset" means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.
- (j) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this chapter, means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (k) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.
- (l) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.
- (m) "Land company" means a mutual benefit corporation, as defined in Section 16-6a-102, that bases the use of the corporation's land on issued share ownership.
- (n) "Registered form," as applied to a certificated security, means a form in which:
- (i) the security certificate specifies a person entitled to the security; and
 - (ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

- (o) "Securities intermediary" means:
- (i) a clearing corporation; or
 - (ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.
- (p) "Security," except as otherwise provided in Section 70A-8-102, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer that:
- (i) is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;
 - (ii) is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and
 - (iii)(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or
 - (B) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.
- (q) "Security certificate" means a certificate representing a security.
- (r) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5, Security Entitlements.
- (s) "Uncertificated security" means a security that is not represented by a certificate.
- (t) "Water company" is as defined in Section 16-4-102.
- (2) ~~[Other-]~~ The following definitions [applying to] in this chapter and [the sections in which they appear are] other chapters apply to this chapter:
- (a) "Appropriate person," Section 70A-8-106.
 - (b) "Control," Section 70A-8-105.
 - (c) "Controllable account," Section 70A-9a-102.
 - (d) "Controllable electronic record," Section 70A-12-102.
 - (e) "Controllable payment intangible," Section 70A-9a-102.
 - ~~[(e)]~~ (f) "Delivery," Section 70A-8-301.
 - ~~[(d)]~~ (g) "Investment company security," Section 70A-8-102.
 - ~~[(e)]~~ (h) "Issuer," Section 70A-8-201.
 - ~~[(f)]~~ (i) "Overissue," Section 70A-8-210.
 - ~~[(g)]~~ (j) "Protected purchaser," Section 70A-8-303.
 - ~~[(h)]~~ (k) "Securities account," Section 70A-8-501.

- (3) In addition, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.
- (4) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.
- Section 40. Section **70A-8-102** is amended to read:
- 70A-8-102 . Rules for determining whether certain obligations and interests are securities or financial assets.**
- (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.
- (2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.
- (3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.
- (4) A writing that is a security certificate is governed by this chapter and not by Chapter 3, Uniform Commercial Code - Negotiable Instruments, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 3, Uniform Commercial Code - Negotiable Instruments, is a financial asset if it is held in a securities account.
- (5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.
- (6) A commodity contract, as defined in ~~[Subsection 70A-9a-102(15)]~~ Section 70A-9a-102, is not a security or a financial asset.
- (7) A document of title is not a financial asset unless Subsection 70A-8-101(1)(i)(i)(C) applies.

- (8) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless Subsection 70A-8-101(1)(i)(i)(C) applies.
- Section 41. Section **70A-8-105** is amended to read:
- 70A-8-105 . Control.**
- (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
- (2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
- (a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or
- (b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
- (3) A purchaser has "control" of an uncertificated security if:
- (a) the uncertificated security is delivered to the purchaser; or
- (b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
- (4) A purchaser has "control" of a security entitlement if:
- (a) the purchaser becomes the entitlement holder;
- (b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
- (c) another person~~[has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser]~~ , other than the transferor to the purchaser of an interest in the security entitlement:
- (i) has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or
- (ii) obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.
- (5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
- (6) A purchaser who has satisfied the requirements of Subsection (3)(b) or (4)(b) has control even if the registered owner in the case of Subsection (3)(b) or the entitlement holder in the case of Subsection (4)(b) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the

uncertificated security or security entitlement.

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

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

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

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

70A-8-303 . Protected purchaser.

- (1) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest in the security, who:
- (a) gives value;
 - (b) does not have notice of an adverse claim to the security;
 - (c) obtains control of the security; and
 - (d) for a share of stock issued by a land company or a water company:
 - (i) pays, or whose predecessors in interest paid, an assessment levied against the share of stock for at least four of the immediate past seven years by the land company or the water company; or
 - (ii) has used, or whose predecessors in interest have used, either directly or indirectly, the water available under the share of stock issued by a water company for at least four of the immediate past seven years.
- (2) ~~[In addition to acquiring the rights of a purchaser, a]~~ A protected purchaser acquires the purchaser's interest in the certificated or uncertificated security, share of stock in a land company, or share of stock in a water company free of any adverse claim.

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

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

In this chapter:

- (1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
- (2)(a) "Account," except as used in "account for[;]", "account to," "commodity account" in Subsection (15), "customer's account," "deposit account" in Subsection (32), "on account of," and "statement of account," means a right to payment of a monetary obligation, whether or not earned by performance:
 - (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
 - (ii) for services rendered or to be rendered;
 - (iii) for a policy of insurance issued or to be issued;
 - (iv) for a secondary obligation incurred or to be incurred;
 - (v) for energy provided or to be provided;
 - (vi) for the use or hire of a vessel under a charter or other contract;
 - (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or
 - (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.
- (b) "Account" includes controllable account and health-care-insurance receivables.
- (c) "Account" does not include:
 - (i) ~~[rights to payment evidenced by chattel paper or an instrument]~~ chattel paper;
 - (ii) commercial tort claims;
 - (iii) deposit accounts;
 - (iv) investment property;
 - (v) letter-of-credit rights or letters of credit;~~[-or]~~
 - (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card~~[-]~~ ; or
 - (vii) rights to payment evidenced by an instrument.
- (3)(a) "Account debtor" means a person obligated on an account, chattel paper, or general intangible.
- (b) "Account debtor" does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument ~~[constitutes 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(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

standards of fair dealing.

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

(b) "Goods" includes:

(i) fixtures;

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

(iii) the unborn young of animals;

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

(v) manufactured homes.

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

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

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

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

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

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

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

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

[(47)] (50)(a) "Instrument" means a negotiable instrument or any other writing that 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

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

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

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

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

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

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

(a) a deposit account; or

(b) money in an electronic form that cannot be subjected to control under Section 70A-9a-105.1.

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

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

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

(i) money;

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

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

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

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

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

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

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

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

(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

provided in connection with a transaction relating to the program.

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

~~[(77)]~~ (80) "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.

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

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

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

~~[(80)]~~ (83) "Termination statement" means an amendment of a financing statement which:

- (a) identifies, by its file number, the initial financing statement to which it relates; and
- (b) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

~~[(81)]~~ (84) "Transmitting utility" means a person primarily engaged in the business of:

- (a) operating a railroad, subway, street railway, or trolley bus;
- (b) transmitting communications electrically, electromagnetically, or by light;
- (c) transmitting goods by pipeline or sewer; or
- (d) transmitting or producing and transmitting electricity, steam, gas, or water.

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

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

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

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

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

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

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

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

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

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

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

~~[(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 ~~[(iii)]~~ (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 ~~[(cc)]~~ (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.

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

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

- (1) A secured party has control of a deposit account if:
- (a) the secured party is the bank with which the deposit account is maintained;
 - (b) the debtor, secured party, and bank have agreed in ~~[an authenticated]~~ a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor;~~;~~
~~or~~
 - (c) the secured party becomes the bank's customer with respect to the deposit account~~[-]~~ ;
or
 - (d) another person, other than the debtor:
 - (i) has control of the deposit account and acknowledges that it has control on behalf of the secured party; or
 - (ii) obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.
- (2) A secured party that has satisfied Subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

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

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

- (1) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.
- (2) A system satisfies Subsection (1) if the record or records evidencing the chattel paper are created, stored, and assigned in a manner that:
- (a) a single authoritative copy of the record or records exists which is unique, identifiable, and except as otherwise provided in Subsections (2)(d), (e), and (f), unalterable;
 - (b) the authoritative copy identifies the purchaser as the assignee of the record or records;
 - (c) the authoritative copy is communicated to and maintained by the purchaser or its designated custodian;
 - (d) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;
 - (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

the chattel paper:

(a) has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(b) obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

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

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

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

(a) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(i) power to avail itself of substantially all the benefit from the electronic money; and

(ii) exclusive power, subject to Subsection (2), to:

(A) prevent others from availing themselves of substantially all the benefit from the electronic money; and

(B) transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(b) the electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under Subsection (1)(a).

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

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

(b) the power is shared with another person.

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

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

(b) the other person:

- 2173 (i) can exercise the power without exercise of the power by the person; or
- 2174 (ii) is the transferor to the person of an interest in the electronic money.
- 2175 (4) If a person has the powers specified in Subsections (1)(a)(ii)(A) and (B), the powers are
- 2176 presumed to be exclusive.
- 2177 (5) A person has control of electronic money if another person, other than the transferor to
- 2178 the person of an interest in the electronic money:
- 2179 (a) has control of the electronic money and acknowledges that it has control on behalf of
- 2180 the person; or
- 2181 (b) obtains control of the electronic money after having acknowledged that it will obtain
- 2182 control of the electronic money on behalf of the person.

2183 Section 48. Section **70A-9a-107.1** is enacted to read:

2184 **70A-9a-107.1 . Control of controllable electronic record, controllable account, or**

2185 **controllable payment intangible.**

- 2186 (1) A secured party has control of a controllable electronic record as provided in Section
- 2187 70A-12-105.
- 2188 (2) A secured party has control of a controllable account or controllable payment intangible
- 2189 if the secured party has control of the controllable electronic record that evidences the
- 2190 controllable account or controllable payment intangible.

2191 Section 49. Section **70A-9a-107.2** is enacted to read:

2192 **70A-9a-107.2 . No requirement to acknowledge or confirm -- No duties.**

- 2193 (1) A person that has control under Section 70A-9a-104, 70A-9a-105, or 70A-9a-105.1 is
- 2194 not required to acknowledge that it has control on behalf of another person.
- 2195 (2) If a person acknowledges that it has or will obtain control on behalf of another person,
- 2196 unless the person otherwise agrees or law other than this article otherwise provides, the
- 2197 person does not owe any duty to the other person and is not required to confirm the
- 2198 acknowledgment to any other person.

2199 Section 50. Section **70A-9a-203** is amended to read:

2200 **70A-9a-203 . Attachment and enforceability of security interest -- Proceeds --**

2201 **Supporting obligations -- Formal requisites.**

- 2202 (1) A security interest attaches to collateral when it becomes enforceable against the debtor
- 2203 with respect to the collateral, unless an agreement expressly postpones the time of
- 2204 attachment.
- 2205 (2) Except as otherwise provided in Subsections (3) through (9), a security interest is
- 2206 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:

(a) the agreement satisfies Subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(b) another agreement is not necessary to make a security interest in the property enforceable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Except as otherwise provided in Subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
- (2) Except as otherwise provided in Subsection (4), if a secured party has possession of collateral:
 - (a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
 - (b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
 - (c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
 - (d) the secured party may use or operate the collateral:
 - (i) for the purpose of preserving the collateral or its value;
 - (ii) as permitted by an order of a court having competent jurisdiction; or
 - (iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
- (3) Except as otherwise provided in Subsection (4), a secured party having possession of collateral or control of collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-105.1, 70A-9a-106, ~~[or]~~ 70A-9a-107, or 70A-9a-107.1:
 - (a) may hold as additional security any proceeds, except money or funds, received from the collateral;
 - (b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - (c) may create a security interest in the collateral.
- (4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
 - (a) Subsection (1) does not apply unless the secured party is entitled under an agreement:
 - (i) to charge back uncollected collateral; or
 - (ii) otherwise to full or limited recourse against the debtor or a secondary obligor

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) a secured party, other than a buyer, having control under Section 70A-9a-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(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

- 2411 the debtor an accounting; and
- 2412 (b) in the case of a request regarding a list of collateral or a request regarding a statement
- 2413 of account, by ~~[authenticating]~~ signing and sending to the debtor an approval or
- 2414 correction.
- 2415 (3) A secured party that claims a security interest in all of a particular type of collateral
- 2416 owned by the debtor may comply with a request regarding a list of collateral by sending
- 2417 to the debtor ~~[an-authenticated]~~ a signed record including a statement to that effect within
- 2418 14 days after receipt.
- 2419 (4) A person that receives a request regarding a list of collateral, claims no interest in the
- 2420 collateral when it receives the request, and claimed an interest in the collateral at an
- 2421 earlier time shall comply with the request within 14 days after receipt by sending to the
- 2422 debtor ~~[an-authenticated]~~ a signed record:
- 2423 (a) disclaiming any interest in the collateral; and
- 2424 (b) if known to the recipient, providing the name and mailing address of any assignee of
- 2425 or successor to the recipient's interest in the collateral.
- 2426 (5) A person that receives a request for an accounting or a request regarding a statement of
- 2427 account, claims no interest in the obligations when it receives the request, and claimed
- 2428 an interest in the obligations at an earlier time shall comply with the request within 14
- 2429 days after receipt by sending to the debtor ~~[an-authenticated]~~ a signed record:
- 2430 (a) disclaiming any interest in the obligations; and
- 2431 (b) if known to the recipient, providing the name and mailing address of any assignee of
- 2432 or successor to the recipient's interest in the obligations.
- 2433 (6) A debtor is entitled without charge to one response to a request under this section during
- 2434 any six-month period. The secured party may require payment of a charge not
- 2435 exceeding \$25 for each additional response.

2436 Section 56. Section **70A-9a-301** is amended to read:

2437 **70A-9a-301 . Law governing perfection and priority of security interests.**

2438 Except as otherwise provided in Sections 70A-9a-303 through ~~[70A-9a-306]~~

2439 70A-9a-306.2, the following rules determine the law governing perfection, the effect of

2440 perfection or nonperfection, and the priority of a security interest in collateral:

- 2441 (1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction,
- 2442 the local law of that jurisdiction governs perfection, the effect of perfection or
- 2443 nonperfection, and the priority of a security interest in collateral.
- 2444 (2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs

perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

- (3) Except as otherwise provided in Subsection (4), while [~~tangible~~]negotiable tangible documents, goods, instruments, [~~money,~~]or tangible [~~chattel paper~~] money is located in a jurisdiction, the local law of that jurisdiction governs:
- (a) perfection of a security interest in the goods by filing a fixture filing;
 - (b) perfection of a security interest in timber to be cut; and
 - (c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
- (4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Section 57. Section **70A-9a-304** is amended to read:

70A-9a-304 . Law governing perfection and priority of security interests in deposit accounts.

- (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.
- (2) The following rules determine a bank's jurisdiction for purposes of this part:
- (a) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the bank's jurisdiction.
 - (b) If Subsection (2)(a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - (d) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
 - (e) If none of the preceding subsections applies, the bank's jurisdiction is the jurisdiction

in which the chief executive office of the bank is located.

Section 58. Section **70A-9a-305** is amended to read:

70A-9a-305 . Law governing perfection and priority of security interests in investment property.

(1) Except as otherwise provided in Subsection (3), the following rules apply:

(a) While a security certificate 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 the certificated security represented thereby.

(b) The local law of the issuer's jurisdiction as specified in Subsection 70A-8-109(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(c) The local law of the securities intermediary's jurisdiction as specified in Subsection 70A-8-109(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(e) Subsections (1)(b), (c), and (d) apply even if the transaction does not bear any relation to the jurisdiction.

(2) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If Subsection (2)(a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(c) If neither Subsection (2)(a) nor Subsection (2)(b) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(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 the 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.

- (1) Except as otherwise provided in Subsection (2) and Subsection 70A-9a-312(2), a financing statement must be filed to perfect all security interests and agricultural liens.
- (2) The filing of a financing statement is not necessary to perfect a security interest:
- (a) that is perfected under Subsection 70A-9a-308(4), (5), (6), or (7);
 - (b) that is perfected under Section 70A-9a-309 when it attaches;
 - (c) in property subject to a statute, regulation, or treaty described in Subsection 70A-9a-311(1);
 - (d) in goods in possession of a bailee which is perfected under Subsection 70A-9a-312(4)(a) or (b);
 - (e) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under Subsection 70A-9a-312(5), (6), or (7);
 - (f) in collateral in the secured party's possession under Section 70A-9a-313;
 - (g) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 70A-9a-313;
 - (h) in controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, [electronic chattel paper,] electronic documents, investment property, or letter-of-credit rights which is perfected by control under Section 70A-9a-314;
 - (i) in chattel paper which is perfected by possession and control under Section 70A-9a-314.1;
 - ~~[(j)]~~ (j) in proceeds which is perfected under Section 70A-9a-315; or
 - ~~[(j)]~~ (k) that is perfected under Section 70A-9a-316.
- (3) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 62. Section **70A-9a-312** is amended to read:

70A-9a-312 . Perfection of security interests in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, negotiable documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money -- Perfection by permissive filing -- Temporary perfection without filing or transfer of possession.

- (1) A security interest in chattel paper, ~~[negotiable documents,]~~ controllable accounts, controllable electronic records, controllable payment intangibles, instruments, [or] investment property, or negotiable documents may be perfected by filing.

- (2) Except as otherwise provided in Subsections 70A-9a-315(3) and (4) for proceeds:
- (a) a security interest in a deposit account may be perfected only by control under Section 70A-9a-314;
 - (b) and except as otherwise provided in Subsection 70A-9a-308(4), a security interest in a letter-of-credit right may be perfected only by control under Section 70A-9a-314;[
and]
 - (c) a security interest in tangible money may be perfected only by the secured party's taking possession under Section 70A-9a-313[-] ; and
 - (d) a security interest in electronic money may be perfected only by control under Section 70A-9a-314.
- (3) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
- (a) a security interest in the goods may be perfected by perfecting a security interest in the document; and
 - (b) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.
- (4) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
- (a) issuance of a document in the name of the secured party;
 - (b) the bailee's receipt of notification of the secured party's interest; or
 - (c) filing as to the goods.
- (5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under [~~an authenticated~~] a signed security agreement.
- (6) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
- (a) ultimate sale or exchange; or
 - (b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
- (7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or

instrument to the debtor for the purpose of:

(a) ultimate sale or exchange; or

(b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in Subsection (5), (6), or (7) expires, perfection depends upon compliance with this chapter.

Section 63. Section **70A-9a-313** is amended to read:

70A-9a-313 . When possession by or delivery to secured party perfects security interest without filing.

- (1) Except as otherwise provided in Subsection (2), a secured party may perfect a security interest in ~~[tangible negotiable documents,]~~ goods, instruments, negotiable tangible documents, or tangible money~~[-or tangible chattel paper]~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 70A-8-301.
- (2) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Subsection 70A-9a-316(4).
- (3) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:
 - (a) the person in possession ~~[authenticates]~~ signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - (b) the person takes possession of the collateral after having ~~[authenticated]~~ signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit.
- (4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs ~~[no]~~ not earlier than the time the secured party takes possession and continues only while the secured party retains possession.
- (5) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 70A-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.
- (6) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
- (7) If a person acknowledges that it holds possession for the secured party's benefit:

- (a) the acknowledgment is effective under Subsection (3) or Subsection 70A-8-301(1), even if the acknowledgment violates the rights of a debtor; and
- (b) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

- (8) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:
 - (a) to hold possession of the collateral for the secured party's benefit; or
 - (b) to redeliver the collateral to the secured party.
- (9) A secured party does not relinquish possession, even if a delivery under Subsection (8) violates the rights of a debtor. A person to which collateral is delivered under Subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

Section 64. Section **70A-9a-314** is amended to read:

70A-9a-314 . Perfection by control.

- (1) A security interest in [~~investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper, or electronic documents~~] controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights may be perfected by control of the collateral under Section 70A-7a-106, 70A-9a-104, [~~70A-9a-105~~] 70A-9a-105.1, 70A-9a-106, [~~or~~]70A-9a-107, or 70A-9a-107.1.
- (2) A security interest in [~~deposit accounts, electronic chattel paper, or letter-of-credit rights, or electronic documents~~] controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights is perfected by control under Section 70A-7a-106, 70A-9a-104, [~~70A-9a-105~~] 70A-9a-105.1, [~~or~~]70A-9a-107, or 70A-9a-107.1 [~~when~~] not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.
- (3) A security interest in investment property is perfected by control under Section 70A-9a-106 [~~from~~] not earlier than the time the secured party obtains control and remains perfected by control until:

- (a) the secured party does not have control; and
- (b) one of the following occurs:
- (i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (iii) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Section 65. Section **70A-9a-314.1** is enacted to read:

70A-9a-314.1 . Perfection by possession and control of chattel paper.

- (1) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing the chattel paper.
- (2) A security interest is perfected under Subsection (1) not earlier than the time the secured party takes possession and obtains control and remains perfected under Subsection (1) only while the secured party retains possession and control.
- (3) Subsections 70A-9a-313(3) and (6) through (9) apply to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

Section 66. Section **70A-9a-316** is amended to read:

70A-9a-316 . Effect of change in governing law.

- (1) A security interest perfected pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1)~~[-or-]~~ , 70A-9a-305(3), 70A-9a-306.1(4), or 70A-9a-306.2(2) remains perfected until the earliest of:
- (a) the time perfection would have ceased under the law of that jurisdiction;
 - (b) the expiration of four months after a change of the debtor's location to another jurisdiction; or
 - (c) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
- (2) If a security interest described in Subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

- (3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
- (a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
 - (b) thereafter the collateral is brought into another jurisdiction; and
 - (c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
- (4) Except as otherwise provided in Subsection (5), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.
- (5) A security interest described in Subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Subsection 70A-9a-311(2) or Section 70A-9a-313 are not satisfied before the earlier of:
- (a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
 - (b) the expiration of four months after the goods had become so covered.
- (6) A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
- (a) the time the security interest would have become unperfected under the law of that jurisdiction; or
 - (b) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
- (7) If a security interest described in Subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become

perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(8) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(a) A financing statement filed before the change pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(b) If a security interest perfected by a financing statement that is effective under Subsection (8)(a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have been ineffective under the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) and the new debtor is located in another jurisdiction, the following rules apply:

(a) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Subsection 70A-9a-203(4), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(b) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have been ineffective under the law of the jurisdiction designated in Subsection 70A-9a-301(1) or 70A-9a-305(3) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 67. Section **70A-9a-317** is amended to read:

70A-9a-317 . Interests that take priority over or take free of security interest or agricultural lien.

- (1) A security interest or agricultural lien is subordinate to the rights of:
- (a) a person entitled to priority under Section 70A-9a-322; and
 - (b) except as otherwise provided in Subsection (5), a person that becomes a lien creditor before the earlier of the time:
 - (i) the security interest or agricultural lien is perfected; or
 - (ii) one of the conditions specified in Subsection 70A-9a-203(2)(c) is met and a financing statement covering the collateral is filed.
- (2) Except as otherwise provided in Subsection (5), a buyer, other than a secured party, [~~of tangible chattel paper, tangible documents,~~] of goods, instruments, tangible documents, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (3) Except as otherwise provided in Subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (4) [A] Subject to Subsections (6) through (9), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than [~~tangible chattel paper~~] electronic money, [~~tangible documents,~~] goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
- (5) Except as otherwise provided in Sections 70A-9a-320 and 70A-9a-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.
- (6) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:
- (a) receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and
 - (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.

(4) Except as otherwise provided in Subsection (5), a buyer of goods [~~other than a buyer in ordinary course of business~~] takes free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the buyer's purchase; or

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(6) Except as otherwise provided in Subsection (7), a lessee of goods [~~other than a lessee in ordinary course of business~~,] takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the lease; or

(b) 45 days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 69. Section **70A-9a-324** is amended to read:

70A-9a-324 . Priority of purchase-money security interests.

(1) Except as otherwise provided in Subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to Subsection (3) and except as otherwise provided in Subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 70A-9a-330, and, except as otherwise provided in Section 70A-9a-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(b) the purchase-money secured party sends [~~an authenticated~~] a signed notification to

- 2921 the holder of the conflicting security interest;
- 2922 (c) the holder of the conflicting security interest receives the notification within five
- 2923 years before the debtor receives possession of the inventory; and
- 2924 (d) the notification states that the person sending the notification has or expects to
- 2925 acquire a purchase-money security interest in inventory of the debtor and describes
- 2926 the inventory.
- 2927 (3) Subsections (2)(b) through (d) apply only if the holder of the conflicting security
- 2928 interest had filed a financing statement covering the same types of inventory:
- 2929 (a) if the purchase-money security interest is perfected by filing, before the date of the
- 2930 filing; or
- 2931 (b) if the purchase-money security interest is temporarily perfected without filing or
- 2932 possession under Subsection 70A-9a-312(6), before the beginning of the 20-day
- 2933 period thereunder.
- 2934 (4) Subject to Subsection (5) and except as otherwise provided in Subsection (7), a
- 2935 perfected purchase-money security interest in livestock that are farm products has
- 2936 priority over a conflicting security interest in the same livestock, and, except as
- 2937 otherwise provided in Section 70A-9a-327, a perfected security interest in their
- 2938 identifiable proceeds and identifiable products in their unmanufactured states also has
- 2939 priority, if:
- 2940 (a) the purchase-money security interest is perfected when the debtor receives
- 2941 possession of the livestock;
- 2942 (b) the purchase-money secured party sends [~~an authenticated~~] a signed notification to
- 2943 the holder of the conflicting security interest;
- 2944 (c) the holder of the conflicting security interest receives the notification within six
- 2945 months before the debtor receives possession of the livestock; and
- 2946 (d) the notification states that the person sending the notification has or expects to
- 2947 acquire a purchase-money security interest in livestock of the debtor and describes
- 2948 the livestock.
- 2949 (5) Subsections (4)(b) through (d) apply only if the holder of the conflicting security
- 2950 interest had filed a financing statement covering the same types of livestock:
- 2951 (a) if the purchase-money security interest is perfected by filing, before the date of the
- 2952 filing; or
- 2953 (b) if the purchase-money security interest is temporarily perfected without filing or
- 2954 possession under Subsection 70A-9a-312(6), before the beginning of the 20-day

period thereunder.

(6) Except as otherwise provided in Subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 70A-9a-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(7) If more than one security interest qualifies for priority in the same collateral under Subsection (1), (2), (4), or (6):

- (a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (b) in all other cases, Subsection 70A-9a-322(1) applies to the qualifying security interests.

Section 70. Section **70A-9a-326.1** is enacted to read:

70A-9a-326.1 . Priority of security interest in controllable account, controllable electronic record, and controllable payment intangible.

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

Section 71. Section **70A-9a-330** is amended to read:

70A-9a-330 . Priority of purchaser of chattel paper or instrument.

(1) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

- (a) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value~~[and]~~ , takes possession of each authoritative tangible copy of the record evidencing the chattel paper, ~~[or]~~ and obtains control [of] under Section 70A-9a-105 of each authoritative electronic copy of the record evidencing the chattel paper[under Section 70A-9a-105]; and
- (b) the ~~[chattel paper does]~~ authoritative copies of the record evidencing the chattel paper do not indicate that [it] the chattel paper has been assigned to an identified assignee other than the purchaser.

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper

which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value,~~[-and]~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper,~~[-or]~~ and obtains control ~~[of the chattel paper]~~ under Section 70A-9a-105 of each authoritative electronic copy of the record evidencing the chattel paper in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in Section 70A-9a-327, a purchaser having priority in chattel paper under Subsection (1) or (2) also has priority in proceeds of the chattel paper to the extent that:

(a) Section 70A-9a-322 provides for priority in the proceeds; or

(b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(4) Except as otherwise provided in Subsection 70A-9a-331(1), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(5) For purposes of Subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(6) For purposes of Subsections (2) and (4), if the authoritative copies of the record evidencing chattel paper or an instrument ~~[indicates]~~ indicate that ~~[it]~~ the chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 72. Section **70A-9a-331** is amended to read:

70A-9a-331 . Priority of rights of purchasers of controllable accounts, controllable electronic records, controllable payment intangibles, documents, instruments, and securities under other chapters -- Priority of interests in financial assets and security entitlements and protection against assertion of claim under Chapter 8, Uniform Commercial Code -- Investment Securities, and Chapter 12, Uniform Commercial Code - Controllable Electronic Records.

- (1) This chapter does not limit the rights of a holder in due course of a negotiable 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 account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapter 3, Uniform Commercial Code - Negotiable Instruments, Chapter 7a, Uniform Commercial Code - Documents of Title, ~~and~~ Chapter 8, Uniform Commercial Code - Investment Securities, and Chapter 12, Uniform Commercial Code - Controllable Electronic Records.
- (2) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8, Uniform Commercial Code - Investment Securities, or Chapter 12, Uniform Commercial Code - Controllable Electronic Records.
- (3) Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in Subsections (1) and (2).

Section 73. Section **70A-9a-332** is amended to read:

70A-9a-332 . Transfer of money -- Transfer of funds from deposit account.

- (1) A transferee of tangible money takes the money free of a security interest ~~[unless the transferee acts]~~ if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.
- (2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~[unless the transferee acts]~~ if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.
- (3) A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.

Section 74. Section **70A-9a-334** is amended to read:

70A-9a-334 . Priority of security interests in fixtures and crops.

- (1) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.
- (2) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.
- (3) In cases not governed by Subsections (4) through (8), a security interest in fixtures is

subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

- (4) Except as otherwise provided in Subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
- (a) the security interest is a purchase-money security interest;
 - (b) the interest of the encumbrancer or owner arises before the goods become fixtures; and
 - (c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.
- (5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
- (a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
 - (ii) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;
 - (b) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:
 - (i) factory or office machines;
 - (ii) equipment that is not primarily used or leased for use in the operation of the real property; or
 - (iii) replacements of domestic appliances that are consumer goods;
 - (c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or
 - (d) the security interest is:
 - (i) created in a manufactured home in a manufactured-home transaction; and
 - (ii) perfected pursuant to a statute described in Subsection 70A-9a-311(1)(b).
- (6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:
- (a) the encumbrancer or owner has, in ~~[an authenticated]~~ a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner.

(7) The priority of the security interest under Subsection (6)(b) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

Section 75. Section **70A-9a-341** is amended to read:

70A-9a-341 . Bank's rights and duties with respect to deposit account.

Except as otherwise provided in Subsection 70A-9a-340(3), and unless the bank otherwise agrees in [~~an authenticated~~] a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

Section 76. Section **70A-9a-404** is amended to read:

70A-9a-404 . Rights acquired by assignee -- Claims and defenses against assignee.

(1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsections (2) through (5), the rights of an assignee are subject to:

- (a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment [~~authenticated~~] signed by the assignor or the assignee.

(2) Subject to Subsection (3) and except as otherwise provided in Subsection (4), the claim

of an account debtor against an assignor may be asserted against an assignee under Subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

Section 77. Section **70A-9a-406** is amended to read:

70A-9a-406 . Discharge of account debtor -- Notification of assignment -- Identification and proof of assignment -- Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(1) Subject to Subsections (2) through (9), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to ~~[Subsection]~~ Subsections (8) and (10), notification is ineffective under Subsection (1):

- (a) if it does not reasonably identify the rights assigned;
- (b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or
- (c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (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

ineffective to the extent that the rule of law, statute, or regulation:

- (a) would impair the creation, attachment, or perfection of a security interest; or
- (b) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

- (4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in Subsection (3) would be effective under law other than this chapter but is ineffective under Subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:
 - (a) is not enforceable against the person obligated on the promissory note or the account debtor;
 - (b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
 - (c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
 - (d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
 - (e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
 - (f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

- (5) In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

Section 79. Section **70A-9a-509** is amended to read:

70A-9a-509 . Persons entitled to file a record.

- (1) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing

statement only if:

(a) the debtor authorizes the filing in [~~an authenticated~~] a signed record or pursuant to Subsection (2) or (3); or

(b) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By [~~authenticating~~] signing or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(a) the collateral described in the security agreement; and

(b) property that becomes collateral under Subsection 70A-9a-315(1)(b), whether or not the security agreement expressly covers proceeds.

(3) By acquiring collateral in which a security interest or agricultural lien continues under Subsection 70A-9a-315(1)(a), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Subsection 70A-9a-315(1)(b).

(4) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Subsection 70A-9a-513(1) or (3), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(5) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under Subsection (4).

Section 80. Section **70A-9a-513** is amended to read:

70A-9a-513 . Termination statement.

(1) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; 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

intangibles, or promissory notes.

Section 82. Section **70A-9a-605** is amended to read:

70A-9a-605 . Unknown debtor or secondary obligor.

[A]

(1) Except as provided in Subsection (2), a secured party does not owe a duty based on its status as secured party:

~~[(1)]~~ (a) to a person that is a debtor or obligor, unless the secured party knows:

~~[(a)]~~ (i) that the person is a debtor or obligor;

~~[(b)]~~ (ii) the identity of the person; and

~~[(c)]~~ (iii) how to communicate with the person; or

~~[(2)]~~ (b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

~~[(a)]~~ (i) that the person is a debtor; and

~~[(b)]~~ (ii) the identity of the person.

(2) A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(a) the person is a debtor or obligor; and

(b) the secured party knows that the information in Subsection (1)(a)(i), (ii), or (iii) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

Section 83. Section **70A-9a-608** is amended to read:

70A-9a-608 . Application of proceeds of collection or enforcement -- Liability for deficiency and right to surplus.

(1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 70A-9a-607 in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien

under which the collection or enforcement is made; and

(iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives [~~an authenticated~~] a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under Subsection (1)(a)(iii).

(c) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 70A-9a-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Section 84. Section **70A-9a-611** is amended to read:

70A-9a-611 . Notification before disposition of collateral.

(1) In this section, "notification date" means the earlier of the date on which:

(a) a secured party sends to the debtor and any secondary obligor [~~an authenticated~~] a signed notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in Subsection (4), a secured party that disposes of collateral under Section 70A-9a-610 shall send to the persons specified in Subsection (3) a reasonable [~~authenticated~~] signed notification of disposition.

(3) To comply with Subsection (2), the secured party shall send [~~an authenticated~~] a signed notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the

notification date, ~~[an authenticated]~~ a signed notification of a claim of an interest in the collateral;

(ii) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(iii) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Subsection 70A-9a-311(1).

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed by Subsection (3)(c)(ii) if:

(a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subsection (3)(c)(ii); and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent ~~[an authenticated]~~ a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Section 85. Section **70A-9a-613** is amended to read:

70A-9a-613 . Contents and form of notification before disposition of collateral --

General.

(1) Except in a consumer-goods transaction, the following rules apply:

~~[(1)]~~ (a) The contents of a notification of disposition are sufficient if the notification:

~~[(a)]~~ (i) describes the debtor and the secured party;

~~[(b)]~~ (ii) describes the collateral that is the subject of the intended disposition;

~~[(c)]~~ (iii) states the method of intended disposition;

~~[(d)]~~ (iv) states that the debtor is entitled to an accounting of the unpaid indebtedness

and states the charge, if any, for an accounting; and

[(e)] (v) states the time and place of a public disposition or the time after which any other disposition is to be made.

[(2)] (b) Whether the contents of a notification that lacks any of the information specified in Subsection (1) are nevertheless sufficient is a question of fact.

[(3)] (c) The contents of a notification providing substantially the information specified in Subsection (1) are sufficient, even if the notification includes:

[(a)] (i) information not specified by that subsection; or

[(b)] (ii) minor errors that are not seriously misleading.

[(4)] (d) A particular phrasing of the notification is not required.

[(5)] (e) The following form of notification and the form appearing in Subsection [70A-9a-614(3)] 70A-9a-614(3), when completed in accordance with the instructions in Subsection (2) and Subsection 70A-9a-104(2), each provides sufficient information:

[NOTIFICATION OF DISPOSITION OF COLLATERAL

To: ~~[Name of debtor, obligor, or other person to which the notification is sent]~~

From: ~~[Name, address, and telephone number of secured party]~~

Name of Debtor(s): ~~[Include only if debtor(s) are not an addressee]~~

~~[For a public disposition:]~~

~~We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:~~

~~Day and Date: [Insert day and date]~~

~~Time: [Insert time]~~

~~Place: [Insert place]~~

~~[For a private disposition:]~~

~~We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date]][-~~

~~You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$[Insert amount]]. You may request an accounting by calling us at [telephone number].~~

] NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

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

3533 is sent;

3534 (c) a telephone number from which the amount that must be paid to the secured party to

3535 redeem the collateral under Section 70A-9a-623 is available; and

3536 (d) a telephone number or mailing address from which additional information

3537 concerning the disposition and the obligation secured is available.

3538 (2) A particular phrasing of the notification is not required.

3539 (3) The following form of notification, when completed in accordance with Subsection (4),

3540 provides sufficient information:

3541 ~~[[Name and address of secured party]~~

3542 ~~{Date}~~

3543 ~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

3544 ~~[Name and address of any obligor who is also a debtor]~~

3545 ~~Subject: [Identification of Transaction]~~

3546 ~~We have your [describe collateral], because you broke promises in our agreement.~~

3547 ~~{For a public disposition:}~~

3548 ~~We will sell [describe collateral] at public sale. A sale could include a lease or license.~~

3549 ~~The sale will be held as follows:~~

3550 ~~Date:~~

3551 ~~Time:~~

3552 ~~Place:~~

3553 ~~You may attend the sale and bring bidders if you want.~~

3554 ~~{For a private disposition:}~~

3555 ~~We will sell [describe collateral] at private sale sometime after [date]. A sale could~~

3556 ~~include a lease or license.~~

3557 ~~The money that we get from the sale (after paying our costs) will reduce the amount~~

3558 ~~you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us~~

3559 ~~the difference. If we get more money than you owe, you will get the extra money, unless we~~

3560 ~~must pay it to someone else.~~

3561 ~~You can get the property back at any time before we sell it by paying us the full amount~~

3562 ~~you owe (not just the past due payments), including our expenses. To learn the exact amount~~

3563 ~~you must pay, call us at [telephone number].~~

3564 ~~If you want us to explain to you in writing how we have figured the amount that you~~

3565 ~~owe us, you may call us at [telephone number] [or write us at [secured party's address]] and~~

3566 ~~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]

3575 (Name and address of secured party)

3576 (Date)

3577 NOTICE OF OUR PLAN TO SELL PROPERTY

3578 (Name and address of any obligor who is also a debtor)

3579 Subject: (Identify transaction)

3580 We have your (describe collateral), because you broke promises in our agreement.

3581 {1} We will sell (describe collateral) at public sale. A sale could include a lease or license.

3582 The sale will be held as follows:

3583 (Date)

3584 (Time)

3585 (Place)

3586 You may attend the sale and bring bidders if you want.

3587 {2} We will sell (describe collateral) at private sale sometime after (date). A sale could
3588 include a lease or license.

3589 {3} The money that we get from the sale, after paying our costs, will reduce the amount
3590 you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us
3591 the difference. If we get more money than you owe, you will get the extra money, unless we
3592 must pay it to someone else.

3593 {4} You can get the property back at any time before we sell it by paying us the full amount
3594 you owe, not just the past due payments, including our expenses. To learn the exact amount
3595 you must pay, call us at (telephone number).

3596 {5} If you want us to explain to you in (writing) (writing or in (description of electronic
3597 record)) (description of electronic record) how we have figured the amount that you owe us,

3598 {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us
3599 by (description of electronic communication method))

3600 {7} and request (a written explanation) (a written explanation or an explanation in

(description of electronic record)) (an explanation in (description of electronic record)).
 {8} We will charge you \$ (amount) for the explanation if we sent you another written
 explanation of the amount you owe us within the last six months.
 {9} If you need more information about the sale (call us at (telephone number)) (or) (write
 us at (secured party's address)) (or contact us by (description of electronic communication
 method)).
 {10} We are sending this notice to the following other people who have an interest in
 (describe collateral) or who owe money under your agreement:
 (Names of all other debtors and obligors, if any)
 [End of Form]

(4) The following instructions apply to the form of notification in Subsection (3):

- (a) The instructions in this subsection refer to the numbers in braces before items in the form of notification in Subsection (3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions.
- (b) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral.
- (c) Include and complete items {3}, {4}, {5}, {6}, and {7}.
- (d) In item {5}, include and complete any one of the three alternative methods for the explanation -- writing, writing or electronic record, or electronic record.
- (e) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication -- writing or electronic communication -- for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included.
- (f) In item {7}, include and complete the method or methods for the explanation -- writing, writing or electronic record, or electronic record -- included in item {5}.
- (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 recipient for another written explanation.
- (h) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication -- electronic communication -- for the recipient

of the notification to communicate with the sender. The additional method of electronic communication is not required to be included.

(i) If item {10} does not apply, insert "None" after "agreement:".

[(4)] (5) A notification in the form of Subsection (3) is sufficient, even if additional information appears at the end of the form.

[(5)] (6) A notification in the form of Subsection (3) is sufficient, even if it includes errors in information not required by Subsection (1), unless the error is misleading with respect to rights arising under this chapter.

[(6)] (7) If a notification under this section is not in the form of Subsection (3), law other than this chapter determines the effect of including information not required by Subsection (1).

Section 87. Section **70A-9a-615** is amended to read:

70A-9a-615 . Application of proceeds of disposition -- Liability for deficiency and right to surplus.

(1) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 70A-9a-610 in the following order to:

- (a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
- (b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- (c) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (i) the secured party receives from the holder of the subordinate security interest or other lien ~~[an authenticated]~~ a signed demand for proceeds before distribution of the proceeds is completed; and
 - (ii) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (d) a secured party that is a consignor of the collateral if the secured party receives from the consignor ~~[an authenticated]~~ a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the 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.

Section 88. Section **70A-9a-616** is amended to read:

70A-9a-616 . Explanation of calculation of surplus or deficiency.

(1) In this section:

(a) "Explanation" means a [~~writing~~] record that:

(i) states the amount of the surplus or deficiency;

(ii) provides an explanation in accordance with Subsection (3) of how the secured party calculated the surplus or deficiency;

(iii) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(iv) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) "Request" means a record:

(i) [~~authenticated~~] signed by a debtor or consumer obligor;

(ii) requesting that the recipient provide an explanation; and

(iii) sent after disposition of the collateral under Section 70A-9a-610.

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 70A-9a-615, the secured party shall:

(a) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(i) before or when the secured party accounts to the debtor and pays any surplus or first makes [~~written~~] demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(ii) within 14 days after receipt of a request; or

(b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(3) To comply with Subsection (1)(a)(ii), [~~a writing~~] an explanation must provide the following information in the following order:

(a) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(i) if the secured party takes or receives possession of the collateral after default, not

- 3737 more than 35 days before the secured party takes or receives possession; or
3738 (ii) if the secured party takes or receives possession of the collateral before default or
3739 does not take possession of the collateral, not more than 35 days before the
3740 disposition;
- 3741 (b) the amount of proceeds of the disposition;
- 3742 (c) the aggregate amount of the obligations after deducting the amount of proceeds;
- 3743 (d) the amount, in the aggregate or by type, and types of expenses, including expenses of
3744 retaking, holding, preparing for disposition, processing, and disposing of the
3745 collateral, and attorney's fees secured by the collateral which are known to the
3746 secured party and relate to the current disposition;
- 3747 (e) the amount, in the aggregate or by type, and types of credits, including rebates of
3748 interest or credit service charges, to which the obligor is known to be entitled and
3749 which are not reflected in the amount in Subsection (3)(a); and
- 3750 (f) the amount of the surplus or deficiency.
- 3751 (4) A particular phrasing of the explanation is not required. An explanation complying
3752 substantially with the requirements of Subsection (1) is sufficient, even if it includes
3753 minor errors that are not seriously misleading.
- 3754 (5) A debtor or consumer obligor is entitled without charge to one response to a request
3755 under this section during any six-month period in which the secured party did not send
3756 to the debtor or consumer obligor an explanation pursuant to Subsection (2)(a). The
3757 secured party may require payment of a charge not exceeding \$25 for each additional
3758 response.
- 3759 Section 89. Section **70A-9a-619** is amended to read:
- 3760 **70A-9a-619 . Transfer of record or legal title.**
- 3761 (1) In this section, "transfer statement" means a record [authenticated] signed by a secured
3762 party stating:
- 3763 (a) that the debtor has defaulted in connection with an obligation secured by specified
3764 collateral;
- 3765 (b) that the secured party has exercised its post-default remedies with respect to the
3766 collateral;
- 3767 (c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the
3768 collateral; and
- 3769 (d) the name and mailing address of the secured party, debtor, and transferee.
- 3770 (2) A transfer statement entitles the transferee to the transfer of record of all rights of the

debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (a) accept the transfer statement;
- (b) promptly amend its records to reflect the transfer; and
- (c) if applicable, issue a new appropriate certificate of title in the name of the transferee.

- (3) A transfer of the record or legal title to collateral to a secured party under Subsection (2) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

Section 90. Section **70A-9a-620** is amended to read:

70A-9a-620 . Acceptance of collateral in full or partial satisfaction of obligation -- Compulsory disposition of collateral.

- (1) Except as otherwise provided in Subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (a) the debtor consents to the acceptance under Subsection (3);
- (b) the secured party does not receive, within the time set forth in Subsection (4), a notification of objection to the proposal ~~[authenticated]~~ signed by:
 - (i) a person to which the secured party was required to send a proposal under Section 70A-9a-621; or
 - (ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (d) Subsection (5) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 70A-9a-624.

- (2) A purported or apparent acceptance of collateral under this section is ineffective unless:

- (a) the secured party consents to the acceptance in ~~[an authenticated]~~ a signed record or sends a proposal to the debtor; and
- (b) the conditions of Subsection (1) are met.

- (3) For purposes of this section:

- (a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~[authenticated]~~ signed after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record [authenticated] signed after default or the secured party:

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a notification of objection [authenticated] signed by the debtor within 20 days after the proposal is sent.

(4) To be effective under Subsection (1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to which the proposal was sent pursuant to Section 70A-9a-621, within 20 days after notification was sent to that person; and

(b) in other cases:

(i) within 20 days after the last notification was sent pursuant to Section 70A-9a-621; or

(ii) if a notification was not sent, before the debtor consents to the acceptance under Subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 70A-9a-610 within the time specified in Subsection (6) if:

(a) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) 60% of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(6) To comply with Subsection (5), the secured party shall dispose of the collateral:

(a) within 90 days after taking possession; or

(b) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and [authenticated] signed after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 91. Section **70A-9a-621** is amended to read:

70A-9a-621 . Notification of proposal to accept collateral.

(1) A secured party that desires to accept collateral in full or partial satisfaction of the

obligation it secures shall send its proposal to:

- (a) any person from which the secured party has received, before the debtor consented to the acceptance, [~~an authenticated~~] a signed notification of a claim of an interest in the collateral;
- (b) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (i) identified the collateral;
 - (ii) was indexed under the debtor's name as of that date; and
 - (iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
- (c) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Subsection 70A-9a-311(1).

- (2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in Subsection (1).

Section 92. Section **70A-9a-624** is amended to read:

70A-9a-624 . Waiver.

- (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 70A-9a-611 only by an agreement to that effect entered into and [~~authenticated~~] signed after default.
- (2) A debtor may waive the right to require disposition of collateral under Subsection 70A-9a-620(5) only by an agreement to that effect entered into and [~~authenticated~~] signed after default.
- (3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 70A-9a-623 only by an agreement to that effect entered into and [~~authenticated~~] signed after default.

Section 93. Section **70A-9a-628** is amended to read:

70A-9a-628 . Nonliability and limitation on liability of secured party -- Liability of secondary obligor.

- (1) [~~Unless~~] Subject to Subsection (6), unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the 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

chapter.

Section 96. Section **70A-12-103** is enacted to read:

70A-12-103 . Relation to Chapter 9a, Uniform Commercial Code - Secured Transactions and consumer laws.

(1) If there is conflict between this chapter and Chapter 9a, Uniform Commercial Code - Secured Transactions, Chapter 9a, Uniform Commercial Code - Secured Transactions, governs.

(2) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and Title 70C, Utah Consumer Credit Code.

Section 97. Section **70A-12-104** is enacted to read:

70A-12-104 . Rights in controllable account, controllable electronic record, and controllable payment intangible.

(1) This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under Subsections (3), (4), (5), (7), and (8), of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(2) To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(3) Except as provided in this section, law other than this chapter determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(4) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(5) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(6) Except as provided in Subsections (1) and (5) for a controllable account and a controllable payment intangible or law other than this chapter, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(7) An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(8) Filing of a financing statement under Chapter 9a, Uniform Commercial Code - Secured Transactions, is not notice of a claim of a property right in a controllable electronic record.

Section 98. Section **70A-12-105** is enacted to read:

70A-12-105 . Control of controllable electronic record.

(1) A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(a) gives the person:

(i) power to avail itself of substantially all the benefit from the electronic record; and

(ii) exclusive power, subject to Subsection (2), to:

(A) prevent others from availing themselves of substantially all the benefit from the electronic record; and

(B) transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(b) enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in Subsection (1)(a).

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

(a) the controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(b) the power is shared with another person.

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

(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

Subsection (4)(a), that the transferee has the power to:

(a) avail itself of substantially all the benefit from the controllable electronic record;

(b) prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(c) transfer the powers specified in Subsection (6)(a) and (b) to another person.

(7) Subject to Subsection (8), an account debtor may not waive or vary its rights under Subsections (4)(a) and (5) or its option under Subsection (4)(c).

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

Section 100. Section **70A-12-107** is enacted to read:

70A-12-107 . Governing law.

(1) Except as provided in Subsection (2), the local law of a controllable electronic records jurisdiction governs a matter covered by this article.

(2) For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable electronic records jurisdiction governs a matter covered by Section 70A-9b-106 unless an effective agreement determines that the local law of another jurisdiction governs.

(3) The following rules determine a controllable electronic records jurisdiction under this section:

(a) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic records jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic records jurisdiction.

(b) Subsection (3)(a) does 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 a particular jurisdiction is the controllable electronic records jurisdiction for purposes of this chapter or title, that jurisdiction is the controllable electronic records jurisdiction.

(c) If Subsections (3)(a) and (b) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable

4111 electronic records jurisdiction.

4112 (d) If Subsections (3)(a) through (c) do not apply and the rules of the system in which
4113 the controllable electronic record is recorded are readily available for review and
4114 expressly provide that the controllable electronic record or the system is governed by
4115 the law of a particular jurisdiction, that jurisdiction is the controllable electronic
4116 records jurisdiction.

4117 (e) If Subsections (3)(a) through (d) do not apply, the controllable electronic records
4118 jurisdiction is the District of Columbia.

4119 (4) If Subsection (3)(e) applies and Article 12 is not in effect in the District of Columbia
4120 without material modification, the governing law for a matter covered by this article is
4121 the law of the District of Columbia as though Article 12 were in effect in the District of
4122 Columbia without material modification. In this subsection, "Article 12" means Article
4123 12 of Uniform Commercial Code Amendments (2022).

4124 (5) To the extent Subsections (1) and (2) provide that the local law of the controllable
4125 electronic records jurisdiction governs a matter covered by this article, that law governs
4126 even if the matter or a transaction to which the matter relates does not bear any relation
4127 to the controllable electronic records jurisdiction.

4128 (6) The rights acquired under Section 70A-12-104 by a purchaser or qualifying purchaser
4129 are governed by the law applicable under this section at the time of purchase.

4130 Section 101. Section **70A-12a-101** is enacted to read:

4131 **CHAPTER 12a. Uniform Commercial Code - Transitional Provisions for Uniform**

4132 **Commercial Code Amendments (2022)**

4133 **Part 1. General Provisions and Definitions**

4134 **70A-12a-101 . Title.**

4135 This article may be cited as Transitional Provisions for Uniform Commercial Code
4136 Amendments (2022).

4137 Section 102. Section **70A-12a-102** is enacted to read:

4138 **70A-12a-102 . Definitions.**

4139 (1) In this chapter:

4140 (a) "Adjustment date" means July 1, 2025, or the date that is one year after May 6, 2026,
4141 whichever is later.

4142 (b) "Article 12" means Chapter 12, Uniform Commercial Code - Controllable Electronic

4143 Records.
 4144 (c) "Article 12 property" means a controllable account, controllable electronic record, or
 4145 controllable payment intangible.

4146 (2) The following definitions in other chapters of this title apply to this chapter:

- 4147 (a) "Controllable account," Section 70A-9a-102.
- 4148 (b) "Controllable electronic record," Section 70A-12-102.
- 4149 (c) "Controllable payment intangible," Section 70A-9a-102.
- 4150 (d) "Electronic money," Section 70A-9a-102.
- 4151 (e) "Financing statement," Section 70A-9a-102.

4152 (3) Chapter 1a, Uniform Commercial Code - General Provisions, contains general
 4153 definitions and principles of construction and interpretation applicable throughout this
 4154 chapter.

4155 Section 103. Section **70A-12a-201** is enacted to read:

4156 **Part 2. General Transitional Provision**

4157 **70A-12a-201 . Saving clause.**

4158 Except as provided in Part 3, Transitional Provisions for Chapter 9a, Uniform
 4159 Commercial Code - Secured Transactions, and Chapter 12, Uniform Commercial Code -
 4160 Controllable Electronic Records, a transaction validly entered into before May 6, 2026, and the
 4161 rights, duties, and interests flowing from the transaction remain valid thereafter and may be
 4162 terminated, completed, consummated, or enforced as required or permitted by law other than
 4163 this title or, if applicable, this title, as though this chapter had not taken effect.

4164 Section 104. Section **70A-12a-301** is enacted to read:

4165 **Part 3. Transitional Provisions for Chapter 9a, Uniform Commercial Code - Secured**

4166 **Transactions and Chapter 12, Uniform Commercial Code - Controllable Electronic**

4167 **Records**

4168 **70A-12a-301 . Saving clause.**

4169 (1) Except as provided in this part, Chapter 9a, Uniform Commercial Code - Secured
 4170 Transactions, as amended by this chapter and Chapter 12, Uniform Commercial Code -
 4171 Controllable Electronic Records, apply to a transaction, lien, or other interest in
 4172 property, even if the transaction, lien, or interest was entered into, created, or acquired
 4173 before May 6, 2026.

- (2) Except as provided in Subsection (3) and Sections 70A-12a-302 through 306:
- (a) a transaction, lien, or interest in property that was validly entered into, created, or transferred before May 6, 2026, and was not governed by this title, but would be subject to Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter or Chapter 12, Uniform Commercial Code - Controllable Electronic Records, if it had been entered into, created, or transferred on or after May 6, 2026, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after May 6, 2026; and
- (b) the transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this chapter or by the law that would apply if this chapter had not taken effect.
- (3) This chapter does not affect an action, case, or proceeding commenced before May 6, 2026.

Section 105. Section **70A-12a-302** is enacted to read:

70A-12a-302 . Security interest perfected before effective date.

- (1) A security interest that is enforceable and perfected immediately before May 6, 2026, is a perfected security interest under this chapter if, on May 6, 2026, the requirements for enforceability and perfection under this chapter are satisfied without further action.
- (2) If a security interest is enforceable and perfected immediately before May 6, 2026, but the requirements for enforceability or perfection under this chapter are not satisfied on May 6, 2026, the security interest:
- (a) is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before May 6, 2026 or the adjustment date;
- (b) remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under Section 70A-9a-203, as amended by this chapter, before the adjustment date; and
- (c) remains perfected thereafter only if the requirements for perfection under this chapter are satisfied before the time specified in Subsection (2)(a).

Section 106. Section **70A-12a-303** is enacted to read:

70A-12a-303 . Security interest unperfected before effective date.

- A security interest that is enforceable immediately before May 6, 2026, but is unperfected at that time:
- (1) remains an enforceable security interest until the adjustment date;

- (2) remains enforceable thereafter if the security interest becomes enforceable under Section 70A-9a-203, as amended by this chapter, on May 6, 2026, or before the adjustment date; and
- (3) becomes perfected:
- (a) without further action, on May 6, 2026, if the requirements for perfection under this chapter are satisfied before or at that time; or
- (b) when the requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 107. Section **70A-12a-304** is enacted to read:

70A-12a-304 . Effectiveness of actions taken before effective date.

- (1) If action, other than the filing of a financing statement, is taken before May 6, 2026, and the action would have resulted in perfection of the security interest had the security interest become enforceable before May 6, 2026, the action is effective to perfect a security interest that attaches under this chapter before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this chapter before the adjustment date.
- (2) The filing of a financing statement before May 6, 2026, is effective to perfect a security interest on May 6, 2026, to the extent the filing would satisfy the requirements for perfection under this chapter.
- (3) The taking of an action before May 6, 2026, is sufficient for the enforceability of a security interest on May 6, 2026, if the action would satisfy the requirements for enforceability under this chapter.

Section 108. Section **70A-12a-305** is enacted to read:

70A-12a-305 . Priority.

- (1) Subject to Subsections (2) and (3), this chapter determines the priority of conflicting claims to collateral.
- (2) Subject to Subsection (3), if the priorities of claims to collateral were established before May 6, 2026, Chapter 9a, Uniform Commercial Code - Secured Transactions, as in effect before May 6, 2026, determines priority.
- (3) On the adjustment date, to the extent the priorities determined by Chapter 9a, Uniform Commercial Code - Secured Transactions, as amended by this chapter modify the priorities established before May 6, 2026, the priorities of claims to Article 12 property and electronic money established before May 6, 2026, cease to apply.

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
4287 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
4291 this act are hereby repealed.

4292 Section 118. Section **70A-20-102**, which is renumbered from Section 70A-10-104 is renumbered
4293 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
4296 any laws prescribing the form or contents of documents of title or the services or facilities to
4297 be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically
4298 dealt with herein; but the fact that such laws are violated does not affect the status of a
4299 document of title which otherwise complies with the definition of a document of title as
4300 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
4304 not take a negotiable instrument under Section 70A-3-104 other than a check as
4305 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~~
4307 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.