

Part 1 General Provisions

70A-9a-101 Title.

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

Enacted by Chapter 252, 2000 General Session

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," 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 health-care-insurance receivables.
 - (c) "Account" does not include:
 - (i) rights to payment evidenced by chattel paper or an instrument;
 - (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.
- (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 instrument constitutes part of chattel paper.
- (4) "Accounting," except as used in "accounting for," means a record:
 - (a) authenticated by a secured party;
 - (b) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and
 - (c) identifying the components of the obligations in reasonable detail.
- (5) "Agricultural lien" means an interest, other than a security interest, in farm products:

- (a) which secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor's farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (b) which is created by statute in favor of a person that:
 - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor's farming operation; and
 - (c) whose effectiveness does not depend on the person's possession of the personal property.
- (6) "As-extracted collateral" means:
- (a) oil, gas, or other minerals that are subject to a security interest that:
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
 - (b) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.
- (7) "Authenticate" means:
- (a) to sign; or
 - (b) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.
- (8)
- (a) "Bank" means an organization that is engaged in the business of banking.
 - (b) "Bank" includes:
 - (i) a depository institution as defined in Section 7-1-103; and
 - (ii) a trust company.
- (9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.
- (10)
- (a) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
 - (b) "Certificate of title" includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (11)
- (a) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this Subsection (11), "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods.
 - (b) "Chattel paper" does not include:
 - (i) charters or other contracts involving the use or hire of a vessel; or
 - (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained or for use with the card.
 - (c) If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

- (12) "Collateral" means the property subject to a security interest or agricultural lien. "Collateral" includes:
- (a) proceeds to which a security interest attaches;
 - (b) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (c) goods that are the subject of a consignment.
- (13) "Commercial tort claim" means a claim arising in tort with respect to which:
- (a) the claimant is an organization; or
 - (b) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant's business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.
- (14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- (15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (a) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (b) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.
- (16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.
- (17) "Commodity intermediary" means a person that:
- (a) is registered as a futures commission merchant under federal commodities law; or
 - (b) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) "Communicate" means:
- (a) to send a written or other tangible record;
 - (b) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (c) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (19) "Consignee" means a merchant to which goods are delivered in a consignment.
- (20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (a) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (b) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;
 - (c) the goods are not consumer goods immediately before delivery; and
 - (d) the transaction does not create a security interest that secures an obligation.
- (21) "Consignor" means a person that delivers goods to a consignee in a consignment.
- (22) "Consumer debtor" means a debtor in a consumer transaction.
- (23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
- (24) "Consumer-goods transaction" means a consumer transaction in which:
- (a) an individual incurs an obligation primarily for personal, family, or household purposes; and

- (b) a security interest in consumer goods secures the obligation.
- (25) "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)
 - (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) "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.
- (28) "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)
 - (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) "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.
- (32) "Encumbrance" means a right, other than an ownership interest, in real property.
"Encumbrance" includes mortgages and other liens on real property.
- (33) "Equipment" means goods other than inventory, farm products, or consumer goods.
- (34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
 - (a) crops grown, growing, or to be grown, including:
 - (i) crops produced on trees, vines, and bushes; and
 - (ii) aquatic goods produced in aquacultural operations;
 - (b) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
 - (c) supplies used or produced in a farming operation; or
 - (d) products of crops or livestock in their unmanufactured states.
- (35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- (36) "File number" means the number assigned to an initial financing statement pursuant to Subsection 70A-9a-519(1).
- (37) "Filing office" means an office designated in Section 70A-9a-501 as the place to file a financing statement.
- (38) "Filing-office rule" means a rule adopted pursuant to Section 70A-9a-526.
- (39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (40)

- (a) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Subsections 70A-9a-502(1) and (2).
 - (b) "Fixture filing" includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- (41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- (42)
- (a) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction.
 - (b) "General intangible" includes payment intangibles and software.
- (43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (44)
- (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)
- (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) "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)
- (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 agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment.
 - (b) "Instrument" does not include:

- (i) investment property;
 - (ii) letters of credit; or
 - (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
- (48) "Inventory" means goods, other than farm products, which:
- (a) are leased by a person as lessor;
 - (b) are held by a person for sale or lease or to be furnished under a contract of service;
 - (c) are furnished by a person under a contract of service; or
 - (d) consist of raw materials, work in process, or materials used or consumed in a business.
- (49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
- (50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.
- (51)
- (a) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.
 - (b) "Letter-of-credit right" does not include the right of a beneficiary to demand payment or performance under a letter of credit.
- (52) "Lien creditor" means:
- (a) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
 - (b) an assignee for benefit of creditors from the time of assignment;
 - (c) a trustee in bankruptcy from the date of the filing of the petition; or
 - (d) a receiver in equity from the time of appointment.
- (53)
- (a) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without 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) 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) "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.
- (55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.
- (56) "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)
- (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) "Noncash proceeds" means proceeds other than cash proceeds.
- (59)
- (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.
- (60) "Original debtor," except as used in Subsection 70A-9a-310(3), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Subsection 70A-9a-203(4).
- (61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.
- (62) "Person related to," with respect to an individual, means:
- (a) the spouse of the individual;
 - (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
 - (c) an ancestor or lineal descendant of the individual or the individual's spouse; or
 - (d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.
- (63) "Person related to," with respect to an organization, means:
- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
 - (b) an officer or director of, or a person performing similar functions with respect to, the organization;
 - (c) an officer or director of, or a person performing similar functions with respect to, a person described in Subsection (63)(a);
 - (d) the spouse of an individual described in Subsection (63)(a), (b), or (c); or
 - (e) an individual who is related by blood or marriage to an individual described in Subsection (63)(a), (b), (c), or (d) and shares the same home with the individual.
- (64) "Proceeds," except as used in Subsection 70A-9a-609(2), means the following property:
- (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
 - (b) whatever is collected on, or distributed on account of, collateral;
 - (c) rights arising out of collateral;
 - (d) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
 - (e) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

- (66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622.
- (67) "Public-finance transaction" means a secured transaction in connection with which:
- (a) debt securities are issued;
 - (b) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and
 - (c) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.
- (68) "Public organic record" means a record that is available to the public for inspection and is:
- (a) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;
 - (b) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
 - (c) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.
- (69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.
- (70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- (71)
- (a) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States.
 - (b) "Registered organization" includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.
- (72) "Secondary obligor" means an obligor to the extent that:
- (a) the obligor's obligation is secondary; or
 - (b) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (73) "Secured party" means:
- (a) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
 - (b) a person that holds an agricultural lien;
 - (c) a consignor;
 - (d) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
 - (e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

- (f) a person that holds a security interest arising under Section 70A-2-401, 70A-2-505, 70A-4-210, or 70A-5-118 or Subsection 70A-2-711(3) or 70A-2a-508(5).
- (74) "Security agreement" means an agreement that creates or provides for a security interest.
- (75) "Send," in connection with a record or notification, means:
 - (a) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
 - (b) to cause the record or notification to be received within the time that it would have been received if properly sent under Subsection (75)(a).
- (76)
 - (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) "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) "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.
- (80) "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) "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.

Amended by Chapter 225, 2013 General Session

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) "Applicant" Section 70A-5-102.
 - (b) "Beneficiary" Section 70A-5-102.
 - (c) "Broker" Section 70A-8-101.
 - (d) "Certificated security" Section 70A-8-101.
 - (e) "Check" Section 70A-3-104.
 - (f) "Clearing corporation" Section 70A-8-101.
 - (g) "Contract for sale" Section 70A-2-106.
 - (h) "Customer" Section 70A-4-104.
 - (i) "Entitlement holder" Section 70A-8-101.
 - (j) "Financial asset" Section 70A-8-101.
 - (k) "Holder in due course" Section 70A-3-302.
 - (l)

- (i) "Issuer" (with respect to a letter of credit or letter-of-credit right) Section 70A-5-102.
 - (ii) "Issuer" (with respect to a security) Section 70A-8-201.
 - (iii) "Issuer" (with respect to documents of title) Section 70A-7a-102.
 - (m) "Lease" Section 70A-2a-103.
 - (n) "Lease agreement" Section 70A-2a-103.
 - (o) "Lease contract" Section 70A-2a-103.
 - (p) "Leasehold interest" Section 70A-2a-103.
 - (q) "Lessee" Section 70A-2a-103.
 - (r) "Lessee in ordinary course of business" Section 70A-2a-103.
 - (s) "Lessor" Section 70A-2a-103.
 - (t) "Lessor's residual interest" Section 70A-2a-103.
 - (u) "Letter of credit" Section 70A-5-102.
 - (v) "Merchant" Section 70A-2-104.
 - (w) "Negotiable instrument" Section 70A-3-104.
 - (x) "Nominated person" Section 70A-5-102.
 - (y) "Note" Section 70A-3-104.
 - (z) "Proceeds of a letter of credit" Section 70A-5-114.
 - (aa) "Prove" Section 70A-3-103.
 - (bb) "Sale" Section 70A-2-106.
 - (cc) "Securities account" Section 70A-8-501.
 - (dd) "Securities intermediary" Section 70A-8-101.
 - (ee) "Security" Section 70A-8-101.
 - (ff) "Security certificate" Section 70A-8-101.
 - (gg) "Security entitlement" Section 70A-8-101.
 - (hh) "Uncertificated security" Section 70A-8-101.
- (2) Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Chapter 272, 2007 General Session

70A-9a-103 Purchase-money security interest -- Application of payments -- Burden of establishing.

- (1) In this section:
 - (a) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and
 - (b) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
- (2) A security interest in goods is a purchase-money security interest:
 - (a) to the extent that the goods are purchase-money collateral with respect to that security interest;
 - (b) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - (c) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

- (3) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
 - (a) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
 - (b) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.
- (4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.
- (5) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
 - (a) in accordance with any reasonable method of application to which the parties agree;
 - (b) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
 - (c) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
 - (i) to obligations that are not secured; and
 - (ii) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
- (6) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:
 - (a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
 - (b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
 - (c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.
- (7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.
- (8) The limitation of the rules in Subsections (5), (6), and (7) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Enacted by Chapter 252, 2000 General Session

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 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.
- (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.

Enacted by Chapter 252, 2000 General Session

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

- (1) A secured party has control of electronic chattel paper if a system employed by evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to whom the chattel paper was assigned.
- (2) A system satisfies Subsection (1) if the record or records comprising the chattel paper are created, stored, and assigned in such 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 secured party as the assignee of the record or records;
 - (c) the authoritative copy is communicated to and maintained by the secured party 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 secured party;
 - (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
 - (f) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Amended by Chapter 225, 2013 General Session

70A-9a-106 Control of investment property.

- (1) A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 70A-8-105.
- (2) A secured party has control of a commodity contract if:
 - (a) the secured party is the commodity intermediary with which the commodity contract is carried; or
 - (b) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
- (3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Enacted by Chapter 252, 2000 General Session

70A-9a-107 Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Subsection 70A-5-114(3) or otherwise applicable law or practice.

Enacted by Chapter 252, 2000 General Session

70A-9a-108 Sufficiency of description.

- (1) Except as otherwise provided in Subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

- (2) Except as otherwise provided in Subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:
 - (a) specific listing;
 - (b) category;
 - (c) except as otherwise provided in Subsection (5), a type of collateral defined in this title;
 - (d) quantity;
 - (e) computational or allocational formula or procedure; or
 - (f) except as otherwise provided in Subsection (3), any other method, if the identity of the collateral is objectively determinable.
- (3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.
- (4) Except as otherwise provided in Subsection (5), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:
 - (a) the collateral by those terms or as investment property; or
 - (b) the underlying financial asset or commodity contract.
- (5) A description only by type of collateral defined in this title is an insufficient description of:
 - (a) a commercial tort claim; or
 - (b) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

Enacted by Chapter 252, 2000 General Session

70A-9a-109 Scope.

- (1) Except as otherwise provided in Subsections (3) and (4), this chapter applies to:
 - (a) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (b) an agricultural lien;
 - (c) a sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - (d) a consignment;
 - (e) a security interest arising under Section 70A-2-401 or 70A-2-505 or Subsection 70A-2-711(3) or 70A-2a-508(5), as provided in Section 70A-9a-110; and
 - (f) a security interest arising under Section 70A-4-210 or 70A-5-118.
- (2) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.
- (3) This chapter does not apply to the extent that:
 - (a) a statute, regulation, or treaty of the United States preempts this chapter;
 - (b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;
 - (c) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
 - (d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 70A-5-114.
- (4) This chapter does not apply to:
 - (a) a landlord's lien, other than an agricultural lien;

- (b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 70A-9a-333 applies with respect to priority of the lien;
 - (c) an assignment of a claim for wages, salary, or other compensation of an employee;
 - (d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
 - (e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
 - (f) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
 - (g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
 - (h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds;
 - (i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
 - (j) a right of recoupment or set-off, but:
 - (i) Section 70A-9a-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (ii) Section 70A-9a-404 applies with respect to defenses or claims of an account debtor;
 - (k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (i) liens on real property in Sections 70A-9a-203 and 70A-9a-308;
 - (ii) fixtures in Section 70A-9a-334;
 - (iii) fixture filings in Sections 70A-9a-501, 70A-9a-502, 70A-9a-512, 70A-9a-516, and 70A-9a-519; and
 - (iv) security agreements covering personal and real property in Section 70A-9a-604;
 - (l) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds;
 - (m) an assignment of a deposit account in a consumer transaction, but Sections 70A-9a-315 and 70A-9a-322 apply with respect to proceeds and priorities in proceeds;
 - (n) an assignment of a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. 104(a)(1) or (2); or
 - (o) an assignment of a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. 1396p(d)(4).
- (5) Notwithstanding anything to the contrary in this section, Subsections (4)(n) and (o) shall only be effective to security interests created on or after May 6, 2002.

Amended by Chapter 99, 2002 General Session

70A-9a-110 Security interests arising under Chapter 2 or 2a.

A security interest arising under Section 70A-2-401 or 70A-2-505, or Subsection 70A-2-711(3) or 70A-2a-508(5) is subject to this chapter. However, until the debtor obtains possession of the goods:

- (1) the security interest is enforceable, even if Subsection 70A-9a-203(2)(c) has not been satisfied;
- (2) filing is not required to perfect the security interest;

- (3) the rights of the secured party after default by the debtor are governed by Chapter 2, Uniform Commercial Code - Sales or Chapter 2a, Uniform Commercial Code - Leases; and
- (4) the security interest has priority over a conflicting security interest created by the debtor.

Enacted by Chapter 252, 2000 General Session