

September 2000

Introduced by

1 A BILL for an Act to provide for a computerized central indexing system; to create and enact
2 section 41-05-18 and a new chapter 41-09 of the North Dakota Century Code, relating to
3 Uniform Commercial Code Article 9 - Secured Transactions; to amend and reenact
4 subsection 5 of section 11-18-05, sections 32-20-08 and 35-06-11, subdivision a of
5 subsection 1 of section 35-29-04, subsection 2 of section 35-32-02, section 35-34-06,
6 subsection 2 of section 41-01-05, section 41-01-10.5, subsections 9 and 32 and subdivision a
7 of subsection 37 of section 41-01-11, subsection 2 of section 41-01-16, subdivision d of
8 subsection 3 of section 41-02-03, sections 41-02-17, 41-02-43, and 41-02-50, subsection 3 of
9 section 41-02-95, subsection 3 of section 41-02.1-03, sections 41-02.1-33 and 41-02.1-37,
10 subdivision b of subsection 1 of section 41-02.1-39, subdivision a of subsection 3 of section
11 41-04-22, subdivision a of subsection 1 of section 41-07-32, subsection 6 of section 41-08-03,
12 section 41-08-06, subsection 5 of section 41-08-10, subdivision c of subsection 1 of section
13 41-08-27, subsection 1 of section 41-08-28, section 41-08-50, subsection 12 of section
14 47-19-02, subdivision a of subsection 2 of section 49-04-19, and section 54-09-08 of the North
15 Dakota Century Code, relating to the Uniform Commercial Code; to repeal present chapter
16 41-09 of the North Dakota Century Code, relating to secured transactions; and to provide an
17 effective date.

18 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

19 **SECTION 1. AMENDMENT.** Subsection 5 of section 11-18-05 of the 1999 Supplement
20 to the North Dakota Century Code is amended and reenacted as follows:

21 5. For filing, indexing, making, or completing any statement, abstract, or certificate
22 under the Uniform Commercial Code central filing data base, the ~~computerized~~
23 central ~~notice~~ indexing system or the computerized statutory liens data base, for
24 receiving printouts, and for other services provided through the ~~computerized~~

1 system, the fee is the same as that provided in ~~sections 41-09-42 and 41-09-43, as~~
2 applicable section 41-09-96.

3 **SECTION 2. AMENDMENT.** Section 32-20-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **32-20-08. Other remedies not affected.** This chapter does not affect any right or
6 remedy to foreclose or otherwise enforce or satisfy a lien upon or security interest in personal
7 property without action as prescribed in sections ~~41-09-47~~ 41-09-99 through ~~41-09-53~~
8 41-09-126.

9 **SECTION 3. AMENDMENT.** Section 35-06-11 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **35-06-11. Pledge enforced - Sale when performance due.** When performance of the
12 act for which a pledge is given is due in whole or in part, the pledgee may collect what is due
13 ~~him~~ the pledgee by a sale of the property pledged, subject to the rules and exceptions
14 prescribed in this chapter and in ~~section 41-09-50~~ sections 41-09-99 through 41-09-126.

15 **SECTION 4. AMENDMENT.** Subdivision a of subsection 1 of section 35-29-04 of the
16 North Dakota Century Code is amended and reenacted as follows:

17 a. The secretary of state, the secretary shall cause the notice to be marked,
18 held, and indexed in accordance with the provisions of ~~subsection 4 of section~~
19 ~~41-09-42~~ 41-09-90 as if the notice were a financing statement within the
20 meaning of title 41; or

21 **SECTION 5. AMENDMENT.** Subsection 2 of section 35-32-02 of the 1999 Supplement
22 to the North Dakota Century Code is amended and reenacted as follows:

23 2. Except as provided in subsection 3, if the holder of a lien under this chapter
24 relinquishes possession of the aircraft before the amount due is paid, that person
25 may retake possession of the aircraft as provided by section ~~41-09-49~~ 41-09-107.

26 **SECTION 6. AMENDMENT.** Section 35-34-06 of the 1999 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **35-34-06. Lien on other personal property.**

29 1. In the case of personal property that does not consist of a vehicle, a vessel, or an
30 account maintained in a financial institution, the public authority may establish a
31 lien on such personal property by filing a notice of lien with the office of the register

- 1 of deeds in the county in which the personal property may be found or with the
2 secretary of state. The notice must particularly describe the property to be
3 subjected to the lien and the name and ~~last-known~~ last-known address of the
4 obligor. The notice of lien must state that the child support obligation is past due
5 and that a copy of the notice of lien has been served on the obligor by first-class
6 mail at the obligor's ~~last-known~~ last-known address.
- 7 2. The information filed with a register of deeds or with the secretary of state under
8 this section must be included in the computerized central indexing system
9 maintained by the secretary of state under section ~~41-09-46~~ 41-09-72 and must be
10 accessible to the public on the same terms and conditions that apply to access
11 other statutory lien information maintained in the computerized central indexing
12 system.
- 13 3. Upon filing of the notice of lien in accordance with this section, the lien attaches to
14 and is perfected against all personal property described in the notice.

NOTE: The changes made to Chapter 41-09 may result in substantive changes
needing to be made to Section 35-34-06.

15 **SECTION 7. AMENDMENT.** Subsection 2 of section 41-01-05 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 2. Where one of the following provisions of this title specifies the applicable law, that
18 provision governs and a contrary agreement is effective only to the extent
19 permitted by the law (including the conflict of laws rules) so specified:
- 20 a. Rights of creditors against sold goods. Section 41-02-47.
 - 21 b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
 - 22 c. Applicability of the chapter on bank deposits and collections. Section
23 41-04-02.
 - 24 d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
 - 25 e. Letters of credit. Section 41-05-16.
 - 26 f. Applicability of the chapter on investment securities. Section 41-08-10.
 - 27 g. ~~Perfection provisions of the chapter on secured transactions. Section~~
28 41-09-03 Law governing perfection, the effect of perfection or nonperfection,
29 and the priority of security interests and agricultural liens. Sections 41-09-21
30 through 41-09-27.

1 **SECTION 8. AMENDMENT.** Section 41-01-10.5 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **41-01-10.5. (~~41-106~~) Required refilings.**

- 4 1. If a security interest, without filing or recording, is perfected or has priority on
5 January 1, 1974, as to all persons or as to certain persons and the filing or
6 recording of a financing statement would be required for the perfection or priority of
7 the security interest against those persons, the perfection and priority rights of the
8 security interest continue until three years after January 1, 1974, at which time the
9 perfection will lapse unless a financing statement is filed or recorded as provided
10 for in subsection 4 or the security interest is otherwise perfected.
- 11 2. If a security interest is perfected on January 1, 1974, under a law other than this
12 title which requires no further filing, refiling, or recording in order to continue its
13 perfection, perfection continues until three years after January 1, 1974, at which
14 time the perfection will lapse, unless a financing statement is filed as provided for
15 in subsection 4, the security interest is otherwise perfected, or under subsection 3
16 of section 41-09-23 the other law continues to govern filing.
- 17 3. If a security interest is perfected by a filing, refiling, or recording under any statute
18 or other law repealed or modified by chapter 343 of the 1973 Session Laws, as
19 codified in this title, which required further filing, refiling, or recording in order to
20 continue its perfection, perfection continues and will lapse on the date provided for
21 by the law so repealed for such further filing, refiling, or recording, unless a
22 financing statement is filed as provided for in subsection 4 or the security interest is
23 otherwise perfected.
- 24 4. A financing statement may be filed within six months before the perfection of a
25 security interest would otherwise lapse. The financing statement may be signed by
26 either the debtor or the secured party. It must identify the security agreement,
27 statement, or notice (however denominated in any statute or other law repealed or
28 modified by chapter 343 of the 1973 Session Laws, as codified in this title), state
29 the office where and the date when the last filing, refiling, or recording, if any, was
30 made with respect to it, and the filing number, if any, or book and page, if any, of
31 any recording and further state that the security agreement, statement, or notice

1 (however denominated) in another filing office under this title or under any statute
2 or other law repealed or modified by chapter 343 of the 1973 Session Laws, as
3 codified in this title, is still effective. Sections 41-09-40 and 41-09-03 govern the
4 proper place to file the financing statement. Except as specified in this subsection,
5 the provisions of subsection 3 of section 41-09-42 for continuation statements
6 apply to the financing statement.

NOTE: The changes made to Chapter 41-09 may result in substantive changes
needing to be made to Section 41-01-10.5 and perhaps Sections 41-09-10.1 through
41-09-10.7.

7 **SECTION 9. AMENDMENT.** Subsections 9 and 32 and subdivision a of subsection 37
8 of section 41-01-11 of the North Dakota Century Code are amended and reenacted as follows:

9 9. "Buyer in ordinary course of business" means a person ~~who~~ that buys goods in
10 good faith and, without knowledge that the sale to the person is in violation of
11 violates the ownership rights or security interest of a third party another person in
12 the goods buys, and in the ordinary course from a person, other than a
13 pawnbroker, in the business of selling goods of that kind but does not include a
14 pawnbroker. All persons who sell minerals or the like (including oil and gas) at
15 wellhead or minehead shall be deemed to be persons. A person buys goods in the
16 ordinary course if the sale to the person comports with the usual or customary
17 practices in the kind of business in which the seller is engaged or with the seller's
18 own usual or customary practices. A person that sells oil, gas, or other minerals at
19 the wellhead or minehead is a person in the business of selling goods of that kind.
20 "Buying" A buyer in the ordinary course of business may be buy for cash or, by
21 exchange of other property, or on secured or unsecured credit, and includes
22 receiving may acquire goods or documents of title under a preexisting contract for
23 sale but does not include a transfer in bulk or as security for or in total or partial
24 satisfaction of a money debt Only a buyer that takes possession of the goods or
25 has a right to recover the goods from the seller under chapter 41-02 may be a
26 buyer in the ordinary course of business. A person that acquires goods in a
27 transfer in bulk or as security for or in total or partial satisfaction of a money debt is
28 not a buyer in the ordinary course of business.

- 1 32. "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien,
2 security interest, issue or reissue, gift, or any other voluntary transaction creating
3 an interest in property.
- 4 37. a. "Security interest" means an interest in personal property or fixtures which
5 secures payment or performance of an obligation. ~~The retention or~~
6 ~~reservation of title by a seller of goods notwithstanding shipment or delivery to~~
7 ~~the buyer (section 41-02-46) is limited in effect to a reservation of a "security~~
8 ~~interest".~~ The term also includes any interest of a consignor and a buyer of
9 accounts or, chattel paper which, a payment intangible, or a promissory note
10 in a transaction that is subject to chapter 41-09. The special property interest
11 of a buyer of goods on identification of those goods to a contract for sale
12 under section 41-02-46 is not a "security interest", but a buyer may also
13 acquire a "security interest" by complying with chapter 41-09. ~~Unless a~~
14 ~~consignment is intended as security, reservation of title thereunder is not a~~
15 ~~"security interest", but a consignment is in any event subject to the provisions~~
16 ~~on consignment sales (section 41-02-43).~~ Except as otherwise provided in
17 section 41-02-53, the right of a seller or lessor of goods under chapter 41-02
18 or 41-02.1 to retain or acquire possession of the goods is not a "security
19 interest", but a seller or lessor may also acquire a "security interest" by
20 complying with chapter 41-09. The retention or reservation of title by a seller
21 of goods notwithstanding shipment or delivery to the buyer, section 41-02-46,
22 is limited in effect to a reservation of a "security interest". Whether a
23 transaction creates a lease or security interest is determined by the facts of
24 each case; however, a transaction creates a security interest if the
25 consideration the lessee is to pay the lessor for the right to possession and
26 use of the goods is an obligation for the term of the lease not subject to
27 termination by the lessee, and (1) the original term of the lease is equal to or
28 greater than the remaining economic life of the goods; (2) the lessee is bound
29 to renew the lease for the remaining economic life of the goods or is bound to
30 become the owner of the goods; (3) the lessee has an option to renew the
31 lease for the remaining economic life of the goods for no additional

1 consideration or nominal additional consideration upon compliance with the
2 lease agreement; or (4) the lessee has an option to become the owner of the
3 goods for no additional consideration or nominal additional consideration upon
4 compliance with the lease agreement.

5 **SECTION 10. AMENDMENT.** Subsection 2 of section 41-01-16 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. Subsection 1 does not apply to contracts for the sale of goods (section 41-02-08)
8 nor of securities (section 41-08-13) nor to security agreements (section ~~41-09-16~~
9 41-09-13).

10 **SECTION 11. AMENDMENT.** Subdivision d of subsection 3 of section 41-02-03 of the
11 North Dakota Century Code is amended and reenacted as follows:

12 d. "Consumer goods". Section ~~41-09-09~~ 41-09-02.

13 **SECTION 12. AMENDMENT.** Section 41-02-17 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **41-02-17. (2-210) Delegation of performance - Assignment of rights.**

16 1. A party may perform that party's duty through a delegate unless otherwise agreed
17 or unless the other party has a substantial interest in having the other party's
18 original promisor perform or control the acts required by the contract. No
19 delegation of performance relieves the party delegating of any duty to perform or
20 any liability for breach.

21 2. ~~Unless~~ Except as otherwise provided in section 41-09-68, unless otherwise
22 agreed, all rights of either seller or buyer can be assigned except when the
23 assignment would materially change the duty of the other party, or increase
24 materially the burden or risk imposed on the other party by that party's contract, or
25 impair materially that party's chance of obtaining return performance. A right to
26 damages for breach of the whole contract or a right arising out of the assignor's
27 due performance of the assignor's entire obligation can be assigned despite
28 agreement otherwise.

29 3. The creation, attachment, perfection, or enforcement of a security interest in the
30 seller's interest under a contract is not a transfer that materially changes the duty
31 of or increases materially the burden or risk imposed on the buyer or impairs

1 materially the buyer's chance of obtaining return performance within the purview of
2 subsection 2 unless, and then only to the extent that, enforcement actually results
3 in a delegation of material performance of the seller. Even in that event, the
4 creation, attachment, perfection, and enforcement of the security interest remain
5 effective, but (a) the seller is liable to the buyer for damages caused by the
6 delegation to the extent that the damages could not reasonably be prevented by
7 the buyer, and (b) a court having jurisdiction may grant other appropriate relief,
8 including cancellation of the contract for sale or an injunction against enforcement
9 of the security interest or consummation of the enforcement.

10 4. Unless the circumstances indicate the contrary, a prohibition of assignment of "the
11 contract" is to be construed as barring only the delegation to the assignee of the
12 assignor's performance.

13 4. 5. An assignment of "the contract" or of "all my rights under the contract" or an
14 assignment in similar general terms is an assignment of rights and unless the
15 language or the circumstances (as in an assignment for security) indicate the
16 contrary, it is a delegation of performance of the duties of the assignor and its
17 acceptance by the assignee constitutes a promise by the assignee to perform
18 those duties. This promise is enforceable by either the assignor or the other party
19 to the original contract.

20 5. 6. The other party may treat any assignment which delegates performance as
21 creating reasonable grounds for insecurity and may without prejudice to that party's
22 rights against the assignor demand assurances from the assignee (section
23 41-02-72).

24 **SECTION 13. AMENDMENT.** Section 41-02-43 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **41-02-43. (2-326) Sale on approval and sale or return - ~~Consignment sales and~~**
27 **~~rights~~ Rights of creditors.**

28 1. Unless otherwise agreed, if delivered goods may be returned by the buyer even
29 though they conform to the contract, the transaction is:

30 a. A "sale on approval" if the goods are delivered primarily for use.

31 b. A "sale or return" if the goods are delivered primarily for resale.

- 1 2. ~~Except as provided in subsection 3, goods~~ Goods held on approval are not subject
2 to the claims of the buyer's creditors until acceptance; goods held on sale or return
3 are subject to such claims while in the buyer's possession.
- 4 3. ~~If goods are delivered to a person for sale and such person maintains a place of~~
5 ~~business at which such person deals in goods of the kind involved, under a name~~
6 ~~other than the name of the person making delivery, then with respect to claims of~~
7 ~~creditors of the person conducting the business the goods are deemed to be on~~
8 ~~sale or return. The provisions of this subsection are applicable even though an~~
9 ~~agreement purports to reserve title to the person making delivery until payment or~~
10 ~~resale or uses such words as "on consignment" or "on memorandum". However,~~
11 ~~this subsection is not applicable if the person making delivery:~~
- 12 a. ~~Complied with an applicable law providing for a consignor's interest or the like~~
13 ~~to be evidenced by a sign;~~
- 14 b. ~~Establishes that the person conducting the business is generally known by the~~
15 ~~person's creditors to be substantially engaged in selling the goods of others;~~
16 ~~or~~
- 17 e. ~~Complies with the filing provisions of the chapter on secured transactions~~
18 ~~(chapter 41-09).~~
- 19 4. Any "or return" term of a contract for sale is to be treated as a separate contract for
20 sale within the statute of frauds section of this chapter (section 41-02-08) and as
21 contradicting the sale aspect of the contract within the provisions of this chapter on
22 parol or extrinsic evidence (section 41-02-09).

23 **SECTION 14. AMENDMENT.** Section 41-02-50 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **41-02-50. (2-502) Buyer's right to goods on seller's repudiation, failure to deliver,**
26 **or insolvency.**

- 27 1. Subject to ~~subsection~~ subsections 2 and 3 and even though the goods have not
28 been shipped, a buyer who has paid a part or all of the price of goods in which the
29 buyer has a special property under the provisions of section 41-02-49 may on
30 making and keeping good a tender of any unpaid portion of their price recover
31 them from the seller if:

- 1 a. In the case of goods bought for personal, family, or household purposes, the
2 seller repudiates or fails to deliver as required by the contract; or
3 b. In all cases, the seller becomes insolvent within ten days after receipt of the
4 first installment on their price.
- 5 2. The buyer's right to recover the goods under subdivision a of subsection 1 vests
6 upon acquisition of a special property, even if the seller had not then repudiated or
7 failed to deliver.
- 8 3. If the identification creating the buyer's special property has been made by the
9 buyer, the buyer acquires the right to recover the goods only if they conform to the
10 contract for sale.

11 **SECTION 15. AMENDMENT.** Subsection 3 of section 41-02-95 of the North Dakota
12 Century Code is amended and reenacted as follows:

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

20 **SECTION 16. AMENDMENT.** Subsection 3 of section 41-02.1-03 of the North Dakota
21 Century Code is amended and reenacted as follows:

- 22 3. The following definitions also apply to this chapter:
- 23 a. "Account". ~~Section 41-09-06~~ Subdivision b of subsection 1 of section
24 41-09-02.
- 25 b. "Between merchants". Subsection 1 of section 41-02-04.
- 26 c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.
- 27 d. "Chattel paper". Subdivision ~~e~~ k of subsection 1 of section ~~41-09-05~~
28 41-09-02.
- 29 e. "Consumer goods". ~~Subsection~~ Subdivision w of subsection 1 of section
30 41-09-09 41-09-02.
- 31 f. "Document". Subdivision ~~g~~ dd of subsection 1 of section ~~41-09-05~~ 41-09-02.

- 1 g. "Entrusting". Subsection 3 of section 41-02-48.
- 2 h. "General ~~intangibles~~ intangible". ~~Section 41-09-06~~ Subdivision pp of
3 subsection 1 of section 41-09-02.
- 4 i. "Good faith". Subdivision b of subsection 1 of section 41-02-03.
- 5 j. "Instrument". Subdivision j uu of subsection 1 of section ~~41-09-05~~ 41-09-02.
- 6 k. "Merchant". Subsection 3 of section 41-02-04.
- 7 l. "Mortgage". Subdivision k ccc of subsection 1 of section ~~41-09-05~~ 41-09-02.
- 8 m. "Pursuant to commitment". Subdivision l ppp of subsection 1 of section
9 ~~41-09-05~~ 41-09-02.
- 10 n. "Receipt". Subdivision c of subsection 1 of section 41-02-03.
- 11 o. "Sale". Subdivision d of subsection 1 of section 41-02-06.
- 12 p. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.
- 13 q. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.
- 14 r. "Seller". Subdivision d of subsection 1 of section 41-02-03.

15 **SECTION 17. AMENDMENT.** Section 41-02.1-33 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-02.1-33. (2A-303) Alienability of party's interest under lease contract or of**
18 **lessor's residual interest in goods - Delegation of performance - Transfer of rights.**

- 19 1. Except as provided in subsections 2 and 3, a provision in a lease agreement that
20 prohibits the voluntary or involuntary transfer, including a transfer by sale,
21 sublease, creation or enforcement of a security interest, or attachment, levy, or
22 other judicial process, of an interest of a party under the lease contract or of the
23 lessor's residual interest in the goods, or that makes such a transfer an event of
24 default, is enforceable as provided in subsection 4, but a transfer that is prohibited
25 or is an event of default under the lease agreement is otherwise effective.
26 "Creation of a security interest" as used in this section includes the sale of a lease
27 contract that is subject to chapter 41-09.
- 28 2. A provision in a lease agreement that prohibits the creation or enforcement of a
29 security interest in an interest of a party under the lease contract, or in the lessor's
30 residual interest in the goods or that makes such a transfer an event of default is
31 not enforceable unless, and then only to the extent that, there is an actual transfer

- 1 by the lessee of the lessee's right of possession or use of the goods in violation of
2 the provision or delegation of a material performance of either party to the lease
3 contract in violation of the provision.
- 4 3. A transfer of a right to damages for default with respect to the whole lease contract
5 or a transfer of a right to payment arising out of the transferor's due performance of
6 the transferor's entire obligation, which includes the creation of a security interest
7 in the right to future payment under a lease contract that is granted by a lessor who
8 has no remaining performance under the lease contract, may not be prohibited or
9 made an event of default and is not a transfer that materially impairs the prospect
10 of obtaining return performance by, materially changes the duty of, or materially
11 increases the burden or risk imposed on the other party to the lease contract within
12 subsection 4.
- 13 4. Subject to subsections 2 and 3, if a transfer is made that is prohibited or is an
14 event of default under a lease agreement, or if a transfer is made that materially
15 impairs the prospect of obtaining return performance by, materially changes the
16 duty of, or materially increases the burden or risk imposed on the other party to the
17 lease contract, unless the party prejudiced by the transfer agrees at any time to the
18 transfer in the lease contract or otherwise, then that party has, if the transfer is
19 made an event of default, the rights and remedies provided under subsection 2 of
20 section 41-02.1-48. In all other cases, except as limited by contract, the transferor
21 is liable to the prejudiced party for damages caused by the transfer to the extent
22 the damages could not reasonably be prevented by the prejudiced party. A court
23 having jurisdiction may grant other appropriate relief, including cancellation of the
24 lease contract or an injunction against the transfer.
- 25 5. A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar
26 general terms is a transfer of rights, and unless the language or the circumstances,
27 as in a transfer for security, indicate the contrary, the transfer is a delegation of
28 duties by the transferor to the transferee and acceptance by the transferee
29 constitutes a promise by the transferee to perform those duties. This promise is
30 enforceable by either the transferor or the other party to the lease contract.

- 1 6. Unless otherwise agreed by the lessor and the lessee, no delegation of
2 performance relieves the transferor as against the other party of any duty to
3 perform or any liability for default.
- 4 7. To prohibit the transfer of an interest of a party under a consumer lease contract or
5 to make a transfer an event of default, the language must be specific, by a writing,
6 and conspicuous.

NOTE: The revised Article 9 Model Act provides for an amendment of Uniform Commercial Code 2A-303; however, the version of 2A-303 enacted by the Legislative Assembly in Section 41-02.1-33 differs from the uniform version. Therefore, review of Section 41-02.1-33 may be necessary.

7 **SECTION 18. AMENDMENT.** Section 41-02.1-37 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **41-02.1-37. (2A-307) Priority of liens arising by attachment or levy on, security**
10 **interests in, and other claims to goods.**

- 11 1. Except as otherwise provided in section 41-02.1-36, a creditor of a lessee takes
12 subject to the lease contract.
- 13 2. Except as otherwise provided in ~~subsections~~ subsection 3 ~~and 4~~ and in sections
14 41-02.1-36 and 41-02.1-38, a creditor of a lessor takes subject to the lease
15 contract unless ~~any of the following is met:~~
- 16 a. ~~The~~ the creditor holds a lien that attached to the goods before the lease
17 contract became enforceable.
- 18 b. ~~The creditor holds a security interest in the goods and the lessee did not give~~
19 ~~value and receive delivery of the goods without knowledge of the security~~
20 ~~interest.~~
- 21 e. ~~The creditor holds a security interest in the goods was perfected (section~~
22 ~~41-09-24) before the lease contract became enforceable.~~
- 23 3. ~~A lessee in the ordinary course of business takes the leasehold free of a security~~
24 ~~interest is perfected and the lessee knows of its existence.~~
- 25 4. ~~A lessee other than a lessee in the ordinary course of business takes the leasehold~~
26 ~~interest free of a security interest to the extent that it secures future advances~~
27 ~~made after the secured party acquires knowledge of the lease or more than~~
28 ~~forty five days after the lease contract becomes enforceable, whichever first~~
29 ~~occurs, unless the future advances are made pursuant to a commitment entered~~

1 ~~into without knowledge of the lease and before the expiration of the forty five day~~
2 ~~period.~~ Except as otherwise provided in sections 41-09-37, 41-09-41, and
3 41-09-43, a lessee takes a leasehold interest subject to a security interest held by
4 a creditor of the lessor.

5 **SECTION 19. AMENDMENT.** Subdivision b of subsection 1 of section 41-02.1-39 of
6 the North Dakota Century Code is amended and reenacted as follows:

7 b. A "fixture filing" is the filing, in the office where a record of a mortgage on the
8 real estate would be recorded, of a financing statement covering goods that
9 are or are to become fixtures and conforming to the requirements of
10 ~~subsection 5~~ subsections 1 and 2 of section ~~41-09-41~~ 41-09-73.

11 **SECTION 20. AMENDMENT.** Subdivision a of subsection 3 of section 41-04-22 of the
12 North Dakota Century Code is amended and reenacted as follows:

13 a. No security agreement is necessary to make the security interest enforceable
14 (paragraph 1 of subdivision a c of subsection 4 2 of section ~~41-09-16~~
15 41-09-13).

16 **SECTION 21.** Section 41-05-18 of the North Dakota Century Code is created and
17 enacted as follows:

18 **41-05-18. (5-118) Security interest of issuer or nominated person.**

19 1. An issuer or nominated person has a security interest in a document presented
20 under a letter of credit to the extent that the issuer or nominated person honors or
21 gives value for the presentation.

22 2. So long as and to the extent that an issuer or nominated person has not been
23 reimbursed or has not otherwise recovered the value given with respect to a
24 security interest in a document under subsection 1, the security interest continues
25 and is subject to chapter 41-09, but:

26 a. A security agreement is not necessary to make the security interest
27 enforceable under subdivision c of subsection 2 of section 41-09-13;

28 b. If the document is presented in a medium other than a written or other
29 tangible medium, the security interest is perfected; and

30 c. If the document is presented in a written or other tangible medium and is not a
31 certificated security, chattel paper, a document of title, an instrument, or a

1 letter of credit, the security interest is perfected and has priority over a
2 conflicting security interest in the document so long as the debtor does not
3 have possession of the document.

4 **SECTION 22. AMENDMENT.** Subdivision a of subsection 1 of section 41-07-32 of the
5 North Dakota Century Code is amended and reenacted as follows:

6 a. Delivered or entrusted them or any document of title covering them to the
7 bailor or the bailor's nominee with actual or apparent authority to ship, store,
8 or sell or with power to obtain delivery under this chapter (section 41-07-28) or
9 with power of disposition under this title (sections 41-02-48 and ~~41-09-28~~
10 41-09-40) or other statute or rule of law; nor

11 **SECTION 23. AMENDMENT.** Subsection 6 of section 41-08-03 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 6. A commodity contract, as defined in subdivision o of subsection 1 of section
14 ~~41-09-13.2~~ 41-09-02, is not a security or a financial asset.

15 **SECTION 24. AMENDMENT.** Section 41-08-06 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **41-08-06. (8-106) Control.**

18 1. A purchaser has "control" of a certificated security in bearer form if the certificated
19 security is delivered to the purchaser.

20 2. A purchaser has "control" of a certificated security in registered form if the
21 certificated security is delivered to the purchaser, and:

22 a. The certificate is endorsed to the purchaser or in blank by an effective
23 endorsement; or

24 b. The certificate is registered in the name of the purchaser, upon original issue
25 or registration of transfer by the issuer.

26 3. A purchaser has "control" of an uncertificated security if:

27 a. The uncertificated security is delivered to the purchaser; or

28 b. The issuer has agreed that it will comply with instructions originated by the
29 purchaser without further consent by the registered owner.

30 4. A purchaser has "control" of a security entitlement if:

31 a. The purchaser becomes the entitlement holder; ~~or~~

- 1 b. The securities intermediary has agreed that it will comply with entitlement
2 orders originated by the purchaser without further consent by the entitlement
3 holder; or
4 c. Another person has control of the security entitlement on behalf of the
5 purchaser or, having previously acquired control of the security entitlement,
6 acknowledges that it has control on behalf of the purchaser.
- 7 5. If an interest in a security entitlement is granted by the entitlement holder to the
8 entitlement holder's own securities intermediary, the securities intermediary has
9 control.
- 10 6. A purchaser who has satisfied the requirements of ~~subdivision b of subsection 3 or~~
11 ~~subdivision b of subsection 4~~ has control, even if the registered owner in the case
12 of ~~subdivision b of subsection 3~~ or the entitlement holder in the case of
13 ~~subdivision b of subsection 4~~ retains the right to make substitutions for the
14 uncertificated security or security entitlement, to originate instructions or
15 entitlement orders to the issuer or securities intermediary, or otherwise to deal with
16 the uncertificated security or security entitlement.
- 17 7. An issuer or a securities intermediary may not enter into an agreement of the kind
18 described in subdivision b of subsection 3 or subdivision b of subsection 4 without
19 the consent of the registered owner or entitlement holder, but an issuer or a
20 securities intermediary is not required to enter into such an agreement even though
21 the registered owner or entitlement holder so directs. An issuer or securities
22 intermediary that has entered into such an agreement is not required to confirm the
23 existence of the agreement to another party unless requested to do so by the
24 registered owner or entitlement holder.

25 **SECTION 25. AMENDMENT.** Subsection 5 of section 41-08-10 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 5. The following rules determine a "securities intermediary's jurisdiction" for purposes
28 of this section:
- 29 a. If an agreement between the securities intermediary and its entitlement holder
30 specifies that it is governed by the law of a particular jurisdiction governing the
31 securities account expressly provides that a particular jurisdiction is the

1 securities intermediary's jurisdiction for purposes of this part, this chapter, or
2 this title, that jurisdiction is the securities intermediary's jurisdiction.

3 b. If subdivision a does not apply and an agreement between the securities
4 intermediary and its entitlement holder governing the securities account
5 expressly provides that the agreement is governed by the law of a particular
6 jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

7 c. If neither subdivision a nor b applies and an agreement between the
8 securities intermediary and its entitlement holder does not specify the
9 governing law as provided in subdivision a, but governing the securities
10 account expressly specifies provides that the securities account is maintained
11 at an office in a particular jurisdiction, that jurisdiction is the securities
12 intermediary's jurisdiction.

13 e. d. If an agreement between the securities intermediary and its entitlement holder
14 does not specify a jurisdiction as provided in subdivision a or b none of the
15 preceding subdivisions applies, the securities intermediary's jurisdiction is the
16 jurisdiction in which is located the office identified in an account statement as
17 the office serving the entitlement holder's account is located.

18 e. If an agreement between the securities intermediary and its entitlement holder
19 does not specify a jurisdiction as provided in subdivision a or b and an
20 account statement does not identify an office serving the entitlement holder's
21 account as provided in subdivision e none of the preceding subdivisions
22 applies, the securities intermediary's jurisdiction is the jurisdiction in which is
23 located the chief executive office of the securities intermediary is located.

24 **SECTION 26. AMENDMENT.** Subdivision c of subsection 1 of section 41-08-27 of the
25 North Dakota Century Code is amended and reenacted as follows:

26 c. A securities intermediary acting on behalf of the purchaser acquires
27 possession of the security certificate, only if the certificate is in registered form
28 and ~~has been~~ is (1) registered in the name of the purchaser, (2) payable to
29 the order of the purchaser, or (3) specially endorsed indorsed to the
30 purchaser by an effective endorsement indorsement and has not been
31 indorsed to the securities intermediary or in blank.

1 **SECTION 27. AMENDMENT.** Subsection 1 of section 41-08-28 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. Except as otherwise provided in subsections 2 and 3, ~~upon delivery a purchaser of~~
4 a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all
5 rights in the security that the transferor had or had power to transfer.

6 **SECTION 28. AMENDMENT.** Section 41-08-50 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **41-08-50. (8-510) Rights of purchaser of security entitlement from entitlement**
9 **holder.**

- 10 1. ~~An~~ In a case not covered by the priority rules in chapter 41-09 or the rules stated in
11 subsection 3, an action based on an adverse claim to a financial asset or security
12 entitlement, whether framed in conversion, replevin, constructive trust, equitable
13 lien, or other theory, may not be asserted against a person who purchases a
14 security entitlement, or an interest therein, from an entitlement holder if the
15 purchaser gives value, does not have notice of the adverse claim, and obtains
16 control.
- 17 2. If an adverse claim could not have been asserted against an entitlement holder
18 under section 41-08-42, the adverse claim cannot be asserted against a person
19 who purchases a security entitlement, or an interest therein, from the entitlement
20 holder.
- 21 3. In a case not covered by the priority rules in chapter 41-09, a purchaser for value
22 of a security entitlement, or an interest therein, who obtains control has priority
23 over a purchaser of a security entitlement, or an interest therein, who does not
24 obtain control. ~~Purchasers~~ Except as otherwise provided in subsection 4,
25 purchasers who have control rank ~~equally, except that a~~ according to priority in
26 time of:
- 27 a. The purchaser's becoming the person for whom the securities account, in
28 which the security entitlement is carried, is maintained, if the purchaser
29 obtained control under subdivision a of subsection 4 of section 41-08-06;
- 30 b. The securities intermediary's agreement to comply with the purchaser's
31 entitlement orders with respect to security entitlements carried or to be carried

- 1 in the securities account in which the security entitlement is carried, if the
2 purchaser obtained control under subdivision b of subsection 4 of section
3 41-08-06; or
4 c. If the purchaser obtained control through another person under subdivision c
5 of subsection 4 of section 41-08-06, the time on which priority would be based
6 under this subsection if the other person were the secured party.
7 4. A securities intermediary as purchaser has priority over a conflicting purchaser who
8 has control unless otherwise agreed by the securities intermediary.

9 **SECTION 29.** Chapter 41-09 of the North Dakota Century Code is created and enacted
10 as follows:

11 **41-09-01. (9-101) Short title.** This chapter may be cited as Uniform Commercial Code
12 - Secured Transactions.

13 **41-09-02. (9-102) Definitions and index of definitions.**

14 1. In this chapter:

15 a. "Accession" means goods that are physically united with other goods in such
16 a manner that the identity of the original goods is not lost.

17 b. "Account", except as used in "account for", means:

18 (1) A right to payment of a monetary obligation, regardless of whether
19 earned by performance:

20 (a) For property that has been or is to be sold, leased, licensed,
21 assigned, or otherwise disposed of;

22 (b) For services rendered or to be rendered;

23 (c) For a policy of insurance issued or to be issued;

24 (d) For a secondary obligation incurred or to be incurred;

25 (e) For energy provided or to be provided;

26 (f) For the use or hire of a vessel under a charter or other contract;

27 (g) Arising out of the use of a credit or charge card or information
28 contained on or for use with the card; or

29 (h) As winnings in a lottery or other game of chance operated or
30 sponsored by a state, governmental unit of a state, or person

- 1 licensed or authorized to operate the game by a state or
2 governmental unit of a state.
- 3 (2) The term includes a health care insurance receivable. The term does
4 not include:
- 5 (a) Right to payment evidenced by chattel paper or an instrument;
6 (b) Commercial tort claim;
7 (c) Deposit account;
8 (d) Investment property;
9 (e) Letter-of-credit right or letters of credit; or
10 (f) Right to payment for any money or fund advanced or sold, other
11 than a right arising out of the use of a credit or charge card or
12 information contained on or for use with the card.
- 13 c. "Account debtor" means a person obligated on an account, chattel paper, or
14 general intangible. The term does not include a person obligated to pay a
15 negotiable instrument, even if the instrument constitutes part of chattel paper.
- 16 d. "Accounting", except as used in "accounting for", means a record:
- 17 (1) Authenticated by a secured party;
18 (2) Indicating the aggregate unpaid secured obligations as of a date not
19 more than thirty-five days earlier or thirty-five days later than the date of
20 the record; and
- 21 (3) Identifying the components of the obligations in reasonable detail.
- 22 e. "Agricultural lien" means an interest, other than a security interest, in farm
23 products:
- 24 (1) That secures payment or performance of an obligation for:
- 25 (a) Goods or services furnished in connection with a debtor's farming
26 operation; or
- 27 (b) Rent on real property leased by a debtor in connection with the
28 debtor's farming operation;
- 29 (2) That is created by statute in favor of a person that:

- 1 (a) In the ordinary course of that person's business furnished goods
2 or services to a debtor in connection with a debtor's farming
3 operation; or
4 (b) Leased real property to a debtor in connection with the debtor's
5 farming operation; and
6 (3) Of which the effectiveness does not depend on the person's possession
7 of the personal property.
- 8 f. "As-extracted collateral" means:
9 (1) Oil, gas, or other mineral that is subject to a security interest that:
10 (a) Is created by a debtor having an interest in the mineral before
11 extraction; and
12 (b) Attaches to the mineral as extracted; or
13 (2) Accounts arising out of the sale at the wellhead or minehead of oil, gas,
14 or other mineral in which the debtor had an interest before extraction.
- 15 g. "Authenticate" means:
16 (1) To sign; or
17 (2) To execute or otherwise adopt a symbol, or encrypt or similarly process
18 a record in whole or in part, with the present intent of the authenticating
19 person to identify the person and adopt or accept a record.
- 20 h. "Bank" means an organization engaged in the business of banking. The term
21 includes a savings bank, savings and loan association, credit union, and trust
22 company.
- 23 i. "Cash proceeds" means proceeds that are money, checks, deposit accounts,
24 or the like.
- 25 j. "Certificate of title" means a certificate of title with respect to which a statute
26 provides for the security interest in question to be indicated on the certificate
27 as a condition or result of the security interest's obtaining priority over the
28 rights of a lien creditor with respect to the collateral.
- 29 k. "Chattel paper" means a record or records that evidence both a monetary
30 obligation and a security interest in specific goods, a security interest in
31 specific goods and software used in the goods, a security interest in specific

- 1 goods and license of software used in the goods, a lease of specific goods, or
2 a lease of specific goods and license of software used in the goods. In this
3 subdivision, "monetary obligation" means a monetary obligation secured by
4 the goods or owed under a lease of the goods and includes a monetary
5 obligation with respect to software used in the goods. The term does not
6 include (1) charters or other contracts involving the use or hire of a vessel or
7 (2) records that evidence a right to payment arising out of the use of a credit
8 or charge card or information contained on or for use with the card. If a
9 transaction is evidenced by records that include an instrument or series of
10 instruments, the group of records taken together constitutes chattel paper.
- 11 l. "Collateral" means the property subject to a security interest or agricultural
12 lien. The term includes:
- 13 (1) Proceeds to which a security interest attaches;
14 (2) Accounts, chattel paper, payment intangibles, and promissory notes
15 that have been sold; and
16 (3) Goods that are the subject of a consignment.
- 17 m. "Commercial tort claim" means a claim arising in tort with respect to which:
- 18 (1) The claimant is an organization; or
19 (2) The claimant is an individual and the claim:
20 (a) Arose in the course of the claimant's business or profession; and
21 (b) Does not include damages arising out of personal injury to or the
22 death of an individual.
- 23 n. "Commodity account" means an account maintained by a commodity
24 intermediary in which a commodity contract is carried for a commodity
25 customer.
- 26 o. "Commodity contract" means a commodity futures contract, an option on a
27 commodity futures contract, a commodity option, or another contract if the
28 contract or option is:
- 29 (1) Traded on or subject to the rules of a board of trade that has been
30 designated as a contract market for such a contract pursuant to federal
31 commodities laws; or

- 1 (2) Traded on a foreign commodity board of trade, exchange, or market
2 and is carried on the books of a commodity intermediary for a
3 commodity customer.
- 4 p. "Commodity customer" means a person for which a commodity intermediary
5 carries a commodity contract on the intermediary's books.
- 6 q. "Commodity intermediary" means a person that:
- 7 (1) Is registered as a futures commission merchant under federal
8 commodities law; or
- 9 (2) In the ordinary course of the person's business provides clearance or
10 settlement services for a board of trade that has been designated as a
11 contract market pursuant to federal commodities law.
- 12 r. "Communicate" means:
- 13 (1) To send a written or other tangible record;
- 14 (2) To transmit a record by any means agreed upon by the persons
15 sending and receiving the record; or
- 16 (3) In the case of transmission of a record to or by a filing office, to transmit
17 a record by any means prescribed by filing-office rule.
- 18 s. "Consignee" means a merchant to which goods are delivered in a
19 consignment.
- 20 t. "Consignment" means a transaction, regardless of form, in which a person
21 delivers goods to a merchant for the purpose of sale and:
- 22 (1) The merchant:
- 23 (a) Deals in goods of that kind under a name other than the name of
24 the person making delivery;
- 25 (b) Is not an auctioneer; and
- 26 (c) Is not generally known by its creditors to be substantially
27 engaged in selling the goods of others;
- 28 (2) With respect to each delivery, the aggregate value of the goods is one
29 thousand dollars or more at the time of delivery;
- 30 (3) The goods are not consumer goods immediately before delivery; and

- 1 (4) The transaction does not create a security interest that secures an
2 obligation.
- 3 u. "Consignor" means a person that delivers goods to a consignee in a
4 consignment.
- 5 v. "Consumer debtor" means a debtor in a consumer transaction.
- 6 w. "Consumer goods" means goods that are used or bought for use primarily for
7 personal, family, or household purposes.
- 8 x. "Consumer-goods transaction" means a consumer transaction in which:
9 (1) An individual incurs an obligation primarily for personal, family, or
10 household purposes; and
11 (2) A security interest in consumer goods secures the obligation.
- 12 y. "Consumer obligor" means an obligor who is an individual and who incurred
13 the obligation as part of a transaction entered into primarily for personal,
14 family, or household purposes.
- 15 z. "Consumer transaction" means a transaction in which:
16 (1) An individual incurs an obligation primarily for personal, family, or
17 household purposes;
18 (2) A security interest secures the obligation; and
19 (3) The collateral is held or acquired primarily for personal, family, or
20 household purposes. The term includes consumer-goods transactions.
- 21 aa. "Continuation statement" means an amendment of a financing statement
22 which:
23 (1) Identifies, by its file number, the initial financing statement to which it
24 relates; and
25 (2) Indicates that it is a continuation statement for, or that it is filed to
26 continue the effectiveness of, the identified financing statement.
- 27 bb. "Debtor" means:
28 (1) A person having an interest, other than a security interest or other lien,
29 in the collateral, regardless of whether the person is an obligor;
30 (2) A seller of accounts, chattel paper, payment intangibles, or promissory
31 notes; or

- 1 (3) A consignee.
- 2 cc. "Deposit account" means a demand, time, savings, passbook, or similar
3 account maintained with a bank. The term does not include investment
4 property or an account evidenced by an instrument.
- 5 dd. "Document" means a document of title or a receipt of the type described in
6 subsection 2 of section 41-07-07.
- 7 ee. "Electronic chattel paper" means chattel paper evidenced by a record
8 consisting of information stored in an electronic medium.
- 9 ff. "Encumbrance" means a right, other than an ownership interest, in real
10 property. The term includes mortgages and other liens on real property.
- 11 gg. "Equipment" means goods other than inventory, farm products, or consumer
12 goods.
- 13 hh. "Farm products" means goods, other than standing timber, with respect to
14 which the debtor is engaged in a farming operation and which are:
- 15 (1) Crops grown, growing, or to be grown, including:
- 16 (a) Crops produced on trees, vines, and bushes; and
- 17 (b) Aquatic goods produced in aquacultural operations;
- 18 (2) Livestock, born or unborn, including aquatic goods produced in
19 aquacultural operations;
- 20 (3) Supplies used or produced in a farming operation; or
- 21 (4) Products of crops or livestock in their unmanufactured states.
- 22 ii. "Farming operation" means raising, cultivating, propagating, fattening,
23 grazing, or any other farming, livestock, or aquacultural operation.
- 24 jj. "File number" means the number assigned to an initial financing statement
25 pursuant to subsection 1 of section 41-09-90.
- 26 kk. "Filing office" means an office designated in section 41-09-72 as the place to
27 file a financing statement.
- 28 ll. "Filing-office rule" means a rule adopted under section 41-09-97.
- 29 mm. "Financing statement" means a record composed of an initial financing
30 statement and any filed record relating to the initial financing statement.

- 1 nn. "Fixture filing" means the filing of a financing statement covering goods that
2 are or are to become fixtures and satisfying subsections 1 and 2 of section
3 41-09-73. The term includes the filing of a financing statement covering
4 goods of a transmitting utility which are or are to become fixtures.
- 5 oo. "Fixtures" means goods that have become so related to particular real
6 property that an interest in them arises under real property law.
- 7 pp. "General intangible" means any personal property, including things in action,
8 other than accounts, chattel paper, commercial tort claims, deposit accounts,
9 documents, goods, instruments, investment property, letter-of-credit rights,
10 letters of credit, money, and oil, gas, or other minerals before extraction. The
11 term includes payment intangibles and software.
- 12 qq. "Good faith" means honesty in fact and the observance of reasonable
13 commercial standards of fair dealing.
- 14 rr. "Goods" means all things that are movable when a security interest attaches.
- 15 (1) The term includes:
- 16 (a) Fixtures;
- 17 (b) Standing timber that is to be cut and removed under a
18 conveyance or contract for sale;
- 19 (c) The unborn young of animals;
- 20 (d) Crops grown, growing, or to be grown, even if the crops are
21 produced on trees, vines, or bushes; and
- 22 (e) Manufactured homes.
- 23 (2) The term also includes a computer program embedded in goods and
24 any supporting information provided in connection with a transaction
25 relating to the program if:
- 26 (a) The program is associated with the goods in such a manner that
27 the program is customarily considered part of the goods; or
- 28 (b) By becoming the owner of the goods, a person acquires a right to
29 use the program in connection with the goods.
- 30 (3) The term does not include a computer program embedded in goods
31 that consist solely of the medium in which the program is embedded.

1 The term also does not include accounts, chattel paper, commercial tort
2 claims, deposit accounts, documents, general intangibles, instruments,
3 investment property, letter-of-credit rights, letters of credit, money, or
4 oil, gas, or other minerals before extraction.

5 ss. "Governmental unit" means a subdivision, agency, department, county,
6 parish, municipality, or other unit of the government of the United States, a
7 state, or a foreign country. The term includes an organization having a
8 separate corporate existence if the organization is eligible to issue debt on
9 which interest is exempt from income taxation under the laws of the United
10 States.

11 tt. "Health care insurance receivable" means an interest in or claim under a
12 policy of insurance which is a right to payment of a monetary obligation for
13 health care goods or services provided.

14 uu. "Instrument" means a negotiable instrument or any other writing that
15 evidences a right to the payment of a monetary obligation, is not itself a
16 security agreement or lease, and is of a type that in ordinary course of
17 business is transferred by delivery with any necessary indorsement or
18 assignment. The term does not include:

- 19 (1) Investment property;
20 (2) Letters of credit; or
21 (3) Writings that evidence a right to payment arising out of the use of a
22 credit or charge card or information contained on or for use with the
23 card.

24 vv. "Inventory" means goods, other than farm products, that:

- 25 (1) Are leased by a person as lessor;
26 (2) Are held by a person for sale or lease or to be furnished under a
27 contract of service;
28 (3) Are furnished by a person under a contract of service; or
29 (4) Consist of raw materials, work in process, or materials used or
30 consumed in a business.

- 1 (1) Which creates a purchase-money security interest in a manufactured
2 home, other than a manufactured home held as inventory; or
3 (2) In which a manufactured home, other than a manufactured home held
4 as inventory, is the primary collateral.
- 5 ccc. "Mortgage" means a consensual interest in real property, including fixtures,
6 that secures payment or performance of an obligation.
- 7 ddd. "New debtor" means a person that becomes bound as debtor under
8 subsection 4 of section 41-09-13 by a security agreement previously entered
9 into by another person.
- 10 eee. "New value" means:
11 (1) Money;
12 (2) Money's worth in property, services, or new credit; or
13 (3) Release by a transferee of an interest in property previously transferred
14 to the transferee.
- 15 The term does not include an obligation substituted for another obligation.
- 16 fff. "Noncash proceeds" means proceeds other than cash proceeds.
- 17 ggg. "Obligor" means a person that, with respect to an obligation secured by a
18 security interest in or an agricultural lien on the collateral:
19 (1) Owes payment or other performance of the obligation;
20 (2) Has provided property other than the collateral to secure payment or
21 other performance of the obligation; or
22 (3) Is otherwise accountable in whole or in part for payment or other
23 performance of the obligation.
- 24 The term does not include issuers or nominated persons under a letter of
25 credit.
- 26 hhh. "Original debtor", except as used in subsection 3 of section 41-09-30, means
27 a person that, as debtor, entered into a security agreement to which a new
28 debtor has become bound under subsection 4 of section 41-09-13.
- 29 iii. "Payment intangible" means a general intangible under which the account
30 debtor's principal obligation is a monetary obligation.
- 31 jjj. "Person related to", with respect to an individual, means:

- 1 (1) The spouse of the individual;
- 2 (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
- 3 (3) An ancestor or lineal descendant of the individual or the individual's
- 4 spouse; or
- 5 (4) Any other relative, by blood or marriage, of the individual or the
- 6 individual's spouse who shares the same home with the individual.
- 7 kkk. "Person related to", with respect to an organization, means:
- 8 (1) A person directly or indirectly controlling, controlled by, or under
- 9 common control with the organization;
- 10 (2) An officer or director of, or a person performing similar functions with
- 11 respect to, the organization;
- 12 (3) An officer or director of, or a person performing similar functions with
- 13 respect to, a person described in paragraph 1;
- 14 (4) The spouse of an individual described in paragraph 1, 2, or 3; or
- 15 (5) An individual who is related by blood or marriage to an individual
- 16 described in paragraph 1, 2, 3, or 4 and shares the same home with the
- 17 individual.
- 18 III. "Proceeds", except as used in subsection 2 of section 41-09-107, means the
- 19 following property:
- 20 (1) Whatever is acquired upon the sale, lease, license, exchange, or other
- 21 disposition of collateral;
- 22 (2) Whatever is collected on, or distributed on account of, collateral;
- 23 (3) Rights arising out of collateral;
- 24 (4) To the extent of the value of collateral, claims arising out of the loss,
- 25 nonconformity, or interference with the use of, defects or infringement
- 26 of rights in, or damage to, the collateral; or
- 27 (5) To the extent of the value of collateral and to the extent payable to the
- 28 debtor or the secured party, insurance payable by reason of the loss or
- 29 nonconformity of, defects or infringement of rights in, or damage to, the
- 30 collateral.

- 1 mmm. "Promissory note" means an instrument that evidences a promise to pay a
2 monetary obligation, does not evidence an order to pay, and does not contain
3 an acknowledgment by a bank that the bank has received for deposit a sum of
4 money or funds.
- 5 nnn. "Proposal" means a record authenticated by a secured party which includes
6 the terms on which the secured party is willing to accept collateral in full or
7 partial satisfaction of the obligation it secures under sections 41-09-118
8 through 41-09-120.
- 9 ooo. "Public-finance transaction" means a secured transaction in connection with
10 which:
- 11 (1) Debt securities are issued;
12 (2) All or a portion of the securities issued have an initial stated maturity of
13 at least twenty years; and
14 (3) The debtor, obligor, secured party, account debtor or other person
15 obligated on collateral, assignor or assignee of a secured obligation, or
16 assignor or assignee of a security interest is a state or a governmental
17 unit of a state.
- 18 ppp. "Pursuant to commitment", with respect to an advance made or other value
19 given by a secured party, means pursuant to the secured party's obligation,
20 regardless of whether a subsequent event of default or other event not within
21 the secured party's control has relieved or may relieve the secured party from
22 the secured party's obligation.
- 23 qqq. "Record", except as used in "for record", "of record", "record or legal title", and
24 "record owner", means information that is inscribed on a tangible medium or
25 which is stored in an electronic or other medium and is retrievable in
26 perceivable form.
- 27 rrr. "Registered organization" means an organization organized solely under the
28 law of a single state or the United States and as to which the state or the
29 United States must maintain a public record showing the organization to have
30 been organized.
- 31 sss. "Secondary obligor" means an obligor to the extent that:

- 1 (1) The obligor's obligation is secondary; or
- 2 (2) The obligor has a right of recourse with respect to an obligation secured
- 3 by collateral against the debtor, another obligor, or property of either.
- 4 ttt. "Secured party" means:
- 5 (1) A person in whose favor a security interest is created or provided for
- 6 under a security agreement, regardless of whether any obligation to be
- 7 secured is outstanding;
- 8 (2) A person that holds an agricultural lien;
- 9 (3) A consignor;
- 10 (4) A person to which accounts, chattel paper, payment intangibles, or
- 11 promissory notes have been sold;
- 12 (5) A trustee, indenture trustee, agent, collateral agent, or other
- 13 representative in whose favor a security interest or agricultural lien is
- 14 created or provided for; or
- 15 (6) A person that holds a security interest arising under section 41-02-46,
- 16 section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of
- 17 section 41-02.1-56, section 41-04-22, or section 41-05-18.
- 18 uuu. "Security agreement" means an agreement that creates or provides for a
- 19 security interest.
- 20 vvv. "Send", in connection with a record or notification, means:
- 21 (1) To deposit in the mail, deliver for transmission, or transmit by any other
- 22 usual means of communication, with postage or cost of transmission
- 23 provided for, addressed to any address reasonable under the
- 24 circumstances; or
- 25 (2) To cause the record or notification to be received within the time that it
- 26 would have been received if properly sent under paragraph 1.
- 27 www. "Software" means a computer program and any supporting information
- 28 provided in connection with a transaction relating to the program. The term
- 29 does not include a computer program that is included in the definition of
- 30 goods.

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- 1 j. "Financial asset". Section 41-08-02.
- 2 k. "Holder in due course". Section 41-03-28.
- 3 l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section
4 41-05-02.
- 5 m. "Issuer" (with respect to a security). Section 41-08-17.
- 6 n. "Lease". Section 41-02.1-03.
- 7 o. "Lease agreement". Section 41-02.1-03.
- 8 p. "Lease contract". Section 41-02.1-03.
- 9 q. "Leasehold interest". Section 41-02.1-03.
- 10 r. "Lessee". Section 41-02.1-03.
- 11 s. "Lessee in ordinary course of business". Section 41-02.1-03.
- 12 t. "Lessor". Section 41-02.1-03.
- 13 u. "Lessor's residual interest". Section 41-02.1-03.
- 14 v. "Letter of credit". Section 41-05-02.
- 15 w. "Merchant". Section 41-02-04.
- 16 x. "Negotiable instrument". Section 41-03-04.
- 17 y. "Nominated person". Section 41-05-02.
- 18 z. "Note". Section 41-03-04.
- 19 aa. "Proceeds of a letter of credit". Section 41-05-14.
- 20 bb. "Prove". Section 41-03-03.
- 21 cc. "Sale". Section 41-02-06.
- 22 dd. "Securities account". Section 41-08-41.
- 23 ee. "Securities intermediary". Section 41-08-02.
- 24 ff. "Security". Section 41-08-02.
- 25 gg. "Security certificate". Section 41-08-02.
- 26 hh. "Security entitlement". Section 41-08-02.
- 27 ii. "Uncertificated security". Section 41-08-02.
- 28 3. Chapter 41-01 contains general definitions and principles of construction and
29 interpretation applicable throughout this chapter.
- 30 **41-09-03. (9-103) Purchase-money security interest - Application of payments -**
31 **Burden of establishing.**

- 1 1. In this section:
- 2 a. "Purchase-money collateral" means goods or software that secures a
- 3 purchase-money obligation incurred with respect to that collateral; and
- 4 b. "Purchase-money obligation" means an obligation of an obligor incurred as all
- 5 or part of the price of the collateral or for value given to enable the debtor to
- 6 acquire rights in or the use of the collateral if the value is in fact so used.
- 7 2. A security interest in goods is a purchase-money security interest:
- 8 a. To the extent that the goods are purchase-money collateral with respect to
- 9 that security interest;
- 10 b. If the security interest is in inventory that is or was purchase-money collateral,
- 11 also to the extent that the security interest secures a purchase-money
- 12 obligation incurred with respect to other inventory in which the secured party
- 13 holds or held a purchase-money security interest; and
- 14 c. Also to the extent that the security interest secures a purchase-money
- 15 obligation incurred with respect to software in which the secured party holds
- 16 or held a purchase-money security interest.
- 17 3. A security interest in software is a purchase-money security interest to the extent
- 18 that the security interest also secures a purchase-money obligation incurred with
- 19 respect to goods in which the secured party holds or held a purchase-money
- 20 security interest if:
- 21 a. The debtor acquired its interest in the software in an integrated transaction in
- 22 which the debtor acquired an interest in the goods; and
- 23 b. The debtor acquired its interest in the software for the principal purpose of
- 24 using the software in the goods.
- 25 4. The security interest of a consignor in goods that are the subject of a consignment
- 26 is a purchase-money security interest in inventory.
- 27 5. In a transaction other than a consumer-goods transaction, if the extent to which a
- 28 security interest is a purchase-money security interest depends on the application
- 29 of a payment to a particular obligation, the payment must be applied:
- 30 a. In accordance with any reasonable method of application to which the parties
- 31 agree;

- 1 b. In the absence of the parties' agreement to a reasonable method, in
2 accordance with any intention of the obligor manifested at or before the time
3 of payment; or
- 4 c. In the absence of an agreement to a reasonable method and a timely
5 manifestation of the obligor's intention, in the following order:
- 6 (1) To obligations that are not secured; and
7 (2) If more than one obligation is secured, to obligations secured by
8 purchase-money security interests in the order in which those
9 obligations were incurred.
- 10 6. In a transaction other than a consumer-goods transaction, a purchase-money
11 security interest does not lose its status as such, even if:
- 12 a. The purchase-money collateral also secures an obligation that is not a
13 purchase-money obligation;
- 14 b. Collateral that is not purchase-money collateral also secures the
15 purchase-money obligation; or
- 16 c. The purchase-money obligation has been renewed, refinanced, consolidated,
17 or restructured.
- 18 7. In a transaction other than a consumer-goods transaction, a secured party claiming
19 a purchase-money security interest has the burden of establishing the extent to
20 which the security interest is a purchase-money security interest.
- 21 8. The limitation of the rules in subsections 5 through 7 to transactions other than
22 consumer-goods transactions is intended to leave to the court the determination of
23 the proper rules in consumer-goods transactions. The court may not infer from that
24 limitation the nature of the proper rule in consumer-goods transactions and may
25 continue to apply established approaches.
- 26 **41-09-04. (9-104) Control of deposit account.**
- 27 1. A secured party has control of a deposit account if:
- 28 a. The secured party is the bank with which the deposit account is maintained;
29 b. The debtor, secured party, and bank have agreed in an authenticated record
30 that the bank will comply with instructions originated by the secured party

1 directing disposition of the funds in the deposit account without further
2 consent by the debtor; or

3 c. The secured party becomes the bank's customer with respect to the deposit
4 account.

5 2. A secured party that has satisfied subsection 1 has control, even if the debtor
6 retains the right to direct the disposition of funds from the deposit account.

7 **41-09-05. (9-105) Control of electronic chattel paper.** A secured party has control of
8 electronic chattel paper if the record or records comprising the chattel paper are created,
9 stored, and assigned in such a manner that:

10 1. A single authoritative copy of the record or records exists which is unique,
11 identifiable and, except as otherwise provided in subsections 4 through 6,
12 unalterable;

13 2. The authoritative copy identifies the secured party as the assignee of the record or
14 records;

15 3. The authoritative copy is communicated to and maintained by the secured party or
16 the secured party's designated custodian;

17 4. Copies or revisions that add or change an identified assignee of the authoritative
18 copy can be made only with the participation of the secured party;

19 5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as
20 a copy that is not the authoritative copy; and

21 6. Any revision of the authoritative copy is readily identifiable as an authorized or
22 unauthorized revision.

23 **41-09-06. (9-106) Control of investment property.**

24 1. A person has control of a certificated security, uncertificated security, or security
25 entitlement as provided in section 41-08-06.

26 2. A secured party has control of a commodity contract if:

27 a. The secured party is the commodity intermediary with which the commodity
28 contract is carried; or

29 b. The commodity customer, secured party, and commodity intermediary have
30 agreed that the commodity intermediary will apply any value distributed on

1 account of the commodity contract as directed by the secured party without
2 further consent by the commodity customer.

3 3. A secured party having control of all security entitlements or commodity contracts
4 carried in a securities account or commodity account has control over the
5 securities account or commodity account.

6 **41-09-07. (9-107) Control of letter-of-credit right.** A secured party has control of a
7 letter-of-credit right to the extent of any right to payment or performance by the issuer or any
8 nominated person if the issuer or nominated person has consented to an assignment of
9 proceeds of the letter of credit under subsection 3 of section 41-05-14 or otherwise applicable
10 law or practice.

11 **41-09-08. (9-108) Sufficiency of description.**

12 1. Except as otherwise provided in subsections 3 through 5, a description of personal
13 or real property is sufficient, regardless of whether the description is specific, if the
14 description reasonably identifies what is described.

15 2. Except as otherwise provided in subsection 4, a description of collateral reasonably
16 identifies the collateral if it identifies the collateral by:

17 a. Specific listing;

18 b. Category;

19 c. Except as otherwise provided in subsection 5, a type of collateral defined in
20 the Uniform Commercial Code;

21 d. Quantity;

22 e. Computational or allocational formula or procedure; or

23 f. Except as otherwise provided in subsection 3, any other method, if the identity
24 of the collateral is objectively determinable.

25 3. A description of collateral as "all the debtor's assets" or "all the debtor's personal
26 property" or using words of similar import does not reasonably identify the
27 collateral.

28 4. Except as otherwise provided in subsection 5, a description of a security
29 entitlement, securities account, or commodity account is sufficient if the description
30 describes:

31 a. The collateral by those terms or as investment property; or

- 1 b. The underlying financial asset or commodity contract.
- 2 5. A description only by type of collateral defined in the Uniform Commercial Code is
- 3 an insufficient description of:
- 4 a. A commercial tort claim; or
- 5 b. In a consumer transaction, consumer goods, a security entitlement, a
- 6 securities account, or a commodity account.

7 **41-09-09. (9-109) Scope.**

- 8 1. Except as otherwise provided in subsections 3 and 4, this chapter applies to:
- 9 a. A transaction, regardless of its form, that creates a security interest in
- 10 personal property or fixtures by contract;
- 11 b. An agricultural lien;
- 12 c. A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- 13 d. A consignment;
- 14 e. A security interest arising under section 41-02-46, section 41-02-53,
- 15 subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56, as
- 16 provided in section 41-09-10; and
- 17 f. A security interest arising under section 41-04-22 or 41-05-18.
- 18 2. The application of this chapter to a security interest in a secured obligation is not
- 19 affected by the fact that the obligation is itself secured by a transaction or interest
- 20 to which this chapter does not apply.
- 21 3. This chapter does not apply to the extent that:
- 22 a. A statute, regulation, or treaty of the United States preempts this chapter;
- 23 b. Another statute of this state expressly governs the creation, perfection,
- 24 priority, or enforcement of a security interest created by this state or a
- 25 governmental unit of this state;
- 26 c. A statute of another state, a foreign country, or a governmental unit of another
- 27 state or a foreign country, other than a statute generally applicable to security
- 28 interests, expressly governs creation, perfection, priority, or enforcement of a
- 29 security interest created by the state, country, or governmental unit; or
- 30 d. The rights of a transferee beneficiary or nominated person under a letter of
- 31 credit are independent and superior under section 41-05-14.

- 1 4. This chapter does not apply to:
- 2 a. A landlord's lien, other than an agricultural lien;
- 3 b. A lien, other than an agricultural lien, given by statute or other rule of law for
4 services or materials, but section 41-09-53 applies with respect to priority of
5 the lien;
- 6 c. An assignment of a claim for wages, salary, or other compensation of an
7 employee;
- 8 d. A sale of accounts, chattel paper, payment intangibles, or promissory notes
9 as part of a sale of the business out of which they arose;
- 10 e. An assignment of accounts, chattel paper, payment intangibles, or promissory
11 notes which is for the purpose of collection only;
- 12 f. An assignment of a right to payment under a contract to an assignee that is
13 also obligated to perform under the contract;
- 14 g. An assignment of a single account, payment intangible, or promissory note to
15 an assignee in full or partial satisfaction of a preexisting indebtedness;
- 16 h. A transfer of an interest in or an assignment of a claim under a policy of
17 insurance, other than an assignment by or to a health care provider of a
18 health care insurance receivable and any subsequent assignment of the right
19 to payment, but sections 41-09-35 and 41-09-42 apply with respect to
20 proceeds and priorities in proceeds;
- 21 i. An assignment of a right represented by a judgment, other than a judgment
22 taken on a right to payment that was collateral;
- 23 j. A right of recoupment or set-off, but:
- 24 (1) Section 41-09-60 applies with respect to the effectiveness of rights of
25 recoupment or set-off against deposit accounts; and
- 26 (2) Section 41-09-66 applies with respect to defenses or claims of an
27 account debtor;
- 28 k. The creation or transfer of an interest in or lien on real property, including a
29 lease or rents thereunder, except to the extent that provision is made for:
- 30 (1) Liens on real property in sections 41-09-13 and 41-09-28;
- 31 (2) Fixtures in section 41-09-54;

1 (3) Fixture filings in sections 41-09-72, 41-09-73, 41-09-87, and 41-09-90;
2 and

3 (4) Security agreements covering personal and real property in section
4 41-09-102;

5 l. An assignment of a claim arising in tort, other than a commercial tort claim,
6 but sections 41-09-35 and 41-09-42 apply with respect to proceeds and
7 priorities in proceeds; or

8 m. An assignment of a deposit account in a consumer transaction, but sections
9 41-09-35 and 41-09-42 apply with respect to proceeds and priorities in
10 proceeds.

11 **41-09-10. (9-110) Security interests arising under chapter 41-02 or 41-02.1. A**

12 security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section
13 41-02-90, or subsection 5 of section 41-02.1-56 is subject to this chapter. However, until the
14 debtor obtains possession of the goods:

15 1. The security interest is enforceable, even if subdivision c of subsection 2 of section
16 41-09-13 has not been satisfied;

17 2. Filing is not required to perfect the security interest;

18 3. The rights of the secured party after default by the debtor are governed by chapter
19 41-02 or 41-02.1; and

20 4. The security interest has priority over a conflicting security interest created by the
21 debtor.

22 **41-09-11. (9-201) General effectiveness of security agreement.**

23 1. Except as otherwise provided in this title, a security agreement is effective
24 according to the security agreement's terms between the parties, against
25 purchasers of the collateral, and against creditors.

26 2. A transaction subject to this chapter is subject to any applicable rule of law which
27 establishes a different rule for consumers and [insert reference to (i) any other
28 statute or regulation that regulates the rates, charges, agreements, and practices
29 for loans, credit sales, or other extensions of credit and (ii) any
30 consumer-protection statute or regulation].

1 3. In case of conflict between this chapter and a rule of law, statute, or regulation
2 described in subsection 2, the rule of law, statute, or regulation controls. Failure to
3 comply with a statute or regulation described in subsection 2 has only the effect the
4 statute or regulation specifies.

5 4. This chapter does not:
6 a. Validate any rate, charge, agreement, or practice that violates a rule of law,
7 statute, or regulation described in subsection 2; or
8 b. Extend the application of the rule of law, statute, or regulation to a transaction
9 not otherwise subject to it.

NOTE: Section 41-09-11(2) provides for insertion of state laws and regulations. This new Section 41-09-11 replaces repealed Section 41-09-16(4), which indicates possible sections may include Chapters 13-03.1, 35-05, 49-09, and 51-13. University of North Dakota Law School Professor Lowell Bottrell mentions Chapter 35-05 may be repealed (see Appendix II) by this Act; therefore, inclusion should consider whether that chapter is repealed.

10 **41-09-12. (9-202) Title to collateral immaterial.** Except as otherwise provided with
11 respect to consignments or sales of accounts, chattel paper, payment intangibles, or
12 promissory notes, the provisions of this chapter with regard to rights and obligations apply
13 whether title to collateral is in the secured party or the debtor.

14 **41-09-13. (9-203) Attachment and enforceability of security interest - Proceeds -**
15 **Supporting obligations - Formal requisites.**

16 1. A security interest attaches to collateral when the security interest becomes
17 enforceable against the debtor with respect to the collateral, unless an agreement
18 expressly postpones the time of attachment.

19 2. Except as otherwise provided in subsections 3 through 9, a security interest is
20 enforceable against the debtor and third parties with respect to the collateral only if:

21 a. Value has been given;

22 b. The debtor has rights in the collateral or the power to transfer rights in the
23 collateral to a secured party; and

24 c. One of the following conditions is met:

25 (1) The debtor has authenticated a security agreement that provides a
26 description of the collateral and, if the security interest covers timber to
27 be cut, a description of the land concerned;

- 1 (2) The collateral is not a certificated security and is in the possession of
2 the secured party under section 41-09-33 pursuant to the debtor's
3 security agreement;
- 4 (3) The collateral is a certificated security in registered form and the
5 security certificate has been delivered to the secured party under
6 section 41-08-27 pursuant to the debtor's security agreement; or
- 7 (4) The collateral is deposit accounts, electronic chattel paper, investment
8 property, or letter-of-credit rights, and the secured party has control
9 under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07 pursuant to
10 the debtor's security agreement.
- 11 3. Subsection 2 is subject to section 41-04-22 on the security interest of a collecting
12 bank, section 41-05-18 on the security interest of a letter-of-credit issuer or
13 nominated person, section 41-09-10 on a security interest arising under chapter
14 41-02 or 41-02.1, and section 41-09-16 on security interests in investment
15 property.
- 16 4. A person becomes bound as debtor by a security agreement entered into by
17 another person if, by operation of law other than this chapter or by contract:
- 18 a. The security agreement becomes effective to create a security interest in the
19 person's property; or
- 20 b. The person becomes generally obligated for the obligations of the other
21 person, including the obligation secured under the security agreement, and
22 acquires or succeeds to all or substantially all of the assets of the other
23 person.
- 24 5. If a new debtor becomes bound as debtor by a security agreement entered into by
25 another person:
- 26 a. The agreement satisfies subdivision c of subsection 2 with respect to existing
27 or after-acquired property of the new debtor to the extent the property is
28 described in the agreement; and
- 29 b. Another agreement is not necessary to make a security interest in the
30 property enforceable.

- 1 6. The attachment of a security interest in collateral gives the secured party the rights
2 to proceeds provided by section 41-09-35 and is also attachment of a security
3 interest in a supporting obligation for the collateral.
- 4 7. The attachment of a security interest in a right to payment or performance secured
5 by a security interest or other lien on personal or real property is also attachment of
6 a security interest in the security interest, mortgage, or other lien.
- 7 8. The attachment of a security interest in a securities account is also attachment of a
8 security interest in the security entitlements carried in the securities account.
- 9 9. The attachment of a security interest in a commodity account is also attachment of
10 a security interest in the commodity contracts carried in the commodity account.

11 **41-09-14. (9-204) After-acquired property - Future advances.**

- 12 1. Except as otherwise provided in subsection 2, a security agreement may create or
13 provide for a security interest in after-acquired collateral.
- 14 2. A security interest does not attach under a term constituting an after-acquired
15 property clause to:
- 16 a. Consumer goods, other than an accession if given as additional security,
17 unless the debtor acquires rights in the consumer goods within ten days after
18 the secured party gives value; or
- 19 b. A commercial tort claim.
- 20 3. A security agreement may provide that collateral secures, or that accounts, chattel
21 paper, payment intangibles, or promissory notes are sold in connection with, future
22 advances or other value, regardless of whether the advances or value is given
23 pursuant to commitment.

24 **41-09-15. (9-205) Use or disposition of collateral permissible.**

- 25 1. A security interest is not invalid or fraudulent against creditors solely because:
- 26 a. The debtor has the right or ability to:
- 27 (1) Use, commingle, or dispose of all or part of the collateral, including
28 returned or repossessed goods;
- 29 (2) Collect, compromise, enforce, or otherwise deal with collateral;
- 30 (3) Accept the return of collateral or make repossessions; or
- 31 (4) Use, commingle, or dispose of proceeds; or

1 b. The secured party fails to require the debtor to account for proceeds or
2 replace collateral.

3 2. This section does not relax the requirements of possession if attachment,
4 perfection, or enforcement of a security interest depends upon possession of the
5 collateral by the secured party.

6 **41-09-16. (9-206) Security interest arising in purchase or delivery of financial**
7 **asset.**

8 1. A security interest in favor of a securities intermediary attaches to a person's
9 security entitlement if:

10 a. The person buys a financial asset through the securities intermediary in a
11 transaction in which the person is obligated to pay the purchase price to the
12 securities intermediary at the time of the purchase; and

13 b. The securities intermediary credits the financial asset to the buyer's securities
14 account before the buyer pays the securities intermediary.

15 2. The security interest described in subsection 1 secures the person's obligation to
16 pay for the financial asset.

17 3. A security interest in favor of a person that delivers a certificated security or other
18 financial asset represented by a writing attaches to the security or other financial
19 asset if:

20 a. The security or other financial asset:

21 (1) In the ordinary course of business is transferred by delivery with any
22 necessary indorsement or assignment; and

23 (2) Is delivered under an agreement between persons in the business of
24 dealing with such securities or financial assets; and

25 b. The agreement calls for delivery against payment.

26 4. The security interest described in subsection 3 secures the obligation to make
27 payment for the delivery.

28 **41-09-17. (9-207) Rights and duties of secured party having possession or**
29 **control of collateral.**

30 1. Except as otherwise provided in subsection 4, a secured party shall use
31 reasonable care in the custody and preservation of collateral in the secured party's

- 1 possession. In the case of chattel paper or an instrument, reasonable care
2 includes taking necessary steps to preserve rights against prior parties unless
3 otherwise agreed.
- 4 2. Except as otherwise provided in subsection 4, if a secured party has possession of
5 collateral:
- 6 a. Reasonable expenses, including the cost of insurance and payment of taxes
7 or other charges, incurred in the custody, preservation, use, or operation of
8 the collateral are chargeable to the debtor and are secured by the collateral;
9 b. The risk of accidental loss or damage is on the debtor to the extent of a
10 deficiency in any effective insurance coverage;
11 c. The secured party shall keep the collateral identifiable, but fungible collateral
12 may be commingled; and
13 d. The secured party may use or operate the collateral:
14 (1) For the purpose of preserving the collateral or the collateral's value;
15 (2) As permitted by an order of a court having competent jurisdiction; or
16 (3) Except in the case of consumer goods, in the manner and to the extent
17 agreed by the debtor.
- 18 3. Except as otherwise provided in subsection 4, a secured party having possession
19 of collateral or control of collateral under section 41-09-04, 41-09-05, 41-09-06, or
20 41-09-07:
- 21 a. May hold as additional security any proceeds, except money or funds,
22 received from the collateral;
23 b. Shall apply money or funds received from the collateral to reduce the secured
24 obligation, unless remitted to the debtor; and
25 c. May create a security interest in the collateral.
- 26 4. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or
27 promissory notes or a consignor:
- 28 a. Subsection 1 does not apply unless the secured party is entitled under an
29 agreement:
30 (1) To charge back uncollected collateral; or

1 (2) Otherwise to full or limited recourse against the debtor or a secondary
2 obligor based on the nonpayment or other default of an account debtor
3 or other obligor on the collateral; and

4 b. Subsections 2 and 3 do not apply.

5 **41-09-18. (9-208) Additional duties of secured party having control of collateral.**

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

9 2. Within ten days after receiving an authenticated demand by the debtor:

10 a. A secured party having control of a deposit account under subdivision b of
11 subsection 1 of section 41-09-04 shall send to the bank with which the deposit
12 account is maintained an authenticated statement that releases the bank from
13 any further obligation to comply with instructions originated by the secured
14 party;

15 b. A secured party having control of a deposit account under subdivision c of
16 subsection 1 of section 41-09-04 shall:

17 (1) Pay the debtor the balance on deposit in the deposit account; or

18 (2) Transfer the balance on deposit into a deposit account in the debtor's
19 name;

20 c. A secured party, other than a buyer, having control of electronic chattel paper
21 under section 41-09-05 shall:

22 (1) Communicate the authoritative copy of the electronic chattel paper to
23 the debtor or the electronic chattel paper's designated custodian;

24 (2) If the debtor designates a custodian that is the designated custodian
25 with which the authoritative copy of the electronic chattel paper is
26 maintained for the secured party, communicate to the custodian an
27 authenticated record releasing the designated custodian from any
28 further obligation to comply with instructions originated by the secured
29 party and instructing the custodian to comply with instructions
30 originated by the debtor; and

1 (3) Take appropriate action to enable the debtor or the debtor's designated
2 custodian to make copies of or revisions to the authoritative copy which
3 add or change an identified assignee of the authoritative copy without
4 the consent of the secured party;

5 d. A secured party having control of investment property under subdivision b of
6 subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall
7 send to the securities intermediary or commodity intermediary with which the
8 security entitlement or commodity contract is maintained an authenticated
9 record that releases the securities intermediary or commodity intermediary
10 from any further obligation to comply with entitlement orders or directions
11 originated by the secured party; and

12 e. A secured party having control of a letter-of-credit right under section
13 41-09-07 shall send to each person having an unfulfilled obligation to pay or
14 deliver proceeds of the letter of credit to the secured party an authenticated
15 release from any further obligation to pay or deliver proceeds of the letter of
16 credit to the secured party.

17 **41-09-19. (9-209) Duties of secured party if account debtor has been notified of**
18 **assignment.**

19 1. Except as otherwise provided in subsection 3, this section applies if:

20 a. There is no outstanding secured obligation; and

21 b. The secured party is not committed to make advances, incur obligations, or
22 otherwise give value.

23 2. Within ten days after receiving an authenticated demand by the debtor, a secured
24 party shall send to an account debtor that has received notification of an
25 assignment to the secured party as assignee under subsection 1 of section
26 41-09-68 an authenticated record that releases the account debtor from any further
27 obligation to the secured party.

28 3. This section does not apply to an assignment constituting the sale of an account,
29 chattel paper, or payment intangible.

30 **41-09-20. (9-210) Request for accounting - Request regarding list of collateral or**
31 **statement of account.**

- 1 1. In this section:
- 2 a. "Request" means a record of a type described in subdivision b, c, or d.
- 3 b. "Request for an accounting" means a record authenticated by a debtor
4 requesting that the recipient provide an accounting of the unpaid obligations
5 secured by collateral and reasonably identifying the transaction or relationship
6 that is the subject of the request.
- 7 c. "Request regarding a list of collateral" means a record authenticated by a
8 debtor requesting that the recipient approve or correct a list of what the debtor
9 believes to be the collateral securing an obligation and reasonably identifying
10 the transaction or relationship that is the subject of the request.
- 11 d. "Request regarding a statement of account" means a record authenticated by
12 a debtor requesting that the recipient approve or correct a statement
13 indicating what the debtor believes to be the aggregate amount of unpaid
14 obligations secured by collateral as of a specified date and reasonably
15 identifying the transaction or relationship that is the subject of the request.
- 16 2. Subject to subsections 3 through 6, a secured party, other than a buyer of
17 accounts, chattel paper, payment intangibles, or promissory notes or a consignor,
18 shall comply with a request within fourteen days after receipt:
- 19 a. In the case of a request for an accounting, by authenticating and sending to
20 the debtor an accounting; and
- 21 b. In the case of a request regarding a list of collateral or a request regarding a
22 statement of account, by authenticating and sending to the debtor an approval
23 or correction.
- 24 3. A secured party that claims a security interest in all of a particular type of collateral
25 owned by the debtor may comply with a request regarding a list of collateral by
26 sending to the debtor an authenticated record including a statement to that effect
27 within fourteen days after receipt.
- 28 4. A person that receives a request regarding a list of collateral, claims no interest in
29 the collateral when that person receives the request, and claimed an interest in the
30 collateral at an earlier time shall comply with the request within fourteen days after
31 receipt by sending to the debtor an authenticated record:

- 1 a. Disclaiming any interest in the collateral; and
- 2 b. If known to the recipient, providing the name and mailing address of any
- 3 assignee of or successor to the recipient's interest in the collateral.
- 4 5. A person that receives a request for an accounting or a request regarding a
- 5 statement of account, claims no interest in the obligations when it receives the
- 6 request, and claimed an interest in the obligations at an earlier time shall comply
- 7 with the request within fourteen days after receipt by sending to the debtor an
- 8 authenticated record:
- 9 a. Disclaiming any interest in the obligations; and
- 10 b. If known to the recipient, providing the name and mailing address of any
- 11 assignee of or successor to the recipient's interest in the obligations.
- 12 6. A debtor is entitled without charge to one response to a request under this section
- 13 during any six-month period. The secured party may require payment of a charge
- 14 not exceeding twenty-five dollars for each additional response.
- 15 **41-09-21. (9-301) Law governing perfection and priority of security interests.**
- 16 Except as otherwise provided in sections 41-09-23 through 41-09-26, the following rules
- 17 determine the law governing perfection, the effect of perfection or nonperfection, and the priority
- 18 of a security interest in collateral:
- 19 1. Except as otherwise provided in this section, while a debtor is located in a
- 20 jurisdiction, the local law of that jurisdiction governs perfection, the effect of
- 21 perfection or nonperfection, and the priority of a security interest in collateral.
- 22 2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs
- 23 perfection, the effect of perfection or nonperfection, and the priority of a possessory
- 24 security interest in that collateral.
- 25 3. Except as otherwise provided in subsection 4, while negotiable documents, goods,
- 26 instruments, money, or tangible chattel paper is located in a jurisdiction, the local
- 27 law of that jurisdiction governs:
- 28 a. Perfection of a security interest in the goods by filing a fixture filing;
- 29 b. Perfection of a security interest in timber to be cut; and
- 30 c. The effect of perfection or nonperfection and the priority of a nonpossessory
- 31 security interest in the collateral.

1 4. The local law of the jurisdiction in which the wellhead or minehead is located
2 governs perfection, the effect of perfection or nonperfection, and the priority of a
3 security interest in as-extracted collateral.

4 **41-09-22. (9-302) Law governing perfection and priority of agricultural liens.**

5 While farm products are located in a jurisdiction, the local law of that jurisdiction governs
6 perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the
7 farm products.

8 **41-09-23. (9-303) Law governing perfection and priority of security interests in**
9 **goods covered by a certificate of title.**

10 1. This section applies to goods covered by a certificate of title, even if there is no
11 other relationship between the jurisdiction under whose certificate of title the goods
12 are covered and the goods or the debtor.

13 2. Goods become covered by a certificate of title when a valid application for the
14 certificate of title and the applicable fee are delivered to the appropriate authority.
15 Goods cease to be covered by a certificate of title at the earlier of the time the
16 certificate of title ceases to be effective under the law of the issuing jurisdiction or
17 the time the goods become covered subsequently by a certificate of title issued by
18 another jurisdiction.

19 3. The local law of the jurisdiction under whose certificate of title the goods are
20 covered governs perfection, the effect of perfection or nonperfection, and the
21 priority of a security interest in goods covered by a certificate of title from the time
22 the goods become covered by the certificate of title until the goods cease to be
23 covered by the certificate of title.

24 **41-09-24. (9-304) Law governing perfection and priority of security interests in**
25 **deposit accounts.**

26 1. The local law of a bank's jurisdiction governs perfection, the effect of perfection or
27 nonperfection, and the priority of a security interest in a deposit account maintained
28 with that bank.

29 2. The following rules determine a bank's jurisdiction for purposes of this part:
30 a. If an agreement between the bank and the debtor governing the deposit
31 account expressly provides that a particular jurisdiction is the bank's

1 jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is
2 the bank's jurisdiction.

3 b. If subdivision a does not apply and an agreement between the bank and its
4 customer governing the deposit account expressly provides that the
5 agreement is governed by the law of a particular jurisdiction, that jurisdiction is
6 the bank's jurisdiction.

7 c. If neither subdivision a nor b applies and an agreement between the bank and
8 the bank's customer governing the deposit account expressly provides that
9 the deposit account is maintained at an office in a particular jurisdiction, that
10 jurisdiction is the bank's jurisdiction.

11 d. If none of the preceding subdivisions applies, the bank's jurisdiction is the
12 jurisdiction in which the office identified in an account statement as the office
13 servicing the customer's account is located.

14 e. If none of the preceding subdivisions applies, the bank's jurisdiction is the
15 jurisdiction in which the chief executive office of the bank is located.

16 **41-09-25. (9-305) Law governing perfection and priority of security interests in**
17 **investment property.**

18 1. Except as otherwise provided in subsection 3, the following rules apply:

19 a. While a security certificate is located in a jurisdiction, the local law of that
20 jurisdiction governs perfection, the effect of perfection or nonperfection, and
21 the priority of a security interest in the certificated security represented
22 thereby.

23 b. The local law of the issuer's jurisdiction as specified in subsection 4 of section
24 41-08-10 governs perfection, the effect of perfection or nonperfection, and the
25 priority of a security interest in an uncertificated security.

26 c. The local law of the securities intermediary's jurisdiction as specified in
27 subsection 5 of section 41-08-10 governs perfection, the effect of perfection or
28 nonperfection, and the priority of a security interest in a security entitlement or
29 securities account.

- 1 d. The local law of the commodity intermediary's jurisdiction governs perfection,
2 the effect of perfection or nonperfection, and the priority of a security interest
3 in a commodity contract or commodity account.
- 4 2. The following rules determine a commodity intermediary's jurisdiction for purposes
5 of sections 41-09-21 through 41-09-62:
- 6 a. If an agreement between the commodity intermediary and commodity
7 customer governing the commodity account expressly provides that a
8 particular jurisdiction is the commodity intermediary's jurisdiction for purposes
9 of sections 41-09-21 through 41-09-62, this chapter, or this title, that
10 jurisdiction is the commodity intermediary's jurisdiction.
- 11 b. If subdivision a does not apply and an agreement between the commodity
12 intermediary and commodity customer governing the commodity account
13 expressly provides that the agreement is governed by the law of a particular
14 jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- 15 c. If neither subdivision a nor b applies and an agreement between the
16 commodity intermediary and commodity customer governing the commodity
17 account expressly provides that the commodity account is maintained at an
18 office in a particular jurisdiction, that jurisdiction is the commodity
19 intermediary's jurisdiction.
- 20 d. If none of the preceding subdivisions applies, the commodity intermediary's
21 jurisdiction is the jurisdiction in which the office identified in an account
22 statement as the office serving the commodity customer's account is located.
- 23 e. If none of the preceding subdivisions applies, the commodity intermediary's
24 jurisdiction is the jurisdiction in which the chief executive office of the
25 commodity intermediary is located.
- 26 3. The local law of the jurisdiction in which the debtor is located governs:
- 27 a. Perfection of a security interest in investment property by filing;
- 28 b. Automatic perfection of a security interest in investment property created by a
29 broker or securities intermediary; and
- 30 c. Automatic perfection of a security interest in a commodity contract or
31 commodity account created by a commodity intermediary.

1 **41-09-26. (9-306) Law governing perfection and priority of security interests in**
2 **letter-of-credit rights.**

3 1. Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated
4 person's jurisdiction governs perfection, the effect of perfection or nonperfection,
5 and the priority of a security interest in a letter-of-credit right if the issuer's
6 jurisdiction or nominated person's jurisdiction is a state.

7 2. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction
8 is the jurisdiction whose law governs the liability of the issuer or nominated person
9 with respect to the letter-of-credit right as provided in section 41-05-16.

10 3. This section does not apply to a security interest that is perfected only under
11 subsection 4 of section 41-09-28.

12 **41-09-27. (9-307) Location of debtor.**

13 1. In this section, "place of business" means a place where a debtor conducts its
14 affairs.

15 2. Except as otherwise provided in this section, the following rules determine a
16 debtor's location:

17 a. A debtor who is an individual is located at the individual's principal residence.

18 b. A debtor that is an organization and has only one place of business is located
19 at its place of business.

20 c. A debtor that is an organization and has more than one place of business is
21 located at its chief executive office.

22 3. Subsection 2 applies only if a debtor's residence, place of business, or chief
23 executive office, as applicable, is located in a jurisdiction whose law generally
24 requires information concerning the existence of a nonpossessory security interest
25 to be made generally available in a filing, recording, or registration system as a
26 condition or result of the security interest's obtaining priority over the rights of a lien
27 creditor with respect to the collateral. If subsection 2 does not apply, the debtor is
28 located in the District of Columbia.

29 4. A person that ceases to exist, have a residence, or have a place of business
30 continues to be located in the jurisdiction specified by subsections 2 and 3.

- 1 5. A registered organization that is organized under the law of a state is located in
2 that state.
- 3 6. Except as otherwise provided in subsection 9, a registered organization that is
4 organized under the law of the United States and a branch or agency of a bank
5 that is not organized under the law of the United States or a state are located:
- 6 a. In the state that the law of the United States designates, if the law designates
7 a state of location;
- 8 b. In the state that the registered organization, branch, or agency designates, if
9 the law of the United States authorizes the registered organization, branch, or
10 agency to designate its state of location; or
- 11 c. In the District of Columbia, if neither subdivision a nor b applies.
- 12 7. A registered organization continues to be located in the jurisdiction specified by
13 subsection 5 or 6 notwithstanding:
- 14 a. The suspension, revocation, forfeiture, or lapse of the registered
15 organization's status as such in its jurisdiction of organization; or
- 16 b. The dissolution, winding up, or cancellation of the existence of the registered
17 organization.
- 18 8. The United States is located in the District of Columbia.
- 19 9. A branch or agency of a bank that is not organized under the law of the United
20 States or a state is located in the state in which the branch or agency is licensed, if
21 all branches and agencies of the bank are licensed in only one state.
- 22 10. A foreign air carrier under the Federal Aviation Act of 1958, as amended, [Pub. L.
23 85-726; 72 Stat. 731] is located at the designated office of the agent upon which
24 service of process may be made on behalf of the carrier.
- 25 11. This section applies only for purposes of this part.

26 **41-09-28. (9-308) When security interest or agricultural lien is perfected -**

27 **Continuity of perfection.**

- 28 1. Except as otherwise provided in this section and section 41-09-29, a security
29 interest is perfected if it has attached and all of the applicable requirements for
30 perfection in sections 41-09-30 through 41-09-36 have been satisfied. A security

- 1 interest is perfected when it attaches if the applicable requirements are satisfied
2 before the security interest attaches.
- 3 2. An agricultural lien is perfected if it has become effective and all of the applicable
4 requirements for perfection in section 41-09-30 have been satisfied. An
5 agricultural lien is perfected when it becomes effective if the applicable
6 requirements are satisfied before the agricultural lien becomes effective.
- 7 3. A security interest or agricultural lien is perfected continuously if it is originally
8 perfected by one method under this chapter and is later perfected by another
9 method under this chapter, without an intermediate period when it was
10 unperfected.
- 11 4. Perfection of a security interest in collateral also perfects a security interest in a
12 supporting obligation for the collateral.
- 13 5. Perfection of a security interest in a right to payment or performance also perfects
14 a security interest in a security interest, mortgage, or other lien on personal or real
15 property securing the right.
- 16 6. Perfection of a security interest in a securities account also perfects a security
17 interest in the security entitlements carried in the securities account.
- 18 7. Perfection of a security interest in a commodity account also perfects a security
19 interest in the commodity contracts carried in the commodity account.
- 20 **41-09-29. (9-309) Security interest perfected upon attachment.** The following
21 security interests are perfected when they attach:
- 22 1. A purchase-money security interest in consumer goods, except as otherwise
23 provided in subsection 2 of section 41-09-31 with respect to consumer goods that
24 are subject to a statute or treaty described in subsection 1 of section 41-09-31;
- 25 2. An assignment of accounts or payment intangibles which does not by itself or in
26 conjunction with other assignments to the same assignee transfer a significant part
27 of the assignor's outstanding accounts or payment intangibles;
- 28 3. A sale of a payment intangible;
- 29 4. A sale of a promissory note;
- 30 5. A security interest created by the assignment of a health care insurance receivable
31 to the provider of the health care goods or services;

- 1 6. A security interest arising under section 41-02-46, section 41-02-53, subsection 3
- 2 of section 41-02-90, or subsection 5 of section 41-02.1-56, until the debtor obtains
- 3 possession of the collateral;
- 4 7. A security interest of a collecting bank arising under section 41-04-22;
- 5 8. A security interest of an issuer or nominated person arising under section
- 6 41-05-18;
- 7 9. A security interest arising in the delivery of a financial asset under subsection 3 of
- 8 section 41-09-16;
- 9 10. A security interest in investment property created by a broker or securities
- 10 intermediary;
- 11 11. A security interest in a commodity contract or a commodity account created by a
- 12 commodity intermediary;
- 13 12. An assignment for the benefit of all creditors of the transferor and subsequent
- 14 transfers by the assignee thereunder; and
- 15 13. A security interest created by an assignment of a beneficial interest in a decedent's
- 16 estate.

17 **41-09-30. (9-310) When filing required to perfect security interest or agricultural**
18 **lien - Security interests and agricultural liens to which filing provisions do not apply.**

- 19 1. Except as otherwise provided in subsection 2 and subsection 2 of section
- 20 41-09-32, a financing statement must be filed to perfect all security interests and
- 21 agricultural liens.
- 22 2. The filing of a financing statement is not necessary to perfect a security interest:
 - 23 a. That is perfected under subsection 4, 5, 6, or 7 of section 41-09-28;
 - 24 b. That is perfected under section 41-09-29 when it attaches;
 - 25 c. In property subject to a statute, regulation, or treaty described in subsection 1
 - 26 of section 41-09-31;
 - 27 d. In goods in possession of a bailee which is perfected under subdivision a or b
 - 28 of subsection 4 of section 41-09-32;
 - 29 e. In certificated securities, documents, goods, or instruments which is perfected
 - 30 without filing or possession under subsection 5, 6, or 7 of section 41-09-32;
 - 31 f. In collateral in the secured party's possession under section 41-09-33;

- 1 g. In a certificated security which is perfected by delivery of the security
2 certificate to the secured party under section 41-09-33;
3 h. In deposit accounts, electronic chattel paper, investment property, or
4 letter-of-credit rights which is perfected by control under section 41-09-34;
5 i. In proceeds which is perfected under section 41-09-35; or
6 j. That is perfected under section 41-09-36.
7 3. If a secured party assigns a perfected security interest or agricultural lien, a filing
8 under this chapter is not required to continue the perfected status of the security
9 interest against creditors of and transferees from the original debtor.

10 **41-09-31. (9-311) Perfection of security interests in property subject to certain**
11 **statutes, regulations, and treaties.**

- 12 1. Except as otherwise provided in subsection 4, the filing of a financing statement is
13 not necessary or effective to perfect a security interest in property subject to:
14 a. A statute, regulation, or treaty of the United States whose requirements for a
15 security interest's obtaining priority over the rights of a lien creditor with
16 respect to the property preempt subsection 1 of section 41-09-30;
17 b. Section 35-01-05.1; or
18 c. A certificate-of-title statute of another jurisdiction which provides for a security
19 interest to be indicated on the certificate as a condition or result of the security
20 interest's obtaining priority over the rights of a lien creditor with respect to the
21 property.
22 2. Compliance with the requirements of a statute, regulation, or treaty described in
23 subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to
24 the filing of a financing statement under this chapter. Except as otherwise provided
25 in subsection 4 and sections 41-09-33 and subsections 4 and 5 of section
26 41-09-36 for goods covered by a certificate of title, a security interest in property
27 subject to a statute, regulation, or treaty described in subsection 1 may be
28 perfected only by compliance with those requirements, and a security interest so
29 perfected remains perfected notwithstanding a change in the use or transfer of
30 possession of the collateral.

- 1 3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of section
2 41-09-36, duration and renewal of perfection of a security interest perfected by
3 compliance with the requirements prescribed by a statute, regulation, or treaty
4 described in subsection 1 are governed by the statute, regulation, or treaty. In
5 other respects, the security interest is subject to this chapter.
- 6 4. During any period in which collateral subject to a statute specified in subdivision b
7 of subsection 1 is inventory held for sale or lease by a person or leased by that
8 person as lessor and that person is in the business of selling goods of that kind,
9 this section does not apply to a security interest in that collateral created by that
10 person.

NOTE: Section 41-09-31(1)(b) provides for insertion of state laws. Professor Bottrell suggests inserting Section 35-01-05.1 and raises the possibility of clarifying whether snowmobiles are titled and therefore perfected.

11 **41-09-32. (9-312) Perfection of security interests in chattel paper, deposit**
12 **accounts, documents, goods covered by documents, instruments, investment property,**
13 **letter-of-credit rights, and money - Perfection by permissive filing - Temporary perfection**
14 **without filing or transfer of possession.**

- 15 1. A security interest in chattel paper, negotiable documents, instruments, or
16 investment property may be perfected by filing.
- 17 2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for
18 proceeds:
- 19 a. A security interest in a deposit account may be perfected only by control
20 under section 41-09-34;
- 21 b. And except as otherwise provided in subsection 4 of section 41-09-28, a
22 security interest in a letter-of-credit right may be perfected only by control
23 under section 41-09-34; and
- 24 c. A security interest in money may be perfected only by the secured party's
25 taking possession under section 41-09-33.
- 26 3. While goods are in the possession of a bailee that has issued a negotiable
27 document covering the goods:
- 28 a. A security interest in the goods may be perfected by perfecting a security
29 interest in the document; and

- 1 b. A security interest perfected in the document has priority over any security
2 interest that becomes perfected in the goods by another method during that
3 time.
- 4 4. While goods are in the possession of a bailee that has issued a nonnegotiable
5 document covering the goods, a security interest in the goods may be perfected
6 by:
- 7 a. Issuance of a document in the name of the secured party;
8 b. The bailee's receipt of notification of the secured party's interest; or
9 c. Filing as to the goods.
- 10 5. A security interest in certificated securities, negotiable documents, or instruments
11 is perfected without filing or the taking of possession for a period of twenty days
12 from the time it attaches to the extent that it arises for new value given under an
13 authenticated security agreement.
- 14 6. A perfected security interest in a negotiable document or goods in possession of a
15 bailee, other than one that has issued a negotiable document for the goods,
16 remains perfected for twenty days without filing if the secured party makes
17 available to the debtor the goods or documents representing the goods for the
18 purpose of:
- 19 a. Ultimate sale or exchange; or
20 b. Loading, unloading, storing, shipping, transshipping, manufacturing,
21 processing, or otherwise dealing with them in a manner preliminary to their
22 sale or exchange.
- 23 7. A perfected security interest in a certificated security or instrument remains
24 perfected for twenty days without filing if the secured party delivers the security
25 certificate or instrument to the debtor for the purpose of:
- 26 a. Ultimate sale or exchange; or
27 b. Presentation, collection, enforcement, renewal, or registration of transfer.
- 28 8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection
29 depends upon compliance with this chapter.

30 **41-09-33. (9-313) When possession by or delivery to secured party perfects**
31 **security interest without filing.**

- 1 1. Except as otherwise provided in subsection 2, a secured party may perfect a
2 security interest in negotiable documents, goods, instruments, money, or tangible
3 chattel paper by taking possession of the collateral. A secured party may perfect a
4 security interest in certificated securities by taking delivery of the certificated
5 securities under section 41-08-27.
- 6 2. With respect to goods covered by a certificate of title issued by this state, a
7 secured party may perfect a security interest in the goods by taking possession of
8 the goods only in the circumstances described in subsection 4 of section 41-09-36.
- 9 3. With respect to collateral other than certificated securities and goods covered by a
10 document, a secured party takes possession of collateral in the possession of a
11 person other than the debtor, the secured party, or a lessee of the collateral from
12 the debtor in the ordinary course of the debtor's business, when:
 - 13 a. The person in possession authenticates a record acknowledging that it holds
14 possession of the collateral for the secured party's benefit; or
 - 15 b. The person takes possession of the collateral after having authenticated a
16 record acknowledging that it will hold possession of collateral for the secured
17 party's benefit.
- 18 4. If perfection of a security interest depends upon possession of the collateral by a
19 secured party, perfection occurs no earlier than the time the secured party takes
20 possession and continues only while the secured party retains possession.
- 21 5. A security interest in a certificated security in registered form is perfected by
22 delivery when delivery of the certificated security occurs under section 41-08-27
23 and remains perfected by delivery until the debtor obtains possession of the
24 security certificate.
- 25 6. A person in possession of collateral is not required to acknowledge that it holds
26 possession for a secured party's benefit.
- 27 7. If a person acknowledges that it holds possession for the secured party's benefit:
 - 28 a. The acknowledgment is effective under subsection 3 or subsection 1 of
29 section 41-09-21, even if the acknowledgment violates the rights of a debtor;
30 and

1 (2) If the collateral is an uncertificated security, the issuer has registered or
2 registers the debtor as the registered owner; or

3 (3) If the collateral is a security entitlement, the debtor is or becomes the
4 entitlement holder.

5 **41-09-35. (9-315) Secured party's rights on disposition of collateral and in**
6 **proceeds.**

7 1. Except as otherwise provided in this chapter and in subsection 2 of section
8 41-02-48:

9 a. A security interest or agricultural lien continues in collateral notwithstanding
10 sale, lease, license, exchange, or other disposition thereof unless the secured
11 party authorized the disposition free of the security interest or agricultural lien;
12 and

13 b. A security interest attaches to any identifiable proceeds of collateral.

14 2. Proceeds that are commingled with other property are identifiable proceeds:

15 a. If the proceeds are goods, to the extent provided by section 41-09-56; and

16 b. If the proceeds are not goods, to the extent that the secured party identifies
17 the proceeds by a method of tracing, including application of equitable
18 principles, that is permitted under law other than this chapter with respect to
19 commingled property of the type involved.

20 3. A security interest in proceeds is a perfected security interest if the security interest
21 in the original collateral was perfected.

22 4. A perfected security interest in proceeds becomes unperfected on the twenty-first
23 day after the security interest attaches to the proceeds unless:

24 a. The following conditions are satisfied:

25 (1) A filed financing statement covers the original collateral;

26 (2) The proceeds are collateral in which a security interest may be
27 perfected by filing in the office in which the financing statement has
28 been filed; and

29 (3) The proceeds are not acquired with cash proceeds;

30 b. The proceeds are identifiable cash proceeds; or

- 1 c. The security interest in the proceeds is perfected other than under
2 subsection 3 when the security interest attaches to the proceeds or within
3 twenty days thereafter.
- 4 5. If a filed financing statement covers the original collateral, a security interest in
5 proceeds which remains perfected under subdivision a of subsection 4 becomes
6 unperfected at the later of:
- 7 a. When the effectiveness of the filed financing statement lapses under section
8 41-09-86 or is terminated under section 41-09-84; or
- 9 b. The twenty-first day after the security interest attaches to the proceeds.

10 **41-09-36. (9-316) Continued perfection of security interest following change in**
11 **governing law.**

- 12 1. A security interest perfected pursuant to the law of the jurisdiction designated in
13 subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains
14 perfected until the earliest of:
- 15 a. The time perfection would have ceased under the law of that jurisdiction;
16 b. The expiration of four months after a change of the debtor's location to
17 another jurisdiction; or
- 18 c. The expiration of one year after a transfer of collateral to a person that
19 thereby becomes a debtor and is located in another jurisdiction.
- 20 2. If a security interest described in subsection 1 becomes perfected under the law of
21 the other jurisdiction before the earliest time or event described in that subsection,
22 it remains perfected thereafter. If the security interest does not become perfected
23 under the law of the other jurisdiction before the earliest time or event, it becomes
24 unperfected and is deemed never to have been perfected as against a purchaser
25 of the collateral for value.
- 26 3. A possessory security interest in collateral, other than goods covered by a
27 certificate of title and as-extracted collateral consisting of goods, remains
28 continuously perfected if:
- 29 a. The collateral is located in one jurisdiction and subject to a security interest
30 perfected under the law of that jurisdiction;
- 31 b. Thereafter the collateral is brought into another jurisdiction; and

- 1 c. Upon entry into the other jurisdiction, the security interest is perfected under
2 the law of the other jurisdiction.
- 3 4. Except as otherwise provided in subsection 5, a security interest in goods covered
4 by a certificate of title which is perfected by any method under the law of another
5 jurisdiction when the goods become covered by a certificate of title from this state
6 remains perfected until the security interest would have become unperfected under
7 the law of the other jurisdiction had the goods not become so covered.
- 8 5. A security interest described in subsection 4 becomes unperfected as against a
9 purchaser of the goods for value and is deemed never to have been perfected as
10 against a purchaser of the goods for value if the applicable requirements for
11 perfection under subsection 2 of section 41-09-31 or section 41-09-33 are not
12 satisfied before the earlier of:
- 13 a. The time the security interest would have become unperfected under the law
14 of the other jurisdiction had the goods not become covered by a certificate of
15 title from this state; or
- 16 b. The expiration of four months after the goods had become so covered.
- 17 6. A security interest in deposit accounts, letter-of-credit rights, or investment property
18 which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction,
19 a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the
20 commodity intermediary's jurisdiction, as applicable, remains perfected until the
21 earlier of:
- 22 a. The time the security interest would have become unperfected under the law
23 of that jurisdiction; or
- 24 b. The expiration of four months after a change of the applicable jurisdiction to
25 another jurisdiction.
- 26 7. If a security interest described in subsection 6 becomes perfected under the law of
27 the other jurisdiction before the earlier of the time or the end of the period
28 described in that subsection, it remains perfected thereafter. If the security interest
29 does not become perfected under the law of the other jurisdiction before the earlier
30 of that time or the end of that period, it becomes unperfected and is deemed never
31 to have been perfected as against a purchaser of the collateral for value.

1 **41-09-37. (9-317) Interests that take priority over or take free of security interest**
2 **or agricultural lien.**

- 3 1. A security interest or an agricultural lien is subordinate to the rights of:
4 a. A person entitled to priority under section 41-09-42; and
5 b. Except as otherwise provided in subsection 5, a person that becomes a lien
6 creditor before the earlier of the time:
7 (1) The security interest or agricultural lien is perfected; or
8 (2) One of the conditions specified in subdivision c of subsection 2 of
9 section 41-09-13 is met and a financing statement covering the
10 collateral is filed.
11 2. Except as otherwise provided in subsection 5, a buyer, other than a secured party,
12 of tangible chattel paper, documents, goods, instruments, or a security certificate
13 takes free of a security interest or agricultural lien if the buyer gives value and
14 receives delivery of the collateral without knowledge of the security interest or
15 agricultural lien and before it is perfected.
16 3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a
17 security interest or agricultural lien if the lessee gives value and receives delivery
18 of the collateral without knowledge of the security interest or agricultural lien and
19 before it is perfected.
20 4. A licensee of a general intangible or a buyer, other than a secured party, of
21 accounts, electronic chattel paper, general intangibles, or investment property
22 other than a certificated security takes free of a security interest if the licensee or
23 buyer gives value without knowledge of the security interest and before it is
24 perfected.
25 5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a
26 financing statement with respect to a purchase-money security interest before or
27 within twenty days after the debtor receives delivery of the collateral, the security
28 interest takes priority over the rights of a buyer, lessee, or lien creditor which arise
29 between the time the security interest attaches and the time of filing.

30 **41-09-38. (9-318) No interest retained in right to payment that is sold - Rights and**
31 **title of seller of account or chattel paper with respect to creditors and purchasers.**

- 1 1. A debtor that has sold an account, chattel paper, payment intangible, or promissory
2 note does not retain a legal or equitable interest in the collateral sold.
- 3 2. For purposes of determining the rights of creditors of, and purchasers for value of
4 an account or chattel paper from, a debtor that has sold an account or chattel
5 paper, while the buyer's security interest is unperfected, the debtor is deemed to
6 have rights and title to the account or chattel paper identical to those the debtor
7 sold.

8 **41-09-39. (9-319) Rights and title of consignee with respect to creditors and**
9 **purchasers.**

- 10 1. Except as otherwise provided in subsection 2, for purposes of determining the
11 rights of creditors of, and purchasers for value of goods from, a consignee, while
12 the goods are in the possession of the consignee, the consignee is deemed to
13 have rights and title to the goods identical to those the consignor had or had power
14 to transfer.
- 15 2. For purposes of determining the rights of a creditor of a consignee, law other than
16 this chapter determines the rights and title of a consignee while goods are in the
17 consignee's possession if, under this part, a perfected security interest held by the
18 consignor would have priority over the rights of the creditor.

19 **41-09-40. (9-320) Buyer of goods.**

- 20 1. Except as otherwise provided in subsection 5, a buyer in ordinary course of
21 business, other than a person buying farm products from a person engaged in
22 farming operations, takes free of a security interest created by the buyer's seller,
23 even if the security interest is perfected and the buyer knows of its existence. A
24 crop or livestock buyer is a buyer in the ordinary course of business as to security
25 interests and liens if the buyer qualifies under subsection 9. As used in this
26 section, a crop or livestock buyer is a person who buys crops or livestock from, or
27 who sells crops or livestock on a fee or commission for, a person engaged in
28 farming operations.
- 29 2. Except as otherwise provided in subsection 5, a buyer of goods from a person who
30 used or bought the goods for use primarily for personal, family, or household
31 purposes takes free of a security interest, even if perfected, if the buyer buys:

- 1 a. Without knowledge of the security interest;
2 b. For value;
3 c. Primarily for the buyer's personal, family, or household purposes; and
4 d. Before the filing of a financing statement covering the goods.
- 5 3. To the extent that it affects the priority of a security interest over a buyer of goods
6 under subsection 2, the period of effectiveness of a filing made in the jurisdiction in
7 which the seller is located is governed by subsections 1 and 2 of section 41-09-36.
- 8 4. A buyer in ordinary course of business buying oil, gas, or other minerals at the
9 wellhead or minehead or after extraction takes free of an interest arising out of an
10 encumbrance.
- 11 5. Subsections 1 and 2 do not affect a security interest in goods in the possession of
12 the secured party under section 41-09-33.
- 13 6. If a secured party who has perfected a security interest in crops or livestock, or if a
14 lienholder who has created a lien by statute or otherwise, which includes liens for
15 crop or agricultural product processing, agricultural supplies, and landlord's lien,
16 intends to impose liability for the security interest or lien against a crop or livestock
17 buyer, the name of the secured party or lienholder must appear on the most
18 current list distributed by the secretary of state pursuant to section 34 of this Act.
19 In order to appear on the list, secured parties or lienholders must file with the
20 secretary of state or in the office of the register of deeds in any county in this state
21 a form prescribed by the secretary of state which contains the information
22 prescribed by the secretary of state under section 41-09-92 or contained on a form
23 prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.
- 24 7. When a crop or livestock buyer issues a check or draft to a person engaged in
25 farming operations in payment for crops or livestock in order to take free of security
26 interests or liens against such crops or livestock, the crop or livestock buyer must
27 issue the check or draft for payment jointly to the person engaged in farming
28 operations and those secured parties or lienholders who have a security interest or
29 lien in the crops or livestock sold and whose names appear on the most current list
30 or lists distributed by the secretary of state at the time the check or draft is issued.
31 A claim for relief may not be commenced by a secured party or lienholder against a

- 1 crop or livestock buyer for a loss incurred as a result of issuing a check or draft
2 after January 1, 1986, which does not include the name of a secured party or
3 lienholder under this section more than eighteen months after the date of the check
4 or draft unless within the eighteen-month period the secured party or lienholder
5 sends a notice as provided under this section, but in no event can the action be
6 commenced more than five years after the date of the check or draft. The notice
7 must:
- 8 a. Be sent by certified mail to, or personally served upon, the crop or livestock
9 buyer;
- 10 b. Name the person engaged in farming operations and the date of the check or
11 draft that gives rise to the claim;
- 12 c. State the intention of the secured party or lienholder to make a claim;
- 13 d. State the amount the secured party or lienholder is claiming;
- 14 e. Give a description of and the amount of crops or livestock upon which the
15 claim is based; and
- 16 f. State that the secured party or lienholder has commenced an action seeking
17 judgment against the person engaged in farming operations or such person
18 has filed or has been placed in bankruptcy or receivership proceedings under
19 chapter 32-10.
- 20 8. A complaint by a secured party or lienholder may not be filed or served against a
21 crop or livestock buyer for collection of any loss sustained by the secured party or
22 lienholder through any transaction filed pursuant to subsection 6 until:
- 23 a. A judgment has been obtained and a good-faith effort made to collect that
24 judgment against the person engaged in farming operations, or that
25 proceedings against the person engaged in farming operations were stayed
26 by federal bankruptcy proceedings, or that receivership proceedings have
27 been commenced under chapter 32-10;
- 28 b. Within eighteen months following the date of the check or draft, the notice
29 required to be sent pursuant to subsection 7 was served upon the crop or
30 livestock buyer and reciting or incorporating by reference all the information
31 contained in that notice; and

- 1 c. A list is made of any other collateral taken by the secured party or lienholder
2 as security on the same debt from the person engaged in farming operations,
3 including a statement of value, status, and plans for application of such
4 collateral to the indebtedness of the person engaged in farming operations.
- 5 9. A crop or livestock buyer takes free of any security interest created by, or any lien
6 against crops or livestock of, the person engaged in farming operations if:
- 7 a. The crop or livestock buyer has complied with the requirements of
8 subsection 7;
- 9 b. Evidence of security interests or liens does not appear on the most current list
10 prepared and distributed by the secretary of state pursuant to sections 33 and
11 34 of this Act; or
- 12 c. The name of the person represented to be the seller of the crops or livestock
13 does not appear on the most current list prepared and distributed pursuant to
14 sections 33 and 34 of this Act.

15 **41-09-41. (9-321) Licensee of general intangible and lessee of goods in ordinary**
16 **course of business.**

- 17 1. In this section, "licensee in ordinary course of business" means a person that
18 becomes a licensee of a general intangible in good faith, without knowledge that
19 the license violates the rights of another person in the general intangible, and in the
20 ordinary course from a person in the business of licensing general intangibles of
21 that kind. A person becomes a licensee in the ordinary course if the license to the
22 person comports with the usual or customary practices in the kind of business in
23 which the licensor is engaged or with the licensor's own usual or customary
24 practices.
- 25 2. A licensee in ordinary course of business takes its rights under a nonexclusive
26 license free of a security interest in the general intangible created by the licensor,
27 even if the security interest is perfected and the licensee knows of its existence.
- 28 3. A lessee in ordinary course of business takes its leasehold interest free of a
29 security interest in the goods created by the lessor, even if the security interest is
30 perfected and the lessee knows of its existence.

- 1 **41-09-42. (9-322) Priorities among conflicting security interests in and**
2 **agricultural liens on same collateral.**
- 3 1. Except as otherwise provided in this section, priority among conflicting security
4 interests and agricultural liens in the same collateral is determined according to the
5 following rules:
- 6 a. Conflicting perfected security interests and agricultural liens rank according to
7 priority in time of filing or perfection. Priority dates from the earlier of the time
8 a filing covering the collateral is first made or the security interest or
9 agricultural lien is first perfected, if there is no period thereafter when there is
10 neither filing nor perfection.
- 11 b. A perfected security interest or agricultural lien has priority over a conflicting
12 unperfected security interest or agricultural lien.
- 13 c. The first security interest or agricultural lien to attach or become effective has
14 priority if conflicting security interests and agricultural liens are unperfected.
- 15 2. For the purposes of subdivision a of subsection 1:
- 16 a. The time of filing or perfection as to a security interest in collateral is also the
17 time of filing or perfection as to a security interest in proceeds; and
- 18 b. The time of filing or perfection as to a security interest in collateral supported
19 by a supporting obligation is also the time of filing or perfection as to a
20 security interest in the supporting obligation.
- 21 3. Except as otherwise provided in subsection 6, a security interest in collateral which
22 qualifies for priority over a conflicting security interest under section 41-09-47,
23 41-09-48, 41-09-49, 41-09-50, or 41-09-51 also has priority over a conflicting
24 security interest in:
- 25 a. Any supporting obligation for the collateral; and
- 26 b. Proceeds of the collateral if:
- 27 (1) The security interest in proceeds is perfected;
- 28 (2) The proceeds are cash proceeds or of the same type as the collateral;
29 and

- 1 (3) In the case of proceeds that are proceeds of proceeds, all intervening
2 proceeds are cash proceeds, proceeds of the same type as the
3 collateral, or an account relating to the collateral.
- 4 4. Subject to subsection 5 and except as otherwise provided in subsection 6, if a
5 security interest in chattel paper, deposit accounts, negotiable documents,
6 instruments, investment property, or letter-of-credit rights is perfected by a method
7 other than filing, conflicting perfected security interests in proceeds of the collateral
8 rank according to priority in time of filing.
- 9 5. Subsection 4 applies only if the proceeds of the collateral are not cash proceeds,
10 chattel paper, negotiable documents, instruments, investment property, or
11 letter-of-credit rights.
- 12 6. Subsections 1 through 5 are subject to:
- 13 a. Subsection 7 and the other provisions of this part;
14 b. Section 41-04-22 with respect to a security interest of a collecting bank;
15 c. Section 41-05-18 with respect to a security interest of an issuer or nominated
16 person; and
17 d. Section 41-09-10 with respect to a security interest arising under chapter
18 41-02 or 41-02.1.
- 19 7. A perfected agricultural lien on collateral has priority over a conflicting security
20 interest in or agricultural lien on the same collateral if the statute creating the
21 agricultural lien so provides.
- 22 **41-09-43. (9-323) Future advances.**
- 23 1. Except as otherwise provided in subsection 3, for purposes of determining the
24 priority of a perfected security interest under subdivision a of subsection 1 of
25 section 41-09-42, perfection of the security interest dates from the time an advance
26 is made to the extent that the security interest secures an advance that:
- 27 a. Is made while the security interest is perfected only:
- 28 (1) Under section 41-09-29 when it attaches; or
29 (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and

- 1 b. Is not made pursuant to a commitment entered into before or while the
2 security interest is perfected by a method other than under section 41-09-29
3 or subsection 5, 6, or 7 of section 41-09-32.
- 4 2. Except as otherwise provided in subsection 3, a security interest is subordinate to
5 the rights of a person that becomes a lien creditor to the extent that the security
6 interest secures an advance made more than forty-five days after the person
7 becomes a lien creditor unless the advance is made:
- 8 a. Without knowledge of the lien; or
9 b. Pursuant to a commitment entered into without knowledge of the lien.
- 10 3. Subsections 1 and 2 do not apply to a security interest held by a secured party that
11 is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or
12 a consignor.
- 13 4. Except as otherwise provided in subsection 5, a buyer of goods other than a buyer
14 in ordinary course of business takes free of a security interest to the extent that it
15 secures advances made after the earlier of:
- 16 a. The time the secured party acquires knowledge of the buyer's purchase; or
17 b. Forty-five days after the purchase.
- 18 5. Subsection 4 does not apply if the advance is made pursuant to a commitment
19 entered into without knowledge of the buyer's purchase and before the expiration
20 of the forty-five-day period.
- 21 6. Except as otherwise provided in subsection 7, a lessee of goods, other than a
22 lessee in ordinary course of business, takes the leasehold interest free of a
23 security interest to the extent that it secures advances made after the earlier of:
- 24 a. The time the secured party acquires knowledge of the lease; or
25 b. Forty-five days after the lease contract becomes enforceable.
- 26 7. Subsection 6 does not apply if the advance is made pursuant to a commitment
27 entered into without knowledge of the lease and before the expiration of the
28 forty-five-day period.
- 29 **41-09-44. (9-324) Priority of purchase-money security interests.**
- 30 1. Except as otherwise provided in subsection 7, a perfected purchase-money
31 security interest in goods other than inventory or livestock has priority over a

- 1 conflicting security interest in the same goods, and, except as otherwise provided
2 in section 41-09-47, a perfected security interest in its identifiable proceeds also
3 has priority, if the purchase-money security interest is perfected when the debtor
4 receives possession of the collateral or within twenty days thereafter.
- 5 2. Subject to subsection 3 and except as otherwise provided in subsection 7, a
6 perfected purchase-money security interest in inventory has priority over a
7 conflicting security interest in the same inventory, has priority over a conflicting
8 security interest in chattel paper or an instrument constituting proceeds of the
9 inventory and in proceeds of the chattel paper, if so provided in section 41-09-50,
10 and, except as otherwise provided in section 41-09-47, also has priority in
11 identifiable cash proceeds of the inventory to the extent the identifiable cash
12 proceeds are received on or before the delivery of the inventory to a buyer, if:
- 13 a. The purchase-money security interest is perfected when the debtor receives
14 possession of the inventory;
- 15 b. The purchase-money secured party sends an authenticated notification to the
16 holder of the conflicting security interest;
- 17 c. The holder of the conflicting security interest receives the notification within
18 five years before the debtor receives possession of the inventory; and
- 19 d. The notification states that the person sending the notification has or expects
20 to acquire a purchase-money security interest in inventory of the debtor and
21 describes the inventory.
- 22 3. Subdivisions b through d of subsection 2 apply only if the holder of the conflicting
23 security interest had filed a financing statement covering the same types of
24 inventory:
- 25 a. If the purchase-money security interest is perfected by filing, before the date
26 of the filing; or
- 27 b. If the purchase-money security interest is temporarily perfected without filing
28 or possession under subsection 6 of section 41-09-32, before the beginning of
29 the twenty-day period thereunder.
- 30 4. Subject to subsection 5 and except as otherwise provided in subsection 7, a
31 perfected purchase-money security interest in livestock that are farm products has

- 1 priority over a conflicting security interest in the same livestock, and, except as
2 otherwise provided in section 41-09-47, a perfected security interest in their
3 identifiable proceeds and identifiable products in their unmanufactured states also
4 has priority, if:
- 5 a. The purchase-money security interest is perfected when the debtor receives
6 possession of the livestock;
- 7 b. The purchase-money secured party sends an authenticated notification to the
8 holder of the conflicting security interest;
- 9 c. The holder of the conflicting security interest receives the notification within
10 six months before the debtor receives possession of the livestock; and
- 11 d. The notification states that the person sending the notification has or expects
12 to acquire a purchase-money security interest in livestock of the debtor and
13 describes the livestock.
- 14 5. Subdivisions b through d of subsection 4 apply only if the holder of the conflicting
15 security interest had filed a financing statement covering the same types of
16 livestock:
- 17 a. If the purchase-money security interest is perfected by filing, before the date
18 of the filing; or
- 19 b. If the purchase-money security interest is temporarily perfected without filing
20 or possession under subsection 6 of section 41-09-32, before the beginning of
21 the twenty-day period thereunder.
- 22 6. Except as otherwise provided in subsection 7, a perfected purchase-money
23 security interest in software has priority over a conflicting security interest in the
24 same collateral, and, except as otherwise provided in section 41-09-47, a perfected
25 security interest in its identifiable proceeds also has priority, to the extent that the
26 purchase-money security interest in the goods in which the software was acquired
27 for use has priority in the goods and proceeds of the goods under this section.
- 28 7. If more than one security interest qualifies for priority in the same collateral under
29 subsection 1, 2, 3, or 4:
- 30 a. A security interest securing an obligation incurred as all or part of the price of
31 the collateral has priority over a security interest securing an obligation

1 incurred for value given to enable the debtor to acquire rights in or the use of
2 collateral; and

3 b. In all other cases, subsection 1 of section 41-09-42 applies to the qualifying
4 security interests.

5 **41-09-45. (9-325) Priority of security interests in transferred collateral.**

6 1. Except as otherwise provided in subsection 2, a security interest created by a
7 debtor is subordinate to a security interest in the same collateral created by
8 another person if:

9 a. The debtor acquired the collateral subject to the security interest created by
10 the other person;

11 b. The security interest created by the other person was perfected when the
12 debtor acquired the collateral; and

13 c. There is no period thereafter when the security interest is unperfected.

14 2. Subsection 1 subordinates a security interest only if the security interest:

15 a. Otherwise would have priority solely under subsection 1 of section 41-09-42
16 or section 41-09-44; or

17 b. Arose solely under subsection 3 of section 41-02-90 or subsection 5 of
18 section 41-02.1-56.

19 **41-09-46. (9-326) Priority of security interests created by new debtor.**

20 1. Subject to subsection 2, a security interest created by a new debtor which is
21 perfected by a filed financing statement that is effective solely under section
22 41-09-79 in collateral in which a new debtor has or acquires rights is subordinate to
23 a security interest in the same collateral which is perfected other than by a filed
24 financing statement that is effective solely under section 41-09-79.

25 2. The other provisions of this part determine the priority among conflicting security
26 interests in the same collateral perfected by filed financing statements that are
27 effective solely under section 41-09-79. However, if the security agreements to
28 which a new debtor became bound as debtor were not entered into by the same
29 original debtor, the conflicting security interests rank according to priority in time of
30 the new debtor's having become bound.

1 **41-09-47. (9-327) Priority of security interests in deposit account.** The following
2 rules govern priority among conflicting security interests in the same deposit account:

- 3 1. A security interest held by a secured party having control of the deposit account
4 under section 41-09-04 has priority over a conflicting security interest held by a
5 secured party that does not have control.
- 6 2. Except as otherwise provided in subsections 3 and 4, security interests perfected
7 by control under section 41-09-34 rank according to priority in time of obtaining
8 control.
- 9 3. Except as otherwise provided in subsection 4, a security interest held by the bank
10 with which the deposit account is maintained has priority over a conflicting security
11 interest held by another secured party.
- 12 4. A security interest perfected by control under subdivision c of subsection 1 of
13 section 41-09-04 has priority over a security interest held by the bank with which
14 the deposit account is maintained.

15 **41-09-48. (9-328) Priority of security interests in investment property.** The
16 following rules govern priority among conflicting security interests in the same investment
17 property:

- 18 1. A security interest held by a secured party having control of investment property
19 under section 41-09-06 has priority over a security interest held by a secured party
20 that does not have control of the investment property.
- 21 2. Except as otherwise provided in subsections 3 and 4, conflicting security interests
22 held by secured parties each of which has control under section 41-09-06 rank
23 according to priority in time of:
 - 24 a. If the collateral is a security, obtaining control;
 - 25 b. If the collateral is a security entitlement carried in a securities account and:
 - 26 (1) If the secured party obtained control under subdivision a of
27 subsection 4 of section 41-08-06, the secured party's becoming the
28 person for which the securities account is maintained;
 - 29 (2) If the secured party obtained control under subdivision b of
30 subsection 4 of section 41-08-06, the securities intermediary's
31 agreement to comply with the secured party's entitlement orders with

1 respect to security entitlements carried or to be carried in the securities
2 account; or

3 (3) If the secured party obtained control through another person under
4 subdivision c of subsection 4 of section 41-08-06, the time on which
5 priority would be based under this subsection if the other person were
6 the secured party; or

7 c. If the collateral is a commodity contract carried with a commodity
8 intermediary, the satisfaction of the requirement for control specified in
9 subdivision b of subsection 2 of section 41-09-06 with respect to commodity
10 contracts carried or to be carried with the commodity intermediary.

11 3. A security interest held by a securities intermediary in a security entitlement or a
12 securities account maintained with the securities intermediary has priority over a
13 conflicting security interest held by another secured party.

14 4. A security interest held by a commodity intermediary in a commodity contract or a
15 commodity account maintained with the commodity intermediary has priority over a
16 conflicting security interest held by another secured party.

17 5. A security interest in a certificated security in registered form which is perfected by
18 taking delivery under subsection 1 of section 41-09-33 and not by control under
19 section 41-09-34 has priority over a conflicting security interest perfected by a
20 method other than control.

21 6. Conflicting security interests created by a broker, securities intermediary, or
22 commodity intermediary which are perfected without control under section
23 41-09-06 rank equally.

24 7. In all other cases, priority among conflicting security interests in investment
25 property is governed by sections 41-09-42 and 41-09-43.

26 **41-09-49. (9-329) Priority of security interests in letter-of-credit right.** The
27 following rules govern priority among conflicting security interests in the same letter-of-credit
28 right:

29 1. A security interest held by a secured party having control of the letter-of-credit right
30 under section 41-09-07 has priority to the extent of its control over a conflicting
31 security interest held by a secured party that does not have control.

1 2. Security interests perfected by control under section 41-09-34 rank according to
2 priority in time of obtaining control.

3 **41-09-50. (9-330) Priority of purchaser of chattel paper or instrument.**

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

7 a. In good faith and in the ordinary course of the purchaser's business, the
8 purchaser gives new value and takes possession of the chattel paper or
9 obtains control of the chattel paper under section 41-09-05; and

10 b. The chattel paper does not indicate that it has been assigned to an identified
11 assignee other than the purchaser.

12 2. A purchaser of chattel paper has priority over a security interest in the chattel
13 paper which is claimed other than merely as proceeds of inventory subject to a
14 security interest if the purchaser gives new value and takes possession of the
15 chattel paper or obtains control of the chattel paper under section 41-09-05 in good
16 faith, in the ordinary course of the purchaser's business, and without knowledge
17 that the purchase violates the rights of the secured party.

18 3. Except as otherwise provided in section 41-09-47, a purchaser having priority in
19 chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel
20 paper to the extent that:

21 a. Section 41-09-42 provides for priority in the proceeds; or

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

25 4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of
26 an instrument has priority over a security interest in the instrument perfected by a
27 method other than possession if the purchaser gives value and takes possession
28 of the instrument in good faith and without knowledge that the purchase violates
29 the rights of the secured party.

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

4 6. For purposes of subsections 2 and 4, if chattel paper or an instrument indicates
5 that it has been assigned to an identified secured party other than the purchaser, a
6 purchaser of the chattel paper or instrument has knowledge that the purchase
7 violates the rights of the secured party.

8 **41-09-51. (9-331) Priority of rights of purchasers of instruments, documents, and**
9 **securities under other articles - Priority of interests in financial assets and security**
10 **entitlements under chapter 41-08.**

11 1. This chapter does not limit the rights of a holder in due course of a negotiable
12 instrument, a holder to which a negotiable document of title has been duly
13 negotiated, or a protected purchaser of a security. These holders or purchasers
14 take priority over an earlier security interest, even if perfected, to the extent
15 provided in chapters 41-03, 41-07, and 41-08.

16 2. This chapter does not limit the rights of or impose liability on a person to the extent
17 that the person is protected against the assertion of a claim under chapter 41-08.

18 3. Filing under this chapter does not constitute notice of a claim or defense to the
19 holders, purchasers, or persons described in subsections 1 and 2.

20 **41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.**

21 1. A transferee of money takes the money free of a security interest unless the
22 transferee acts in collusion with the debtor in violating the rights of the secured
23 party.

24 2. A transferee of funds from a deposit account takes the funds free of a security
25 interest in the deposit account unless the transferee acts in collusion with the
26 debtor in violating the rights of the secured party.

27 **41-09-53. (9-333) Priority of certain liens arising by operation of law.**

28 1. In this section, "possessory lien" means an interest, other than a security interest
29 or an agricultural lien:

- 1 a. Which secures payment or performance of an obligation for services or
- 2 materials furnished with respect to goods by a person in the ordinary course
- 3 of the person's business;
- 4 b. Which is created by statute or rule of law in favor of the person; and
- 5 c. Whose effectiveness depends on the person's possession of the goods.
- 6 2. A possessory lien on goods has priority over a security interest in the goods unless
- 7 the lien is created by a statute that expressly provides otherwise.

8 **41-09-54. (9-334) Priority of security interests in fixtures and crops.**

- 9 1. A security interest under this chapter may be created in goods that are fixtures or
- 10 may continue in goods that become fixtures. A security interest does not exist
- 11 under this chapter in ordinary building materials incorporated into an improvement
- 12 on land.
- 13 2. This chapter does not prevent creation of an encumbrance upon fixtures under
- 14 real-property law.
- 15 3. In cases not governed by subsections 4 through 8, a security interest in fixtures is
- 16 subordinate to a conflicting interest of an encumbrancer or owner of the related
- 17 real property other than the debtor.
- 18 4. Except as otherwise provided in subsection 8, a perfected security interest in
- 19 fixtures has priority over a conflicting interest of an encumbrancer or owner of the
- 20 real property if the debtor has an interest of record in or is in possession of the real
- 21 property and:
- 22 a. The security interest is a purchase-money security interest;
- 23 b. The interest of the encumbrancer or owner arises before the goods become
- 24 fixtures; and
- 25 c. The security interest is perfected by a fixture filing before the goods become
- 26 fixtures or within twenty days thereafter.
- 27 5. A perfected security interest in fixtures has priority over a conflicting interest of an
- 28 encumbrancer or owner of the real property if:
- 29 a. The debtor has an interest of record in the real property or is in possession of
- 30 the real property and the security interest:

- 1 (1) Is perfected by a fixture filing before the interest of the encumbrancer or
2 owner is of record; and
- 3 (2) Has priority over any conflicting interest of a predecessor in title of the
4 encumbrancer or owner;
- 5 b. Before the goods become fixtures, the security interest is perfected by any
6 method permitted by this chapter and the fixtures are readily removable:
- 7 (1) Factory or office machines;
- 8 (2) Equipment that is not primarily used or leased for use in the operation
9 of the real property; or
- 10 (3) Replacements of domestic appliances that are consumer goods;
- 11 c. The conflicting interest is a lien on the real property obtained by legal or
12 equitable proceedings after the security interest was perfected by any method
13 permitted by this chapter; or
- 14 d. The security interest is:
- 15 (1) Created in a manufactured home in a manufactured-home transaction;
16 and
- 17 (2) Perfected pursuant to a statute described in subdivision b of
18 subsection 1 of section 41-09-31.
- 19 6. A security interest in fixtures, whether or not perfected, has priority over a
20 conflicting interest of an encumbrancer or owner of the real property if:
- 21 a. The encumbrancer or owner has, in an authenticated record, consented to the
22 security interest or disclaimed an interest in the goods as fixtures; or
- 23 b. The debtor has a right to remove the goods as against the encumbrancer or
24 owner.
- 25 7. The priority of the security interest under subdivision b of subsection 6 continues
26 for a reasonable time if the debtor's right to remove the goods as against the
27 encumbrancer or owner terminates.
- 28 8. A mortgage is a construction mortgage to the extent that it secures an obligation
29 incurred for the construction of an improvement on land, including the acquisition
30 cost of the land, if a recorded record of the mortgage so indicates. Except as
31 otherwise provided in subsections 5 and 6, a security interest in fixtures is

1 subordinate to a construction mortgage if a record of the mortgage is recorded
2 before the goods become fixtures and the goods become fixtures before the
3 completion of the construction. A mortgage has this priority to the same extent as
4 a construction mortgage to the extent that it is given to refinance a construction
5 mortgage.

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

9 10. Subsection 9 prevails over any inconsistent provisions of section 47-16-03:

NOTE: Section 41-09-54(10) provides for insertion of state laws. Professor Bottrell suggests inserting Section 47-16-03.

10 **41-09-55. (9-335) Accessions.**

11 1. A security interest may be created in an accession and continues in collateral that
12 becomes an accession.

13 2. If a security interest is perfected when the collateral becomes an accession, the
14 security interest remains perfected in the collateral.

15 3. Except as otherwise provided in subsection 4, the other provisions of this part
16 determine the priority of a security interest in an accession.

17 4. A security interest in an accession is subordinate to a security interest in the whole
18 which is perfected by compliance with the requirements of a certificate-of-title
19 statute under subsection 2 of section 41-09-51.

20 5. After default, subject to sections 41-09-99 through 41-09-126, a secured party may
21 remove an accession from other goods if the security interest in the accession has
22 priority over the claims of every person having an interest in the whole.

23 6. A secured party that removes an accession from other goods under subsection 5
24 shall promptly reimburse any holder of a security interest or other lien on, or owner
25 of, the whole or of the other goods, other than the debtor, for the cost of repair of
26 any physical injury to the whole or the other goods. The secured party need not
27 reimburse the holder or owner for any diminution in value of the whole or the other
28 goods caused by the absence of the accession removed or by any necessity for
29 replacing it. A person entitled to reimbursement may refuse permission to remove

1 until the secured party gives adequate assurance for the performance of the
2 obligation to reimburse.

3 **41-09-56. (9-336) Commingled goods.**

4 1. In this section, "commingled goods" means goods that are physically united with
5 other goods in such a manner that their identity is lost in a product or mass.

6 2. A security interest does not exist in commingled goods as such. However, a
7 security interest may attach to a product or mass that results when goods become
8 commingled goods.

9 3. If collateral becomes commingled goods, a security interest attaches to the product
10 or mass.

11 4. If a security interest in collateral is perfected before the collateral becomes
12 commingled goods, the security interest that attaches to the product or mass under
13 subsection 3 is perfected.

14 5. Except as otherwise provided in subsection 6, the other provisions of this part
15 determine the priority of a security interest that attaches to the product or mass
16 under subsection 3.

17 6. If more than one security interest attaches to the product or mass under
18 subsection 3, the following rules determine priority:

19 a. A security interest that is perfected under subsection 4 has priority over a
20 security interest that is unperfected at the time the collateral becomes
21 commingled goods.

22 b. If more than one security interest is perfected under subsection 4, the security
23 interests rank equally in proportion to the value of the collateral at the time it
24 became commingled goods.

25 **41-09-57. (9-337) Priority of security interests in goods covered by certificate of**

26 **title.** If, while a security interest in goods is perfected by any method under the law of another
27 jurisdiction, this state issues a certificate of title that does not show that the goods are subject to
28 the security interest or contain a statement that they may be subject to security interests not
29 shown on the certificate:

30 1. A buyer of the goods, other than a person in the business of selling goods of that
31 kind, takes free of the security interest if the buyer gives value and receives

1 delivery of the goods after issuance of the certificate and without knowledge of the
2 security interest; and

3 2. The security interest is subordinate to a conflicting security interest in the goods
4 that attaches, and is perfected under subsection 2 of section 41-09-31, after
5 issuance of the certificate and without the conflicting secured party's knowledge of
6 the security interest.

7 **41-09-58. (9-338) Priority of security interest or agricultural lien perfected by filed**
8 **financing statement providing certain incorrect information.** If a security interest or
9 agricultural lien is perfected by a filed financing statement providing information described in
10 subdivision e of subsection 2 of section 41-09-87 which is incorrect at the time the financing
11 statement is filed:

12 1. The security interest or agricultural lien is subordinate to a conflicting perfected
13 security interest in the collateral to the extent that the holder of the conflicting
14 security interest gives value in reasonable reliance upon the incorrect information;
15 and

16 2. A purchaser, other than a secured party, of the collateral takes free of the security
17 interest or agricultural lien to the extent that, in reasonable reliance upon the
18 incorrect information, the purchaser gives value and, in the case of chattel paper,
19 documents, goods, instruments, or a security certificate, receives delivery of the
20 collateral.

21 **41-09-59. (9-339) Priority subject to subordination.** This chapter does not preclude
22 subordination by agreement by a person entitled to priority.

23 **41-09-60. (9-340) Effectiveness of right of recoupment or set-off against deposit**
24 **account.**

25 1. Except as otherwise provided in subsection 3, a bank with which a deposit account
26 is maintained may exercise any right of recoupment or set-off against a secured
27 party that holds a security interest in the deposit account.

28 2. Except as otherwise provided in subsection 3, the application of this chapter to a
29 security interest in a deposit account does not affect a right of recoupment or
30 set-off of the secured party as to a deposit account maintained with the secured
31 party.

1 3. The exercise by a bank of a set-off against a deposit account is ineffective against
2 a secured party that holds a security interest in the deposit account which is
3 perfected by control under subdivision c of subsection 1 of section 41-09-04, if the
4 set-off is based on a claim against the debtor.

5 **41-09-61. (9-341) Bank's rights and duties with respect to deposit account.**

6 Except as otherwise provided in subsection 3 of section 41-09-60, and unless the bank
7 otherwise agrees in an authenticated record, a bank's rights and duties with respect to a
8 deposit account maintained with the bank are not terminated, suspended, or modified by:

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

12 **41-09-62. (9-342) Bank's right to refuse to enter into or disclose existence of**
13 **control agreement.** This chapter does not require a bank to enter into an agreement of the
14 kind described in subdivision b of subsection 1 of section 41-09-04, even if its customer so
15 requests or directs. A bank that has entered into such an agreement is not required to confirm
16 the existence of the agreement to another person unless requested to do so by its customer.

17 **41-09-63. (9-401) Alienability of debtor's rights.**

- 18 1. Except as otherwise provided in subsection 2 and sections 41-09-68 through
19 41-09-71, whether a debtor's rights in collateral may be voluntarily or involuntarily
20 transferred is governed by law other than this chapter.
21 2. An agreement between the debtor and secured party which prohibits a transfer of
22 the debtor's rights in collateral or makes the transfer a default does not prevent the
23 transfer from taking effect.

24 **41-09-64. (9-402) Secured party not obligated on contract of debtor or in tort.** The
25 existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or
26 use collateral, without more, does not subject a secured party to liability in contract or tort for
27 the debtor's acts or omissions.

28 **41-09-65. (9-403) Agreement not to assert defenses against assignee.**

- 29 1. In this section, "value" has the meaning provided in subsection 1 of section
30 41-03-29.

- 1 2. Except as otherwise provided in this section, an agreement between an account
2 debtor and an assignor not to assert against an assignee any claim or defense that
3 the account debtor may have against the assignor is enforceable by an assignee
4 that takes an assignment:
- 5 a. For value;
6 b. In good faith;
7 c. Without notice of a claim of a property or possessory right to the property
8 assigned; and
9 d. Without notice of a defense or claim in recoupment of the type that may be
10 asserted against a person entitled to enforce a negotiable instrument under
11 subsection 1 of section 41-03-31.
- 12 3. Subsection 2 does not apply to defenses of a type that may be asserted against a
13 holder in due course of a negotiable instrument under subsection 2 of section
14 41-03-31.
- 15 4. In a consumer transaction, if a record evidences the account debtor's obligation,
16 law other than this chapter requires that the record include a statement to the effect
17 that the rights of an assignee are subject to claims or defenses that the account
18 debtor could assert against the original obligee, and the record does not include
19 such a statement:
- 20 a. The record has the same effect as if the record included such a statement;
21 and
22 b. The account debtor may assert against an assignee those claims and
23 defenses that would have been available if the record included such a
24 statement.
- 25 5. This section is subject to law other than this chapter which establishes a different
26 rule for an account debtor who is an individual and who incurred the obligation
27 primarily for personal, family, or household purposes.
- 28 6. Except as otherwise provided in subsection 4, this section does not displace law
29 other than this chapter which gives effect to an agreement by an account debtor
30 not to assert a claim or defense against an assignee.

1 **41-09-66. (9-404) Rights acquired by assignee - Claims and defenses against**
2 **assignee.**

3 1. Unless an account debtor has made an enforceable agreement not to assert
4 defenses or claims, and subject to subsections 2 through 5, the rights of an
5 assignee are subject to:

6 a. All terms of the agreement between the account debtor and assignor and any
7 defense or claim in recoupment arising from the transaction that gave rise to
8 the contract; and

9 b. Any other defense or claim of the account debtor against the assignor which
10 accrues before the account debtor receives a notification of the assignment
11 authenticated by the assignor or the assignee.

12 2. Subject to subsection 3 and except as otherwise provided in subsection 4, the
13 claim of an account debtor against an assignor may be asserted against an
14 assignee under subsection 1 only to reduce the amount the account debtor owes.

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

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

25 5. This section does not apply to an assignment of a health care insurance
26 receivable.

27 **41-09-67. (9-405) Modification of assigned contract.**

28 1. A modification of or substitution for an assigned contract is effective against an
29 assignee if made in good faith. The assignee acquires corresponding rights under
30 the modified or substituted contract. The assignment may provide that the

1 modification or substitution is a breach of contract by the assignor. This subsection
2 is subject to subsections 2 through 4.

3 2. Subsection 1 applies to the extent that:

4 a. The right to payment or a part thereof under an assigned contract has not
5 been fully earned by performance; or

6 b. The right to payment or a part thereof has been fully earned by performance
7 and the account debtor has not received notification of the assignment under
8 subsection 1 of section 41-09-68.

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

12 4. This section does not apply to an assignment of a health care insurance
13 receivable.

14 **41-09-68. (9-406) Discharge of account debtor - Notification of assignment -**

15 **Identification and proof of assignment - Restrictions on assignment of accounts, chattel**
16 **paper, payment intangibles, and promissory notes ineffective.**

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

24 2. Subject to subsection 8, notification is ineffective under subsection 1:

25 a. If it does not reasonably identify the rights assigned;

26 b. To the extent that an agreement between an account debtor and a seller of a
27 payment intangible limits the account debtor's duty to pay a person other than
28 the seller and the limitation is effective under law other than this chapter; or

29 c. At the option of an account debtor, if the notification notifies the account
30 debtor to make less than the full amount of any installment or other periodic
31 payment to the assignee, even if:

- 1 (1) Only a portion of the account, chattel paper, or payment intangible has
2 been assigned to that assignee;
- 3 (2) A portion has been assigned to another assignee; or
4 (3) The account debtor knows that the assignment to that assignee is
5 limited.
- 6 3. Subject to subsection 8, if requested by the account debtor, an assignee shall
7 seasonably furnish reasonable proof that the assignment has been made. Unless
8 the assignee complies, the account debtor may discharge its obligation by paying
9 the assignor, even if the account debtor has received a notification under
10 subsection 1.
- 11 4. Except as otherwise provided in subsection 5 and sections 41-02.1-33 and
12 41-09-69, and subject to subsection 8, a term in an agreement between an account
13 debtor and an assignor or in a promissory note is ineffective to the extent that it:
- 14 a. Prohibits, restricts, or requires the consent of the account debtor or person
15 obligated on the promissory note to the assignment or transfer of, or the
16 creation, attachment, perfection, or enforcement of a security interest in, the
17 account, chattel paper, payment intangible, or promissory note; or
- 18 b. Provides that the assignment or transfer or the creation, attachment,
19 perfection, or enforcement of the security interest may give rise to a default,
20 breach, right of recoupment, claim, defense, termination, right of termination,
21 or remedy under the account, chattel paper, payment intangible, or
22 promissory note.
- 23 5. Subsection 4 does not apply to the sale of a payment intangible or promissory
24 note.
- 25 6. Except as otherwise provided in sections 41-02.1-33 and 41-09-69 and subject to
26 subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or
27 requires the consent of a government, governmental body or official, or account
28 debtor to the assignment or transfer of, or creation of a security interest in, an
29 account or chattel paper is ineffective to the extent that the rule of law, statute, or
30 regulation:

- 1 a. Prohibits, restricts, or requires the consent of the government, governmental
2 body or official, or account debtor to the assignment or transfer of, or the
3 creation, attachment, perfection, or enforcement of a security interest in the
4 account or chattel paper; or
5 b. Provides that the assignment, transfer, creation, attachment, perfection, or
6 enforcement of the security interest may give rise to a default, breach, right of
7 recoupment, claim, defense, termination, right of termination, or remedy under
8 the account or chattel paper.
9 7. Subject to subsection 8, an account debtor may not waive or vary its option under
10 subdivision c of subsection 2.
11 8. This section is subject to law other than this chapter which establishes a different
12 rule for an account debtor who is an individual and who incurred the obligation
13 primarily for personal, family, or household purposes.
14 9. This section does not apply to an assignment of a health care insurance
15 receivable.
16 10. This section prevails over any inconsistent provisions of the following statutes,
17 rules, and regulations:

NOTE: Section 41-09-68(10) provides for insertion of state laws regarding account debtors.

18 **41-09-69. (9-407) Restrictions on creation or enforcement of security interest in**
19 **leasehold interest or in lessor's residual interest.**

- 20 1. Except as otherwise provided in subsection 2, a term in a lease agreement is
21 ineffective to the extent that the term:
22 a. Prohibits, restricts, or requires the consent of a party to the lease to the
23 assignment, transfer, creation, attachment, perfection, or enforcement of a
24 security interest in an interest of a party under the lease contract or in the
25 lessor's residual interest in the goods; or
26 b. Provides that the assignment, transfer, creation, attachment, perfection, or
27 enforcement of the security interest may give rise to a default, breach, right of
28 recoupment, claim, defense, termination, right of termination, or remedy under
29 the lease.

- 1 2. Except as otherwise provided in subsection 7 of section 41-02.1-33, a term
2 described in subdivision b of subsection 1 is effective to the extent that there is:
3 a. A transfer by the lessee of the lessee's right of possession or use of the
4 goods in violation of the term; or
5 b. A delegation of a material performance of either party to the lease contract in
6 violation of the term.
- 7 3. The creation, attachment, perfection, or enforcement of a security interest in the
8 lessor's interest under the lease contract or the lessor's residual interest in the
9 goods is not a transfer that materially impairs the lessee's prospect of obtaining
10 return performance or materially changes the duty of or materially increases the
11 burden or risk imposed on the lessee within the purview of subsection 4 of section
12 41-02.1-33 unless, and then only to the extent that, enforcement actually results in
13 a delegation of material performance of the lessor.

14 **41-09-70. (9-408) Restrictions on assignment of promissory notes, health care**
15 **insurance receivables, and certain general intangibles ineffective.**

- 16 1. Except as otherwise provided in subsection 2, a term in a promissory note or in an
17 agreement between an account debtor and a debtor which relates to a health care
18 insurance receivable or a general intangible, including a contract, permit, license,
19 or franchise, and which term prohibits, restricts, or requires the consent of the
20 person obligated on the promissory note or the account debtor to, the assignment
21 or transfer of, or creation, attachment, or perfection of a security interest in, the
22 promissory note, health care insurance receivable, or general intangible, is
23 ineffective to the extent that the term:
- 24 a. Would impair the creation, attachment, or perfection of a security interest; or
25 b. Provides that the assignment, transfer, creation, attachment, or perfection of
26 the security interest may give rise to a default, breach, right of recoupment,
27 claim, defense, termination, right of termination, or remedy under the
28 promissory note, health care insurance receivable, or general intangible.
- 29 2. Subsection 1 applies to a security interest in a payment intangible or promissory
30 note only if the security interest arises out of a sale of the payment intangible or
31 promissory note.

- 1 3. A rule of law, statute, or regulation that prohibits, restricts, or requires the consent
2 of a government, governmental body or official, person obligated on a promissory
3 note, or account debtor to the assignment or transfer of, or creation of a security
4 interest in, a promissory note, health care insurance receivable, or general
5 intangible, including a contract, permit, license, or franchise between an account
6 debtor and a debtor, is ineffective to the extent that the rule of law, statute, or
7 regulation:
- 8 a. Would impair the creation, attachment, or perfection of a security interest; or
9 b. Provides that the assignment, transfer, creation, attachment, or perfection of
10 the security interest may give rise to a default, breach, right of recoupment,
11 claim, defense, termination, right of termination, or remedy under the
12 promissory note, health care insurance receivable, or general intangible.
- 13 4. To the extent that a term in a promissory note or in an agreement between an
14 account debtor and a debtor which relates to a health care insurance receivable or
15 general intangible or a rule of law, statute, or regulation described in subsection 3
16 would be effective under law other than this chapter but is ineffective under
17 subsection 1 or 3, the creation, attachment, or perfection of a security interest in
18 the promissory note, health care insurance receivable, or general intangible:
- 19 a. Is not enforceable against the person obligated on the promissory note or the
20 account debtor;
- 21 b. Does not impose a duty or obligation on the person obligated on the
22 promissory note or the account debtor;
- 23 c. Does not require the person obligated on the promissory note or the account
24 debtor to recognize the security interest, pay or render performance to the
25 secured party, or accept payment or performance from the secured party;
- 26 d. Does not entitle the secured party to use or assign the debtor's rights under
27 the promissory note, health care insurance receivable, or general intangible,
28 including any related information or materials furnished to the debtor in the
29 transaction giving rise to the promissory note, health care insurance
30 receivable, or general intangible;

- 1 e. Does not entitle the secured party to use, assign, possess, or have access to
2 any trade secrets or confidential information of the person obligated on the
3 promissory note or the account debtor; and
- 4 f. Does not entitle the secured party to enforce the security interest in the
5 promissory note, health care insurance receivable, or general intangible.
- 6 5. This section prevails over any inconsistent provisions of the following statutes,
7 rules, and regulations:

NOTE: Section 41-09-70(5) provides for insertion of state laws regarding assignments of promissory notes. Section 28-21-14 is a possible law to insert.

8 **41-09-71. (9-409) Restrictions on assignment of letter-of-credit rights ineffective.**

- 9 1. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice
10 applicable to the letter of credit which prohibits, restricts, or requires the consent of
11 an applicant, issuer, or nominated person to a beneficiary's assignment of or
12 creation of a security interest in a letter-of-credit right is ineffective to the extent
13 that the term or rule of law, statute, regulation, custom, or practice:
- 14 a. Would impair the creation, attachment, or perfection of a security interest in
15 the letter-of-credit right; or
- 16 b. Provides that the assignment, creation, attachment, or perfection of the
17 security interest may give rise to a default, breach, right of recoupment, claim,
18 defense, termination, right of termination, or remedy under the letter-of-credit
19 right.
- 20 2. To the extent that a term in a letter of credit is ineffective under subsection 1 but
21 would be effective under law other than this chapter or a custom or practice
22 applicable to the letter of credit, to the transfer of a right to draw or otherwise
23 demand performance under the letter of credit, or to the assignment of a right to
24 proceeds of the letter of credit, the creation, attachment, or perfection of a security
25 interest in the letter-of-credit right:
- 26 a. Is not enforceable against the applicant, issuer, nominated person, or
27 transferee beneficiary;
- 28 b. Imposes no duties or obligations on the applicant, issuer, nominated person,
29 or transferee beneficiary; and

- 1 c. Does not require the applicant, issuer, nominated person, or transferee
2 beneficiary to recognize the security interest, pay or render performance to
3 the secured party, or accept payment or other performance from the secured
4 party.

5 **41-09-72. (9-501) Filing office.**

- 6 1. Except as otherwise provided in subsection 2, if the local law of this state governs
7 perfection of a security interest or agricultural lien, the office in which to file a
8 financing statement to perfect the security interest or agricultural lien is:
9 a. The office designated for the filing or recording of a record of a mortgage on
10 the related real property, if:
11 (1) The collateral is as-extracted collateral or timber to be cut; or
12 (2) The financing statement is filed as a fixture filing and the collateral is
13 goods that are or are to become fixtures; or
14 b. The office of the register of deeds in any county in this state or in the office of
15 the secretary of state, in all other cases, including a case in which the
16 collateral is goods that are or are to become fixtures and the financing
17 statement is not filed as a fixture filing.
18 2. The office in which to file a financing statement to perfect a security interest in
19 collateral, including fixtures, of a transmitting utility is the office of the secretary of
20 state. The financing statement also constitutes a fixture filing as to the collateral
21 indicated in the financing statement which is or is to become fixtures.

NOTE: Section 41-09-72(1)(b) provides for insertion of locations where financing statements are filed. Subsection 2 also provides for insertion of locations where financing statements are filed. Professor Bottrell suggests insertion of "register of deeds or secretary of state" and "secretary of state" accordingly.

22 **41-09-73. (9-502) Contents of financing statement - Record of mortgage as**
23 **financing statement - Time of filing financing statement - Amending financing statement.**

- 24 1. Subject to subsection 2, a financing statement is sufficient only if the statement:
25 a. Provides the name of the debtor;
26 b. Provides the name of the secured party or a representative of the secured
27 party;
28 c. Indicates the collateral covered by the financing statement; and

- 1 d. If it is a financing statement that is to be filed to gain protection under the
2 central notice system, includes a reasonable description of the property,
3 including the county in which the property is located, and any other additional
4 information required by the Food Security Act of 1985 [Pub. L. 99-198; Stat.
5 1535; 7 U.S.C. 1631], as prescribed by the secretary of state, and, to be
6 sufficient a financing statement filed after July 1, 1987, includes either the
7 social security number or federal tax identification number of the debtor.
- 8 2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient,
9 a financing statement that covers as-extracted collateral or timber to be cut, or
10 which is filed as a fixture filing and covers goods that are or are to become fixtures,
11 must satisfy subsection 1 and also:
- 12 a. Indicate that it covers this type of collateral;
13 b. Indicate that it is to be filed for record in the real-property records;
14 c. Provide a description of the real property to which the collateral is related
15 sufficient to give constructive notice of a mortgage under the law of this state
16 if the description were contained in a record of the mortgage of the real
17 property; and
- 18 d. If the debtor does not have an interest of record in the real property, provide
19 the name of a record owner.
- 20 3. A record of a mortgage is effective, from the date of recording, as a financing
21 statement filed as a fixture filing or as a financing statement covering as-extracted
22 collateral or timber to be cut only if:
- 23 a. The record indicates the goods or accounts that it covers;
24 b. The goods are or are to become fixtures related to the real property described
25 in the record or the collateral is related to the real property described in the
26 record and is as-extracted collateral or timber to be cut;
- 27 c. The record satisfies the requirements for a financing statement in this section
28 other than an indication that it is to be filed in the real-property records; and
- 29 d. The record is duly recorded.
- 30 4. A financing statement may be filed before a security agreement is made or a
31 security interest otherwise attaches.

1 5. A financing statement filed to gain protection under the central notice system must
2 be amended within three months of a material change to reflect that change. The
3 amended financing statement must be signed by both the debtor and secured party
4 and filed in the same manner as the original financing statement.

5 **41-09-74. (9-503) Name of debtor and secured party.**

6 1. A financing statement sufficiently provides the name of the debtor:

7 a. If the debtor is a registered organization, only if the financing statement
8 provides the name of the debtor indicated on the public record of the debtor's
9 jurisdiction of organization which shows the debtor to have been organized;

10 b. If the debtor is a decedent's estate, only if the financing statement provides
11 the name of the decedent and indicates that the debtor is an estate;

12 c. If the debtor is a trust or a trustee acting with respect to property held in trust,
13 only if the financing statement:

14 (1) Provides the name specified for the trust in its organic documents or, if
15 no name is specified, provides the name of the settlor and additional
16 information sufficient to distinguish the debtor from other trusts having
17 one or more of the same settlors; and

18 (2) Indicates, in the debtor's name or otherwise, that the debtor is a trust or
19 is a trustee acting with respect to property held in trust; and

20 d. In other cases:

21 (1) If the debtor has a name, only if it provides the individual or
22 organizational name of the debtor; and

23 (2) If the debtor does not have a name, only if it provides the names of the
24 partners, members, associates, or other persons comprising the debtor.

25 2. A financing statement that provides the name of the debtor in accordance with
26 subsection 1 is not rendered ineffective by the absence of:

27 a. A trade name or other name of the debtor; or

28 b. Unless required under paragraph 2 of subdivision d of subsection 1, names of
29 partners, members, associates, or other persons comprising the debtor.

30 3. A financing statement that provides only the debtor's trade name does not
31 sufficiently provide the name of the debtor.

1 4. Failure to indicate the representative capacity of a secured party or representative
2 of a secured party does not affect the sufficiency of a financing statement.

3 5. A financing statement may provide the name of more than one debtor and the
4 name of more than one secured party.

5 **41-09-75. (9-504) Indication of collateral.** A financing statement sufficiently indicates
6 the collateral that it covers if the financing statement provides:

7 1. A description of the collateral pursuant to section 41-09-08; or

8 2. An indication that the financing statement covers all assets or all personal property.

9 **41-09-76. (9-505) Filing and compliance with other statutes and treaties for**
10 **consignments, leases, other bailments, and other transactions.**

11 1. A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment
12 intangible or promissory note may file a financing statement, or may comply with a
13 statute or treaty described in subsection 1 of section 41-09-31, using the terms
14 "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee",
15 "owner", "registered owner", "buyer", "seller", or words of similar import, instead of
16 the terms "secured party" and "debtor".

17 2. This part applies to the filing of a financing statement under subsection 1 and, as
18 appropriate, to compliance that is equivalent to filing a financing statement under
19 subsection 2 of section 41-09-31, but the filing or compliance is not of itself a factor
20 in determining whether the collateral secures an obligation. If it is determined for
21 another reason that the collateral secures an obligation, a security interest held by
22 the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the
23 collateral is perfected by the filing or compliance.

24 **41-09-77. (9-506) Effect of errors or omissions.**

25 1. A financing statement substantially satisfying the requirements of this part is
26 effective, even if the financing statement has minor errors or omissions, unless the
27 errors or omissions make the financing statement seriously misleading.

28 2. Except as otherwise provided in subsection 3, a financing statement that fails
29 sufficiently to provide the name of the debtor in accordance with subsection 1 of
30 section 41-09-74 is seriously misleading.

1 3. If a search of the records of the filing office under the debtor's correct name, using
2 the filing office's standard search logic, if any, would disclose a financing statement
3 that fails sufficiently to provide the name of the debtor in accordance with
4 subsection 1 of section 41-09-74, the name provided does not make the financing
5 statement seriously misleading.

6 4. For purposes of subsection 2 of section 41-09-79, the "debtor's correct name" in
7 subsection 3 means the correct name of the new debtor.

8 **41-09-78. (9-507) Effect of certain events on effectiveness of financing statement.**

9 1. A filed financing statement remains effective with respect to collateral that is sold,
10 exchanged, leased, licensed, or otherwise disposed of and in which a security
11 interest or agricultural lien continues, even if the secured party knows of or
12 consents to the disposition.

13 2. Except as otherwise provided in subsection 3 and section 41-09-79, a financing
14 statement is not rendered ineffective if, after the financing statement is filed, the
15 information provided in the financing statement becomes seriously misleading
16 under section 41-09-77.

17 3. If a debtor so changes its name that a filed financing statement becomes seriously
18 misleading under section 41-09-77:

19 a. The financing statement is effective to perfect a security interest in collateral
20 acquired by the debtor before, or within four months after, the change; and

21 b. The financing statement is not effective to perfect a security interest in
22 collateral acquired by the debtor more than four months after the change,
23 unless an amendment to the financing statement which renders the financing
24 statement not seriously misleading is filed within four months after the
25 change.

26 **41-09-79. (9-508) Effectiveness of financing statement if new debtor becomes**
27 **bound by security agreement.**

28 1. Except as otherwise provided in this section, a filed financing statement naming an
29 original debtor is effective to perfect a security interest in collateral in which a new
30 debtor has or acquires rights to the extent that the financing statement would have
31 been effective had the original debtor acquired rights in the collateral.

- 1 2. If the difference between the name of the original debtor and that of the new debtor
2 causes a filed financing statement that is effective under subsection 1 to be
3 seriously misleading under section 41-09-77:
- 4 a. The financing statement is effective to perfect a security interest in collateral
5 acquired by the new debtor before, and within four months after, the new
6 debtor becomes bound under subsection 4 of section 41-09-13; and
- 7 b. The financing statement is not effective to perfect a security interest in
8 collateral acquired by the new debtor more than four months after the new
9 debtor becomes bound under subsection 4 of section 41-09-13 unless an
10 initial financing statement providing the name of the new debtor is filed before
11 the expiration of that time.
- 12 3. This section does not apply to collateral as to which a filed financing statement
13 remains effective against the new debtor under subsection 1 of section 41-09-78.

14 **41-09-80. (9-509) Persons entitled to file a record.**

- 15 1. A person may file an initial financing statement, amendment that adds collateral
16 covered by a financing statement, or amendment that adds a debtor to a financing
17 statement only if:
- 18 a. The debtor authorizes the filing in an authenticated record or pursuant to
19 subsection 2 or 3; or
- 20 b. The person holds an agricultural lien that has become effective at the time of
21 filing and the financing statement covers only collateral in which the person
22 holds an agricultural lien.
- 23 2. By authenticating or becoming bound as debtor by a security agreement, a debtor
24 or new debtor authorizes the filing of an initial financing statement, and an
25 amendment, covering:
- 26 a. The collateral described in the security agreement; and
- 27 b. Property that becomes collateral under subdivision b of subsection 1 of
28 section 41-09-35, regardless of whether the security agreement expressly
29 covers proceeds.
- 30 3. By acquiring collateral in which a security interest or agricultural lien continues
31 under subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the

1 filing of an initial financing statement, and an amendment, covering the collateral
2 and property that becomes collateral under subdivision b of subsection 1 of section
3 41-09-35.

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

7 a. The secured party of record authorizes the filing; or

8 b. The amendment is a termination statement for a financing statement as to
9 which the secured party of record has failed to file or send a termination
10 statement as required by subsection 1 or 3 of section 41-09-84, the debtor
11 authorizes the filing, and the termination statement indicates that the debtor
12 authorized it to be filed.

13 5. If there is more than one secured party of record for a financing statement, each
14 secured party of record may authorize the filing of an amendment under
15 subsection 4.

16 **41-09-81. (9-510) Effectiveness of filed record.**

17 1. A filed record is effective only to the extent that it was filed by a person that may
18 file it under section 41-09-80.

19 2. A record authorized by one secured party of record does not affect the financing
20 statement with respect to another secured party of record.

21 3. A continuation statement that is not filed within the six-month period prescribed by
22 subsection 4 of section 41-09-86 is ineffective.

23 **41-09-82. (9-511) Secured party of record.**

24 1. A secured party of record with respect to a financing statement is a person whose
25 name is provided as the name of the secured party or a representative of the
26 secured party in an initial financing statement that has been filed. If an initial
27 financing statement is filed under subsection 1 of section 41-09-85, the assignee
28 named in the initial financing statement is the secured party of record with respect
29 to the financing statement.

30 2. If an amendment of a financing statement which provides the name of a person as
31 a secured party or a representative of a secured party is filed, the person named in

1 the amendment is a secured party of record. If an amendment is filed under
2 subsection 2 of section 41-09-85, the assignee named in the amendment is a
3 secured party of record.

4 3. A person remains a secured party of record until the filing of an amendment of the
5 financing statement which deletes the person.

6 **41-09-83. (9-512) Amendment of financing statement.**

7 Alternative A

8 1. Subject to section 41-09-80, a person may add or delete collateral covered by,
9 continue or terminate the effectiveness of, or, subject to subsection 5, otherwise
10 amend the information provided in, a financing statement by filing an amendment
11 that:

12 a. Identifies, by its file number, the initial financing statement to which the
13 amendment relates; and

14 b. If the amendment relates to an initial financing statement filed or recorded in a
15 filing office described in subdivision a of subsection 1 of section 41-09-72,
16 provides the information specified in subsection 2 of section 41-09-73.

17 Alternative B

18 1. Subject to section 41-09-80, a person may add or delete collateral covered by,
19 continue or terminate the effectiveness of, or, subject to subsection 5, otherwise
20 amend the information provided in, a financing statement by filing an amendment
21 that:

22 a. Identifies, by its file number, the initial financing statement to which the
23 amendment relates; and

24 b. If the amendment relates to an initial financing statement filed or recorded in a
25 filing office described in subdivision a of subsection 1 of section 41-09-72,
26 provides the date and time that the initial financing statement was filed or
27 recorded and the information specified in subsection 2 of section 41-09-73.

28 2. Except as otherwise provided in section 41-09-86, the filing of an amendment does
29 not extend the period of effectiveness of the financing statement.

- 1 3. A financing statement that is amended by an amendment that adds collateral is
2 effective as to the added collateral only from the date of the filing of the
3 amendment.
- 4 4. A financing statement that is amended by an amendment that adds a debtor is
5 effective as to the added debtor only from the date of the filing of the amendment.
- 6 5. An amendment is ineffective to the extent it:
- 7 a. Purports to delete all debtors and fails to provide the name of a debtor to be
8 covered by the financing statement; or
- 9 b. Purports to delete all secured parties of record and fails to provide the name
10 of a new secured party of record.

NOTE: Section 41-09-83(1) provides for the language in Alternative A or Alternative B. Professor Bottrell suggests Alternative A.

11 **41-09-84. (9-513) Termination statement.**

- 12 1. A secured party shall cause the secured party of record for a financing statement
13 to file a termination statement for the financing statement if the financing statement
14 covers consumer goods and:
- 15 a. There is no obligation secured by the collateral covered by the financing
16 statement and no commitment to make an advance, incur an obligation, or
17 otherwise give value; or
- 18 b. The debtor did not authorize the filing of the initial financing statement.
- 19 2. To comply with subsection 1, a secured party shall cause the secured party of
20 record to file the termination statement:
- 21 a. Within one month after there is no obligation secured by the collateral covered
22 by the financing statement and no commitment to make an advance, incur an
23 obligation, or otherwise give value; or
- 24 b. If earlier, within twenty days after the secured party receives an authenticated
25 demand from a debtor.
- 26 3. In cases not governed by subsection 1, within twenty days after a secured party
27 receives an authenticated demand from a debtor, the secured party shall cause the
28 secured party of record for a financing statement to send to the debtor a
29 termination statement for the financing statement or file the termination statement
30 in the filing office if:

- 1 a. Except in the case of a financing statement covering accounts or chattel
2 paper that has been sold or goods that are the subject of a consignment,
3 there is no obligation secured by the collateral covered by the financing
4 statement and no commitment to make an advance, incur an obligation, or
5 otherwise give value;
- 6 b. The financing statement covers accounts or chattel paper that has been sold
7 but as to which the account debtor or other person obligated has discharged
8 its obligation;
- 9 c. The financing statement covers goods that were the subject of a consignment
10 to the debtor but are not in the debtor's possession; or
- 11 d. The debtor did not authorize the filing of the initial financing statement.
- 12 4. Except as otherwise provided in section 41-09-81, upon the filing of a termination
13 statement with the filing office, the financing statement to which the termination
14 statement relates ceases to be effective. Except as otherwise provided in section
15 41-09-81, for purposes of subsection 7 of section 41-09-90, subsection 1 of section
16 41-09-93, and subsection 3 of section 41-09-94, the filing with the filing office of a
17 termination statement relating to a financing statement that indicates that the
18 debtor is a transmitting utility also causes the effectiveness of the financing
19 statement to lapse.

20 **41-09-85. (9-514) Assignment of powers of secured party of record.**

- 21 1. Except as otherwise provided in subsection 3, an initial financing statement may
22 reflect an assignment of all of the secured party's power to authorize an
23 amendment to the financing statement by providing the name and mailing address
24 of the assignee as the name and address of the secured party.
- 25 2. Except as otherwise provided in subsection 3, a secured party of record may
26 assign of record all or part of its power to authorize an amendment to a financing
27 statement by filing in the filing office an amendment of the financing statement
28 which:
 - 29 a. Identifies, by its file number, the initial financing statement to which it relates;
 - 30 b. Provides the name of the assignor; and
 - 31 c. Provides the name and mailing address of the assignee.

1 3. An assignment of record of a security interest in a fixture covered by a record of a
2 mortgage which is effective as a financing statement filed as a fixture filing under
3 subsection 3 of section 41-09-73 may be made only by an assignment of record of
4 the mortgage in the manner provided by law of this state other than this title.

5 **41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of**
6 **lapsed financing statement.**

7 1. Except as otherwise provided in subsections 2, 5, 6, and 7, a filed financing
8 statement is effective for a period of five years after the date of filing.

9 2. Except as otherwise provided in subsections 5 through 7, an initial financing
10 statement filed in connection with a public-finance transaction or
11 manufactured-home transaction is effective for a period of thirty years after the
12 date of filing if it indicates that it is filed in connection with a public-finance
13 transaction or manufactured-home transaction.

14 3. The effectiveness of a filed financing statement lapses on the expiration of the
15 period of its effectiveness unless before the lapse a continuation statement is filed
16 pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective
17 and any security interest or agricultural lien that was perfected by the financing
18 statement becomes unperfected, unless the security interest is perfected
19 otherwise. If the security interest or agricultural lien becomes unperfected upon
20 lapse, it is deemed never to have been perfected as against a purchaser of the
21 collateral for value.

22 4. A continuation statement may be filed only within six months before the expiration
23 of the five-year period specified in subsection 1 or the thirty-year period specified in
24 subsection 2, whichever is applicable.

25 5. Except as otherwise provided in section 41-09-81, upon timely filing of a
26 continuation statement, the effectiveness of the initial financing statement
27 continues for a period of five years commencing on the day on which the financing
28 statement would have become ineffective in the absence of the filing. Upon the
29 expiration of the five-year period, the financing statement lapses in the same
30 manner as provided in subsection 3, unless, before the lapse, another continuation
31 statement is filed pursuant to subsection 4. Succeeding continuation statements

1 may be filed in the same manner to continue the effectiveness of the initial
2 financing statement.

3 6. If a debtor is a transmitting utility and a filed financing statement so indicates, the
4 financing statement is effective until a termination statement is filed.

5 7. A record of a mortgage that is effective as a financing statement filed as a fixture
6 filing under subsection 3 of section 41-09-73 remains effective as a financing
7 statement filed as a fixture filing until the mortgage is released or satisfied of record
8 or its effectiveness otherwise terminates as to the real property.

9 **41-09-87. (9-516) What constitutes filing - Effectiveness of filing.**

10 1. Except as otherwise provided in subsection 2, communication of a record to a filing
11 office and tender of the filing fee or acceptance of the record by the filing office
12 constitutes filing.

13 2. Filing does not occur with respect to a record that a filing office refuses to accept
14 because:

15 a. The record is not communicated by a method or medium of communication
16 authorized by the filing office;

17 b. An amount equal to or greater than the applicable filing fee is not tendered;

18 c. The filing office is unable to index the record because:

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

21 (2) In the case of an amendment or correction statement, the record:

22 (a) Does not identify the initial financing statement as required by
23 section 41-09-83 or 41-09-89, as applicable; or

24 (b) Identifies an initial financing statement whose effectiveness has
25 lapsed under section 41-09-86;

26 (3) In the case of an initial financing statement that provides the name of a
27 debtor identified as an individual or an amendment that provides a
28 name of a debtor identified as an individual which was not previously
29 provided in the financing statement to which the record relates, the
30 record does not identify the debtor's last name; or

- 1 (4) In the case of a record filed or recorded in the filing office described in
2 subdivision a of subsection 1 of section 41-09-72, the record does not
3 provide a sufficient description of the real property to which it relates;
- 4 d. In the case of an initial financing statement or an amendment that adds a
5 secured party of record, the record does not provide a name and mailing
6 address for the secured party of record;
- 7 e. In the case of an initial financing statement or an amendment that provides a
8 name of a debtor which was not previously provided in the financing
9 statement to which the amendment relates, the record does not:
- 10 (1) Provide a mailing address for the debtor;
11 (2) Indicate whether the debtor is an individual or an organization; or
12 (3) If the financing statement indicates that the debtor is an organization,
13 provide:
- 14 (a) A type of organization for the debtor;
15 (b) A jurisdiction of organization for the debtor; or
16 (c) An organizational identification number for the debtor or indicate
17 that the debtor has none;
- 18 f. In the case of an assignment reflected in an initial financing statement under
19 subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of
20 section 41-09-85, the record does not provide a name and mailing address for
21 the assignee; or
- 22 g. In the case of a continuation statement, the record is not filed within the
23 six-month period prescribed by subsection 4 of section 41-09-86.
- 24 3. For purposes of subsection 2:
- 25 a. A record does not provide information if the filing office is unable to read or
26 decipher the information; and
- 27 b. A record that does not indicate that it is an amendment or identify an initial
28 financing statement to which it relates, as required by section 41-09-83,
29 41-09-85, or 41-09-89, is an initial financing statement.
- 30 4. A record that is communicated to the filing office with tender of the filing fee, but
31 which the filing office refuses to accept for a reason other than one set forth in

1 subsection 2, is effective as a filed record except as against a purchaser of the
2 collateral which gives value in reasonable reliance upon the absence of the record
3 from the files.

4 **41-09-88. (9-517) Effect of indexing errors.** The failure of the filing office to index a
5 record correctly does not affect the effectiveness of the filed record.

6 **41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.**

7 1. A person may file in the filing office a correction statement with respect to a record
8 indexed there under the person's name if the person believes that the record is
9 inaccurate or was wrongfully filed.

10 Alternative A

11 2. A correction statement must:

12 a. Identify the record to which it relates by the file number assigned to the initial
13 financing statement to which the record relates;

14 b. Indicate that it is a correction statement; and

15 c. Provide the basis for the person's belief that the record is inaccurate and
16 indicate the manner in which the person believes the record should be
17 amended to cure any inaccuracy or provide the basis for the person's belief
18 that the record was wrongfully filed.

19 Alternative B

20 2. A correction statement must:

21 a. Identify the record to which it relates by:

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

24 (2) If the correction statement relates to a record filed or recorded in a filing
25 office described in subdivision a of subsection 1 of section 41-09-72,
26 the date and time that the initial financing statement was filed or
27 recorded and the information specified in subsection 2 of section
28 41-09-73;

29 b. Indicate that it is a correction statement; and

30 c. Provide the basis for the person's belief that the record is inaccurate and
31 indicate the manner in which the person believes the record should be

1 amended to cure any inaccuracy or provide the basis for the person's belief
2 that the record was wrongfully filed.

3 3. The filing of a correction statement does not affect the effectiveness of an initial
4 financing statement or other filed record.

NOTE: Section 41-09-89(2) provides for the language in Alternative A or Alternative B.
Professor Bottrell suggests Alternative A.

5 **41-09-90. (9-519) Numbering, maintaining, and indexing records - Communicating**
6 **information provided in records.**

7 1. For each record filed in a filing office, the filing office shall:

8 a. Assign a unique number to the filed record;

9 b. Create a record that bears the number assigned to the filed record and the
10 date and time of filing;

11 c. Maintain the filed record for public inspection; and

12 d. Index the filed record in accordance with subsections 3 through 5.

13 2. A file number assigned after January 1, 2002, must include a digit that:

14 a. Is mathematically derived from or related to the other digits of the file number;
15 and

16 b. Aids the filing office in determining whether a number communicated as the
17 file number includes a single-digit or transpositional error.

18 3. Except as otherwise provided in subsections 4 and 5, the filing office shall:

19 a. Index an initial financing statement according to the name of the debtor and
20 index all filed records relating to the initial financing statement in a manner
21 that associates with one another an initial financing statement and all filed
22 records relating to the initial financing statement; and

23 b. Index a record that provides a name of a debtor which was not previously
24 provided in the financing statement to which the record relates also according
25 to the name that was not previously provided.

26 4. If a financing statement is filed as a fixture filing or covers as-extracted collateral or
27 timber to be cut, it must be filed for record and the filing office shall index it:

28 a. Under the names of the debtor and of each owner of record shown on the
29 financing statement as if they were the mortgagors under a mortgage of the
30 real property described; and

- 1 b. To the extent that the law of this state provides for indexing of records of
2 mortgages under the name of the mortgagee, under the name of the secured
3 party as if the secured party were the mortgagee thereunder, or, if indexing is
4 by description, as if the financing statement were a record of a mortgage of
5 the real property described.
- 6 5. If a financing statement is filed as a fixture filing or covers as-extracted collateral or
7 timber to be cut, the filing office shall index an assignment filed under subsection 1
8 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85:
- 9 a. Under the name of the assignor as grantor; and
- 10 b. To the extent that the law of this state provides for indexing a record of the
11 assignment of a mortgage under the name of the assignee, under the name of
12 the assignee.

13 Alternative A

- 14 6. The filing office shall maintain a capability:
- 15 a. To retrieve a record by the name of the debtor and by the file number
16 assigned to the initial financing statement to which the record relates; and
- 17 b. To associate and retrieve with one another an initial financing statement and
18 each filed record relating to the initial financing statement.

19 Alternative B

- 20 6. The filing office shall maintain a capability:
- 21 a. To retrieve a record by the name of the debtor and:
- 22 (1) If the filing office is described in subdivision a of subsection 1 of section
23 41-09-72, by the file number assigned to the initial financing statement
24 to which the record relates and the date and time that the record was
25 filed or recorded; or
- 26 (2) If the filing office is described in subdivision b of subsection 1 of section
27 41-09-72, by the file number assigned to the initial financing statement
28 to which the record relates; and
- 29 b. To associate and retrieve with one another an initial financing statement and
30 each filed record relating to the initial financing statement.

- 1 7. The filing office may not remove a debtor's name from the index until one year after
2 the effectiveness of a financing statement naming the debtor lapses under section
3 41-09-86 with respect to all secured parties of record.
- 4 8. The filing office shall perform the acts required by subsections 1 through 5 at the
5 time and in the manner prescribed by filing-office rule, but not later than two
6 business days after the filing office receives the record in question.
- 7 [9. Subsection[s] [2] [and] [8] do[es] not apply to a filing office described in
8 subdivision a of subsection 1 of section 41-09-72.]

NOTE: Section 41-09-90(6) provides for the language in Alternative A or Alternative B. Professor Bottrell suggests Alternative A. Subsection 9 provides for insertion of language regarding which subsections do not apply to a filing office under Section 41-09-72.

9 **41-09-91. (9-520) Acceptance and refusal to accept record.**

- 10 1. A filing office shall refuse to accept a record for filing for a reason set forth in
11 subsection 2 of section 41-09-87 and may refuse to accept a record for filing only
12 for a reason set forth in subsection 2 of section 41-09-87.
- 13 2. If a filing office refuses to accept a record for filing, it shall communicate to the
14 person that presented the record the fact of and reason for the refusal and the date
15 and time the record would have been filed had the filing office accepted it. The
16 communication must be made at the time and in the manner prescribed by
17 filing-office rule but [, in the case of a filing office described in subdivision b of
18 subsection 1 of section 41-09-72,] in no event more than two business days after
19 the filing office receives the record.
- 20 3. A filed financing statement satisfying subsections 1 and 2 of section 41-09-73 is
21 effective, even if the filing office is required to refuse to accept it for filing under
22 subsection 1. However, section 41-09-58 applies to a filed financing statement
23 providing information described in subdivision e of subsection 2 of section
24 41-09-87 which is incorrect at the time the financing statement is filed.
- 25 4. If a record communicated to a filing office provides information that relates to more
26 than one debtor, this part applies as to each debtor separately.

NOTE: Section 41-09-91(2) provides that a state that elects not to require real-property offices to comply with subsection 2 should include the bracketed language.

27 **41-09-92. (9-521) Uniform form of written financing statement and amendment.**

- 1 1. A filing office that accepts written records may not refuse to accept a written initial
2 financing statement in the form and format established by the secretary of state,
3 except for a reason set forth in subsection 2 of section 41-09-87.
4 2. A filing office that accepts written records may not refuse to accept a written record
5 in the form and format established by the secretary of state, except for a reason set
6 forth in subsection 2 of section 41-09-87.

7 **41-09-93. (9-522) Maintenance and destruction of records.**

8 Alternative A

- 9 1. The filing office shall maintain a record of the information provided in a filed
10 financing statement for at least one year after the effectiveness of the financing
11 statement has lapsed under section 41-09-86 with respect to all secured parties of
12 record. The record must be retrievable by using the name of the debtor and by
13 using the file number assigned to the initial financing statement to which the record
14 relates.

15 Alternative B

- 16 1. The filing office shall maintain a record of the information provided in a filed
17 financing statement for at least one year after the effectiveness of the financing
18 statement has lapsed under section 41-09-86 with respect to all secured parties of
19 record. The record must be retrievable by using the name of the debtor and:
20 a. If the record was filed or recorded in the filing office described in subdivision a
21 of subsection 1 of section 41-09-72, by using the file number assigned to the
22 initial financing statement to which the record relates and the date and time
23 that the record was filed or recorded; or
24 b. If the record was filed in the filing office described in subdivision b of
25 subsection 1 of section 41-09-72, by using the file number assigned to the
26 initial financing statement to which the record relates.
27 2. Except to the extent that a statute governing disposition of public records provides
28 otherwise, the filing office immediately may destroy any written record evidencing a
29 financing statement. However, if the filing office destroys a written record, it shall
30 maintain another record of the financing statement which complies with
31 subsection 1.

NOTE: Section 41-09-93(1) provides for the language in Alternative A or Alternative B. Professor Bottrell suggests Alternative A.

41-09-94. (9-523) Information from filing office - Sale or license of records.

1. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to subdivision a of subsection 1 of section 41-09-90 and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:
 - a. Note upon the copy the number assigned to the record pursuant to subdivision a of subsection 1 of section 41-09-90 and the date and time of the filing of the record; and
 - b. Send the copy to the person.
2. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:
 - a. The information in the record;
 - b. The number assigned to the record pursuant to subdivision a of subsection 1 of section 41-09-90; and
 - c. The date and time of the filing of the record.
3. The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:
 - a. Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:
 - (1) Designates a particular debtor [or, if the request so states, designates a particular debtor at the address specified in the request];
 - (2) Has not lapsed under section 41-09-86 with respect to all secured parties of record; and
 - (3) If the request so states, has lapsed under section 41-09-86 and a record of which is maintained by the filing office under subsection 1 of section 41-09-93;
 - b. The date and time of filing of each financing statement; and
 - c. The information provided in each financing statement.

- 1 4. In complying with its duty under subsection 3, the filing office may communicate
2 information in any medium. However, if requested, the filing office shall
3 communicate information by issuing [(its written certificate) (a record that can be
4 admitted into evidence in the courts of this state without extrinsic evidence of its
5 authenticity)].
- 6 5. The filing office shall perform the acts required by subsections 1 through 4 at the
7 time and in the manner prescribed by filing-office rule, but not later than two
8 business days after the filing office receives the request.
- 9 6. At least weekly, the filing office shall offer to sell or license to the public on a
10 nonexclusive basis, in bulk, copies of all records filed in it under this part, in every
11 medium from time to time available to the filing office.

NOTE: Section 41-09-94(3)(a)(1) provides bracketed language that should be used if the filing office honors search requests for a debtor limited to a particular address. Subsection 4 provides bracketed language that must be chosen based on whether the legislators wish to require a filing office to issue search results in admissible form.

12 **41-09-95. (9-524) Delay by filing office.** Delay by the filing office beyond a time limit
13 prescribed by this part is excused if:

- 14 1. The delay is caused by interruption of communication or computer facilities, war,
15 emergency conditions, failure of equipment, or other circumstances beyond control
16 of the filing office; and
- 17 2. The filing office exercises reasonable diligence under the circumstances.

18 **41-09-96. (9-525) Fees.**

- 19 1. Except as otherwise provided in subsection 5, the fee for filing and indexing a
20 record under this part, other than an initial financing statement of the kind
21 described in subsection 2, is [the amount specified in subsection 3, if applicable,
22 plus]:
- 23 a. \$ _____ [X] _____ if the record is communicated in writing and
24 consists of one or two pages;
- 25 b. \$ _____ [2X] _____ if the record is communicated in writing and
26 consists of more than two pages; and
- 27 c. \$ _____ [1/2X] _____ if the record is communicated by another
28 medium authorized by filing-office rule.

- 1 2. Except as otherwise provided in subsection 5, the fee for filing and indexing an
2 initial financing statement of the following kind is [the amount specified in
3 subsection 3, if applicable, plus]:
- 4 a. \$ _____ if the financing statement indicates that it is filed in connection with
5 a public-finance transaction; and
- 6 b. \$ _____ if the financing statement indicates that it is filed in connection with
7 a manufactured-home transaction.

8 Alternative A

- 9 3. The number of names required to be indexed does not affect the amount of the fee
10 in subsections 1 and 2.

11 Alternative B

- 12 3. Except as otherwise provided in subsection 5, if a record is communicated in
13 writing, the fee for each name more than two required to be indexed is \$ _____ .

- 14 4. The fee for responding to a request for information from the filing office, including
15 for [issuing a certificate showing] [communicating] whether there is on file any
16 financing statement naming a particular debtor, is:

- 17 a. \$ _____ if the request is communicated in writing; and
- 18 b. \$ _____ if the request is communicated by another medium authorized by
19 filing-office rule.

- 20 5. This section does not require a fee with respect to a record of a mortgage which is
21 effective as a financing statement filed as a fixture filing or as a financing statement
22 covering as-extracted collateral or timber to be cut under subsection 3 of section
23 41-09-73. However, the recording and satisfaction fees that otherwise would be
24 applicable to the record of the mortgage apply.

- 25 6. Any fees collected by the secretary of state pursuant to this chapter must be
26 deposited in the general fund in the state treasury.

NOTE: Section 41-09-96(1-4) requires insertion of the amounts of fees. Subsection 3 also provides for the language in Alternative A or Alternative B.

27 **41-09-97. (9-526) Filing-office rules.**

- 28 1. The filing office shall adopt and publish rules to implement this chapter. The
29 filing-office rules must be:

- 30 a. Consistent with this chapter; and

- 1 b. Adopted and published in accordance with chapter 28-32.
- 2 2. To keep the filing-office rules and practices of the filing office in harmony with the
3 rules and practices of filing offices in other jurisdictions that enact substantially this
4 part, and to keep the technology used by the filing office compatible with the
5 technology used by filing offices in other jurisdictions that enact substantially this
6 part, the [insert appropriate governmental official or agency], so far as is consistent
7 with the purposes, policies, and provisions of this chapter, in adopting, amending,
8 and repealing filing-office rules, shall:
- 9 a. Consult with filing offices in other jurisdictions that enact substantially this
10 part;
- 11 b. Consult the most recent version of the model rules promulgated by the
12 international association of corporate administrators or any successor
13 organization; and
- 14 c. Take into consideration the rules and practices of, and the technology used
15 by, filing offices in other jurisdictions that enact substantially this part.

16 **41-09-98. (9-527) Duty to report.** The secretary of state shall report [annually on or
17 before _____] to the [governor and legislature] on the operation of the filing office. The
18 report must contain a statement of the extent to which:

- 19 1. The filing-office rules are not in harmony with the rules of filing offices in other
20 jurisdictions that enact substantially this part and the reasons for these variations;
21 and
- 22 2. The filing-office rules are not in harmony with the most recent version of the model
23 rules promulgated by the international association of corporate administrators, or
24 any successor organization, and the reasons for these variations.

NOTE: Section 41-09-98 provides bracketed language that must be chosen based on what date to require the annual reporting and who should receive this report.

25 **41-09-99. (9-601) Rights after default - Judicial enforcement - Consignor or buyer**
26 **of accounts, chattel paper, payment intangibles, or promissory notes.**

- 27 1. After default, a secured party has the rights provided in this part and, except as
28 otherwise provided in section 41-09-100, those provided by agreement of the
29 parties. A secured party:

- 1 a. May reduce a claim to judgment, foreclose, or otherwise enforce the claim,
2 security interest, or agricultural lien by any available judicial procedure; and
3 b. If the collateral is documents, may proceed either as to the documents or as
4 to the goods they cover.
- 5 2. A secured party in possession of collateral or control of collateral under section
6 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in
7 section 41-09-17.
- 8 3. The rights under subsections 1 and 2 are cumulative and may be exercised
9 simultaneously.
- 10 4. Except as otherwise provided in subsection 7 and section 41-09-103, after default,
11 a debtor and an obligor have the rights provided in this part and by agreement of
12 the parties.
- 13 5. If a secured party has reduced its claim to judgment, the lien of any levy that may
14 be made upon the collateral by virtue of an execution based upon the judgment
15 relates back to the earliest of:
- 16 a. The date of perfection of the security interest or agricultural lien in the
17 collateral;
- 18 b. The date of filing a financing statement covering the collateral; or
- 19 c. Any date specified in a statute under which the agricultural lien was created.
- 20 6. A sale pursuant to an execution is a foreclosure of the security interest or
21 agricultural lien by judicial procedure within the meaning of this section. A secured
22 party may purchase at the sale and thereafter hold the collateral free of any other
23 requirements of this chapter.
- 24 7. Except as otherwise provided in subsection 3 of section 41-09-105, sections
25 41-09-99 through 41-09-126 impose no duties upon a secured party that is a
26 consignor or is a buyer of accounts, chattel paper, payment intangibles, or
27 promissory notes.

28 **41-09-100. (9-602) Waiver and variance of rights and duties.** Except as otherwise
29 provided in section 41-09-122, to the extent that they give rights to a debtor or obligor and
30 impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated
31 in the following listed sections:

- 1 1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with
- 2 use and operation of the collateral by the secured party;
- 3 2. Section 41-09-20, which deals with requests for an accounting and requests
- 4 concerning a list of collateral and statement of account;
- 5 3. Subsection 3 of section 41-09-105, which deals with collection and enforcement of
- 6 collateral;
- 7 4. Subsection 1 of section 41-09-106 and subsection 3 of section 41-09-113 to the
- 8 extent that they deal with application or payment of noncash proceeds of collection,
- 9 enforcement, or disposition;
- 10 5. Subsection 1 of section 41-09-106 and subsection 4 of section 41-09-113 to the
- 11 extent that they require accounting for or payment of surplus proceeds of collateral;
- 12 6. Section 41-09-107 to the extent that it imposes upon a secured party that takes
- 13 possession of collateral without judicial process the duty to do so without breach of
- 14 the peace;
- 15 7. Subsection 2 of section 41-09-108, section 41-09-109, section 41-09-111, and
- 16 section 41-09-112, which deal with disposition of collateral;
- 17 8. Subsection 6 of section 41-09-113, which deals with calculation of a deficiency or
- 18 surplus when a disposition is made to the secured party, a person related to the
- 19 secured party, or a secondary obligor;
- 20 9. Section 41-09-114, which deals with explanation of the calculation of a surplus or
- 21 deficiency;
- 22 10. Sections 41-09-118 through 41-09-120, which deal with acceptance of collateral in
- 23 satisfaction of obligation;
- 24 11. Section 41-09-121, which deals with redemption of collateral;
- 25 12. Section 41-09-122, which deals with permissible waivers; and
- 26 13. Sections 41-09-123 and 41-09-124, which deal with the secured party's liability for
- 27 failure to comply with this chapter.
- 28 **41-09-101. (9-603) Agreement on standards concerning rights and duties.**
- 29 1. The parties may determine by agreement the standards measuring the fulfillment
- 30 of the rights of a debtor or obligor and the duties of a secured party under a rule
- 31 stated in section 41-09-100 if the standards are not manifestly unreasonable.

1 2. Subsection 1 does not apply to the duty under section 41-09-107 to refrain from
2 breaching the peace.

3 **41-09-102. (9-604) Procedure if security agreement covers real property or**
4 **fixtures.**

5 1. If a security agreement covers both personal and real property, a secured party
6 may proceed:

7 a. Under this part as to the personal property without prejudicing any rights with
8 respect to the real property; or

9 b. As to both the personal property and the real property in accordance with the
10 rights with respect to the real property, in which case the other provisions of
11 this part do not apply.

12 2. Subject to subsection 3, if a security agreement covers goods that are or become
13 fixtures, a secured party may proceed:

14 a. Under this part; or

15 b. In accordance with the rights with respect to real property, in which case the
16 other provisions of this part do not apply.

17 3. Subject to the other provisions of this part, if a secured party holding a security
18 interest in fixtures has priority over all owners and encumbrancers of the real
19 property, the secured party, after default, may remove the collateral from the real
20 property.

21 4. A secured party that removes collateral shall promptly reimburse any
22 encumbrancer or owner of the real property, other than the debtor, for the cost of
23 repair of any physical injury caused by the removal. The secured party need not
24 reimburse the encumbrancer or owner for any diminution in value of the real
25 property caused by the absence of the goods removed or by any necessity of
26 replacing them. A person entitled to reimbursement may refuse permission to
27 remove until the secured party gives adequate assurance for the performance of
28 the obligation to reimburse.

29 **41-09-103. (9-605) Unknown debtor or secondary obligor.** A secured party does not
30 owe a duty based on its status as secured party:

31 1. To a person that is a debtor or obligor, unless the secured party knows:

- 1 a. That the person is a debtor or obligor;
- 2 b. The identity of the person; and
- 3 c. How to communicate with the person; or
- 4 2. To a secured party or lienholder that has filed a financing statement against a
- 5 person, unless the secured party knows:
- 6 a. That the person is a debtor; and
- 7 b. The identity of the person.

8 **41-09-104. (9-606) Time of default for agricultural lien.** For purposes of this part, a

9 default occurs in connection with an agricultural lien at the time the secured party becomes

10 entitled to enforce the lien in accordance with the statute under which it was created.

11 **41-09-105. (9-607) Collection and enforcement by secured party.**

- 12 1. If so agreed, and in any event after default, a secured party:
- 13 a. May notify an account debtor or other person obligated on collateral to make
- 14 payment or otherwise render performance to or for the benefit of the secured
- 15 party;
- 16 b. May take any proceeds to which the secured party is entitled under section
- 17 41-09-35;
- 18 c. May enforce the obligations of an account debtor or other person obligated on
- 19 collateral and exercise the rights of the debtor with respect to the obligation of
- 20 the account debtor or other person obligated on collateral to make payment or
- 21 otherwise render performance to the debtor, and with respect to any property
- 22 that secures the obligations of the account debtor or other person obligated
- 23 on the collateral;
- 24 d. If it holds a security interest in a deposit account perfected by control under
- 25 subdivision a of subsection 1 of section 41-09-04, may apply the balance of
- 26 the deposit account to the obligation secured by the deposit account; and
- 27 e. If it holds a security interest in a deposit account perfected by control under
- 28 subdivision b or c of subsection 1 of section 41-09-04, may instruct the bank
- 29 to pay the balance of the deposit account to or for the benefit of the secured
- 30 party.

- 1 2. If necessary to enable a secured party to exercise under subdivision c of
2 subsection 1 the right of a debtor to enforce a mortgage nonjudicially, the secured
3 party may record in the office in which a record of the mortgage is recorded:
4 a. A copy of the security agreement that creates or provides for a security
5 interest in the obligation secured by the mortgage; and
6 b. The secured party's sworn affidavit in recordable form stating that:
7 (1) A default has occurred; and
8 (2) The secured party is entitled to enforce the mortgage nonjudicially.
9 3. A secured party shall proceed in a commercially reasonable manner if the secured
10 party:
11 a. Undertakes to collect from or enforce an obligation of an account debtor or
12 other person obligated on collateral; and
13 b. Is entitled to charge back uncollected collateral or otherwise to full or limited
14 recourse against the debtor or a secondary obligor.
15 4. A secured party may deduct from the collections made pursuant to subsection 3
16 reasonable expenses of collection and enforcement, including reasonable
17 attorney's fees and legal expenses incurred by the secured party.
18 5. This section does not determine whether an account debtor, bank, or other person
19 obligated on collateral owes a duty to a secured party.

20 **41-09-106. (9-608) Application of proceeds of collection or enforcement - Liability**
21 **for deficiency and right to surplus.**

- 22 1. If a security interest or agricultural lien secures payment or performance of an
23 obligation, the following rules apply:
24 a. A secured party shall apply or pay over for application the cash proceeds of
25 collection or enforcement under section 41-09-105 in the following order to:
26 (1) The reasonable expenses of collection and enforcement and, to the
27 extent provided for by agreement and not prohibited by law, reasonable
28 attorney's fees and legal expenses incurred by the secured party;
29 (2) The satisfaction of obligations secured by the security interest or
30 agricultural lien under which the collection or enforcement is made; and

- 1 (3) The satisfaction of obligations secured by any subordinate security
2 interest in or other lien on the collateral subject to the security interest
3 or agricultural lien under which the collection or enforcement is made if
4 the secured party receives an authenticated demand for proceeds
5 before distribution of the proceeds is completed.
- 6 b. If requested by a secured party, a holder of a subordinate security interest or
7 other lien shall furnish reasonable proof of the interest or lien within a
8 reasonable time. Unless the holder complies, the secured party need not
9 comply with the holder's demand under subdivision c.
- 10 c. A secured party need not apply or pay over for application noncash proceeds
11 of collection and enforcement under section 41-09-105 unless the failure to do
12 so would be commercially unreasonable. A secured party that applies or pays
13 over for application noncash proceeds shall do so in a commercially
14 reasonable manner.
- 15 d. A secured party shall account to and pay a debtor for any surplus, and the
16 obligor is liable for any deficiency.
- 17 2. If the underlying transaction is a sale of accounts, chattel paper, payment
18 intangibles, or promissory notes, the debtor is not entitled to any surplus, and the
19 obligor is not liable for any deficiency.

20 **41-09-107. (9-609) Secured party's right to take possession after default.**

- 21 1. After default, and subject to chapter 28-29, a secured party:
- 22 a. May take possession of the collateral; and
- 23 b. Without removal, may render equipment unusable and dispose of collateral on
24 a debtor's premises under section 41-09-108.
- 25 2. A secured party may proceed under subsection 1:
- 26 a. Pursuant to judicial process; or
- 27 b. Without judicial process, if it proceeds without breach of the peace.
- 28 3. If so agreed, and in any event after default, a secured party may require the debtor
29 to assemble the collateral and make it available to the secured party at a place to
30 be designated by the secured party which is reasonably convenient to both parties.

31 **41-09-108. (9-610) Disposition of collateral after default.**

- 1 1. After default, a secured party may sell, lease, license, or otherwise dispose of any
2 or all of the collateral in its present condition or following any commercially
3 reasonable preparation or processing.
- 4 2. Every aspect of a disposition of collateral, including the method, manner, time,
5 place, and other terms, must be commercially reasonable. If commercially
6 reasonable, a secured party may dispose of collateral by public or private
7 proceedings, by one or more contracts, as a unit or in parcels, and at any time and
8 place and on any terms.
- 9 3. A secured party may purchase collateral:
 - 10 a. At a public disposition; or
 - 11 b. At a private disposition only if the collateral is of a kind that is customarily sold
12 on a recognized market or the subject of widely distributed standard price
13 quotations.
- 14 4. A contract for sale, lease, license, or other disposition includes the warranties
15 relating to title, possession, quiet enjoyment, and the like which by operation of law
16 accompany a voluntary disposition of property of the kind subject to the contract.
- 17 5. A secured party may disclaim or modify warranties under subsection 4:
 - 18 a. In a manner that would be effective to disclaim or modify the warranties in a
19 voluntary disposition of property of the kind subject to the contract of
20 disposition; or
 - 21 b. By communicating to the purchaser a record evidencing the contract for
22 disposition and including an express disclaimer or modification of the
23 warranties.
- 24 6. A record is sufficient to disclaim warranties under subsection 5 if it indicates "there
25 is no warranty relating to title, possession, quiet enjoyment, or the like in this
26 disposition" or uses words of similar import.

27 **41-09-109. (9-611) Notification before disposition of collateral.**

- 28 1. In this section, "notification date" means the earlier of the date on which:
 - 29 a. A secured party sends to the debtor and any secondary obligor an
30 authenticated notification of disposition; or
 - 31 b. The debtor and any secondary obligor waive the right to notification.

- 1 2. Except as otherwise provided in subsection 4, a secured party that disposes of
2 collateral under section 41-09-108 shall send to the persons specified in
3 subsection 3 a reasonable authenticated notification of disposition.
- 4 3. To comply with subsection 2, the secured party shall send an authenticated
5 notification of disposition to:
- 6 a. The debtor;
7 b. Any secondary obligor; and
8 c. If the collateral is other than consumer goods:
- 9 (1) Any other person from which the secured party has received, before the
10 notification date, an authenticated notification of a claim of an interest in
11 the collateral;
- 12 (2) Any other secured party or lienholder that, ten days before the
13 notification date, held a security interest in or other lien on the collateral
14 perfected by the filing of a financing statement that:
- 15 (a) Identified the collateral;
16 (b) Was indexed under the debtor's name as of that date; and
17 (c) Was filed in the office in which to file a financing statement
18 against the debtor covering the collateral as of that date; and
- 19 (3) Any other secured party that, ten days before the notification date, held
20 a security interest in the collateral perfected by compliance with a
21 statute, regulation, or treaty described in subsection 1 of section
22 41-09-31.
- 23 4. Subsection 2 does not apply if the collateral is perishable or threatens to decline
24 speedily in value or is of a type customarily sold on a recognized market.
- 25 5. A secured party complies with the requirement for notification prescribed by
26 paragraph 2 of subdivision c of subsection 3 if:
- 27 a. Not later than twenty days or earlier than thirty days before the notification
28 date, the secured party requests, in a commercially reasonable manner,
29 information concerning financing statements indexed under the debtor's name
30 in the office indicated in paragraph 2 of subdivision c of subsection 3; and
31 b. Before the notification date, the secured party:

- 1 (1) Did not receive a response to the request for information; or
2 (2) Received a response to the request for information and sent an
3 authenticated notification of disposition to each secured party or other
4 lienholder named in that response whose financing statement covered
5 the collateral.

6 **41-09-110. (9-612) Timeliness of notification before disposition of collateral.**

- 7 1. Except as otherwise provided in subsection 2, whether a notification is sent within
8 a reasonable time is a question of fact.
9 2. In a transaction other than a consumer transaction, a notification of disposition sent
10 after default and ten days or more before the earliest time of disposition set forth in
11 the notification is sent within a reasonable time before the disposition.

12 **41-09-111. (9-613) Contents and form of notification before disposition of**
13 **collateral - General.** Except in a consumer-goods transaction, the following rules apply:

- 14 1. The contents of a notification of disposition are sufficient if the notification:
15 a. Describes the debtor and the secured party;
16 b. Describes the collateral that is the subject of the intended disposition;
17 c. States the method of intended disposition;
18 d. States that the debtor is entitled to an accounting of the unpaid indebtedness
19 and states the charge, if any, for an accounting; and
20 e. States the time and place of a public disposition or the time after which any
21 other disposition is to be made.
22 2. Whether the contents of a notification that lacks any of the information specified in
23 subsection 1 are nevertheless sufficient is a question of fact.
24 3. The contents of a notification providing substantially the information specified in
25 subsection 1 are sufficient, even if the notification includes:
26 a. Information not specified by that subsection; or
27 b. Minor errors that are not seriously misleading.
28 4. A particular phrasing of the notification is not required.
29 5. The following form of notification and the form appearing in subsection 3 of section
30 41-09-112, when completed, each provides sufficient information:

31 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

2 Subject: (Identification of transaction)

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

5 (For a public disposition:)

6 We will sell (describe collateral) at public sale. A sale could include a lease or
7 license. The sale will be held as follows:

8 Date: _____

9 Time: _____

10 Place: _____

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

12 (For a private disposition:)

13 We will sell (describe collateral) at private sale sometime after (date). A sale
14 could include a lease or license.

15 The money that we get from the sale (after paying our costs) will reduce the
16 amount you owe. If we get less money than you owe, you (will or will not, as
17 applicable) still owe us the difference. If we get more money than you owe, you
18 will get the extra money, unless we must pay it to someone else.

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

22 If you want us to explain to you in writing how we have figured the amount
23 that you owe us, you may call us at (telephone number) (or write us at (secured
24 party's address)) and request a written explanation. (We will charge you \$ _____
25 for the explanation if we sent you another written explanation of the amount you
26 owe us within the last six months.)

27 If you need more information about the sale call us at (telephone number) (or
28 write us at (secured party's address)).

29 We are sending this notice to the following other people who have an interest
30 in (describe collateral) or who owe money under your agreement: (Names of all
31 other debtors and obligors, if any).

- 1 4. A notification in the form of subsection 3 is sufficient, even if additional information
2 appears at the end of the form.
- 3 5. A notification in the form of subsection 3 is sufficient, even if it includes errors in
4 information not required by subsection 1, unless the error is misleading with
5 respect to rights arising under this chapter.
- 6 6. If a notification under this section is not in the form of subsection 3, law other than
7 this chapter determines the effect of including information not required by
8 subsection 1.

9 **41-09-113. (9-615) Application of proceeds of disposition - Liability for deficiency**
10 **and right to surplus.**

- 11 1. A secured party shall apply or pay over for application the cash proceeds of
12 disposition under section 41-09-108 in the following order to:
- 13 a. The reasonable expenses of retaking, holding, preparing for disposition,
14 processing, and disposing, and, to the extent provided for by agreement and
15 not prohibited by law, reasonable attorney's fees and legal expenses incurred
16 by the secured party;
- 17 b. The satisfaction of obligations secured by the security interest or agricultural
18 lien under which the disposition is made;
- 19 c. The satisfaction of obligations secured by any subordinate security interest in
20 or other subordinate lien on the collateral if:
- 21 (1) The secured party receives from the holder of the subordinate security
22 interest or other lien an authenticated demand for proceeds before
23 distribution of the proceeds is completed; and
- 24 (2) In a case in which a consignor has an interest in the collateral, the
25 subordinate security interest or other lien is senior to the interest of the
26 consignor; and
- 27 d. A secured party that is a consignor of the collateral if the secured party
28 receives from the consignor an authenticated demand for proceeds before
29 distribution of the proceeds is completed.
- 30 2. If requested by a secured party, a holder of a subordinate security interest or other
31 lien shall furnish reasonable proof of the interest or lien within a reasonable time.

- 1 Unless the holder does so, the secured party need not comply with the holder's
2 demand under subdivision c of subsection 1.
- 3 3. A secured party need not apply or pay over for application noncash proceeds of
4 disposition under section 41-09-108 unless the failure to do so would be
5 commercially unreasonable. A secured party that applies or pays over for
6 application noncash proceeds shall do so in a commercially reasonable manner.
- 7 4. If the security interest under which a disposition is made secures payment or
8 performance of an obligation, after making the payments and applications required
9 by subsection 1 and permitted by subsection 3:
- 10 a. Unless subdivision d of subsection 1 requires the secured party to apply or
11 pay over cash proceeds to a consignor, the secured party shall account to
12 and pay a debtor for any surplus; and
- 13 b. The obligor is liable for any deficiency.
- 14 5. If the underlying transaction is a sale of accounts, chattel paper, payment
15 intangibles, or promissory notes:
- 16 a. The debtor is not entitled to any surplus; and
- 17 b. The obligor is not liable for any deficiency.
- 18 6. The surplus or deficiency following a disposition is calculated based on the amount
19 of proceeds that would have been realized in a disposition complying with this part
20 to a transferee other than the secured party, a person related to the secured party,
21 or a secondary obligor if:
- 22 a. The transferee in the disposition is the secured party, a person related to the
23 secured party, or a secondary obligor; and
- 24 b. The amount of proceeds of the disposition is significantly below the range of
25 proceeds that a complying disposition to a person other than the secured
26 party, a person related to the secured party, or a secondary obligor would
27 have brought.
- 28 7. A secured party that receives cash proceeds of a disposition in good faith and
29 without knowledge that the receipt violates the rights of the holder of a security
30 interest or other lien that is not subordinate to the security interest or agricultural
31 lien under which the disposition is made:

- 1 a. Takes the cash proceeds free of the security interest or other lien;
- 2 b. Is not obligated to apply the proceeds of the disposition to the satisfaction of
- 3 obligations secured by the security interest or other lien; and
- 4 c. Is not obligated to account to or pay the holder of the security interest or other
- 5 lien for any surplus.

6 **41-09-114. (9-616) Explanation of calculation of surplus or deficiency.**

7 1. In this section:

8 a. "Explanation" means a writing that:

- 9 (1) States the amount of the surplus or deficiency;
- 10 (2) Provides an explanation in accordance with subsection 3 of how the
- 11 secured party calculated the surplus or deficiency;
- 12 (3) States, if applicable, that future debits, credits, charges, including
- 13 additional credit service charges or interest, rebates, and expenses
- 14 may affect the amount of the surplus or deficiency; and
- 15 (4) Provides a telephone number or mailing address from which additional
- 16 information concerning the transaction is available.

17 b. "Request" means a record:

- 18 (1) Authenticated by a debtor or consumer obligor;
- 19 (2) Requesting that the recipient provide an explanation; and
- 20 (3) Sent after disposition of the collateral under section 41-09-108.

21 2. In a consumer-goods transaction in which the debtor is entitled to a surplus or a

22 consumer obligor is liable for a deficiency under section 41-09-113, the secured

23 party shall:

24 a. Send an explanation to the debtor or consumer obligor, as applicable, after

25 the disposition and:

- 26 (1) Before or when the secured party accounts to the debtor and pays any
- 27 surplus or first makes written demand on the consumer obligor after the
- 28 disposition for payment of the deficiency; and
- 29 (2) Within fourteen days after receipt of a request; or

- 1 b. In the case of a consumer obligor who is liable for a deficiency, within fourteen
2 days after receipt of a request, send to the consumer obligor a record waiving
3 the secured party's right to a deficiency.
- 4 3. To comply with paragraph 2 of subdivision a of subsection 1, a writing must
5 provide the following information in the following order:
- 6 a. The aggregate amount of obligations secured by the security interest under
7 which the disposition was made, and, if the amount reflects a rebate of
8 unearned interest or credit service charge, an indication of that fact,
9 calculated as of a specified date:
- 10 (1) If the secured party takes or receives possession of the collateral after
11 default, not more than thirty-five days before the secured party takes or
12 receives possession; or
- 13 (2) If the secured party takes or receives possession of the collateral
14 before default or does not take possession of the collateral, not more
15 than thirty-five days before the disposition;
- 16 b. The amount of proceeds of the disposition;
- 17 c. The aggregate amount of the obligations after deducting the amount of
18 proceeds;
- 19 d. The amount, in the aggregate or by type, and types of expenses, including
20 expenses of retaking, holding, preparing for disposition, processing, and
21 disposing of the collateral, and attorney's fees secured by the collateral which
22 are known to the secured party and relate to the current disposition;
- 23 e. The amount, in the aggregate or by type, and types of credits, including
24 rebates of interest or credit service charges, to which the obligor is known to
25 be entitled and which are not reflected in the amount in subsection 1; and
- 26 f. The amount of the surplus or deficiency.
- 27 4. A particular phrasing of the explanation is not required. An explanation complying
28 substantially with the requirements of subsection 1 is sufficient, even if it includes
29 minor errors that are not seriously misleading.
- 30 5. A debtor or consumer obligor is entitled without charge to one response to a
31 request under this section during any six-month period in which the secured party

1 did not send to the debtor or consumer obligor an explanation pursuant to
2 subdivision a of subsection 1. The secured party may require payment of a charge
3 not exceeding twenty-five dollars for each additional response.

4 **41-09-115. (9-617) Rights of transferee of collateral.**

- 5 1. A secured party's disposition of collateral after default:
- 6 a. Transfers to a transferee for value all of the debtor's rights in the collateral;
7 b. Discharges the security interest under which the disposition is made; and
8 c. Discharges any subordinate security interest or other subordinate lien [other
9 than liens created under (cite acts or statutes providing for liens, if any, that
10 are not to be discharged)].
- 11 2. A transferee that acts in good faith takes free of the rights and interests described
12 in subsection 1, even if the secured party fails to comply with this chapter or the
13 requirements of any judicial proceeding.
- 14 3. If a transferee does not take free of the rights and interests described in
15 subsection 1, the transferee takes the collateral subject to:
- 16 a. The debtor's rights in the collateral;
17 b. The security interest or agricultural lien under which the disposition is made;
18 and
19 c. Any other security interest or other lien.

NOTE: Section 41-09-115(1)(c) provides bracketed language that must be chosen based on whether there is a statutory lien that would survive a foreclosure disposition by a secured party, even though the lien is subordinate to the security interest. If there is such a statutory lien, reference should be included in this subdivision.

20 **41-09-116. (9-618) Rights and duties of certain secondary obligors.**

- 21 1. A secondary obligor acquires the rights and becomes obligated to perform the
22 duties of the secured party after the secondary obligor:
- 23 a. Receives an assignment of a secured obligation from the secured party;
24 b. Receives a transfer of collateral from the secured party and agrees to accept
25 the rights and assume the duties of the secured party; or
26 c. Is subrogated to the rights of a secured party with respect to collateral.
- 27 2. An assignment, transfer, or subrogation described in subsection 1:
- 28 a. Is not a disposition of collateral under section 41-09-108; and
29 b. Relieves the secured party of further duties under this chapter.

1 **41-09-117. (9-619) Transfer of record or legal title.**

2 1. In this section, "transfer statement" means a record authenticated by a secured
3 party stating:

4 a. That the debtor has defaulted in connection with an obligation secured by
5 specified collateral;

6 b. That the secured party has exercised its postdefault remedies with respect to
7 the collateral;

8 c. That, by reason of the exercise, a transferee has acquired the rights of the
9 debtor in the collateral; and

10 d. The name and mailing address of the secured party, debtor, and transferee.

11 2. A transfer statement entitles the transferee to the transfer of record of all rights of
12 the debtor in the collateral specified in the statement in any official filing, recording,
13 registration, or certificate-of-title system covering the collateral. If a transfer
14 statement is presented with the applicable fee and request form to the official or
15 office responsible for maintaining the system, the official or office shall:

16 a. Accept the transfer statement;

17 b. Promptly amend its records to reflect the transfer; and

18 c. If applicable, issue a new appropriate certificate of title in the name of the
19 transferee.

20 3. A transfer of the record or legal title to collateral to a secured party under
21 subsection 2 or otherwise is not of itself a disposition of collateral under this
22 chapter and does not of itself relieve the secured party of its duties under this
23 chapter.

24 **41-09-118. (9-620) Acceptance of collateral in full or partial satisfaction of**
25 **obligation - Compulsory disposition of collateral.**

26 1. Except as otherwise provided in subsection 7, a secured party may accept
27 collateral in full or partial satisfaction of the obligation it secures only if:

28 a. The debtor consents to the acceptance under subsection 3;

29 b. The secured party does not receive, within the time set forth in subsection 4, a
30 notification of objection to the proposal authenticated by:

- 1 (1) A person to which the secured party was required to send a proposal
2 under section 41-09-119; or
- 3 (2) Any other person, other than the debtor, holding an interest in the
4 collateral subordinate to the security interest that is the subject of the
5 proposal;
- 6 c. If the collateral is consumer goods, the collateral is not in the possession of
7 the debtor when the debtor consents to the acceptance; and
- 8 d. Subsection 5 does not require the secured party to dispose of the collateral or
9 the debtor waives the requirement pursuant to section 41-09-122.
- 10 2. A purported or apparent acceptance of collateral under this section is ineffective
11 unless:
- 12 a. The secured party consents to the acceptance in an authenticated record or
13 sends a proposal to the debtor; and
- 14 b. The conditions of subsection 1 are met.
- 15 3. For purposes of this section:
- 16 a. A debtor consents to an acceptance of collateral in partial satisfaction of the
17 obligation it secures only if the debtor agrees to the terms of the acceptance
18 in a record authenticated after default; and
- 19 b. A debtor consents to an acceptance of collateral in full satisfaction of the
20 obligation it secures only if the debtor agrees to the terms of the acceptance
21 in a record authenticated after default or the secured party:
- 22 (1) Sends to the debtor after default a proposal that is unconditional or
23 subject only to a condition that collateral not in the possession of the
24 secured party be preserved or maintained;
- 25 (2) In the proposal, proposes to accept collateral in full satisfaction of the
26 obligation it secures; and
- 27 (3) Does not receive a notification of objection authenticated by the debtor
28 within twenty days after the proposal is sent.
- 29 4. To be effective under subdivision c of subsection 1, a notification of objection must
30 be received by the secured party:

- 1 a. In the case of a person to which the proposal was sent pursuant to section
2 41-09-119, within twenty days after notification was sent to that person; and
3 b. In other cases:
4 (1) Within twenty days after the last notification was sent pursuant to
5 section 41-09-119; or
6 (2) If a notification was not sent, before the debtor consents to the
7 acceptance under subsection 3.
8 5. A secured party that has taken possession of collateral shall dispose of the
9 collateral pursuant to section 41-09-108 within the time specified in subsection 6 if:
10 a. Sixty percent of the cash price has been paid in the case of a
11 purchase-money security interest in consumer goods; or
12 b. Sixty percent of the principal amount of the obligation secured has been paid
13 in the case of a non-purchase-money security interest in consumer goods.
14 6. To comply with subsection 5, the secured party shall dispose of the collateral:
15 a. Within ninety days after taking possession; or
16 b. Within any longer period to which the debtor and all secondary obligors have
17 agreed in an agreement to that effect entered into and authenticated after
18 default.
19 7. In a consumer transaction, a secured party may not accept collateral in partial
20 satisfaction of the obligation it secures.

21 **41-09-119. (9-621) Notification of proposal to accept collateral.**

- 22 1. A secured party that desires to accept collateral in full or partial satisfaction of the
23 obligation it secures shall send its proposal to:
24 a. Any person from which the secured party has received, before the debtor
25 consented to the acceptance, an authenticated notification of a claim of an
26 interest in the collateral;
27 b. Any other secured party or lienholder that, ten days before the debtor
28 consented to the acceptance, held a security interest in or other lien on the
29 collateral perfected by the filing of a financing statement that:
30 (1) Identified the collateral;
31 (2) Was indexed under the debtor's name as of that date; and

- 1 (3) Was filed in the office or offices in which to file a financing statement
2 against the debtor covering the collateral as of that date; and
3 c. Any other secured party that, ten days before the debtor consented to the
4 acceptance, held a security interest in the collateral perfected by compliance
5 with a statute, regulation, or treaty described in subsection 1 of section
6 41-09-31.
- 7 2. A secured party that desires to accept collateral in partial satisfaction of the
8 obligation it secures shall send its proposal to any secondary obligor in addition to
9 the persons described in subsection 1.

10 **41-09-120. (9-622) Effect of acceptance of collateral.**

- 11 1. A secured party's acceptance of collateral in full or partial satisfaction of the
12 obligation it secures:
- 13 a. Discharges the obligation to the extent consented to by the debtor;
14 b. Transfers to the secured party all of a debtor's rights in the collateral;
15 c. Discharges the security interest or agricultural lien that is the subject of the
16 debtor's consent and any subordinate security interest or other subordinate
17 lien; and
18 d. Terminates any other subordinate interest.
- 19 2. A subordinate interest is discharged or terminated under subsection 1, even if the
20 secured party fails to comply with this chapter.

21 **41-09-121. (9-623) Right to redeem collateral.**

- 22 1. A debtor, any secondary obligor, or any other secured party or lienholder may
23 redeem collateral.
- 24 2. To redeem collateral, a person shall tender:
- 25 a. Fulfillment of all obligations secured by the collateral; and
26 b. The reasonable expenses and attorney's fees described in subdivision a of
27 subsection 1 of section 41-09-113.
- 28 3. A redemption may occur at any time before a secured party:
- 29 a. Has collected collateral under section 41-09-105;
30 b. Has disposed of collateral or entered into a contract for its disposition under
31 section 41-09-108; or

1 c. Has accepted collateral in full or partial satisfaction of the obligation it secures
2 under section 41-09-120.

3 **41-09-122. (9-624) Waiver.**

4 1. A debtor or secondary obligor may waive the right to notification of disposition of
5 collateral under section 41-09-109 only by an agreement to that effect entered into
6 and authenticated after default.

7 2. A debtor may waive the right to require disposition of collateral under subsection 5
8 of section 41-09-118 only by an agreement to that effect entered into and
9 authenticated after default.

10 3. Except in a consumer-goods transaction, a debtor or secondary obligor may waive
11 the right to redeem collateral under section 41-09-121 only by an agreement to that
12 effect entered into and authenticated after default.

13 **41-09-123. (9-625) Remedies for secured party's failure to comply with chapter.**

14 1. If it is established that a secured party is not proceeding in accordance with this
15 chapter, a court may order or restrain collection, enforcement, or disposition of
16 collateral on appropriate terms and conditions.

17 2. Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of
18 any loss caused by a failure to comply with this chapter. Loss caused by a failure
19 to comply may include loss resulting from the debtor's inability to obtain, or
20 increase costs of, alternative financing.

21 3. Except as otherwise provided in section 41-09-126:

22 a. A person that, at the time of the failure, was a debtor, was an obligor, or held
23 a security interest in or other lien on the collateral may recover damages
24 under subsection 2 for its loss; and

25 b. If the collateral is consumer goods, a person that was a debtor or a secondary
26 obligor at the time a secured party failed to comply with this part may recover
27 for that failure in any event an amount not less than the credit service charge
28 plus ten percent of the principal amount of the obligation or the time-price
29 differential plus ten percent of the cash price.

30 4. A debtor whose deficiency is eliminated under section 41-09-124 may recover
31 damages for the loss of any surplus. However, a debtor or secondary obligor

1 whose deficiency is eliminated or reduced under section 41-09-124 may not
2 otherwise recover under subsection 2 for noncompliance with the provisions of
3 sections 41-09-99 through 41-09-126 relating to collection, enforcement,
4 disposition, or acceptance.

5 5. In addition to any damages recoverable under subsection 2, the debtor, consumer
6 obligor, or person named as a debtor in a filed record, as applicable, may recover
7 five hundred dollars in each case from a person that:

8 a. Fails to comply with section 41-09-18;

9 b. Fails to comply with section 41-09-19;

10 c. Files a record that the person is not entitled to file under subsection 1 of
11 section 41-09-80;

12 d. Fails to cause the secured party of record to file or send a termination
13 statement as required by subsection 1 or 3 of section 41-09-84;

14 e. Fails to comply with subdivision a of subsection 2 of section 41-09-114 and
15 whose failure is part of a pattern, or consistent with a practice, of
16 noncompliance; or

17 f. Fails to comply with subdivision b of subsection 2 of section 41-09-114.

18 6. A debtor or consumer obligor may recover damages under subsection 2 and, in
19 addition, five hundred dollars in each case from a person that, without reasonable
20 cause, fails to comply with a request under section 41-09-20. A recipient of a
21 request under section 41-09-20 which never claimed an interest in the collateral or
22 obligations that are the subject of a request under that section has a reasonable
23 excuse for failure to comply with the request within the meaning of this subsection.

24 7. If a secured party fails to comply with a request regarding a list of collateral or a
25 statement of account under section 41-09-20, the secured party may claim a
26 security interest only as shown in the list or statement included in the request as
27 against a person that is reasonably misled by the failure.

28 **41-09-124. (9-626) Action in which deficiency or surplus is in issue.**

29 1. In an action arising from a transaction, other than a consumer transaction, in which
30 the amount of a deficiency or surplus is in issue, the following rules apply:

- 1 a. A secured party need not prove compliance with the provisions of this part
2 relating to collection, enforcement, disposition, or acceptance unless the
3 debtor or a secondary obligor places the secured party's compliance in issue.
- 4 b. If the secured party's compliance is placed in issue, the secured party has the
5 burden of establishing that the collection, enforcement, disposition, or
6 acceptance was conducted in accordance with this part.
- 7 c. Except as otherwise provided in section 41-09-126, if a secured party fails to
8 prove that the collection, enforcement, disposition, or acceptance was
9 conducted in accordance with the provisions of this part relating to collection,
10 enforcement, disposition, or acceptance, the liability of a debtor or a
11 secondary obligor for a deficiency is limited to an amount by which the sum of
12 the secured obligation, expenses, and attorney's fees exceeds the greater of:
13 (1) The proceeds of the collection, enforcement, disposition, or
14 acceptance; or
15 (2) The amount of proceeds that would have been realized had the
16 noncomplying secured party proceeded in accordance with the
17 provisions of this part relating to collection, enforcement, disposition, or
18 acceptance.
- 19 d. For purposes of paragraph 2 of subdivision c, the amount of proceeds that
20 would have been realized is equal to the sum of the secured obligation,
21 expenses, and attorney's fees unless the secured party proves that the
22 amount is less than that sum.
- 23 e. If a deficiency or surplus is calculated under subsection 6 of section
24 41-09-113, the debtor or obligor has the burden of establishing that the
25 amount of proceeds of the disposition is significantly below the range of prices
26 that a complying disposition to a person other than the secured party, a
27 person related to the secured party, or a secondary obligor would have
28 brought.
- 29 2. The limitation of the rules in subsection 1 to transactions other than consumer
30 transactions is intended to leave to the court the determination of the proper rules
31 in consumer transactions. The court may not infer from that limitation the nature of

1 the proper rule in consumer transactions and may continue to apply established
2 approaches.

3 **41-09-125. (9-627) Determination of whether conduct was commercially**
4 **reasonable.**

- 5 1. The fact that a greater amount could have been obtained by a collection,
6 enforcement, disposition, or acceptance at a different time or in a different method
7 from that selected by the secured party is not of itself sufficient to preclude the
8 secured party from establishing that the collection, enforcement, disposition, or
9 acceptance was made in a commercially reasonable manner.
- 10 2. A disposition of collateral is made in a commercially reasonable manner if the
11 disposition is made:
- 12 a. In the usual manner on any recognized market;
13 b. At the price current in any recognized market at the time of the disposition; or
14 c. Otherwise in conformity with reasonable commercial practices among dealers
15 in the type of property that was the subject of the disposition.
- 16 3. A collection, enforcement, disposition, or acceptance is commercially reasonable if
17 it has been approved:
- 18 a. In a judicial proceeding;
19 b. By a bona fide creditors' committee;
20 c. By a representative of creditors; or
21 d. By an assignee for the benefit of creditors.
- 22 4. Approval under subsection 3 need not be obtained, and lack of approval does not
23 mean that the collection, enforcement, disposition, or acceptance is not
24 commercially reasonable.

25 **41-09-126. (9-628) Nonliability and limitation on liability of secured party -**
26 **Liability of secondary obligor.**

- 27 1. Unless a secured party knows that a person is a debtor or obligor, knows the
28 identity of the person, and knows how to communicate with the person:
- 29 a. The secured party is not liable to the person, or to a secured party or
30 lienholder that has filed a financing statement against the person, for failure to
31 comply with this chapter; and

- 1 b. The secured party's failure to comply with this chapter does not affect the
2 liability of the person for a deficiency.
- 3 2. A secured party is not liable because of its status as secured party:
- 4 a. To a person that is a debtor or obligor, unless the secured party knows:
- 5 (1) That the person is a debtor or obligor;
6 (2) The identity of the person; and
7 (3) How to communicate with the person; or
- 8 b. To a secured party or lienholder that has filed a financing statement against a
9 person, unless the secured party knows:
- 10 (1) That the person is a debtor; and
11 (2) The identity of the person.
- 12 3. A secured party is not liable to any person, and a person's liability for a deficiency
13 is not affected, because of any act or omission arising out of the secured party's
14 reasonable belief that a transaction is not a consumer-goods transaction or a
15 consumer transaction or that goods are not consumer goods, if the secured party's
16 belief is based on its reasonable reliance on:
- 17 a. A debtor's representation concerning the purpose for which collateral was to
18 be used, acquired, or held; or
- 19 b. An obligor's representation concerning the purpose for which a secured
20 obligation was incurred.
- 21 4. A secured party is not liable to any person under subdivision b of subsection 3 of
22 section 41-09-123 for its failure to comply with section 41-09-114.
- 23 5. A secured party is not liable under subdivision b of subsection 3 of section
24 41-09-123 more than once with respect to any one secured obligation.
- 25 **41-09-127. (9-702) Savings clause.**
- 26 1. Except as otherwise provided in this part, this Act applies to a transaction or lien
27 within its scope, even if the transaction or lien was entered into or created before
28 January 1, 2002.
- 29 2. Except as otherwise provided in subsection 3 and sections 41-09-128 through
30 41-09-134:

- 1 a. Transactions and liens that were not governed by the former chapter 41-09
2 were validly entered into or created before January 1, 2002, and would be
3 subject to this Act if they had been entered into or created on or after
4 January 1, 2002, and the rights, duties, and interests flowing from those
5 transactions and liens remain valid after January 1, 2001; and
6 b. The transactions and liens may be terminated, completed, consummated, and
7 enforced as required or permitted by this Act or by the law that otherwise
8 would apply if this Act had not taken effect.
9 3. This Act does not affect an action, case, or proceeding commenced before
10 January 1, 2002.

11 **41-09-128. (9-703) Security interest perfected before effective date.**

- 12 1. A security interest that is enforceable immediately before January 1, 2002, and
13 would have priority over the rights of a person that becomes a lien creditor at that
14 time is a perfected security interest under this Act if, on January 1, 2002, the
15 applicable requirements for enforceability and perfection under this Act are
16 satisfied without further action.
17 2. Except as otherwise provided in section 41-09-130, if, immediately before
18 January 1, 2002, a security interest is enforceable and would have priority over the
19 rights of a person that becomes a lien creditor at that time, but the applicable
20 requirements for enforceability or perfection under this Act are not satisfied on
21 January 1, 2002, the security interest:
22 a. Is a perfected security interest for one year after this Act takes effect;
23 b. Remains enforceable thereafter only if the security interest becomes
24 enforceable under section 41-09-13 before the year expires; and
25 c. Remains perfected thereafter only if the applicable requirements for perfection
26 under this Act are satisfied before the year expires.

27 **41-09-129. (9-704) Security interest unperfected before effective date.** A security
28 interest that is enforceable immediately before January 1, 2002, but which would be
29 subordinate to the rights of a person that becomes a lien creditor at that time:

- 30 1. Remains an enforceable security interest until January 1, 2003;

- 1 2. Remains enforceable thereafter if the security interest becomes enforceable under
2 section 41-09-13 on January 1, 2002, or within one year thereafter; and
3 3. Becomes perfected:
4 a. Without further action, on January 1, 2002, if the applicable requirements for
5 perfection under this Act are satisfied before or at that time; or
6 b. When the applicable requirements for perfection are satisfied if the
7 requirements are satisfied after that time.

8 **41-09-130. (9-705) Effectiveness of action taken before effective date.**

- 9 1. If action, other than the filing of a financing statement, is taken before January 1,
10 2002, and the action would have resulted in priority of a security interest over the
11 rights of a person that becomes a lien creditor had the security interest become
12 enforceable before January 1, 2002, the action is effective to perfect a security
13 interest that attaches under this Act by January 1, 2003. An attached security
14 interest becomes unperfected on January 1, 2003, unless the security interest
15 becomes a perfected security interest under this Act before the expiration of that
16 period.
17 2. The filing of a financing statement before January 1, 2002, is effective to perfect a
18 security interest to the extent the filing would satisfy the applicable requirements for
19 perfection under this Act.
20 3. This Act does not render ineffective an effective financing statement that, before
21 January 1, 2002, is filed and satisfies the applicable requirements for perfection
22 under the law of the jurisdiction governing perfection as provided in the former
23 section 41-09-03. However, except as otherwise provided in subsections 4 and 5
24 and section 41-09-131, the financing statement ceases to be effective at the earlier
25 of:
26 a. The time the financing statement would have ceased to be effective under the
27 law of the jurisdiction in which it is filed; or
28 b. January 1, 2007.
29 4. The filing of a continuation statement after this Act takes effect does not continue
30 the effectiveness of the financing statement filed before January 1, 2002.
31 However, upon the timely filing of a continuation statement after January 1, 2002,

1 and in accordance with the law of the jurisdiction governing perfection as provided
2 in part 3, the effectiveness of a financing statement filed in the same office in that
3 jurisdiction before January 1, 2002, continues for the period provided by the law of
4 that jurisdiction.

5 5. Subdivision b of subsection 3 applies to a financing statement that, before
6 January 1, 2002, is filed against a transmitting utility and satisfies the applicable
7 requirements for perfection under the law of the jurisdiction governing perfection as
8 provided in the former section 41-09-03 only to the extent that part 3 provides that
9 the law of a jurisdiction other than the jurisdiction in which the financing statement
10 is filed governs perfection of a security interest in collateral covered by the
11 financing statement.

12 6. A financing statement that includes a financing statement filed before January 1,
13 2002, takes effect and a continuation statement filed after January 1, 2002, is
14 effective only to the extent that it satisfies the requirements of part 5 for an initial
15 financing statement.

16 **41-09-131. (9-706) When initial financing statement suffices to continue**
17 **effectiveness of financing statement.**

18 1. The filing of an initial financing statement in the office specified in section 41-09-72
19 continues the effectiveness of a financing statement filed before January 1, 2002,
20 if:

21 a. The filing of an initial financing statement in that office would be effective to
22 perfect a security interest under this Act;

23 b. The pre-effective-date financing statement was filed in an office in another
24 state or another office in this state; and

25 c. The initial financing statement satisfies subsection 3.

26 2. The filing of an initial financing statement under subsection 1 continues the
27 effectiveness of the pre-effective-date financing statement:

28 a. If the initial financing statement is filed before January 1, 2002, for the period
29 provided in the former section 41-09-42 with respect to a financing statement;
30 and

1 4. If the law of this state governs perfection of a security interest, the effectiveness of
2 a pre-effective-date financing statement may be continued only under
3 subsections 4 and 6 of section 41-09-130 and section 41-09-131.

4 5. Regardless of whether the law of this state governs perfection of a security
5 interest, the effectiveness of a pre-effective-date financing statement filed in this
6 state may be terminated January 1, 2002, by filing a termination statement in the
7 office in which the pre-effective-date financing statement is filed, unless an initial
8 financing statement that satisfies subsection 3 of section 41-09-131 has been filed
9 in the office specified by the law of the jurisdiction governing perfection as provided
10 in part 3 as the office in which to file a financing statement.

11 **41-09-133. (9-708) Persons entitled to file initial financing statement or**
12 **continuation statement.** A person may file an initial financing statement or a continuation
13 statement under this part if:

- 14 1. The secured party of record authorizes the filing; and
15 2. The filing is necessary under this part:
16 a. To continue the effectiveness of a financing statement filed before January 1,
17 2002; or
18 b. To perfect or continue the perfection of a security interest.

19 **41-09-134. (9-709) Priority.**

- 20 1. This Act determines the priority of conflicting claims to collateral. However, if the
21 relative priorities of the claims were established before January 1, 2002, the former
22 chapter 41-09 determines priority.
23 2. For purposes of subsection 1 of section 41-09-42, the priority of a security interest
24 that becomes enforceable under section 41-09-13 dates from January 1, 2002, if
25 the security interest is perfected under this Act by the filing of a financing statement
26 before January 1, 2002, which would not have been effective to perfect the security
27 interest under the former chapter 41-09. This subsection does not apply to
28 conflicting security interests each of which is perfected by the filing of such a
29 financing statement.

30 **SECTION 30. AMENDMENT.** Subsection 12 of section 47-19-02 of the North Dakota
31 Century Code is amended and reenacted as follows:

1 12. A financing statement covering any item described in ~~subsection 5~~ of section
2 ~~41-09-41~~ 41-09-73.

3 **SECTION 31. AMENDMENT.** Subdivision a of subsection 2 of section 49-04-19 of the
4 North Dakota Century Code is amended and reenacted as follows:

5 2. a. Notwithstanding the provisions of ~~sections 41-09-23, 41-09-40, 41-09-41,~~
6 section 41-09-30 and 41-09-42 sections 41-09-72 through 41-09-98, all filings
7 required under the Uniform Commercial Code in order to perfect a security
8 interest against the personal property or fixtures of a debtor transmitting utility
9 shall be made and maintained only in the office of the secretary of state of
10 North Dakota.

11 **SECTION 32. AMENDMENT.** Section 54-09-08 of the 1999 Supplement to the North
12 Dakota Century Code is amended and reenacted as follows:

13 **54-09-08. Secretary of state's general services operating fund.** The secretary of
14 state's general services operating fund is a special fund in the state treasury. Moneys in the
15 fund are to be used pursuant to legislative appropriations for the provision of services under
16 ~~subsections 8 and 11 of section 41-09-42~~ 41-09-96 and subsection 10 of section 54-09-04. At
17 the close of each fiscal year, the secretary of state shall transfer any unobligated balance
18 remaining in the fund exceeding seventy-five thousand dollars to the general fund.

NOTE: Changes made to Chapter 41-09 may result in substantive changes needing to
be made to Section 54-09-08.

19 **SECTION 33. Computerized central indexing system - Rules.**

20 1. The secretary of state shall maintain a computerized central indexing system that
21 contains the information filed with the office of the secretary of state or with any of
22 the offices of the registers of deeds in this state pursuant to sections 35-13-02,
23 35-17-04, 35-20-16, 35-30-02, 35-31-02, and 41-09-72. The system must connect
24 each register of deeds' office to the secretary of state's office through the
25 information technology department. The system must allow access to financing
26 statement information by equipment that conforms to requirements determined by
27 the information technology department. The system must have safeguards to
28 allow access to information that is in the system relating to security interests or
29 liens and to prevent unauthorized alteration or deletion of that information and to

- 1 allow access to other information in the system as prescribed by the secretary of
2 state.
- 3 2. Within one working day of receipt of a financing statement, continuation statement,
4 amendment, or termination statement filed pursuant to chapter 41-09 or a
5 statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or
6 35-31-02, the register of deeds or secretary of state shall file the information
7 contained in the statement in the computerized central indexing system. A
8 computer printout of information from the system is prima facie evidence of the
9 existence or nonexistence of the filing of a financing statement or lien. The
10 secretary of state shall prescribe one form that can be used to perfect a security
11 interest in farm products or gain protection under the central indexing system, or
12 both.
- 13 3. The secretary of state may adopt rules necessary to implement sections 33, 34,
14 and 35 of this Act.

15 **SECTION 34. Secretary of state to compile lists for crops and livestock -**

16 **Distribution of lists.**

- 17 1. From the computerized central indexing system, the secretary of state or a
18 designee shall produce each month one list for crops and one list for livestock that
19 each contain the information as filed on the forms pursuant to section 41-09-72.
20 The secretary of state shall also include on the lists the information filed for crops
21 and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The lists
22 must be in alphabetical order according to the last name of, or in numerical order
23 according to the social security number of, the person engaged in farming
24 operations. The lists may be prepared in categories according to county, regions
25 as designated by the secretary of state, or on a statewide basis. If requested, the
26 lists must be in printed form and on microfiche. Each list must conspicuously note
27 the effective date of the list.
- 28 2. The secretary of state shall distribute monthly by mail the lists prepared pursuant to
29 subsection 1, at least five business days in advance of the effective date of each of
30 the lists. If requested, the secretary of state shall mail the lists to any person
31 making a request at a fee as provided in section 35 of this Act.

1 3. Upon a verbal request of any person, the secretary of state, a designee of the
2 secretary of state, or a register of deeds shall verbally provide information
3 contained on a list generated through the computerized central indexing system if
4 the collateral is crops or livestock. The requesting party may request a certificate
5 from the secretary of state or the register of deeds and the secretary of state or the
6 register of deeds shall confirm the information given. Direct computer access is
7 equivalent to oral confirmation, and a computer printout constitutes the written
8 confirmation of the secretary of state, if use of this method of confirmation does not
9 cause the central indexing system to lose federal certification. A computer printout
10 from the computerized central indexing system constitutes the certificate of the
11 secretary of state or the register of deeds as to whether there is on file, on the date
12 and hour stated on the computer printout, a financing statement.

13 **SECTION 35. Fees.**

- 14 1. The secretary of state shall establish fees for placing data in the computerized
15 central indexing system; for obtaining computer access to the computerized central
16 indexing system, to the computerized Uniform Commercial Code central filing data
17 base, or to the computerized statutory liens data base; for receiving printouts; and
18 for other services provided through the computerized system.
- 19 2. The fee for furnishing information on a verbal request pursuant to subsection 3 of
20 section 34 of this Act is seven dollars, and the fee for furnishing a certificate
21 pursuant to subsection 3 of section 34 of this Act is seven dollars.
- 22 3. The secretary of state shall establish the fee for furnishing lists pursuant to
23 subsection 1 of section 34 of this Act based on actual costs to produce the lists for
24 distribution.
- 25 4. Fees collected by the secretary of state pursuant to subsections 1 and 3 must be
26 deposited in the secretary of state's general services operating fund. Fees
27 collected by the secretary of state pursuant to subsection 2 must be deposited in
28 the general fund in the state treasury.

29 **SECTION 36. REPEAL.** Chapter 41-09 of the North Dakota Century Code is repealed.

30 **SECTION 37. EFFECTIVE DATE.** This Act becomes effective on January 1, 2002.

NOTE: Appendix II to the Model Act contains optional provisions setting forth a production-money security interest in crops. If the Legislative Assembly decides to

enact these optional provisions, there are several necessary changes to make to the Act.