

SENATE BILL NO. 1352

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR LUETKEMEYER.

5166S.04I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 400.1-201, 400.1-204, 400.1-301, 400.1-306, 400.2-102, 400.2-106, 400.2-201, 400.2-202, 400.2-203, 400.2-205, 400.2-209, 400.2A-102, 400.2A-103, 400.2A-107, 400.2A-201, 400.2A-202, 400.2A-203, 400.2A-205, 400.2A-208, 400.3-104, 400.3-105, 400.3-401, 400.3-604, 400.4A-103, 400.4A-201, 400.4A-202, 400.4A-203, 400.4A-207, 400.4A-208, 400.4A-210, 400.4A-211, 400.4A-305, 400.5-104, 400.5-116, 400.7-102, 400.7-106, 400.8-102, 400.8-103, 400.8-106, 400.8-110, 400.8-303, 400.9-102, 400.9-104, 400.9-105, 400.9-203, 400.9-204, 400.9-207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-304, 400.9-305, 400.9-310, 400.9-312, 400.9-313, 400.9-314, 400.9-316, 400.9-317, 400.9-323, 400.9-324, 400.9-330, 400.9-331, 400.9-332, 400.9-334, 400.9-341, 400.9-404, 400.9-406, 400.9-408, 400.9-509, 400.9-513, 400.9-601, 400.9-605, 400.9-608, 400.9-611, 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-619, 400.9-620, 400.9-621, 400.9-624, and 400.9-628, RSMo, and to enact in lieu thereof one hundred eight new sections relating to commercial transactions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 400.1-201, 400.1-204, 400.1-301,
2 400.1-306, 400.2-102, 400.2-106, 400.2-201, 400.2-202, 400.2-
3 203, 400.2-205, 400.2-209, 400.2A-102, 400.2A-103, 400.2A-107,
4 400.2A-201, 400.2A-202, 400.2A-203, 400.2A-205, 400.2A-208,
5 400.3-104, 400.3-105, 400.3-401, 400.3-604, 400.4A-103, 400.4A-
6 201, 400.4A-202, 400.4A-203, 400.4A-207, 400.4A-208, 400.4A-
7 210, 400.4A-211, 400.4A-305, 400.5-104, 400.5-116, 400.7-102,
8 400.7-106, 400.8-102, 400.8-103, 400.8-106, 400.8-110, 400.8-
9 303, 400.9-102, 400.9-104, 400.9-105, 400.9-203, 400.9-204,

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 400.9-207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-
11 304, 400.9-305, 400.9-310, 400.9-312, 400.9-313, 400.9-314,
12 400.9-316, 400.9-317, 400.9-323, 400.9-324, 400.9-330, 400.9-
13 331, 400.9-332, 400.9-334, 400.9-341, 400.9-404, 400.9-406,
14 400.9-408, 400.9-509, 400.9-513, 400.9-601, 400.9-605, 400.9-
15 608, 400.9-611, 400.9-613, 400.9-614, 400.9-615, 400.9-616,
16 400.9-619, 400.9-620, 400.9-621, 400.9-624, and 400.9-628,
17 RSMo, are repealed and one hundred eight new sections enacted
18 in lieu thereof, to be known as sections 34.700, 400.1-201,
19 400.1-204, 400.1-301, 400.1-306, 400.2-102, 400.2-106, 400.2-
20 201, 400.2-202, 400.2-203, 400.2-205, 400.2-209, 400.2A-102,
21 400.2A-103, 400.2A-107, 400.2A-201, 400.2A-202, 400.2A-203,
22 400.2A-205, 400.2A-208, 400.3-104, 400.3-105, 400.3-401, 400.3-
23 604, 400.4A-103, 400.4A-201, 400.4A-202, 400.4A-203, 400.4A-
24 207, 400.4A-208, 400.4A-210, 400.4A-211, 400.4A-305, 400.5-104,
25 400.5-116, 400.7-102, 400.7-106, 400.8-102, 400.8-103, 400.8-
26 106, 400.8-110, 400.8-303, 400.9-102, 400.9-104, 400.9-105,
27 400.9-105A, 400.9-107A, 400.9-107B, 400.9-203, 400.9-204,
28 400.9-207, 400.9-208, 400.9-209, 400.9-210, 400.9-301, 400.9-
29 304, 400.9-305, 400.9-306A, 400.9-306B, 400.9-310, 400.9-312,
30 400.9-313, 400.9-314, 400.9-314A, 400.9-316, 400.9-317, 400.9-
31 323, 400.9-324, 400.9-326A, 400.9-330, 400.9-331, 400.9-332,
32 400.9-334, 400.9-341, 400.9-404, 400.9-406, 400.9-408, 400.9-
33 509, 400.9-513, 400.9-601, 400.9-605, 400.9-608, 400.9-611,
34 400.9-613, 400.9-614, 400.9-615, 400.9-616, 400.9-619, 400.9-
35 620, 400.9-621, 400.9-624, 400.9-628, 400.12-101, 400.12-102,
36 400.12-103, 400.12-104, 400.12-105, 400.12-106, 400.12-107,
37 400.199-101, 400.199-102, 400.199-201, 400.199-301, 400.199-
38 302, 400.199-303, 400.199-304, 400.199-305, and 400.199-306, to
39 read as follows:

34.700. 1. A public entity shall not:

2 (1) Accept a payment using central bank digital
3 currency; or

4 (2) Participate in any test of central bank digital
5 currency by any Federal Reserve branch.

6 2. For purposes of this section, the following terms
7 mean:

8 (1) "Central bank digital currency", has the same
9 meaning as in section 400.1-201;

10 (2) "Public entity", the state of Missouri or any
11 political subdivision thereof, including all boards,
12 commissions, agencies, institutions, authorities, and bodies
13 politic and corporate of the state created by or in
14 accordance with state law or regulations.

 400.1-201. (a) Unless the context otherwise requires,
2 words or phrases defined in this section, or in the
3 additional definitions contained in other articles of this
4 chapter that apply to particular articles or parts thereof,
5 have the meanings stated.

6 (b) Subject to definitions contained in other articles
7 of this chapter that apply to particular articles or parts
8 thereof:

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

12 (2) "Aggrieved party" means a party entitled to pursue
13 a remedy.

14 (3) "Agreement", as distinguished from "contract",
15 means the bargain of the parties in fact, as found in their
16 language or inferred from other circumstances, including
17 course of performance, course of dealing, or usage of trade
18 as provided in section 400.1-303.

19 (4) "Bank" means a person engaged in the business of
20 banking and includes a savings bank, savings and loan
21 association, credit union, and trust company.

22 (5) "Bearer" means a person in possession of a
23 negotiable instrument, document of title, or certificated
24 security that is payable to bearer or indorsed in blank.

25 (6) "Bill of lading" means a document evidencing the
26 receipt of goods for shipment issued by a person engaged in
27 the business of transporting or forwarding goods.

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

30 (8) "Burden of establishing" a fact means the burden
31 of persuading the trier of fact that the existence of the
32 fact is more probable than its nonexistence.

33 (9) "Buyer in ordinary course of business" means a
34 person that buys goods in good faith, without knowledge that
35 the sale violates the rights of another person in the goods,
36 and in the ordinary course from a person, other than a
37 pawnbroker, in the business of selling goods of that kind.
38 A person buys goods in the ordinary course if the sale to
39 the person comports with the usual or customary practices in
40 the kind of business in which the seller is engaged or with
41 the seller's own usual or customary practices. A person
42 that sells oil, gas, or other minerals at the wellhead or
43 minehead is a person in the business of selling goods of
44 that kind. A buyer in ordinary course of business may buy
45 for cash, by exchange of other property, or on secured or
46 unsecured credit, and may acquire goods or documents of
47 title under a preexisting contract for sale. Only a buyer
48 that takes possession of the goods or has a right to recover
49 the goods from the seller under article 2 may be a buyer in
50 ordinary course of business. "Buyer in ordinary course of

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

54 (9A) "Central bank digital currency" means a digital
55 currency, a digital medium of exchange, or a digital
56 monetary unit of account issued by the United States Federal
57 Reserve System, a federal agency, a foreign government, a
58 foreign central bank, or a foreign reserve system, that is
59 made directly available to a consumer by such entities. The
60 term includes a digital currency, a digital medium of
61 exchange, or a digital monetary unit of account issued by
62 the United States Federal Reserve System, a federal agency,
63 a foreign government, a foreign central bank, or a foreign
64 reserve system, that is processed or validated directly by
65 such entities.

66 (10) "Conspicuous", with reference to a term, means so
67 written, displayed, or presented that, **based on the totality**
68 **of the circumstances**, a reasonable person against which it
69 is to operate ought to have noticed it. Whether a term is
70 "conspicuous" or not is a decision for the court.

71 [Conspicuous terms include the following:

72 (A) a heading in capitals equal to or greater in size
73 than the surrounding text, or in contrasting type, font, or
74 color to the surrounding text of the same or lesser size; and

75 (B) language in the body of a record or display in
76 larger type than the surrounding text, or in contrasting
77 type, font, or color to the surrounding text of the same
78 size, or set off from surrounding text of the same size by
79 symbols or other marks that call attention to the language.]

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

83 (12) "Contract", as distinguished from "agreement",
84 means the total legal obligation that results from the
85 parties' agreement as determined by this chapter as
86 supplemented by any other applicable laws.

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

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

96 (15) "Delivery", with respect to an **electronic**
97 **document of title, means voluntary transfer of control and,**
98 **with respect to an instrument, a tangible** document of title,
99 **or an authoritative tangible copy of a record evidencing**
100 chattel paper, means voluntary transfer of possession.

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

112 (16A) **"Electronic" means relating to technology having**
113 **electrical, digital, magnetic, wireless, optical,**
114 **electromagnetic, or similar capabilities.**

115 (17) "Fault" means a default, breach, or wrongful act
116 or omission.

117 (18) "Fungible goods" means:

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

120 (B) goods that by agreement are treated as equivalent.

121 (19) "Genuine" means free of forgery or counterfeiting.

122 (20) "Good faith", except as otherwise provided in
123 article 5, means honesty in fact and the observance of
124 reasonable commercial standards of fair dealing.

125 (21) "Holder" means:

126 (A) the person in possession of a negotiable
127 instrument that is payable either to bearer or to an
128 identified person that is the person in possession; [or]

129 (B) the person in possession of a document of title if
130 the goods are deliverable either to bearer or to the order
131 of the person in possession; or

132 **(C) the person in control, other than pursuant to**
133 **Section 400.7-106(g), of a negotiable electronic document of**
134 **title.**

135 (22) "Insolvency proceeding" includes an assignment
136 for the benefit of creditors or other proceeding intended to
137 liquidate or rehabilitate the estate of the person involved.

138 (23) "Insolvent" means:

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

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

143 (C) being insolvent within the meaning of federal
144 bankruptcy law.

145 (24) "Money" means a medium of exchange **that is**
146 currently authorized or adopted by a domestic or foreign

147 government. The term includes a monetary unit of account
148 established by an intergovernmental organization or by
149 agreement between two or more countries. **The term does not**
150 **include an electronic record that is a medium of exchange**
151 **recorded and transferable in a system that existed and**
152 **operated for the medium of exchange before the medium of**
153 **exchange was authorized or adopted by the government. The**
154 **term does not include a central bank digital currency.**

155 (25) "Organization" means a person other than an
156 individual.

157 (26) "Party", as distinguished from "third party",
158 means a person that has engaged in a transaction or made an
159 agreement subject to this chapter.

160 (27) "Person" means an individual, corporation,
161 business trust, estate, trust, partnership, limited
162 liability company, association, joint venture, government,
163 governmental subdivision, agency, or instrumentality,
164 [public corporation,] or any other legal or commercial
165 entity. **The term includes a protected series, however**
166 **denominated, of an entity if the protected series is**
167 **established under law other than under this chapter that**
168 **limits, or limits if conditions specified under the law are**
169 **satisfied, the ability of a creditor of the entity or of any**
170 **other protected series of the entity to satisfy a claim from**
171 **assets of the protected series.**

172 (28) "Present value" means the amount as of a date
173 certain of one or more sums payable in the future,
174 discounted to the date certain by use of either an interest
175 rate specified by the parties if that rate is not manifestly
176 unreasonable at the time the transaction is entered into or,
177 if an interest rate is not so specified, a commercially

178 reasonable rate that takes into account the facts and
179 circumstances at the time the transaction is entered into.

180 (29) "Purchase" means taking by sale, lease, discount,
181 negotiation, mortgage, pledge, lien, security interest,
182 issue or reissue, gift, or any other voluntary transaction
183 creating an interest in property.

184 (30) "Purchaser" means a person that takes by purchase.

185 (31) "Record" means information that is inscribed on a
186 tangible medium or that is stored in an electronic or other
187 medium and is retrievable in perceivable form.

188 (32) "Remedy" means any remedial right to which an
189 aggrieved party is entitled with or without resort to a
190 tribunal.

191 (33) "Representative" means a person empowered to act
192 for another, including an agent, an officer of a corporation
193 or association, and a trustee, executor, or administrator of
194 an estate.

195 (34) "Right" includes remedy.

196 (35) "Security interest" means an interest in personal
197 property or fixtures which secures payment or performance of
198 an obligation. "Security interest" includes any interest of
199 a consignor and a buyer of accounts, chattel paper, a
200 payment intangible, or a promissory note in a transaction
201 that is subject to article 9. "Security interest" does not
202 include the special property interest of a buyer of goods on
203 identification of those goods to a contract for sale under
204 section 400.2-401, but a buyer may also acquire a "security
205 interest" by complying with article 9. Except as otherwise
206 provided in section 400.2-505, the right of a seller or
207 lessor of goods under article 2 or 2A to retain or acquire
208 possession of the goods is not a "security interest", but a
209 seller or lessor may also acquire a "security interest" by

210 complying with article 9. The retention or reservation of
211 title by a seller of goods notwithstanding shipment or
212 delivery to the buyer under section 400.2-401 is limited in
213 effect to a reservation of a "security interest". Whether a
214 transaction in the form of a lease creates a "security
215 interest" is determined pursuant to section 400.1-203.

216 (36) "Send", in connection with a [writing,] record[,]
217 or [notice] **notification**, means:

218 (A) to deposit in the mail [or], deliver for
219 transmission, **or transmit** by any other usual means of
220 communication, with postage or cost of transmission provided
221 for [and properly addressed and, in the case of an
222 instrument, to an address specified thereon or otherwise
223 agreed, or if there be none], **addressed** to any address
224 reasonable under the circumstances; or

225 (B) [in any other way to cause to be received any
226 record or notice within the time it would have arrived if
227 properly sent] **to cause the record or notification to be
228 received within the time it would have been received if
229 properly sent under subparagraph (A).**

230 (37) ["Signed" includes using any symbol executed or
231 adopted with present intention to adopt or accept a writing]
232 **"Sign" means with present intent to authenticate or adopt a
233 record:**

234 (A) **execute or adopt a tangible symbol; or**

235 (B) **attach to or logically associate with the record
236 an electronic symbol, sound, or process.**

237 **"Signed", "signing", and "signature" have corresponding
238 meanings.**

239 (38) "State" means a State of the United States, the
240 District of Columbia, Puerto Rico, the United States Virgin

241 Islands, or any territory or insular possession subject to
242 the jurisdiction of the United States.

243 (39) "Surety" includes a guarantor or other secondary
244 obligor.

245 (40) "Term" means a portion of an agreement that
246 relates to a particular matter.

247 (41) "Unauthorized signature" means a signature made
248 without actual, implied, or apparent authority. The term
249 includes a forgery.

250 (42) "Warehouse receipt" means a receipt issued by a
251 person engaged in the business of storing goods for hire.

252 (43) "Writing" includes printing, typewriting, or any
253 other intentional reduction to tangible form. "Written" has
254 a corresponding meaning.

400.1-204. Except as otherwise provided in articles 3,
2 4, [and] 5, **and 12**, a person gives value for rights if the
3 person acquires them:

4 (1) in return for a binding commitment to extend
5 credit or for the extension of immediately available credit,
6 whether or not drawn upon and whether or not a charge-back
7 is provided for in the event of difficulties in collection;

8 (2) as security for, or in total or partial
9 satisfaction of, a preexisting claim;

10 (3) by accepting delivery under a preexisting contract
11 for purchase; or

12 (4) in return for any consideration sufficient to
13 support a simple contract.

400.1-301. (a) Except as otherwise provided in this
2 section, when a transaction bears a reasonable relation to
3 this state and also to another state or nation the parties
4 may agree that the law either of this state or of such other
5 state or nation shall govern their rights and duties.

6 (b) In the absence of an agreement effective under
7 subsection (a), and except as provided in subsection (c),
8 this chapter applies to transactions bearing an appropriate
9 relation to this state.

10 (c) If one of the following provisions of this chapter
11 specifies the applicable law, that provision governs and a
12 contrary agreement is effective only to the extent permitted
13 by the law so specified:

- 14 (1) section 400.2-402;
- 15 (2) sections 400.2A-105 and 400.2A-106;
- 16 (3) section 400.4-102;
- 17 (4) section 400.4A-507;
- 18 (5) section 400.5-116;
- 19 (6) section 400.8-110;
- 20 (7) sections 400.9-301 through 400.9-307;
- 21 **(8) section 400.12-107.**

400.1-306. A claim or right arising out of an alleged
2 breach may be discharged in whole or in part without
3 consideration by agreement of the aggrieved party in [an
4 authenticated] **a signed** record.

400.2-102. **(1)** Unless the context otherwise requires,
2 [this article applies to transactions in goods; it does not
3 apply to any transaction which although in the form of an
4 unconditional contract to sell or present sale is intended
5 to operate only as a security transaction nor does this
6 article impair or repeal any statute regulating sales to
7 consumers, farmers or other specified classes of buyers] **and**
8 **except as provided in subsection (3), this Article applies**
9 **to transactions in goods and, in the case of a hybrid**
10 **transaction, it applies to the extent provided in subsection**
11 **(2).**

12 **(2) In a hybrid transaction:**

13 (a) If the sale-of-goods aspects do not predominate,
14 only the provisions of this Article which relate primarily
15 to the sale-of-goods aspects of the transaction apply, and
16 the provisions that relate primarily to the transaction as a
17 whole do not apply.

18 (b) If the sale-of-goods aspects predominate, this
19 Article applies to the transaction but does not preclude
20 application in appropriate circumstances of other law to
21 aspects of the transaction which do not relate to the sale
22 of goods.

23 (3) This Article does not:

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

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

400.2-106. (1) In this article unless the context
2 otherwise requires "contract" and "agreement" are limited to
3 those relating to the present or future sale of goods.
4 "Contract for sale" includes both a present sale of goods
5 and a contract to sell goods at a future time. A "sale"
6 consists in the passing of title from the seller to the
7 buyer for a price (section 400.2-401). A "present" means a
8 sale which is accomplished by the making of the contract.

9 (2) Goods or conduct including any part of a
10 performance are "conforming" or conform to the contract when
11 they are in accordance with the obligations under the
12 contract.

13 (3) "Termination" occurs when either party pursuant to
14 a power created by agreement or law puts an end to the
15 contract otherwise than for its breach. On "termination"
16 all obligations which are still executory on both sides are

17 discharged but any right based on prior breach or
18 performance survives.

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

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

26 (a) **the provision of services;**

27 (b) **a lease of other goods; or**

28 (c) **a sale, lease, or license of property other than**
29 **goods.**

400.2-201. (1) Except as otherwise provided in this
2 section a contract for the sale of goods for the price of
3 five hundred dollars or more is not enforceable by way of
4 action or defense unless there is [some writing] **a record**
5 sufficient to indicate that a contract for sale has been
6 made between the parties and signed by the party against
7 whom enforcement is sought or by [his] **the party's**
8 authorized agent or broker. A [writing] **record** is not
9 insufficient because it omits or incorrectly states a term
10 agreed upon but the contract is not enforceable under this
11 [paragraph] **subsection** beyond the quantity of goods shown in
12 [such writing] **the record.**

13 (2) Between merchants if within a reasonable time a
14 [writing] **record** in confirmation of the contract and
15 sufficient against the sender is received and the party
16 receiving it has reason to know its contents, it satisfies
17 the requirements of subsection (1) against [such] **the party**
18 unless [written] notice **in a record** of objection to its
19 contents is given within ten days after it is received.

20 (3) A contract which does not satisfy the requirements
21 of subsection (1) but which is valid in other respects is
22 enforceable

23 (a) if the goods are to be specially manufactured for
24 the buyer and are not suitable for sale to others in the
25 ordinary course of the seller's business and the seller,
26 before notice of repudiation is received and under
27 circumstances which reasonably indicate that the goods are
28 for the buyer, has made either a substantial beginning of
29 their manufacture or commitments for their procurement; or

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

35 (c) with respect to goods for which payment has been
36 made and accepted or which have been received and accepted
37 (section 400.2-606).

400.2-202. Terms with respect to which the
2 confirmatory memoranda of the parties agree or which are
3 otherwise set forth in a **[writing] record** intended by the
4 parties as a final expression of their agreement with
5 respect to such terms as are included therein may not be
6 contradicted by evidence of any prior agreement or of a
7 contemporaneous oral agreement but may be explained or
8 supplemented

9 (a) by course of dealing or usage of trade (section
10 400.1-205) or by course of performance (section 400.2-208);
11 and

12 (b) by evidence of consistent additional terms unless
13 the court finds the **[writing] record** to have been intended

14 also as a complete and exclusive statement of the terms of
15 the agreement.

400.2-203. The affixing of a seal to a **[writing]**
2 **record** evidencing a contract for sale or an offer to buy or
3 sell goods does not constitute the **[writing]** **record** a sealed
4 instrument and the law with respect to sealed instruments
5 does not apply to such a contract or offer.

400.2-205. An offer by a merchant to buy or sell goods
2 in a signed **[writing]** **record** which by its terms gives
3 assurance that it will be held open is not revocable, for
4 lack of consideration, during the time stated or if no time
5 is stated for a reasonable time, but in no event may such
6 period of irrevocability exceed three months; but any such
7 term of assurance on a form supplied by the offeree must be
8 separately signed by the offeror.

400.2-209. (1) An agreement modifying a contract
2 within this article needs no consideration to be binding.

3 (2) A signed agreement which excludes modification or
4 rescission except by a signed writing **or other signed record**
5 cannot be otherwise modified or rescinded, but except as
6 between merchants such a requirement on a form supplied by
7 the merchant must be separately signed by the other party.

8 (3) The requirements of the statute of frauds section
9 of this article (section 400.2-201) must be satisfied if the
10 contract as modified is within its provisions.

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

14 (5) A party who has made a waiver affecting an
15 executory portion of the contract may retract the waiver by
16 reasonable notification received by the other party that
17 strict performance will be required of any term waived,

18 unless the retraction would be unjust in view of a material
19 change of position in reliance on the waiver.

400.2A-102. **(1)** This Article applies to any
2 transaction, regardless of form, that creates a lease **and,**
3 **in the case of a hybrid lease, it applies to the extent**
4 **provided in subsection (2).**

5 **(2) In a hybrid lease:**

6 **(a) If the lease-of-goods aspects do not predominate:**

7 **(i) Only the provisions of this Article which relate**
8 **primarily to the lease-of-goods aspects of the transaction**
9 **apply, and the provisions that relate primarily to the**
10 **transaction as a whole do not apply;**

11 **(ii) Section 400.2A-209 applies if the lease is a**
12 **finance lease; and**

13 **(iii) Section 400.2A-407 applies to the promises of**
14 **the lessee in a finance lease to the extent the promises are**
15 **consideration for the right to possession and use of the**
16 **leased goods; and**

17 **(b) If the lease-of-goods aspects predominate, this**
18 **Article applies to the transaction, but does not preclude**
19 **application in appropriate circumstances of other law to**
20 **aspects of the lease which do not relate to the lease of**
21 **goods.**

400.2A-103. **(1)** In this article unless the context
2 otherwise requires:

3 **(a) "Buyer in ordinary course of business" means a**
4 **person who in good faith and without knowledge that the sale**
5 **to him or her is in violation of the ownership rights or**
6 **security interest or leasehold interest of a third party in**
7 **the goods buys in ordinary course from a person in the**
8 **business of selling goods of that kind but does not include**
9 **a pawnbroker. "Buying" may be for cash or by exchange of**

10 other property or on secured or unsecured credit and
11 includes receiving goods or documents of title under a
12 preexisting contract for sale but does not include a
13 transfer in bulk or as security for or in total or partial
14 satisfaction of a money debt.

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

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

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

28 (e) "Consumer lease" means a lease that a lessor
29 regularly engaged in the business of leasing or selling
30 makes to a lessee who is an individual and who takes under
31 the lease primarily for a personal, family, or household
32 purpose, if the total payments to be made under the lease
33 contract, excluding payments for option to renew or buy, do
34 not exceed fifty thousand dollars.

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

37 (g) "Finance lease" means a lease with respect to
38 which:

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

41 (ii) the lessor acquires the goods or the right to
42 possession and use of the goods in connection with the
43 lease; and

44 (iii) one of the following occurs:

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

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

53 (C) the lessor (aa) informs the lessee in writing of
54 the identity of the supplier, unless the lessee has selected
55 the supplier and directed the lessor to purchase the goods
56 from the supplier, (bb) informs the lessee in writing that
57 the lessee may have rights under the contract evidencing the
58 lessor's purchase of the goods, and (cc) advised the lessee
59 in writing to contact the supplier for a description of any
60 such rights, or

61 (D) the lease contract discloses all warranties and
62 other rights provided to the lessee by the lessor and
63 supplier in connection with the lease contract and informs
64 the lessee that there are no warranties or other rights
65 provided to the lessee by the lessor and supplier other than
66 those disclosed in the lease contract.

67 (h) "Goods" means all things that are movable at the
68 time of identification to the lease contract, or are
69 fixtures as defined in Section 400.2A-309, but the term does
70 not include money, documents, instruments, accounts, chattel
71 paper, general intangibles, or minerals or the like,

72 including oil and gas, before extraction. The term also
73 includes the unborn young of animals.

74 **(h.1) "Hybrid lease" means a single transaction**
75 **involving a lease of goods and:**

76 **(i) the provision of services;**

77 **(ii) a sale of other goods; or**

78 **(iii) a sale, lease, or license of property other than**
79 **goods.**

80 (i) "Installment lease contract" means a lease
81 contract that authorizes or requires the delivery of goods
82 in separate lots to be separately accepted, even though the
83 lease contract contains a clause "each delivery is a
84 separate lease" or its equivalent.

85 (j) "Lease" means a transfer of the right to
86 possession and use of goods for a term in return for
87 consideration, but a sale, including a sale on approval or a
88 sale or return, or retention or creation of a security
89 interest is not a lease. Unless the context clearly
90 indicates otherwise, the term includes a sublease.

91 (k) "Lease agreement" means the bargain, with respect
92 to the lease, of the lessor and the lessee in fact as found
93 in their language or by implication from other circumstances
94 including course of dealing or usage of trade or course of
95 performance as provided in this Article. Unless the context
96 clearly indicates otherwise, the term includes a sublease
97 agreement.

98 (l) "Lease contract" means the total legal obligation
99 that results from the lease agreement as affected by this
100 Article and any other applicable rules of law. Unless the
101 context clearly indicates otherwise, the term includes a
102 sublease contract.

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

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

109 (o) "Lessee in ordinary course of business" means a
110 person who in good faith and without knowledge that the
111 lease to him or her is in violation of the ownership rights
112 or security interest or leasehold interest of a third party
113 in the goods leases in ordinary course from a person in the
114 business of selling or leasing goods of that kind but does
115 not include a pawnbroker. "Leasing" may be for cash or by
116 exchange of other property or on secured or unsecured credit
117 and includes receiving goods or documents of title under a
118 preexisting lease contract but does not include a transfer
119 in bulk or as security for or in total or partial
120 satisfaction of a money debt.

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

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

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

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

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

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

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

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

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

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

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

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

161 "Accessions". Section 400.2A-310(1).

162 "Construction
163 mortgage". Section 400.2A-309(1)(d).

164 "Encumbrance". Section 400.2A-309(1)(e).

165 "Fixtures". Section 400.2A-309(1) (a) .
166 "Fixture filing". Section 400.2A-309(1) (b) .
167 "Purchase money lease". Section 400.2A-309(1) (c) .

168 (3) The following definitions in other articles apply
169 to this article:

170 "Account". Section 400.9-102(a) (2) .
171 "Between merchants". Section 400.2-104(3) .
172 "Buyer". Section 400.2-103(1) (a) .
173 "Chattel paper". Section 400.9-102(a) (10) .
174 "Consumer goods". Section 400.9-102(a) (22) .
175 "Document". Section 400.9-102(a) (29) .
176 "Entrusting". Section 400.2-403(3) .
177 "General intangible". Section 400.9-102(a) (41) .
178 "Good faith". Section 400.2-103(1) (b) .
179 "Instrument". Section 400.9-102(a) (46) .
180 "Merchant". Section 400.2-104(1) .
181 "Mortgage". Section 400.9-102(a) (54) .
182 "Pursuant to Section 400.9-102(a) (68) .
183 commitment".
184 "Receipt". Section 400.2-103(1) (c) .
185 "Sale". Section 400.2-106(1) .
186 "Sale on approval". Section 400.2-326 .
187 "Sale or return". Section 400.2-326 .
188 "Seller". Section 400.2-103(1) (d) .

189 (4) In addition article 1 contains general definitions
190 and principles of construction and interpretation applicable
191 throughout this article.

400.2A-107. Any claim or right arising out of an
2 alleged default or breach of warranty may be discharged in
3 whole or in part without consideration by a **[written]** waiver
4 or renunciation **in a** signed **[and]** **record** delivered by the
5 aggrieved party.

400.2A-201. (1) A lease contract is not enforceable
2 by way of action or defense unless:

3 (a) the total payments to be made under the lease
4 contract, excluding payments for options to renew or buy,
5 are less than one thousand dollars; or

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

11 (2) Any description of leased goods or of the lease
12 term is sufficient and satisfies subsection (1)(b), whether
13 or not it is specific, if it reasonably identifies what is
14 described.

15 (3) A **[writing]** **record** is not insufficient because it
16 omits or incorrectly states a term agreed upon, but the
17 lease contract is not enforceable under subsection (1)(b)
18 beyond the lease term and the quantity of goods shown in the
19 **[writing]** **record**.

20 (4) A lease contract that does not satisfy the
21 requirements of subsection (1), but which is valid in other
22 respects, is enforceable:

23 (a) if the goods are to be specifically manufactured
24 or obtained for the lessee and are not suitable for lease or
25 sale to others in the ordinary course of the lessor's
26 business, and the lessor, before notice of repudiation is
27 received and under circumstances that reasonably indicate

28 that the goods are for the lessee, has made either a
29 substantial beginning of their manufacture or commitments
30 for their procurement;

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

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

38 (5) The lease term under a lease contract referred to
39 in subsection (4) is:

40 (a) if there is a **[writing] record** signed by the party
41 against whom enforcement is sought or by that party's
42 authorized agent specifying the lease term, the term so
43 specified;

44 (b) if the party against whom enforcement is sought
45 admits in that party's pleading, testimony, or otherwise in
46 court a lease term, the term so admitted; or

47 (c) a reasonable lease term.

400.2A-202. Terms with respect to which the
2 confirmatory memoranda of the parties agree or which are
3 otherwise set forth in a **[writing] record** intended by the
4 parties as a final expression of their agreement with
5 respect to such terms as are included therein may not be
6 contradicted by evidence of any prior agreement or of a
7 contemporaneous oral agreement but may be explained or
8 supplemented:

9 (a) by course of dealing or usage of trade or by
10 course of performance; and

11 (b) by evidence of consistent additional terms unless
12 the court finds the **[writing] record** to have been intended

13 also as a complete and exclusive statement of the terms of
14 the agreement.

400.2A-203. The affixing of a seal to a [writing]
2 **record** evidencing a lease contract or an offer to enter into
3 a lease contract does not render the [writing] **record** a
4 sealed instrument and the law with respect to sealed
5 instruments does not apply to the lease contract or offer.

400.2A-205. An offer by a merchant to lease goods to
2 or from another person in a signed [writing] **record** that by
3 its terms gives assurance it will be held open is not
4 revocable, for lack of consideration, during the time stated
5 or, if no time is stated, for a reasonable time, but in no
6 event may the period of irrevocability exceed three months.
7 Any such term of assurance on a form supplied by the offeree
8 must be separately signed by the offeror.

400.2A-208. (1) An agreement modifying a lease
2 contract needs no consideration to be binding.

(2) A signed lease agreement that excludes
3 modification or rescission except by a signed [writing]
4 **record** may not be otherwise modified or rescinded, but,
5 except as between merchants, such a requirement on a form
6 supplied by a merchant must be separately signed by the
7 other party.
8

(3) Although an attempt at modification or rescission
9 does not satisfy the requirements of subsection (2), it may
10 operate as a waiver.
11

(4) A party who has made a waiver affecting an
12 executory portion of a lease contract may retract the waiver
13 by reasonable notification received by the other party that
14 strict performance will be required of any term waived,
15 unless the retraction would be unjust in view of a material
16 change of position in reliance on the waiver.
17

400.3-104. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, [or] (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, **(iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.**

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

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

32 (e) An instrument is a "note" if it is a promise and
33 is a "draft" if it is an order. If an instrument falls
34 within the definition of both "note" and "draft," a person
35 entitled to enforce the instrument may treat it as either.

36 (f) "Check" means (i) a draft, other than a
37 documentary draft, payable on demand and drawn on a bank or
38 (ii) a cashier's check or teller's check. An instrument may
39 be a check even though it is described on its face by
40 another term, such as "money order."

41 (g) "Cashier's check" means a draft with respect to
42 which the drawer and drawee are the same bank or branches of
43 the same bank.

44 (h) "Teller's check" means a draft drawn by a bank (i)
45 on another bank, or (ii) payable at or through a bank.

46 (i) "Traveler's check" means an instrument that (i) is
47 payable on demand, (ii) is drawn on or payable at or through
48 a bank, (iii) is designated by the term "traveler's check"
49 or by a substantially similar term, and (iv) requires, as a
50 condition to payment, a countersignature by a person whose
51 specimen signature appears on the instrument.

52 (j) "Certificate of deposit" means an instrument
53 containing an acknowledgement by a bank that a sum of money
54 has been received by the bank and a promise by the bank to
55 repay the sum of money. A certificate of deposit is a note
56 of the bank.

57 (k) "Demand draft", a writing not signed by the
58 customer that is created by a third party under the
59 purported authority of the customer for the purpose of
60 charging the customer's account with a bank. A demand draft
61 shall contain the customer's account number and may contain
62 any or all of the following:

63 a. The customer's printed or typewritten name;

64 b. A notation that the customer authorized the draft;
65 or

66 c. The statement "No signature required" or words to
67 that effect.

68 A demand draft shall not include a check purportedly
69 drawn by and bearing the signature of a fiduciary, as
70 defined in paragraph (1) of subsection (a) of section 400.3.-
71 307.

400.3-105. (a) "Issue" means:

2 **(1)** the first delivery of an instrument by the maker
3 or drawer, whether to a holder or nonholder, for the purpose
4 of giving rights on the instrument to any person; **or**

5 **(2) if agreed by the payee, the first transmission by**
6 **the drawer to the payee of an image of an item and**
7 **information derived from the item that enables the**
8 **depository bank to collect the item by transferring or**
9 **presenting under federal law an electronic check.**

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

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

400.3-401. **[(a)]** A person is not liable on an
2 instrument unless (i) the person signed the instrument, or
3 (ii) the person is represented by an agent or representative
4 who signed the instrument and the signature is binding on
5 the represented person under Section 400.3-402.

6 **[(b)A signature may be made (i) manually or by means of**
7 **a device or machine, and (ii) by the use of any name,**

8 including a trade or assumed name, or by a word, mark, or
9 symbol executed or adopted by a person with present
10 intention to authenticate a writing.]

400.3-604. (a) A person entitled to enforce an
2 instrument, with or without consideration, may discharge the
3 obligation of a party to pay the instrument (i) by an
4 intentional voluntary act, such as surrender of the
5 instrument to the party, destruction, mutilation, or
6 cancellation of the instrument, cancellation or striking out
7 of the party's signature, or the addition of words to the
8 instrument indicating discharge, or (ii) by agreeing not to
9 sue or otherwise renouncing rights against the party by a
10 signed [writing] record. **The obligation of a party to pay a
11 check is not discharged solely by destruction of the check
12 in connection with a process in which information is
13 extracted from the check and an image of the check is made
14 and, subsequently, the information and image are transmitted
15 for payment.**

16 (b) Cancellation or striking out of an endorsement
17 pursuant to subsection (a) does not affect the status and
18 rights of a party derived from the endorsement.

400.4A-103. (a) In this Article:

2 (1) "Payment order" means an instruction of a sender
3 to a receiving bank, transmitted orally[, electronically,]
4 or in [writing] **a record**, to pay, or to cause another bank
5 to pay, a fixed or determinable amount of money to a
6 beneficiary if:

7 (i) the instruction does not state a condition to
8 payment to the beneficiary other than time of payment;

9 (ii) the receiving bank is to be reimbursed by
10 debiting an account of, or otherwise receiving payment from,
11 the sender; and

12 (iii) the instruction is transmitted by the sender
13 directly to the receiving bank or to an agent, funds-
14 transfer system, or communication system for transmittal to
15 the receiving bank;

16 (2) "Beneficiary" means the person to be paid by the
17 beneficiary's bank;

18 (3) "Beneficiary's bank" means the bank identified in
19 a payment order in which an account of the beneficiary is to
20 be credited pursuant to the order or which otherwise is to
21 make payment to the beneficiary if the order does not
22 provide for payment to an account;

23 (4) "Receiving bank" means the bank to which the
24 sender's instruction is addressed;

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

27 (b) If an instruction complying with subsection (a) (1)
28 is to make more than one payment to a beneficiary, the
29 instruction is a separate payment order with respect to each
30 payment.

31 (c) A payment order is issued when it is sent to the
32 receiving bank.

400.4A-201. "Security procedure" means a procedure
2 established by agreement of a customer and a receiving bank
3 for the purpose of (i) verifying that a payment order or
4 communication amending or cancelling a payment order is that
5 of the customer, or (ii) detecting error in the transmission
6 or the content of the payment order or communication. A
7 security procedure may **impose an obligation on the receiving**
8 **bank or the customer and** require the use of algorithms or
9 other codes, identifying words [or], numbers, **symbols,**
10 **sounds, biometrics,** encryption, callback procedures, or
11 similar security devices. Comparison of a signature on a

12 payment order or communication with an authorized specimen
13 signature of the customer **or requiring a payment order to be**
14 **sent from a known email address, IP address, or telephone**
15 **number** is not by itself a security procedure.

400.4A-202. (a) A payment order received by the
2 receiving bank is the authorized order of the person
3 identified as sender if that person authorized the order or
4 is otherwise bound by it under the law of agency.

5 (b) If a bank and its customer have agreed that the
6 authenticity of payment orders issued to the bank in the
7 name of the customer as sender will be verified pursuant to
8 a security procedure, a payment order received by the
9 receiving bank is effective as the order of the customer,
10 whether or not authorized, if (i) the security procedure is
11 a commercially reasonable method of providing security
12 against unauthorized payment orders, and (ii) the bank
13 proves that it accepted the payment order in good faith and
14 in compliance with **the bank's obligations under** the security
15 procedure and any [written] agreement or instruction of the
16 customer, **evidenced by a record**, restricting acceptance of
17 payment orders issued in the name of the customer. The bank
18 is not required to follow an instruction that violates [a
19 written] **an** agreement with the customer, **evidenced by a**
20 **record**, or notice of which is not received at a time and in
21 a manner affording the bank a reasonable opportunity to act
22 on it before the payment order is accepted.

23 (c) Commercial reasonableness of a security procedure
24 is a question of law to be determined by considering the
25 wishes of the customer expressed to the bank, the
26 circumstances of the customer known to the bank, including
27 the size, type, and frequency of payment orders normally
28 issued by the customer to the bank, alternative security

29 procedures offered to the customer, and security procedures
30 in general use by customers and receiving banks similarly
31 situated. A security procedure is deemed to be commercially
32 reasonable if (i) the security procedure was chosen by the
33 customer after the bank offered, and the customer refused, a
34 security procedure that was commercially reasonable for that
35 customer, and (ii) the customer expressly agreed in
36 **[writing] a record** to be bound by any payment order, whether
37 or not authorized, issued in its name and accepted by the
38 bank in compliance with the **bank's obligations under the**
39 security procedure chosen by the customer.

40 (d) The term "sender" in this Article includes the
41 customer in whose name a payment order is issued if the
42 order is the authorized order of the customer under
43 subsection (a), or it is effective as the order of the
44 customer under subsection (b).

45 (e) This section applies to amendments and
46 cancellations of payment orders to the same extent it
47 applies to payment orders.

48 (f) Except as provided in this section and in section
49 400.4A-203(a)(1), rights and obligations arising under this
50 section or section 400.4A-203 may not be varied by agreement.

400.4A-203. (a) If an accepted payment order is not,
2 under section 400.4A-202(a), an authorized order of a
3 customer identified as sender, but is effective as an order
4 of the customer pursuant to section 400.4A-202(b), the
5 following rules apply:

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

10 (2) The receiving bank is not entitled to enforce or
11 retain payment of the payment order if the customer proves
12 that the order was not caused, directly or indirectly, by a
13 person (i) entrusted at any time with duties to act for the
14 customer with respect to payment orders or the security
15 procedure, or (ii) who obtained access to transmitting
16 facilities of the customer or who obtained, from a source
17 controlled by the customer and without authority of the
18 receiving bank, information facilitating breach of the
19 security procedure, regardless of how the information was
20 obtained or whether the customer was at fault. Information
21 includes any access device, computer software, or the like.

22 (b) This section applies to amendments of payment
23 orders to the same extent it applies to payment orders.

400.4A-207. (a) Subject to subsection (b), if, in a
2 payment order received by the beneficiary's bank, the name,
3 bank account number, or other identification of the
4 beneficiary refers to a nonexistent or unidentifiable person
5 or account, no person has rights as a beneficiary of the
6 order and acceptance of the order cannot occur.

7 (b) If a payment order received by the beneficiary's
8 bank identifies the beneficiary both by name and by an
9 identifying or bank account number and the name and number
10 identify different persons, the following rules apply:

11 (1) Except as otherwise provided in subsection 3 of
12 this section, if the beneficiary's bank does not know that
13 the name and number refer to different persons, it may rely
14 on the number as the proper identification of the
15 beneficiary of the order. The beneficiary's bank need not
16 determine whether the name and number refer to the same
17 person.

18 (2) If the beneficiary's bank pays the person
19 identified by name or knows that the name and number
20 identify different persons, no person has rights as
21 beneficiary except the person paid by the beneficiary's bank
22 if that person was entitled to receive payment from the
23 originator of the funds transfer. If no person has rights
24 as beneficiary, acceptance of the order cannot occur.

25 (c) If (i) a payment order described in subsection (b)
26 is accepted, (ii) the originator's payment order described
27 the beneficiary inconsistently by name and number, and (iii)
28 the beneficiary's bank pays the person identified by number
29 as permitted by subsection (b)(1), the following rules apply:

30 (1) If the originator is a bank, the originator is
31 obliged to pay its order.

32 (2) If the originator is not a bank and proves that
33 the person identified by number was not entitled to receive
34 payment from the originator, the originator is not obliged
35 to pay its order unless the originator's bank proves that
36 the originator, before acceptance of the originator's order,
37 had notice that payment of a payment order issued by the
38 originator might be made by the beneficiary's bank on the
39 basis of an identifying or bank account number even if it
40 identifies a person different from the named beneficiary.
41 Proof of notice may be made by any admissible evidence. The
42 originator's bank satisfies the burden of proof if it proves
43 that the originator, before the payment order was accepted,
44 signed a [writing] **record** stating the information to which
45 the notice relates.

46 (d) In a case governed by subsection (b)(1), if the
47 beneficiary's bank rightfully pays the person identified by
48 number and that person was not entitled to receive payment
49 from the originator, the amount paid may be recovered from

50 that person to the extent allowed by the law governing
51 mistake and restitution as follows:

52 (1) If the originator is obliged to pay its payment
53 order as stated in subsection (c), the originator has the
54 right to recover;

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

400.4A-208. (a) This subsection applies to a payment
2 order identifying an intermediary bank or the beneficiary's
3 bank only by an identifying number:

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

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

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

16 (1) If the sender is a bank, the receiving bank may
17 rely on the number as the proper identification of the
18 intermediary or beneficiary's bank if the receiving bank,
19 when it executes the sender's order, does not know that the
20 name and number identify different persons. The receiving
21 bank need not determine whether the name and number refer to
22 the same person or whether the number refers to a bank. The
23 sender is obliged to compensate the receiving bank for any
24 loss and expenses incurred by the receiving bank as a result

25 of its reliance on the number in executing or attempting to
26 execute the order.

27 (2) If the sender is not a bank and the receiving bank
28 proves that the sender, before the payment order was
29 accepted, had notice that the receiving bank might rely on
30 the number as the proper identification of the intermediary
31 or beneficiary's bank even if it identifies a person
32 different from the bank identified by name, the rights and
33 obligations of the sender and the receiving bank are
34 governed by subsection (b) (1), as though the sender were a
35 bank. Proof of notice may be made by any admissible
36 evidence. The receiving bank satisfies the burden of proof
37 if it proves that the sender, before the payment order was
38 accepted, signed a [writing] **record** stating the information
39 to which the notice relates.

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

47 (4) If the receiving bank knows that the name and
48 number identify different persons, reliance on either the
49 name or the number in executing the sender's payment order
50 is a breach of the obligation stated in section 400.4A-
51 302(a) (1).

400.4A-210. (a) A payment order is rejected by the
2 receiving bank by a notice of rejection transmitted to the
3 sender orally[, electronically,] or in [writing] **a record**.
4 A notice of rejection need not use any particular words and
5 is sufficient if it indicates that the receiving bank is

6 rejecting the order or will not execute or pay the order.
7 Rejection is effective when the notice is given if
8 transmission is by a means that is reasonable in the
9 circumstances. If notice of rejection is given by a means
10 that is not reasonable, rejection is effective when the
11 notice is received. If an agreement of the sender and
12 receiving bank establishes the means to be used to reject a
13 payment order, (i) any means complying with the agreement is
14 reasonable and (ii) any means not complying is not
15 reasonable unless no significant delay in receipt of the
16 notice resulted from the use of the noncomplying means.

17 (b) This subsection applies if a receiving bank other
18 than the beneficiary's bank fails to execute a payment order
19 despite the existence on the execution date of a
20 withdrawable credit balance in an authorized account of the
21 sender sufficient to cover the order. If the sender does
22 not receive notice of rejection of the order on the
23 execution date and the authorized account of the sender does
24 not bear interest, the bank is obliged to pay interest to
25 the sender on the amount of the order for the number of days
26 elapsing after the execution date to the earlier of the day
27 the order is cancelled pursuant to section 400.4A-211(d) or
28 the day the sender receives notice or learns that the order
29 was not executed, counting the final day of the period as an
30 elapsed day. If the withdrawable credit balance during that
31 period falls below the amount of the order, the amount of
32 interest is reduced accordingly.

33 (c) If a receiving bank suspends payments, all
34 unaccepted payment orders issued to it are deemed rejected
35 at the time the bank suspends payments.

36 (d) Acceptance of a payment order precludes a later
37 rejection of the order. Rejection of a payment order
38 precludes a later acceptance of the order.

400.4A-211. (a) A communication of the sender of a
2 payment order cancelling or amending the order may be
3 transmitted to the receiving bank orally[, electronically,]
4 or in [writing] a record. If a security procedure is in
5 effect between the sender and the receiving bank, the
6 communication is not effective to cancel or amend the order
7 unless the communication is verified pursuant to the
8 security procedure or the bank agrees to the cancellation or
9 amendment.

10 (b) Subject to subsection (a), a communication by the
11 sender cancelling or amending a payment order is effective
12 to cancel or amend the order if notice of the communication
13 is received at a time and in a manner affording the
14 receiving bank a reasonable opportunity to act on the
15 communication before the bank accepts the payment order.

16 (c) After a payment order has been accepted,
17 cancellation or amendment of the order is not effective
18 unless the receiving bank agrees or a funds-transfer system
19 rule allows cancellation or amendment without agreement of
20 the bank.

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

26 (2) With respect to a payment order accepted by the
27 beneficiary's bank, cancellation or amendment is not
28 effective unless the order was issued in execution of an
29 unauthorized payment order, or because of a mistake by a

30 sender in the funds transfer which resulted in the issuance
31 of a payment order (i) that is a duplicate of a payment
32 order previously issued by the sender, (ii) that orders
33 payment to a beneficiary not entitled to receive payment
34 from the originator, or (iii) that orders payment in an
35 amount greater than the amount the beneficiary was entitled
36 to receive from the originator. If the payment order is
37 cancelled or amended, the beneficiary's bank is entitled to
38 recover from the beneficiary any amount paid to the
39 beneficiary to the extent allowed by the law governing
40 mistake and restitution.

41 (d) An unaccepted payment order is cancelled by
42 operation of law at the close of the fifth funds-transfer
43 business day of the receiving bank after the execution date
44 or payment date of the order.

45 (e) A cancelled payment order cannot be accepted. If
46 an accepted payment order is cancelled, the acceptance is
47 nullified and no person has any right or obligation based on
48 the acceptance. Amendment of a payment order is deemed to
49 be cancellation of the original order at the time of
50 amendment and issue of a new payment order in the amended
51 form at the same time.

52 (f) Unless otherwise provided in an agreement of the
53 parties or in a funds-transfer system rule, if the receiving
54 bank, after accepting a payment order, agrees to
55 cancellation or amendment of the order by the sender or is
56 bound by a funds-transfer system rule allowing cancellation
57 or amendment without the bank's agreement, the sender,
58 whether or not cancellation or amendment is effective, is
59 liable to the bank for any loss and expenses, including
60 reasonable attorney's fees, incurred by the bank as a result

61 of the cancellation or amendment or attempted cancellation
62 or amendment.

63 (g) A payment order is not revoked by the death or
64 legal incapacity of the sender unless the receiving bank
65 knows of the death or of an adjudication of incapacity by a
66 court of competent jurisdiction and has reasonable
67 opportunity to act before acceptance of the order.

68 (h) A funds-transfer system rule is not effective to
69 the extent it conflicts with subsection (c) (2).

400.4A-305. (a) If a funds transfer is completed but
2 execution of a payment order by the receiving bank in breach
3 of section 400.4A-302 results in delay in payment to the
4 beneficiary, the bank is obliged to pay interest to either
5 the originator or the beneficiary of the funds transfer for
6 the period of delay caused by the improper execution.
7 Except as provided in subsection (c), additional damages are
8 not recoverable.

9 (b) If execution of a payment order by a receiving
10 bank in breach of section 400.4A-302 results in (i)
11 noncompletion of the funds transfer, (ii) failure to use an
12 intermediary bank designated by the originator, or (iii)
13 issuance of a payment order that does not comply with the
14 terms of the payment order of the originator, the bank is
15 liable to the originator for its expenses in the funds
16 transfer and for incidental expenses and interest losses, to
17 the extent not covered by subsection (a), resulting from the
18 improper execution. Except as provided in subsection (c),
19 additional damages are not recoverable.

20 (c) In addition to the amounts payable under
21 subsections (a) and (b), damages, including consequential
22 damages, are recoverable to the extent provided in an

23 express [written] agreement of the receiving bank, **evidenced**
24 **by a record.**

25 (d) If a receiving bank fails to execute a payment
26 order it was obliged by express agreement to execute, the
27 receiving bank is liable to the sender for its expenses in
28 the transaction and for incidental expenses and interest
29 losses resulting from the failure to execute. Additional
30 damages, including consequential damages, are recoverable to
31 the extent provided in an express [written] agreement of the
32 receiving bank, **evidenced by a record**, but are not otherwise
33 recoverable.

34 (e) Reasonable attorney's fees are recoverable if
35 demand for compensation under subsection (a) or (b) is made
36 and refused before an action is brought on the claim. If a
37 claim is made for breach of an agreement under subsection
38 (d) and the agreement does not provide for damages,
39 reasonable attorney's fees are recoverable if demand for
40 compensation under subsection (d) is made and refused before
41 an action is brought on the claim.

42 (f) Except as stated in this section, the liability of
43 a receiving bank under subsections (a) and (b) may not be
44 varied by agreement.

400.5-104. A letter of credit, confirmation, advice,
2 transfer, amendment or cancellation may be issued in any
3 form that is a **signed** record [and is authenticated:

4 (i) By a signature; or

5 (ii) In accordance with the agreement of the parties
6 or the standard practice referred to in section 400.5-
7 108(e)].

400.5-116. (a) The liability of an issuer, nominated
2 person or adviser for action or omission is governed by the
3 law of the jurisdiction chosen by an agreement in the form

4 of a record signed [or otherwise authenticated] by the
5 affected parties [in the manner provided in section 400.5-
6 104] or by a provision in the person's letter of credit,
7 confirmation or other undertaking. The jurisdiction whose
8 law is chosen need not bear any relation to the transaction.

9 (b) Unless subsection (a) applies, the liability of an
10 issuer, nominated person or adviser for action or omission
11 is governed by the law of the jurisdiction in which the
12 person is located. The person is considered to be located
13 at the address indicated in the person's undertaking. If
14 more than one address is indicated, the person is considered
15 to be located at the address from which the person's
16 undertaking was issued.

17 (c) For the purpose of jurisdiction, choice of law and
18 recognition of interbranch letters of credit, but not
19 enforcement of a judgment, all branches of a bank are
20 considered separate juridical entities and a bank is
21 considered to be located at the place where its relevant
22 branch is considered to be located under [this] subsection
23 (d).

24 (d) **A branch of a bank is considered to be located at**
25 **the address indicated in the branch's undertaking. If more**
26 **than one address is indicated, the branch is considered to**
27 **be located at the address from which the undertaking was**
28 **issued.**

29 [(c)] (e) Except as otherwise provided in this
30 subsection, the liability of an issuer, nominated person or
31 adviser is governed by any rules of custom or practice, such
32 as the Uniform Customs and Practice for Documentary Credits,
33 to which the letter of credit, confirmation or other
34 undertaking is expressly made subject. If:

35 (i) This article would govern the liability of an
36 issuer, nominated person or adviser under subsection (a) or
37 (b);

38 (ii) The relevant undertaking incorporates rules of
39 custom or practice; and

40 (iii) There is a conflict between this article and
41 those rules as applied to that undertaking, those rules
42 govern except to the extent of any conflict with the
43 nonvariable provisions specified in section 400.5-103(c).

44 [(d)] (f) If there is conflict between this article
45 and article 3, 4, 4A or 9 of this chapter, this article
46 governs.

47 [(e)] (g) The forum for settling disputes arising out
48 of an undertaking within this article may be chosen in the
49 manner and with the binding effect that governing law may be
50 chosen in accordance with subsection (a).

400.7-102. (a) In this article, unless the context
2 otherwise requires:

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

7 (2) "Carrier" means a person that issues a bill of
8 lading.

9 (3) "Consignee" means a person named in a bill of
10 lading to which or to whose order the bill promises delivery.

11 (4) "Consignor" means a person named in a bill of
12 lading as the person from which the goods have been received
13 for shipment.

14 (5) "Delivery order" means a record that contains an
15 order to deliver goods directed to a warehouse, carrier, or

16 other person that in the ordinary course of business issues
17 warehouse receipts or bills of lading.

18 (6) "Good faith" has the same meaning as in
19 subdivision (20) of subsection (b) of section 400.1-201.

20 (7) "Goods" means all things that are treated as
21 movable for the purposes of a contract for storage or
22 transportation.

23 (8) "Issuer" means a bailee that issues a document of
24 title or, in the case of an unaccepted delivery order, the
25 person that orders the possessor of goods to deliver. The
26 term includes a person for which an agent or employee
27 purports to act in issuing a document if the agent or
28 employee has real or apparent authority to issue documents,
29 even if the issuer did not receive any goods, the goods were
30 misdescribed, or in any other respect the agent or employee
31 violated the issuer's instructions.

32 (9) "Person entitled under the document" means the
33 holder, in the case of a negotiable document of title, or
34 the person to which delivery of the goods is to be made by
35 the terms of, or pursuant to instructions in a record under,
36 a nonnegotiable document of title.

37 (10) ["Record" has the same meaning as in subdivision
38 (31) of subsection (b) of section 400.1-201.

39 (11) "Sign" means, with present intent to authenticate
40 or adopt a record:

41 (A) to execute or adopt a tangible symbol; or

42 (B) to attach to or logically associate with the
43 record an electronic sound, symbol, or process.

44 [(12)] "Shipper" means a person that enters into a
45 contract of transportation with a carrier.

46 [(13)] (11) "Warehouse" means a person engaged in the
47 business of storing goods for hire.

48 (b) Definitions in other articles applying to this
49 article and the sections in which they appear are:

50 (1) "Contract for sale", section 400.2-106.

51 (2) "Lessee in the ordinary course of business",
52 section 400.2A-103.

53 (3) "Receipt" of goods, section 400.2-103.

54 (c) In addition, article 1 contains general
55 definitions and principles of construction and
56 interpretation applicable throughout this article.

400.7-106. (a) A person has control of an electronic
2 document of title if a system employed for evidencing the
3 transfer of interests in the electronic document reliably
4 establishes that person as the person to which the
5 electronic document was issued or transferred.

6 (b) A system satisfies subsection (a), and a person
7 **[is deemed to have] has** control of an electronic document of
8 title, if the document is created, stored, and **[assigned]**
9 **transferred** in **[such]** a manner that:

10 (1) a single authoritative copy of the document exists
11 which is unique, identifiable, and, except as otherwise
12 provided in paragraphs (4), (5), and (6), unalterable;

13 (2) the authoritative copy identifies the person
14 asserting control as:

15 (A) the person to which the document was issued; or

16 (B) if the authoritative copy indicates that the
17 document has been transferred, the person to which the
18 document was most recently transferred;

19 (3) the authoritative copy is communicated to and
20 maintained by the person asserting control or its designated
21 custodian;

22 (4) copies or amendments that add or change an
23 identified **[assignee] transferee** of the authoritative copy

24 can be made only with the consent of the person asserting
25 control;

26 (5) each copy of the authoritative copy and any copy
27 of a copy is readily identifiable as a copy that is not the
28 authoritative copy; and

29 (6) any amendment of the authoritative copy is readily
30 identifiable as authorized or unauthorized.

31 (c) A system satisfies subsection (a), and a person
32 has control of an electronic document of title, if an
33 authoritative electronic copy of the document, a record
34 attached to or logically associated with the electronic
35 copy, or a system in which the electronic copy is recorded:

36 (1) enables the person readily to identify each
37 electronic copy as either an authoritative copy or a
38 nonauthoritative copy;

39 (2) enables the person readily to identify itself in
40 any way, including by name, identifying number,
41 cryptographic key, office, or account number, as the person
42 to which each authoritative electronic copy was issued or
43 transferred; and

44 (3) gives the person exclusive power, subject to
45 subsection (d), to:

46 (A) prevent others from adding or changing the person
47 to which each authoritative electronic copy has been issued
48 or transferred; and

49 (B) transfer control of each authoritative electronic
50 copy.

51 (d) Subject to subsection (e), a power is exclusive
52 under subsection (c) (3) (A) and (B) even if:

53 (1) the authoritative electronic copy, a record
54 attached to or logically associated with the authoritative
55 electronic copy, or a system in which the authoritative

56 electronic copy is recorded limits the use of the document
57 of title or has a protocol that is programmed to cause a
58 change, including a transfer or loss of control; or

59 (2) the power is shared with another person.

60 (e) A power of a person is not shared with another
61 person under subsection (d) (2) and the person's power is not
62 exclusive if:

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

65 (2) the other person:

66 (A) can exercise the power without exercise of the
67 power by the person; or

68 (B) is the transferor to the person of an interest in
69 the document of title.

70 (f) If a person has the powers specified in subsection
71 (c) (3) (A) and (B), the powers are presumed to be exclusive.

72 (g) A person has control of an electronic document of
73 title if another person, other than the transferor to the
74 person of an interest in the document:

75 (1) has control of the document and acknowledges that
76 it has control on behalf of the person; or

77 (2) obtains control of the document after having
78 acknowledged that it will obtain control of the document on
79 behalf of the person.

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

83 (i) If a person acknowledges that it has or will
84 obtain control on behalf of another person, unless the
85 person otherwise agrees or law other than this article or
86 Article 9 otherwise provides, the person does not owe any

87 **duty to the other person and is not required to confirm the**
88 **acknowledgment to any other person.**

400.8-102. (a) In this article:

2 (1) "Adverse claim" means a claim that a claimant has
3 a property interest in a financial asset and that it is a
4 violation of the rights of the claimant for another person
5 to hold, transfer or deal with the financial asset;

6 (2) "Bearer form", as applied to a certificated
7 security, means a form in which the security is payable to
8 the bearer of the security certificate according to its
9 terms but not by reason of an indorsement;

10 (3) "Broker" means a person defined as a broker or
11 dealer under the federal securities laws, but without
12 excluding a bank acting in that capacity;

13 (4) "Certificated security" means a security that is
14 represented by a certificate;

15 (5) "Clearing corporation" means:

16 (i) A person that is registered as a "clearing agency"
17 under the federal securities laws;

18 (ii) A federal reserve bank; or

19 (iii) Any other person that provides clearance or
20 settlement services with respect to financial assets that
21 would require it to register as a clearing agency under the
22 federal securities laws but for an exclusion or exemption
23 from the registration requirement, if its activities as a
24 clearing corporation, including promulgation of rules, are
25 subject to regulation by a federal or state governmental
26 authority;

27 (6) "Communicate" means to:

28 (i) Send a signed **[writing] record**; or

29 (ii) Transmit information by any mechanism agreed upon
30 by the persons transmitting and receiving the information;

31 (7) "Entitlement holder" means a person identified in
32 the records of a securities intermediary as the person
33 having a security entitlement against the securities
34 intermediary. If a person acquires a security entitlement
35 by virtue of section 400.8-501(b)(2) or (3), that person is
36 the entitlement holder;

37 (8) "Entitlement order" means a notification
38 communicated to a securities intermediary directing transfer
39 or redemption of a financial asset to which the entitlement
40 holder has a security entitlement;

41 (9) "Financial asset", except as otherwise provided in
42 section 400.8-103, means:

43 (i) A security;

44 (ii) An obligation of a person or a share,
45 participation or other interest in a person or in property
46 or an enterprise of a person, which is, or is of a type,
47 dealt in or traded on financial markets, or which is
48 recognized in any area in which it is issued or dealt in as
49 a medium for investment; or

50 (iii) Any property that is held by a securities
51 intermediary for another person in a securities account if
52 the securities intermediary has expressly agreed with the
53 other person that the property is to be treated as a
54 financial asset under this article.

55 As context requires, the term means either the interest
56 itself or the means by which a person's claim to it is
57 evidenced, including a certificated or uncertificated
58 security, a security certificate or a security entitlement;

59 (10) "Good faith", for purposes of the obligation of
60 good faith in the performance or enforcement of contracts or
61 duties within this article, means honesty in fact and the

62 observance of reasonable commercial standards of fair
63 dealing;

64 (11) "Indorsement" means a signature that alone or
65 accompanied by other words is made on a security certificate
66 in registered form or on a separate document for the purpose
67 of assigning, transferring or redeeming the security or
68 granting a power to assign, transfer or redeem it;

69 (12) "Instruction" means a notification communicated
70 to the issuer of an uncertificated security which directs
71 that the transfer of the security be registered or that the
72 security be redeemed;

73 (13) "Registered form", as applied to a certificated
74 security, means a form in which:

75 (i) The security certificate specifies a person
76 entitled to the security; and

77 (ii) A transfer of the security may be registered upon
78 books maintained for that purpose by or on behalf of the
79 issuer, or the security certificate so states;

80 (14) "Securities intermediary" means:

81 (i) A clearing corporation; or

82 (ii) A person, including a bank or broker, that in the
83 ordinary course of its business maintains securities
84 accounts for others and is acting in that capacity;

85 (15) "Security", except as otherwise provided in
86 section 400.8-103, means an obligation of an issuer or a
87 share, participation or other interest in an issuer or in
88 property or an enterprise of an issuer:

89 (i) Which is represented by a security certificate in
90 bearer or registered form, or the transfer of which may be
91 registered upon books maintained for that purpose by or on
92 behalf of the issuer;

93 (ii) Which is one of a class or series or by its terms
 94 is divisible into a class or series of shares,
 95 participations, interests or obligations; and

96 (iii) Which:

97 (A) Is, or is of a type, dealt in or traded on
 98 securities exchanges or securities markets; or

99 (B) Is a medium for investment and by its terms
 100 expressly provides that it is a security governed by this
 101 article;

102 (16) "Security certificate" means a certificate
 103 representing a security;

104 (17) "Security entitlement" means the rights and
 105 property interest of an entitlement holder with respect to a
 106 financial asset specified in sections 400.8-501 to 400.8-510;

107 (18) "Uncertificated security" means a security that
 108 is not represented by a certificate.

109 (b) [Other definitions applying to this article and the
 110 sections in which they appear are] **The following definitions**
 111 **in this article and other articles apply to this article:**

112	"Appropriate person".	Section 400.8-107.
113	"Control".	Section 400.8-106.
114	"Controllable account".	Section 400.9-102.
115	"Controllable electronic	Section 400.12-102.
116	record".	
117	"Controllable payment	Section 400.9-102.
118	intangible".	
119	"Delivery".	Section 400.8-301.
120	"Investment company	Section 400.8-103.
121	security".	

122	"Issuer".	Section 400.8-201.
123	"Overissue".	Section 400.8-210.
124	"Protected purchaser".	Section 400.8-303.
125	"Securities account".	Section 400.8-501.

126 (c) In addition, article 1 of this chapter contains
 127 general definitions and principles of construction and
 128 interpretation applicable throughout this article.

129 (d) The characterization of a person, business, or
 130 transaction for purposes of this article does not determine
 131 the characterization of the person, business or transaction
 132 for purposes of any other law, regulation or rule.

400.8-103. (a) A share or similar equity interest
 2 issued by a corporation, business trust, joint stock company
 3 or similar entity is a security.

4 (b) An "investment company security" is a security.
 5 "Investment company security" means a share or similar
 6 equity interest issued by an entity that is registered as an
 7 investment company under the federal investment company
 8 laws, an interest in a unit investment trust that is so
 9 registered, or a face-amount certificate issued by a face-
 10 amount certificate company that is so registered.
 11 Investment company security does not include an insurance
 12 policy or endowment policy or annuity contract issued by an
 13 insurance company.

14 (c) An interest in a partnership or limited liability
 15 company is not a security unless it is dealt in or traded on
 16 securities exchanges or in securities markets, its terms
 17 expressly provide that it is a security governed by this
 18 article, or it is an investment company security. However,

19 an interest in a partnership or limited liability company is
20 a financial asset if it is held in a securities account.

21 (d) A writing that is a security certificate is
22 governed by this article and not by article 3 of this
23 chapter, even though it also meets the requirements of that
24 article. However, a negotiable instrument governed by
25 article 3 of this chapter is a financial asset if it is held
26 in a securities account.

27 (e) An option or similar obligation issued by a
28 clearing corporation to its participants is not a security,
29 but is a financial asset.

30 (f) A commodity contract, as defined in section 400.9-
31 102(a)(14), is not a security or a financial asset.

32 **(g) A controllable account, controllable electronic**
33 **record, or controllable payment intangible is not a**
34 **financial asset unless Section 400.8-102(a)(9)(iii) applies.**

400.8-106. (a) A purchaser has "control" of a
2 certificated security in bearer form if the certificated
3 security is delivered to the purchaser.

4 (b) A purchaser has "control" of a certificated
5 security in registered form if the certificated security is
6 delivered to the purchaser, and:

7 (1) The certificate is indorsed to the purchaser or in
8 blank by an effective indorsement; or

9 (2) The certificate is registered in the name of the
10 purchaser, upon original issue or registration of transfer
11 by the issuer.

12 (c) A purchaser has "control" of an uncertificated
13 security if:

14 (1) The uncertificated security is delivered to the
15 purchaser; or

16 (2) The issuer has agreed that it will comply with
17 instructions originated by the purchaser without further
18 consent by the registered owner.

19 (d) A purchaser has "control" of a security
20 entitlement if:

21 (1) The purchaser becomes the entitlement holder;

22 (2) The securities intermediary has agreed that it
23 will comply with entitlement orders originated by the
24 purchaser without further consent by the entitlement holder;
25 or

26 (3) Another person [has control of the security
27 entitlement on behalf of the purchaser or, having previously
28 acquired control of the security entitlement, acknowledges
29 that it has control on behalf of the purchaser], **other than**
30 **the transferor to the purchaser of an interest in the**
31 **security entitlement:**

32 **(A) has control of the security entitlement and**
33 **acknowledges that it has control on behalf of the purchaser;**
34 **or**

35 **(B) obtains control of the security entitlement after**
36 **having acknowledged that it will obtain control of the**
37 **security entitlement on behalf of the purchaser.**

38 (e) If an interest in a security entitlement is
39 granted by the entitlement holder to the entitlement
40 holder's own securities intermediary, the securities
41 intermediary has control.

42 (f) A purchaser who has satisfied the requirements of
43 subsection (c) or (d) has control even if the registered
44 owner in the case of subsection (c) or the entitlement
45 holder in the case of subsection (d) retains the right to
46 make substitutions for the uncertificated security or
47 security entitlement, to originate instructions or

48 entitlement orders to the issuer or securities intermediary,
49 or otherwise to deal with the uncertificated security or
50 security entitlement.

51 (g) An issuer or a securities intermediary may not
52 enter into an agreement of the kind described in subsection
53 (c) (2) or (d) (2) without the consent of the registered owner
54 or entitlement holder, but an issuer or a securities
55 intermediary is not required to enter into such an agreement
56 even though the registered owner or entitlement holder so
57 directs. An issuer or securities intermediary that has
58 entered into such an agreement is not required to confirm
59 the existence of the agreement to another party unless
60 requested to do so by the registered owner or entitlement
61 holder.

62 **(h) A person that has control under this section is**
63 **not required to acknowledge that it has control on behalf of**
64 **a purchaser.**

65 **(i) If a person acknowledges that it has or will**
66 **obtain control on behalf of a purchaser, unless the person**
67 **otherwise agrees or law other than this Article or Article 9**
68 **otherwise provides, the person does not owe any duty to the**
69 **purchaser and is not required to confirm the acknowledgment**
70 **to any other person.**

400.8-110. (a) The local law of the issuer's
2 jurisdiction, as specified in subsection (d), governs:

3 (1) The validity of a security;

4 (2) The rights and duties of the issuer with respect
5 to registration of transfer;

6 (3) The effectiveness of registration of transfer by
7 the issuer;

8 (4) Whether the issuer owes any duties to an adverse
9 claimant to a security; and

10 (5) Whether an adverse claim can be asserted against a
11 person to whom transfer of a certificated or uncertificated
12 security is registered or a person who obtains control of an
13 uncertificated security.

14 (b) The local law of the securities intermediary's
15 jurisdiction, as specified in subsection (e), governs:

16 (1) Acquisition of a security entitlement from the
17 securities intermediary;

18 (2) The rights and duties of the securities
19 intermediary and entitlement holder arising out of a
20 security entitlement;

21 (3) Whether the securities intermediary owes any
22 duties to an adverse claimant to a security entitlement; and

23 (4) Whether an adverse claim can be asserted against a
24 person who acquires a security entitlement from the
25 securities intermediary or a person who purchases a security
26 entitlement or interest therein from an entitlement holder.

27 (c) The local law of the jurisdiction in which a
28 security certificate is located at the time of delivery
29 governs whether an adverse claim can be asserted against a
30 person to whom the security certificate is delivered.

31 (d) "Issuer's jurisdiction" means the jurisdiction
32 under which the issuer of the security is organized or, if
33 permitted by the law of that jurisdiction, the law of
34 another jurisdiction specified by the issuer. An issuer
35 organized under the law of this state may specify the law of
36 another jurisdiction as the law governing the matters
37 specified in subsection (a) (2) through (5).

38 (e) The following rules determine a "securities
39 intermediary's jurisdiction" for purposes of this section:

40 (1) If an agreement between the securities
41 intermediary and its entitlement holder governing the

42 securities account expressly provides that a particular
43 jurisdiction is the securities intermediary's jurisdiction
44 for purposes of this part, this article, or chapter 400,
45 that jurisdiction is the securities intermediary's
46 jurisdiction;

47 (2) If paragraph (1) does not apply and an agreement
48 between the securities intermediary and its entitlement
49 holder governing the securities account expressly provides
50 that the agreement is governed by the law of a particular
51 jurisdiction, that jurisdiction is the securities
52 intermediary's jurisdiction.

53 (3) If neither paragraph (1) nor paragraph (2)
54 applies, and an agreement between the securities
55 intermediary and its entitlement holder governing the
56 securities account expressly provides that the securities
57 account is maintained at an office in a particular
58 jurisdiction, that jurisdiction is the securities
59 intermediary's jurisdiction;

60 (4) If none of the preceding paragraphs apply, the
61 securities intermediary's jurisdiction is the jurisdiction
62 in which the office identified in an account statement as
63 the office serving the entitlement holder's account is
64 located.

65 (5) If none of the preceding paragraphs apply, the
66 securities intermediary's jurisdiction is the jurisdiction
67 in which the chief executive office of the securities
68 intermediary is located.

69 (f) A securities intermediary's jurisdiction is not
70 determined by the physical location of certificates
71 representing financial assets, or by the jurisdiction in
72 which is organized the issuer of the financial asset with
73 respect to which an entitlement holder has a security

74 entitlement, or by the location of facilities for data
75 processing or other record keeping concerning the account.

76 **(g) The local law of the issuer's jurisdiction or the**
77 **securities intermediary's jurisdiction governs a matter or**
78 **transaction specified in subsection (a) or (b) even if the**
79 **matter or transaction does not bear any relation to the**
80 **jurisdiction.**

400.8-303. (a) "Protected purchaser" means a
2 purchaser of a certificated or uncertificated security, or
3 of an interest therein, who:

4 (1) Gives value;

5 (2) Does not have notice of any adverse claim to the
6 security; and

7 (3) Obtains control of the certificated or
8 uncertificated security.

9 (b) **[In addition to acquiring the rights of a**
10 **purchaser,]** A protected purchaser also acquires its interest
11 in the security free of any adverse claim.

400.9-102. (a) In this article:

2 (1) "Accession" means goods that are physically united
3 with other goods in such a manner that the identity of the
4 original goods is not lost;

5 (2) "Account", except as used in "account for",
6 **"account statement", "account to", "commodity account" in**
7 **paragraph (14), "customer's account", "deposit account" in**
8 **paragraph (29), "on account of", and "statement of account",**
9 means a right to payment of a monetary obligation, whether
10 or not earned by performance, (i) for property that has been
11 or is to be sold, leased, licensed, assigned, or otherwise
12 disposed of, (ii) for services rendered or to be rendered,
13 (iii) for a policy of insurance issued or to be issued, (iv)
14 for a secondary obligation incurred or to be incurred, (v)

15 for energy provided or to be provided, (vi) for the use or
16 hire of a vessel under a charter or other contract, (vii)
17 arising out of the use of a credit or charge card or
18 information contained on or for use with the card, or (viii)
19 as winnings in a lottery or other game of chance operated or
20 sponsored by a state, governmental unit of a state, or
21 person licensed or authorized to operate the game by a state
22 or governmental unit of a state. The term includes
23 **controllable accounts and** health-care-insurance
24 receivables. The term does not include (i) **[rights to**
25 **payment evidenced by]** chattel paper **[or an instrument]**, (ii)
26 commercial tort claims, (iii) deposit accounts, (iv)
27 investment property, (v) letter-of-credit rights or letters
28 of credit, **[or]** (vi) rights to payment for money or funds
29 advanced or sold, other than rights arising out of the use
30 of a credit or charge card or information contained on or
31 for use with the card, **or (vii) rights to payment evidenced**
32 **by an instrument;**

33 (3) "Account debtor" means a person obligated on an
34 account, chattel paper, or general intangible. The term
35 does not include persons obligated to pay a negotiable
36 instrument, even if the **negotiable** instrument **[constitutes**
37 **part of]** **evidences** chattel paper;

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

40 (A) **[Authenticated]** **Signed** by a secured party;

41 (B) Indicating the aggregate unpaid secured
42 obligations as of a date not more than thirty-five days
43 earlier or thirty-five days later than the date of the
44 record; and

45 (C) Identifying the components of the obligations in
46 reasonable detail;

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

49 (A) Which secures payment or performance of an
50 obligation for:

51 (i) Goods or services furnished in connection with a
52 debtor's farming operation; or

53 (ii) Rent on real property leased by a debtor in
54 connection with its farming operation;

55 (B) Which is created by statute in favor of a person
56 that:

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

60 (ii) Leased real property to a debtor in connection
61 with the debtor's farming operation; and

62 (C) Whose effectiveness does not depend on the
63 person's possession of the personal property;

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

65 (A) Oil, gas, or other minerals that are subject to a
66 security interest that:

67 (i) Is created by a debtor having an interest in the
68 minerals before extraction; and

69 (ii) Attaches to the minerals as extracted; or

70 (B) Accounts arising out of the sale at the wellhead
71 or minehead of oil, gas, or other minerals in which the
72 debtor had an interest before extraction;

73 (7) ["Authenticate" means:

74 (A) To sign; or

75 (B) With the present intent to adopt or accept a
76 record, to attach to or logically associate with the record

77 an electronic sound, symbol or process] "Assignee", except

78 as used in "assignee for benefit of creditors", means a

79 person (i) in whose favor a security interest that secures
80 an obligation is created or provided for under a security
81 agreement, whether or not the obligation is outstanding or
82 (ii) to which an account, chattel paper, payment intangible,
83 or promissory note has been sold. The term includes a
84 person to which a security interest has been transferred by
85 a secured party;

86 (7A) "Assignor" means a person that (i) under a
87 security agreement creates or provides for a security
88 interest that secures an obligation or (ii) sells an
89 account, chattel paper, payment intangible, or promissory
90 note. The term includes a secured party that has
91 transferred a security interest to another person;

92 (8) "Bank" means an organization that is engaged in
93 the business of banking. The term includes savings banks,
94 savings and loan associations, credit unions, and trust
95 companies;

96 (9) "Cash proceeds" means proceeds that are money,
97 checks, deposit accounts, or the like;

98 (10) "Certificate of title" means a certificate of
99 title with respect to which a statute provides for the
100 security interest in question to be indicated on the
101 certificate as a condition or result of the security
102 interest's obtaining priority over the rights of a lien
103 creditor with respect to the collateral. The term includes
104 another record maintained as an alternative to a certificate
105 of title by the governmental unit that issues certificates
106 of title if a statute permits the security interest in
107 question to be indicated on the record as a condition or
108 result of the security interest's obtaining priority over
109 the rights of a lien creditor with respect to the collateral;

110 (11) "Chattel paper" means [a record or records that
111 evidence both a monetary obligation and a security interest
112 in specific goods, a security interest in specific goods and
113 software used in the goods, a security interest in specific
114 goods and license of software used in the goods, a lease of
115 specific goods, or a lease of specific goods and license of
116 software used in the goods. In this paragraph, "monetary
117 obligation" means a monetary obligation secured by the goods
118 or owed under a lease of the goods and includes a monetary
119 obligation with respect to software used in the goods. The
120 term does not include (i) charters or other contracts
121 involving the use or hire of a vessel or (ii) records that
122 evidence a right to payment arising out of the use of a
123 credit or charge card or information contained on or for use
124 with the card. If a transaction is evidenced by records
125 that include an instrument or series of instruments, the
126 group of records taken together constitutes chattel paper;]:

127 **(A) A right to payment of a monetary obligation**
128 **secured by specific goods, if the right to payment and**
129 **security agreement are evidenced by a record; or**

130 **(B) A right to payment of a monetary obligation owed**
131 **by a lessee under a lease agreement with respect to specific**
132 **goods and a monetary obligation owed by the lessee in**
133 **connection with the transaction giving rise to the lease, if:**

134 **(i) The right to payment and lease agreement are**
135 **evidenced by a record; and**

136 **(ii) The predominant purpose of the transaction giving**
137 **rise to the lease was to give the lessee the right to**
138 **possession and use of the goods.**

139 **The term does not include a right to payment arising out of**
140 **a charter or other contract involving the use or hire of a**

141 **vessel or a right to payment arising out of the use of a**
142 **credit or charge card or information contained on or for use**
143 **with the card;**

144 (12) "Collateral" means the property subject to a
145 security interest or agricultural lien. The term includes:

146 (A) Proceeds to which a security interest attaches;

147 (B) Accounts, chattel paper, payment intangibles, and
148 promissory notes that have been sold; and

149 (C) Goods that are the subject of a consignment;

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

152 (A) The claimant is an organization; or

153 (B) The claimant is an individual and the claim:

154 (i) Arose in the course of the claimant's business or
155 profession; and

156 (ii) Does not include damages arising out of personal
157 injury to or the death of an individual;

158 (14) "Commodity account" means an account maintained
159 by a commodity intermediary in which a commodity contract is
160 carried for a commodity customer;

161 (15) "Commodity contract" means a commodity futures
162 contract, an option on a commodity futures contract, a
163 commodity option, or another contract if the contract or
164 option is:

165 (A) Traded on or subject to the rules of a board of
166 trade that has been designated as a contract market for such
167 a contract pursuant to federal commodities laws; or

168 (B) Traded on a foreign commodity board of trade,
169 exchange, or market, and is carried on the books of a
170 commodity intermediary for a commodity customer;

171 (16) "Commodity customer" means a person for which a
172 commodity intermediary carries a commodity contract on its
173 books;

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

175 (A) Is registered as a futures commission merchant
176 under federal commodities law; or

177 (B) In the ordinary course of its business provides
178 clearance or settlement services for a board of trade that
179 has been designated as a contract market pursuant to federal
180 commodities law;

181 (18) "Communicate" means:

182 (A) To send a written or other tangible record;

183 (B) To transmit a record by any means agreed upon by
184 the persons sending and receiving the record; or

185 (C) In the case of transmission of a record to or by a
186 filing office, to transmit a record by any means prescribed
187 by filing-office rule;

188 (19) "Consignee" means a merchant to which goods are
189 delivered in a consignment;

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

193 (A) The merchant:

194 (i) Deals in goods of that kind under a name other
195 than the name of the person making delivery;

196 (ii) Is not an auctioneer; and

197 (iii) Is not generally known by its creditors to be
198 substantially engaged in selling the goods of others;

199 (B) With respect to each delivery, the aggregate value
200 of the goods is one thousand dollars or more at the time of
201 delivery;

202 (C) The goods are not consumer goods immediately
203 before delivery; and

204 (D) The transaction does not create a security
205 interest that secures an obligation;

206 (21) "Consignor" means a person that delivers goods to
207 a consignee in a consignment;

208 (22) "Consumer debtor" means a debtor in a consumer
209 transaction;

210 (23) "Consumer goods" means goods that are used or
211 bought for use primarily for personal, family, or household
212 purposes;

213 (24) "Consumer-goods transaction" means a consumer
214 transaction in which:

215 (A) An individual incurs an obligation primarily for
216 personal, family, or household purposes; and

217 (B) A security interest in consumer goods secures the
218 obligation;

219 (25) "Consumer obligor" means an obligor who is an
220 individual and who incurred the obligation as part of a
221 transaction entered into primarily for personal, family, or
222 household purposes;

223 (26) "Consumer transaction" means a transaction in
224 which (i) an individual incurs an obligation primarily for
225 personal, family, or household purposes, (ii) a security
226 interest secures the obligation, and (iii) the collateral is
227 held or acquired primarily for personal, family, or
228 household purposes. The term includes consumer-goods
229 transactions;

230 (27) "Continuation statement" means an amendment of a
231 financing statement which:

232 (A) Identifies, by its file number, the initial
233 financing statement to which it relates; and

234 (B) Indicates that it is a continuation statement for,
235 or that it is filed to continue the effectiveness of, the
236 identified financing statement;

237 (27A) "Controllable account" means an account
238 evidenced by a controllable electronic record that provides
239 that the account debtor undertakes to pay the person that
240 has control under section 400.12-105 of the controllable
241 electronic record;

242 (27B) "Controllable payment intangible" means a
243 payment intangible evidenced by a controllable electronic
244 record that provides that the account debtor undertakes to
245 pay the person that has control under section 400.12-105 of
246 the controllable electronic record;

247 (28) "Debtor" means:

248 (A) A person having an interest, other than a security
249 interest or other lien, in the collateral, whether or not
250 the person is an obligor;

251 (B) A seller of accounts, chattel paper, payment
252 intangibles, or promissory notes; or

253 (C) A consignee;

254 (29) "Deposit account" means a demand, time, savings,
255 passbook, or similar account maintained with a bank. The
256 term does not include investment property or accounts
257 evidenced by an instrument;

258 (30) "Document" means a document of title or a receipt
259 of the type described in section 400.7-201(b);

260 (31) ["Electronic chattel paper" means chattel paper
261 evidenced by a record or records consisting of information
262 stored in an electronic medium] "Electronic money" means
263 money in an electronic form;

264 (32) "Encumbrance" means a right, other than an
265 ownership interest, in real property. The term includes
266 mortgages and other liens on real property;

267 (33) "Equipment" means goods other than inventory,
268 farm products, or consumer goods;

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

272 (A) Crops grown, growing, or to be grown, including:

273 (i) Crops produced on trees, vines, and bushes; and

274 (ii) Aquatic goods produced in aquacultural operations;

275 (B) Livestock, born or unborn, including aquatic goods
276 produced in aquacultural operations;

277 (C) Supplies used or produced in a farming operation;

278 or

279 (D) Products of crops or livestock in their
280 unmanufactured states;

281 (35) "Farming operation" means raising, cultivating,
282 propagating, fattening, grazing, or any other farming,
283 livestock, or aquacultural operation;

284 (36) "File number" means the number assigned to an
285 initial financing statement pursuant to section 400.9-519(a);

286 (37) "Filing office" means an office designated in
287 section 400.9-501 as the place to file a financing statement;

288 (38) "Filing-office rule" means a rule adopted
289 pursuant to section 400.9-526;

290 (39) "Financing statement" means a record or records
291 composed of an initial financing statement and any filed
292 record relating to the initial financing statement;

293 (40) "Fixture filing" means the filing of a financing
294 statement covering goods that are or are to become fixtures
295 and satisfying section 400.9-502(a) and (b). The term

296 includes the filing of a financing statement covering goods
297 of a transmitting utility which are or are to become
298 fixtures;

299 (41) "Fixtures" means goods that have become so
300 related to particular real property that an interest in them
301 arises under real property law;

302 (42) "General intangible" means any personal property,
303 including things in action, other than accounts, chattel
304 paper, commercial tort claims, deposit accounts, documents,
305 goods, instruments, investment property, letter-of-credit
306 rights, letters of credit, money, and oil, gas, or other
307 minerals before extraction. The term includes **controllable**
308 **electronic records**, payment intangibles, and software;

309 (43) ["Good faith" means honesty in fact;

310 (44)] "Goods" means all things that are movable when a
311 security interest attaches. The term includes (i) fixtures,
312 (ii) standing timber that is to be cut and removed under a
313 conveyance or contract for sale, (iii) the unborn young of
314 animals, (iv) crops grown, growing, or to be grown, even if
315 the crops are produced on trees, vines, or bushes, and (v)
316 manufactured homes. The term also includes a computer
317 program embedded in goods and any supporting information
318 provided in connection with a transaction relating to the
319 program if (i) the program is associated with the goods in
320 such a manner that it customarily is considered part of the
321 goods, or (ii) by becoming the owner of the goods, a person
322 acquires a right to use the program in connection with the
323 goods. The term does not include a computer program
324 embedded in goods that consist solely of the medium in which
325 the program is embedded. The term also does not include
326 accounts, chattel paper, commercial tort claims, deposit
327 accounts, documents, general intangibles, instruments,

328 investment property, letter-of-credit rights, letters of
329 credit, money, or oil, gas, or other minerals before
330 extraction;

331 [(45)] (44) "Governmental unit" means a subdivision,
332 agency, department, county, parish, municipality, or other
333 unit of the government of the United States, a state, or a
334 foreign country. The term includes an organization having a
335 separate corporate existence if the organization is eligible
336 to issue debt on which interest is exempt from income
337 taxation under the laws of the United States;

338 [(46)] (45) "Health-care-insurance receivable" means
339 an interest in or claim under a policy of insurance which is
340 a right to payment of a monetary obligation for health-care
341 goods or services provided or to be provided;

342 [(47)] (46) "Instrument" means a negotiable instrument
343 or any other writing that evidences a right to the payment
344 of a monetary obligation, is not itself a security agreement
345 or lease, and is of a type that in ordinary course of
346 business is transferred by delivery with any necessary
347 indorsement or assignment. The term does not include (i)
348 investment property, (ii) letters of credit, [or] (iii)
349 writings that evidence a right to payment arising out of the
350 use of a credit or charge card or information contained on
351 or for use with the card, **or (iv) writings that evidence**
352 **chattel paper;**

353 [(48)] (47) "Inventory" means goods, other than farm
354 products, which:

355 (A) Are leased by a person as lessor;

356 (B) Are held by a person for sale or lease or to be
357 furnished under a contract of service;

358 (C) Are furnished by a person under a contract of
359 service; or

360 (D) Consist of raw materials, work in process, or
361 materials used or consumed in a business;

362 [(49)] (48) "Investment property" means a security,
363 whether certificated or uncertificated, security
364 entitlement, securities account, commodity contract, or
365 commodity account;

366 [(50)] (49) "Jurisdiction of organization", with
367 respect to a registered organization, means the jurisdiction
368 under whose law the organization is formed or organized;

369 [(51)] (50) "Letter-of-credit right" means a right to
370 payment or performance under a letter of credit, whether or
371 not the beneficiary has demanded or is at the time entitled
372 to demand payment or performance. The term does not include
373 the right of a beneficiary to demand payment or performance
374 under a letter of credit;

375 [(52)] (51) "Lien creditor" means:

376 (A) A creditor that has acquired a lien on the
377 property involved by attachment, levy, or the like;

378 (B) An assignee for benefit of creditors from the time
379 of assignment;

380 (C) A trustee in bankruptcy from the date of the
381 filing of the petition; or

382 (D) A receiver in equity from the time of appointment;

383 [(53)] (52) "Manufactured home" means a structure,
384 transportable in one or more sections, which, in the
385 traveling mode, is eight body feet or more in width or forty
386 body feet or more in length, or, when erected on site, is
387 three hundred twenty or more square feet, and which is built
388 on a permanent chassis and designed to be used as a dwelling
389 with or without a permanent foundation when connected to the
390 required utilities, and includes the plumbing, heating, air-
391 conditioning, and electrical systems contained therein. The

392 term includes any structure that meets all of the
393 requirements of this paragraph except the size requirements
394 and with respect to which the manufacturer voluntarily files
395 a certification required by the United States Secretary of
396 Housing and Urban Development and complies with the
397 standards established under Title 42 of the United States
398 Code;

399 **[(54)] (53)** "Manufactured-home transaction" means a
400 secured transaction:

401 (A) That creates a purchase-money security interest in
402 a manufactured home, other than a manufactured home held as
403 inventory; or

404 (B) In which a manufactured home, other than a
405 manufactured home held as inventory, is the primary
406 collateral;

407 **(54) "Money" has the meaning in section 400.1-**
408 **201(b) (24), but does not include (i) a deposit account or**
409 **(ii) money in an electronic form that cannot be subjected to**
410 **control under section 400.9-105A;**

411 (55) "Mortgage" means a consensual interest in real
412 property, including fixtures, which secures payment or
413 performance of an obligation;

414 (56) "New debtor" means a person that becomes bound as
415 debtor under section 400.9-203(d) by a security agreement
416 previously entered into by another person;

417 (57) "New value" means (i) money, (ii) money's worth
418 in property, services, or new credit, or (iii) release by a
419 transferee of an interest in property previously transferred
420 to the transferee. The term does not include an obligation
421 substituted for another obligation;

422 (58) "Noncash proceeds" means proceeds other than cash
423 proceeds;

424 (59) "Obligor" means a person that, with respect to an
425 obligation secured by a security interest in or an
426 agricultural lien on the collateral, (i) owes payment or
427 other performance of the obligation, (ii) has provided
428 property other than the collateral to secure payment or
429 other performance of the obligation, or (iii) is otherwise
430 accountable in whole or in part for payment or other
431 performance of the obligation. The term does not include
432 issuers or nominated persons under a letter of credit;

433 (60) "Original debtor", except as used in section
434 400.9-310(c), means a person that, as debtor, entered into a
435 security agreement to which a new debtor has become bound
436 under section 400.9-203(d);

437 (61) "Payment intangible" means a general intangible
438 under which the account debtor's principal obligation is a
439 monetary obligation. **The term includes a controllable**
440 **payment intangible;**

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

443 (A) The spouse of the individual;

444 (B) A brother, brother-in-law, sister, or sister-in-
445 law of the individual;

446 (C) An ancestor or lineal descendant of the individual
447 or the individual's spouse; or

448 (D) Any other relative, by blood or marriage, of the
449 individual or the individual's spouse who shares the same
450 home with the individual;

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

453 (A) A person directly or indirectly controlling,
454 controlled by, or under common control with the organization;

455 (B) An officer or director of, or a person performing
456 similar functions with respect to, the organization;

457 (C) An officer or director of, or a person performing
458 similar functions with respect to, a person described in
459 subparagraph (A);

460 (D) The spouse of an individual described in
461 subparagraph (A), (B), or (C); or

462 (E) An individual who is related by blood or marriage
463 to an individual described in subparagraph (A), (B), (C), or
464 (D) and shares the same home with the individual;

465 (64) "Proceeds", except as used in section 400.9-
466 609(b), means the following property:

467 (A) Whatever is acquired upon the sale, lease,
468 license, exchange, or other disposition of collateral;

469 (B) Whatever is collected on, or distributed on
470 account of, collateral;

471 (C) Rights arising out of collateral;

472 (D) To the extent of the value of collateral, claims
473 arising out of the loss, nonconformity, or interference with
474 the use of, defects or infringement of rights in, or damage
475 to, the collateral; or

476 (E) To the extent of the value of collateral and to
477 the extent payable to the debtor or the secured party,
478 insurance payable by reason of the loss or nonconformity of,
479 defects or infringement of rights in, or damage to, the
480 collateral;

481 (65) "Promissory note" means an instrument that
482 evidences a promise to pay a monetary obligation, does not
483 evidence an order to pay, and does not contain an
484 acknowledgment by a bank that the bank has received for
485 deposit a sum of money or funds;

486 (66) "Proposal" means a record authenticated by a
487 secured party which includes the terms on which the secured
488 party is willing to accept collateral in full or partial
489 satisfaction of the obligation it secures pursuant to
490 sections 400.9-620, 400.9-621 and 400.9-622;

491 (67) "Public organic record" means a record that is
492 available to the public for inspection and is:

493 (A) A record consisting of the record initially filed
494 with or issued by a state or the United States to form or
495 organize an organization and any record filed with or issued
496 by the state or the United States which amends or restates
497 the initial record;

498 (B) An organic record of a business trust consisting
499 of the record initially filed with a state and any record
500 filed with the state which amends or restates the initial
501 record, if a statute of the state governing business trusts
502 requires that the record be filed with the state; or

503 (C) A record consisting of legislation enacted by the
504 legislature of a state or the Congress of the United States
505 which forms or organizes an organization, any record
506 amending the legislation, and any record filed with or
507 issued by the state or the United States which amends or
508 restates the name of the organization;

509 (68) "Pursuant to commitment", with respect to an
510 advance made or other value given by a secured party, means
511 pursuant to the secured party's obligation, whether or not a
512 subsequent event of default or other event not within the
513 secured party's control has relieved or may relieve the
514 secured party from its obligation;

515 (69) "Record", except as used in "for record", "of
516 record", "record or legal title", and "record owner", means
517 information that is inscribed on a tangible medium or which

518 is stored in an electronic or other medium and is
519 retrievable in perceivable form;

520 (70) "Registered organization" means an organization
521 formed or organized solely under the law of a single state
522 or the United States by the filing of a public organic
523 record with, the issuance of a public organic record by, or
524 the enactment of legislation by the state or the United
525 States. The term includes a business trust that is formed
526 or organized under the law of a single state if a statute of
527 the state governing business trusts requires that the
528 business trust's organic record be filed with the state;

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

531 (A) The obligor's obligation is secondary; or

532 (B) The obligor has a right of recourse with respect
533 to an obligation secured by collateral against the debtor,
534 another obligor, or property of either;

535 (72) "Secured party" means:

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

539 (B) A person that holds an agricultural lien;

540 (C) A consignor;

541 (D) A person to which accounts, chattel paper, payment
542 intangibles, or promissory notes have been sold;

543 (E) A trustee, indenture trustee, agent, collateral
544 agent, or other representative in whose favor a security
545 interest or agricultural lien is created or provided for; or

546 (F) A person that holds a security interest arising
547 under sections 400.2-401, 400.2-505, 400.2-711(3), 400.2A-
548 508(5), 400.4-210 or 400.5-118;

549 (73) "Security agreement" means an agreement that
550 creates or provides for a security interest;

551 (74) ["Send", in connection with a record or
552 notification, means:

553 (A) To deposit in the mail, deliver for transmission,
554 or transmit by any other usual means of communication, with
555 postage or cost of transmission provided for, addressed to
556 any address reasonable under the circumstances; or

557 (B) To cause the record or notification to be received
558 within the time that it would have been received if properly
559 sent under subparagraph (A);

560 (75)] "Software" means a computer program and any
561 supporting information provided in connection with a
562 transaction relating to the program. The term does not
563 include a computer program that is included in the
564 definition of goods;

565 [(76)] (75) "State" means a state of the United
566 States, the District of Columbia, Puerto Rico, the United
567 States Virgin Islands, or any territory or insular
568 possession subject to the jurisdiction of the United States;

569 [(77)] (76) "Supporting obligation" means a letter-of-
570 credit right or secondary obligation that supports the
571 payment or performance of an account, chattel paper, a
572 document, a general intangible, an instrument, or investment
573 property;

574 [(78) "Tangible chattel paper" means chattel paper
575 evidenced by a record or records consisting of information
576 that is inscribed on a tangible medium;]

577 (77) "Tangible money" means money in a tangible form;

578 [(79)] (78) "Termination statement" means an amendment
579 of a financing statement which:

580 (A) Identifies, by its file number, the initial
 581 financing statement to which it relates; and

582 (B) Indicates either that it is a termination
 583 statement or that the identified financing statement is no
 584 longer effective;

585 [(80)] (79) "Transmitting utility" means a person
 586 primarily engaged in the business of:

587 (A) Operating a railroad, subway, street railway, or
 588 trolley bus;

589 (B) Transmitting communications electrically,
 590 electromagnetically, or by light;

591 (C) Transmitting goods by pipeline or sewer; or

592 (D) Transmitting or producing and transmitting
 593 electricity, steam, gas, or water.

594 (b) "Control" as provided in section 400.8-106 and the
 595 following definitions in other articles apply to this
 596 article:

597	"Applicant"	Section 400.5-102.
598	"Beneficiary"	Section 400.5-102.
599	"Broker"	Section 400.8-102.
600	"Certificated security"	Section 400.8-102.
601	"Check"	Section 400.3-104.
602	"Clearing corporation"	Section 400.8-102.
603	"Contract for sale"	Section 400.2-106.
604	"Controllable electronic record"	Section 400.12-102.
605		
606	"Customer"	Section 400.4-104.
607	"Entitlement holder"	Section 400.8-102.

608	"Financial asset"	Section 400.8-102.
609	"Holder in due course"	Section 400.3-302.
610 611	"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 400.5-102.
612	"Issuer" (with respect to a security)	Section 400.8-201.
613 614	"Lease"	Section 400.2A-103.
615 616	"Lease agreement"	Section 400.2A-103.
617 618	"Lease contract"	Section 400.2A-103.
619 620	"Leasehold interest"	Section 400.2A-103.
621 622	"Lessee"	Section 400.2A-103.
623 624	"Lessee in ordinary course of business"	Section 400.2A-103.
625 626	"Lessor"	Section 400.2A-103.
627 628	"Lessor's residual interest"	Section 400.2A-103.
629	"Letter of credit"	Section 400.5-102.
630	"Merchant"	Section 400.2-104.
631	"Negotiable instrument"	Section 400.3-104.
632	"Nominated person"	Section 400.5-102.
633	"Note"	Section 400.3-104.
634	"Proceeds of a letter of credit"	Section 400.5-114.
635	"Protected purchaser"	Section 400.8-303.
636	"Prove"	Section 400.3-103.

637	"Qualifying purchaser"	Section 400.12-102.
638		
639	"Sale"	Section 400.2-106.
640	"Securities account"	Section 400.8-501.
641	"Securities intermediary"	Section 400.8-102.
642	"Security"	Section 400.8-102.
643	"Security certificate"	Section 400.8-102.
644	"Security entitlement"	Section 400.8-102.
645	"Uncertificated security"	Section 400.8-102.

646 (c) This section contains general definitions and
 647 principles of construction and interpretation applicable
 648 throughout sections 400.9-103 to 400.9-809.

400.9-104. (a) A secured party has control of a
 2 deposit account if:

3 (1) The secured party is the bank with which the
 4 deposit account is maintained;

5 (2) The debtor, secured party, and bank have agreed in
 6 **[an authenticated] a signed** record that the bank will comply
 7 with instructions originated by the secured party directing
 8 disposition of the funds in the account without further
 9 consent by the debtor; **[or]**

10 (3) The secured party becomes the bank's customer with
 11 respect to the deposit account; **or**

12 (4) **Another person, other than the debtor:**

13 (A) **Has control of the deposit account and**
 14 **acknowledges that it has control on behalf of the secured**
 15 **party; or**

16 **(B) Obtains control of the deposit account after**
17 **having acknowledged that it will obtain control of the**
18 **deposit account on behalf of the secured party.**

19 (b) A secured party that has satisfied subsection (a)
20 has control, even if the debtor retains the right to direct
21 the disposition of funds from the deposit account.

 400.9-105. (a) A [secured party] **purchaser** has
2 control of **an authoritative electronic copy of a record**
3 **evidencing** chattel paper if a system employed for evidencing
4 the [transfer] **assignment** of interests in the chattel paper
5 reliably establishes the [secured party] **purchaser** as the
6 person to which the [chattel paper] **authoritative electronic**
7 **copy** was assigned.

8 (b) A system satisfies subsection (a) if the record or
9 records [comprising] **evidencing** the chattel paper are
10 created, stored, and assigned in such a manner that:

11 (1) A single authoritative copy of the record or
12 records exists which is unique, identifiable, and, except as
13 otherwise provided in paragraphs (4), (5), and (6),
14 unalterable;

15 (2) The authoritative copy identifies the [secured
16 party] **purchaser** as the assignee of the record or records;

17 (3) The authoritative copy is communicated to and
18 maintained by the [secured party] **purchaser** or its
19 designated custodian;

20 (4) Copies or amendments that add or change an
21 identified assignee of the authoritative copy can be made
22 only with the consent of the [secured party] **purchaser**;

23 (5) Each copy of the authoritative copy and any copy
24 of a copy is readily identifiable as a copy that is not the
25 authoritative copy; and

26 (6) Any amendment of the authoritative copy is readily
27 identifiable as authorized or unauthorized.

28 (c) A system satisfies subsection (a), and a purchaser
29 has control of an authoritative electronic copy of a record
30 evidencing chattel paper, if the electronic copy, a record
31 attached to or logically associated with the electronic
32 copy, or a system in which the electronic copy is recorded:

33 (1) Enables the purchaser readily to identify each
34 electronic copy as either an authoritative copy or a
35 nonauthoritative copy;

36 (2) Enables the purchaser readily to identify itself
37 in any way, including by name, identifying number,
38 cryptographic key, office, or account number, as the
39 assignee of the authoritative electronic copy; and

40 (3) Gives the purchaser exclusive power, subject to
41 subsection (d), to:

42 (A) Prevent others from adding or changing an
43 identified assignee of the authoritative electronic copy; and

44 (B) Transfer control of the authoritative electronic
45 copy.

46 (d) Subject to subsection (e), a power is exclusive
47 under subsection (c) (3) (A) and (B) even if:

48 (1) The authoritative electronic copy, a record
49 attached to or logically associated with the authoritative
50 electronic copy, or a system in which the authoritative
51 electronic copy is recorded limits the use of the
52 authoritative electronic copy or has a protocol programmed
53 to cause a change, including a transfer or loss of control;
54 or

55 (2) The power is shared with another person.

56 (e) A power of a purchaser is not shared with another
57 person under subsection (d) (2) and the purchaser's power is
58 not exclusive if:

59 (1) The purchaser can exercise the power only if the
60 power also is exercised by the other person; and

61 (2) The other person:

62 (A) Can exercise the power without exercise of the
63 power by the purchaser; or

64 (B) Is the transferor to the purchaser of an interest
65 in the chattel paper.

66 (f) If a purchaser has the powers specified in
67 subsection (c) (3) (A) and (B), the powers are presumed to be
68 exclusive.

69 (g) A purchaser has control of an authoritative
70 electronic copy of a record evidencing chattel paper if
71 another person, other than the transferor to the purchaser
72 of an interest in the chattel paper:

73 (1) Has control of the authoritative electronic copy
74 and acknowledges that it has control on behalf of the
75 purchaser; or

76 (2) Obtains control of the authoritative electronic
77 copy after having acknowledged that it will obtain control
78 of the electronic copy on behalf of the purchaser.

 400.9-105A. (a) A person has control of electronic
2 money if:

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

6 (A) Power to avail itself of substantially all the
7 benefit from the electronic money; and

8 (B) Exclusive power, subject to subsection (b), to:

9 (i) Prevent others from availing themselves of
10 substantially all the benefit from the electronic money; and

11 (ii) Transfer control of the electronic money to
12 another person or cause another person to obtain control of
13 other electronic money as a result of the transfer of the
14 electronic money; and

15 (2) The electronic money, a record attached to or
16 logically associated with the electronic money, or a system
17 in which the electronic money is recorded enables the person
18 readily to identify itself in any way, including by name,
19 identifying number, cryptographic key, office, or account
20 number, as having the powers under paragraph (1).

21 (b) Subject to subsection (c), a power is exclusive
22 under subsection (a) (1) (B) (i) and (ii) even if:

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

28 (2) The power is shared with another person.

29 (c) A power of a person is not shared with another
30 person under subsection (b) (2) and the person's power is not
31 exclusive if:

32 (1) The person can exercise the power only if the
33 power also is exercised by the other person; and

34 (2) The other person:

35 (A) Can exercise the power without exercise of the
36 power by the person; or

37 (B) Is the transferor to the person of an interest in
38 the electronic money.

39 (d) If a person has the powers specified in subsection
40 (a) (1) (B) (i) and (ii), the powers are presumed to be
41 exclusive.

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

45 (1) Has control of the electronic money and
46 acknowledges that it has control on behalf of the person; or

47 (2) Obtains control of the electronic money after
48 having acknowledged that it will obtain control of the
49 electronic money on behalf of the person.

400.9-107A. (a) A secured party has control of a
2 controllable electronic record as provided in Section 400.12-
3 105.

4 (b) A secured party has control of a controllable
5 account or controllable payment intangible if the secured
6 party has control of the controllable electronic record that
7 evidences the controllable account or controllable payment
8 intangible.

400.9-107B. (a) A person that has control under
2 section 400.9-104, 400.9-105, or 400.9-105A is not required
3 to acknowledge that it has control on behalf of another
4 person.

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

400.9-203. (a) A security interest attaches to
2 collateral when it becomes enforceable against the debtor

3 with respect to the collateral, unless an agreement
4 expressly postpones the time of attachment.

5 (b) Except as otherwise provided in subsections (c)
6 through (i), a security interest is enforceable against the
7 debtor and third parties with respect to the collateral only
8 if:

9 (1) Value has been given;

10 (2) The debtor has rights in the collateral or the
11 power to transfer rights in the collateral to a secured
12 party; and

13 (3) One of the following conditions is met:

14 (A) The debtor has [authenticated] **signed** a security
15 agreement that provides a description of the collateral and,
16 if the security interest covers timber to be cut, a
17 description of the land concerned;

18 (B) The collateral is not a certificated security and
19 is in the possession of the secured party under section
20 400.9-313 pursuant to the debtor's security agreement;

21 (C) The collateral is a certificated security in
22 registered form and the security certificate has been
23 delivered to the secured party under section 400.8-301
24 pursuant to the debtor's security agreement; [or]

25 (D) The collateral is **controllable accounts,**
26 **controllable electronic records, controllable payment**
27 **intangibles,** deposit accounts, [electronic chattel paper,]
28 **electronic documents, electronic money,** investment property,
29 or letter-of-credit rights, and the secured party has
30 control under section 400.9-104, [400.9-105,] **400.9-105A,**
31 400.9-106 [or], 400.9-107, **or 400.9-107A** pursuant to the
32 debtor's security agreement; **or**

33 **(E) The collateral is chattel paper and the secured**
34 **party has possession and control under section 400.9-314A**
35 **pursuant to the debtor's security agreement.**

36 (c) Subsection (b) is subject to section 400.4-210 on
37 the security interest of a collecting bank, section 400.5-
38 118 on the security interest of a letter-of-credit issuer or
39 nominated person, section 400.9-110 on a security interest
40 arising under article 2 or 2A, and section 400.9-206 on
41 security interests in investment property.

42 (d) A person becomes bound as debtor by a security
43 agreement entered into by another person if, by operation of
44 law other than this article or by contract:

45 (1) The security agreement becomes effective to create
46 a security interest in the person's property; or

47 (2) The person becomes generally obligated for the
48 obligations of the other person, including the obligation
49 secured under the security agreement, and acquires or
50 succeeds to all or substantially all of the assets of the
51 other person.

52 (e) If a new debtor becomes bound as debtor by a
53 security agreement entered into by another person:

54 (1) The agreement satisfies subsection (b)(3) with
55 respect to existing or after-acquired property of the new
56 debtor to the extent the property is described in the
57 agreement; and

58 (2) Another agreement is not necessary to make a
59 security interest in the property enforceable.

60 (f) The attachment of a security interest in
61 collateral gives the secured party the rights to proceeds
62 provided by section 400.9-315 and is also attachment of a
63 security interest in a supporting obligation for the
64 collateral.

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

70 (h) The attachment of a security interest in a
71 securities account is also attachment of a security interest
72 in the security entitlements carried in the securities
73 account.

74 (i) The attachment of a security interest in a
75 commodity account is also attachment of a security interest
76 in the commodity contracts carried in the commodity account.

400.9-204. (a) Except as otherwise provided in
2 subsection (b), a security agreement may create or provide
3 for a security interest in after-acquired collateral.

4 (b) **[A] Subject to subsection (b.1), a security**
5 interest does not attach under a term constituting an after-
6 acquired property clause to:

7 (1) Consumer goods, other than an accession when given
8 as additional security, unless the debtor acquires rights in
9 them within ten days after the secured party gives value; or

10 (2) A commercial tort claim.

11 **(b.1) Subsection (b) does not prevent a security**
12 **interest from attaching:**

13 (1) **To consumer goods as proceeds under Section 400.9-**
14 **315(a) or commingled goods under Section 400.9-336(c);**

15 (2) **To a commercial tort claim as proceeds under**
16 **Section 400.9-315(a); or**

17 (3) **Under an after-acquired property clause to**
18 **property that is proceeds of consumer goods or a commercial**
19 **tort claim.**

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

400.9-207. (a) Except as otherwise provided in
2 subsection (d), a secured party shall use reasonable care in
3 the custody and preservation of collateral in the secured
4 party's possession. In the case of chattel paper or an
5 instrument, reasonable care includes taking necessary steps
6 to preserve rights against prior parties unless otherwise
7 agreed.

8 (b) Except as otherwise provided in subsection (d), if
9 a secured party has possession of collateral:

10 (1) Reasonable expenses, including the cost of
11 insurance and payment of taxes or other charges, incurred in
12 the custody, preservation, use, or operation of the
13 collateral are chargeable to the debtor and are secured by
14 the collateral;

15 (2) The risk of accidental loss or damage is on the
16 party having possession of the collateral;

17 (3) The secured party shall keep the collateral
18 identifiable, but fungible collateral may be commingled; and

19 (4) The secured party may use or operate the
20 collateral:

21 (A) For the purpose of preserving the collateral or
22 its value;

23 (B) As permitted by an order of a court having
24 competent jurisdiction; or

25 (C) Except in the case of consumer goods, in the
26 manner and to the extent agreed by the debtor.

27 (c) Except as otherwise provided in subsection (d), a
28 secured party having possession of collateral or control of
29 collateral under section 400.9-104, 400.9-105, **400.9-105A**,
30 400.9-106 [or], 400.9-107, **or 400.9-107A**:

31 (1) May hold as additional security any proceeds,
32 except money or funds, received from the collateral;

33 (2) Shall apply money or funds received from the
34 collateral to reduce the secured obligation, unless remitted
35 to the debtor; and

36 (3) May create a security interest in the collateral.

37 (d) If the secured party is a buyer of accounts,
38 chattel paper, payment intangibles, or promissory notes or a
39 consignor:

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

42 (A) To charge back uncollected collateral; or

43 (B) Otherwise to full or limited recourse against the
44 debtor or a secondary obligor based on the nonpayment or
45 other default of an account debtor or other obligor on the
46 collateral; and

47 (2) Subsections (b) and (c) do not apply.

400.9-208. (a) This section applies to cases in which
2 there is no outstanding secured obligation and the secured
3 party is not committed to make advances, incur obligations,
4 or otherwise give value.

5 (b) Within ten days after receiving [an authenticated]
6 **a signed** demand by the debtor:

7 (1) A secured party having control of a deposit
8 account under section 400.9-104(a)(2) shall send to the bank
9 with which the deposit account is maintained [an
10 authenticated statement] **a signed record** that releases the

11 bank from any further obligation to comply with instructions
12 originated by the secured party;

13 (2) A secured party having control of a deposit
14 account under section 400.9-104(a)(3) shall:

15 (A) Pay the debtor the balance on deposit in the
16 deposit account; or

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

19 (3) A secured party, other than a buyer, having
20 control [of electronic chattel paper] under section 400.9-
21 105 **of an authoritative electronic copy of a record**
22 **evidencing chattel paper** [shall:

23 (A) Communicate the authoritative copy of the
24 electronic chattel paper to the debtor or its designated
25 custodian;

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

34 (C) Take appropriate action to enable the debtor or
35 its designated custodian to make copies of or revisions to
36 the authoritative copy which add or change an identified
37 assignee of the authoritative copy without the consent of
38 the secured party] **shall transfer control of the electronic**
39 **copy to the debtor or a person designated by the debtor;**

40 (4) A secured party having control of investment
41 property under section 400.8-106(d)(2) or 400.9-106(b) shall
42 send to the securities intermediary or commodity

43 intermediary with which the security entitlement or
44 commodity contract is maintained [an authenticated] a signed
45 record that releases the securities intermediary or
46 commodity intermediary from any further obligation to comply
47 with entitlement orders or directions originated by the
48 secured party; [and]

49 (5) A secured party having control of a letter-of-
50 credit right under section 400.9-107 shall send to each
51 person having an unfulfilled obligation to pay or deliver
52 proceeds of the letter of credit to the secured party [an
53 authenticated] a signed release from any further obligation
54 to pay or deliver proceeds of the letter of credit to the
55 secured party;

56 (6) A secured party having control under section 400.7-
57 106 of an authoritative electronic copy of an electronic
58 document shall transfer control of the electronic copy to
59 the debtor or a person designated by the debtor;

60 (7) A secured party having control under section 400.9-
61 105A of electronic money shall transfer control of the
62 electronic money to the debtor or a person designated by the
63 debtor; and

64 (8) A secured party having control under section
65 400.12-105 of a controllable electronic record, other than a
66 buyer of a controllable account or controllable payment
67 intangible evidenced by the controllable electronic record,
68 shall transfer control of the controllable electronic record
69 to the debtor or a person designated by the debtor.

400.9-209. (a) Except as otherwise provided in
2 subsection (c), this section applies if:

3 (1) There is no outstanding secured obligation; and

4 (2) The secured party is not committed to make
5 advances, incur obligations, or otherwise give value.

6 (b) Within ten days after receiving [an authenticated]
7 **a signed** demand by the debtor, a secured party shall send to
8 an account debtor that has received notification **under**
9 **section 400.9-406(a) or 400.12-106(b)** of an assignment to
10 the secured party as assignee [under section 400.9-406(a) an
11 **authenticated**] **a signed** record that releases the account
12 debtor from any further obligation to the secured party.

13 (c) This section does not apply to an assignment
14 constituting the sale of an account, chattel paper, or
15 payment intangible.

400.9-210. (a) In this section:

2 (1) "Request" means a record of a type described in
3 paragraph (2), (3), or (4);

4 (2) "Request for an accounting" means a record
5 **[authenticated] signed** by a debtor requesting that the
6 recipient provide an accounting of the unpaid obligations
7 secured by collateral and reasonably identifying the
8 transaction or relationship that is the subject of the
9 request;

10 (3) "Request regarding a list of collateral" means a
11 record **[authenticated] signed** by a debtor requesting that
12 the recipient approve or correct a list of what the debtor
13 believes to be the collateral securing an obligation and
14 reasonably identifying the transaction or relationship that
15 is the subject of the request;

16 (4) "Request regarding a statement of account" means a
17 record **[authenticated] signed** by a debtor requesting that
18 the recipient approve or correct a statement indicating what
19 the debtor believes to be the aggregate amount of unpaid
20 obligations secured by collateral as of a specified date and
21 reasonably identifying the transaction or relationship that
22 is the subject of the request.

23 (b) Subject to subsections (c), (d), (e), and (f), a
24 secured party, other than a buyer of accounts, chattel
25 paper, payment intangibles, or promissory notes or a
26 consignor, shall comply with a request within fourteen days
27 after receipt:

28 (1) In the case of a request for an accounting, by
29 **[authenticating] signing** and sending to the debtor an
30 accounting; and

31 (2) In the case of a request regarding a list of
32 collateral or a request regarding a statement of account, by
33 **[authenticating] signing** and sending to the debtor an
34 approval or correction.

35 (c) A secured party that claims a security interest in
36 all of a particular type of collateral owned by the debtor
37 may comply with a request regarding a list of collateral by
38 sending to the debtor **[an authenticated] a signed** record
39 including a statement to that effect within fourteen days
40 after receipt.

41 (d) A person that receives a request regarding a list
42 of collateral, claims no interest in the collateral when it
43 receives the request, and claimed an interest in the
44 collateral at an earlier time shall comply with the request
45 within fourteen days after receipt by sending to the debtor
46 **[an authenticated] a signed** record:

47 (1) Disclaiming any interest in the collateral; and

48 (2) If known to the recipient, providing the name and
49 mailing address of any assignee of or successor to the
50 recipient's security interest in the collateral.

51 (e) A person that receives a request for an accounting
52 or a request regarding a statement of account, claims no
53 interest in the obligations when it receives the request,
54 and claimed an interest in the obligations at an earlier

55 time shall comply with the request within fourteen days
56 after receipt by sending to the debtor [an authenticated] a
57 **signed** record:

58 (1) Disclaiming any interest in the obligations; and

59 (2) If known to the recipient, providing the name and
60 mailing address of any assignee of or successor to the
61 recipient's interest in the obligations.

62 (f) A debtor is entitled without charge to one
63 response to a request under this section during any six-
64 month period. The secured party may require payment of a
65 charge not exceeding twenty-five dollars for each additional
66 response.

400.9-301. Except as otherwise provided in sections
2 400.9-303 through [400.9-306] **400.9-306B**, the following
3 rules determine the law governing perfection, the effect of
4 perfection or nonperfection, and the priority of a security
5 interest in collateral:

6 (1) Except as otherwise provided in this section,
7 while a debtor is located in a jurisdiction, the local law
8 of that jurisdiction governs perfection, the effect of
9 perfection or nonperfection, and the priority of a security
10 interest in collateral;

11 (2) While collateral is located in a jurisdiction, the
12 local law of that jurisdiction governs perfection, the
13 effect of perfection or nonperfection, and the priority of a
14 possessory security interest in that collateral;

15 (3) Except as otherwise provided in paragraph (4),
16 while negotiable **tangible** documents, goods, instruments, **or**
17 **tangible** money[, or tangible chattel paper] is located in a
18 jurisdiction, the local law of that jurisdiction governs:

19 (A) Perfection of a security interest in the goods by
20 filing a fixture filing;

21 (B) Perfection of a security interest in timber to be
22 cut; and

23 (C) The effect of perfection or nonperfection and the
24 priority of a nonpossessory security interest in the
25 collateral;

26 (4) The local law of the jurisdiction in which the
27 wellhead or minehead is located governs perfection, the
28 effect of perfection or nonperfection, and the priority of a
29 security interest in as-extracted collateral.

400.9-304. (a) The local law of a bank's jurisdiction
2 governs perfection, the effect of perfection or
3 nonperfection, and the priority of a security interest in a
4 deposit account maintained with that bank **even if the**
5 **transaction does not bear any relation to the bank's**
6 **jurisdiction.**

7 (b) The following rules determine a bank's
8 jurisdiction for purposes of this part:

9 (1) If an agreement between the bank and the debtor
10 governing the deposit account expressly provides that a
11 particular jurisdiction is the bank's jurisdiction for
12 purposes of this part, this article, or this chapter, that
13 jurisdiction is the bank's jurisdiction;

14 (2) If paragraph (1) does not apply and an agreement
15 between the bank and its customer governing the deposit
16 account expressly provides that the agreement is governed by
17 the law of a particular jurisdiction, that jurisdiction is
18 the bank's jurisdiction;

19 (3) If neither paragraph (1) nor paragraph (2) applies
20 and an agreement between the bank and its customer governing
21 the deposit account expressly provides that the deposit
22 account is maintained at an office in a particular
23 jurisdiction, that jurisdiction is the bank's jurisdiction;

24 (4) If none of the preceding paragraphs applies, the
25 bank's jurisdiction is the jurisdiction in which the office
26 identified in an account statement as the office serving the
27 customer's account is located;

28 (5) If none of the preceding paragraphs applies, the
29 bank's jurisdiction is the jurisdiction in which the chief
30 executive office of the bank is located.

 400.9-305. (a) Except as otherwise provided in
2 subsection (c), the following rules apply:

3 (1) While a security certificate is located in a
4 jurisdiction, the local law of that jurisdiction governs
5 perfection, the effect of perfection or nonperfection, and
6 the priority of a security interest in the certificated
7 security represented thereby;

8 (2) The local law of the issuer's jurisdiction as
9 specified in section 400.8-110(d) governs perfection, the
10 effect of perfection or nonperfection, and the priority of a
11 security interest in an uncertificated security;

12 (3) The local law of the securities intermediary's
13 jurisdiction as specified in section 400.8-110(e) governs
14 perfection, the effect of perfection or nonperfection, and
15 the priority of a security interest in a security
16 entitlement or securities account;

17 (4) The local law of the commodity intermediary's
18 jurisdiction governs perfection, the effect of perfection or
19 nonperfection, and the priority of a security interest in a
20 commodity contract or commodity account;

21 **(5) Paragraphs (2), (3), and (4) apply even if the**
22 **transaction does not bear any relation to the jurisdiction.**

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

25 (1) If an agreement between the commodity intermediary
26 and commodity customer governing the commodity account
27 expressly provides that a particular jurisdiction is the
28 commodity intermediary's jurisdiction for purposes of this
29 part, this article, or this chapter, that jurisdiction is
30 the commodity intermediary's jurisdiction;

31 (2) If paragraph (1) does not apply and an agreement
32 between the commodity intermediary and commodity customer
33 governing the commodity account expressly provides that the
34 agreement is governed by the law of a particular
35 jurisdiction, that jurisdiction is the commodity
36 intermediary's jurisdiction;

37 (3) If neither paragraph (1) nor paragraph (2) applies
38 and an agreement between the commodity intermediary and
39 commodity customer governing the commodity account expressly
40 provides that the commodity account is maintained at an
41 office in a particular jurisdiction, that jurisdiction is
42 the commodity intermediary's jurisdiction;

43 (4) If none of the preceding paragraphs applies, the
44 commodity intermediary's jurisdiction is the jurisdiction in
45 which the office identified in an account statement as the
46 office serving the commodity customer's account is located;

47 (5) If none of the preceding paragraphs applies, the
48 commodity intermediary's jurisdiction is the jurisdiction in
49 which the chief executive office of the commodity
50 intermediary is located.

51 (c) The local law of the jurisdiction in which the
52 debtor is located governs:

53 (1) Perfection of a security interest in investment
54 property by filing;

55 (2) Automatic perfection of a security interest in
56 investment property created by a broker or securities
57 intermediary; and

58 (3) Automatic perfection of a security interest in a
59 commodity contract or commodity account created by a
60 commodity intermediary.

400.9-306A. (a) Except as provided in subsection (d),
2 **if chattel paper is evidenced only by an authoritative**
3 **electronic copy of the chattel paper or is evidenced by an**
4 **authoritative electronic copy and an authoritative tangible**
5 **copy, the local law of the chattel paper's jurisdiction**
6 **governs perfection, the effect of perfection or**
7 **nonperfection, and the priority of a security interest in**
8 **the chattel paper, even if the transaction does not bear any**
9 **relation to the chattel paper's jurisdiction.**

10 **(b) The following rules determine the chattel paper's**
11 **jurisdiction under this section:**

12 **(1) If the authoritative electronic copy of the record**
13 **evidencing chattel paper, or a record attached to or**
14 **logically associated with the electronic copy and readily**
15 **available for review, expressly provides that a particular**
16 **jurisdiction is the chattel paper's jurisdiction for**
17 **purposes of this part, this article, or this chapter, that**
18 **jurisdiction is the chattel paper's jurisdiction.**

19 **(2) If paragraph (1) does not apply and the rules of**
20 **the system in which the authoritative electronic copy is**
21 **recorded are readily available for review and expressly**
22 **provide that a particular jurisdiction is the chattel**
23 **paper's jurisdiction for purposes of this part, this**
24 **article, or this chapter, that jurisdiction is the chattel**
25 **paper's jurisdiction.**

26 (3) If paragraphs (1) and (2) do not apply and the
27 authoritative electronic copy, or a record attached to or
28 logically associated with the electronic copy and readily
29 available for review, expressly provides that the chattel
30 paper is governed by the law of a particular jurisdiction,
31 that jurisdiction is the chattel paper's jurisdiction.

32 (4) If paragraphs (1), (2), and (3) do not apply and
33 the rules of the system in which the authoritative
34 electronic copy is recorded are readily available for review
35 and expressly provide that the chattel paper or the system
36 is governed by the law of a particular jurisdiction, that
37 jurisdiction is the chattel paper's jurisdiction.

38 (5) If paragraphs (1) through (4) do not apply, the
39 chattel paper's jurisdiction is the jurisdiction in which
40 the debtor is located.

41 (c) If an authoritative tangible copy of a record
42 evidences chattel paper and the chattel paper is not
43 evidenced by an authoritative electronic copy, while the
44 authoritative tangible copy of the record evidencing chattel
45 paper is located in a jurisdiction, the local law of that
46 jurisdiction governs:

47 (1) Perfection of a security interest in the chattel
48 paper by possession under section 400.9-314A; and

49 (2) The effect of perfection or nonperfection and the
50 priority of a security interest in the chattel paper.

51 (d) The local law of the jurisdiction in which the
52 debtor is located governs perfection of a security interest
53 in chattel paper by filing.

 400.9-306B. (a) Except as provided in subsection (b),
2 the local law of the controllable electronic record's
3 jurisdiction specified in section 400.12-107(c) and (d)
4 governs perfection, the effect of perfection or

5 nonperfection, and the priority of a security interest in a
6 controllable electronic record and a security interest in a
7 controllable account or controllable payment intangible
8 evidenced by the controllable electronic record.

9 (b) The local law of the jurisdiction in which the
10 debtor is located governs:

11 (1) Perfection of a security interest in a
12 controllable account, controllable electronic record, or
13 controllable payment intangible by filing; and

14 (2) Automatic perfection of a security interest in a
15 controllable payment intangible created by a sale of the
16 controllable payment intangible.

400.9-310. (a) Except as otherwise provided in
2 subsection (b) and section 400.9-312(b), a financing
3 statement must be filed to perfect all security interests
4 and agricultural liens.

5 (b) The filing of a financing statement is not
6 necessary to perfect a security interest:

7 (1) That is perfected under section 400.9-308(c), (d),
8 (e) or (f);

9 (2) That is perfected under section 400.9-309 when it
10 attaches;

11 (3) In property subject to a statute, regulation, or
12 treaty described in section 400.9-311(a);

13 (4) In goods in possession of a bailee which is
14 perfected under section 400.9-312(d)(1) or (2);

15 (5) In certificated securities, documents, goods, or
16 instruments which is perfected without filing or possession
17 under section 400.9-312(e), (f), or (g);

18 (6) In collateral in the secured party's possession
19 under section 400.9-313;

20 (7) In a certificated security which is perfected by
21 delivery of the security certificate to the secured party
22 under section 400.9-313;

23 (8) In **controllable accounts, controllable electronic**
24 **records, controllable payment intangibles,** deposit accounts,
25 **[electronic chattel paper,] electronic documents,** investment
26 property, or letter-of-credit rights which is perfected by
27 control under section 400.9-314;

28 **(8.1) In chattel paper which is perfected by**
29 **possession and control under section 400.9-314A;**

30 (9) In proceeds which is perfected under section 400.9-
31 315; or

32 (10) That is perfected under section 400.9-316.

33 (c) If a secured party assigns a perfected security
34 interest or agricultural lien, a filing under this article
35 is not required to continue the perfected status of the
36 security interest against creditors of and transferees from
37 the original debtor.

400.9-312. (a) A security interest in chattel paper,
2 **[negotiable documents,] controllable accounts, controllable**
3 **electronic records, controllable payment intangibles,**
4 instruments, **[or]** investment property, **or negotiable**
5 **documents** may be perfected by filing.

6 (b) Except as otherwise provided in section 400.9-
7 315(c) and (d) for proceeds:

8 (1) A security interest in a deposit account may be
9 perfected only by control under section 400.9-314;

10 (2) And except as otherwise provided in section 400.9-
11 308(c), a security interest in a letter-of-credit right may
12 be perfected only by control under section 400.9-314; **[and]**

13 (3) A security interest in **tangible** money may be
14 perfected only by the secured party's taking possession
15 under section 400.9-313; **and**

16 **(4) A security interest in electronic money may be**
17 **perfected only by control under section 400.9-314.**

18 (c) While goods are in the possession of a bailee that
19 has issued a negotiable document covering the goods:

20 (1) A security interest in the goods may be perfected
21 by perfecting a security interest in the document; and

22 (2) A security interest perfected in the document has
23 priority over any security interest that becomes perfected
24 in the goods by another method during that time.

25 (d) While goods are in the possession of a bailee that
26 has issued a nonnegotiable document covering the goods, a
27 security interest in the goods may be perfected by:

28 (1) Issuance of a document in the name of the secured
29 party;

30 (2) The bailee's receipt of notification of the
31 secured party's interest; or

32 (3) Filing as to the goods.

33 (e) A security interest in certificated securities,
34 negotiable documents, or instruments is perfected without
35 filing or the taking of possession for a period of twenty
36 days from the time it attaches to the extent that it arises
37 for new value given under **[an authenticated] a signed**
38 security agreement.

39 (f) A perfected security interest in a negotiable
40 document or goods in possession of a bailee, other than one
41 that has issued a negotiable document for the goods, remains
42 perfected for twenty days without filing if the secured
43 party makes available to the debtor the goods or documents
44 representing the goods for the purpose of:

45 (1) Ultimate sale or exchange; or
46 (2) Loading, unloading, storing, shipping,
47 transshipping, manufacturing, processing, or otherwise
48 dealing with them in a manner preliminary to their sale or
49 exchange.

50 (g) A perfected security interest in a certificated
51 security or instrument remains perfected for twenty days
52 without filing if the secured party delivers the security
53 certificate or instrument to the debtor for the purpose of:

54 (1) Ultimate sale or exchange; or
55 (2) Presentation, collection, enforcement, renewal, or
56 registration of transfer.

57 (h) After the twenty-day period specified in
58 subsection (e), (f), or (g) expires, perfection depends upon
59 compliance with this article.

 400.9-313. (a) Except as otherwise provided in
2 subsection (b), a secured party may perfect a security
3 interest in [negotiable documents,] goods, instruments,
4 **negotiable tangible documents, or tangible** money[, or
5 **tangible chattel paper**] by taking possession of the
6 collateral. A secured party may perfect a security interest
7 in certificated securities by taking delivery of the
8 certificated securities under section 400.8-301.

9 (b) With respect to goods covered by a certificate of
10 title issued by this state, a secured party may perfect a
11 security interest in the goods by taking possession of the
12 goods only in the circumstances described in section 400.9-
13 316(d).

14 (c) With respect to collateral other than certificated
15 securities and goods covered by a document, a secured party
16 takes possession of collateral in the possession of a person
17 other than the debtor, the secured party, or a lessee of the

18 collateral from the debtor in the ordinary course of the
19 debtor's business, when:

20 (1) The person in possession **[authenticates]** **signs** a
21 record acknowledging that it holds possession of the
22 collateral for the secured party's benefit; or

23 (2) The person takes possession of the collateral
24 after having **[authenticated]** **signed** a record acknowledging
25 that it will hold possession of **the** collateral for the
26 secured party's benefit.

27 (d) If perfection of a security interest depends upon
28 possession of the collateral by a secured party, perfection
29 occurs **[no]** **not** earlier than the time the secured party
30 takes possession and continues only while the secured party
31 retains possession.

32 (e) A security interest in a certificated security in
33 registered form is perfected by delivery when delivery of
34 the certificated security occurs under section 400.8-301 and
35 remains perfected by delivery until the debtor obtains
36 possession of the security certificate.

37 (f) A person in possession of collateral is not
38 required to acknowledge that it holds possession for a
39 secured party's benefit.

40 (g) If a person acknowledges that it holds possession
41 for the secured party's benefit:

42 (1) The acknowledgment is effective under subsection
43 (c) or section 400.8-301(a), even if the acknowledgment
44 violates the rights of a debtor; and

45 (2) Unless the person otherwise agrees or law other
46 than this article otherwise provides, the person does not
47 owe any duty to the secured party and is not required to
48 confirm the acknowledgment to another person.

49 (h) A secured party having possession of collateral
50 does not relinquish possession by delivering the collateral
51 to a person other than the debtor or a lessee of the
52 collateral from the debtor in the ordinary course of the
53 debtor's business if the person was instructed before the
54 delivery or is instructed contemporaneously with the
55 delivery:

56 (1) To hold possession of the collateral for the
57 secured party's benefit; or

58 (2) To redeliver the collateral to the secured party.

59 (i) A secured party does not relinquish possession,
60 even if a delivery under subsection (h) violates the rights
61 of a debtor. A person to which collateral is delivered
62 under subsection (h) does not owe any duty to the secured
63 party and is not required to confirm the delivery to another
64 person unless the person otherwise agrees or law other than
65 this article otherwise provides.

400.9-314. (a) A security interest in [investment
2 property, deposit accounts, letter-of-credit rights, or
3 electronic chattel paper] **controllable accounts,**
4 **controllable electronic records, controllable payment**
5 **intangibles, deposit accounts, electronic documents,**
6 **electronic money, investment property, or letter-of-credit**
7 **rights** may be perfected by control of the collateral under
8 section 400.9-104, [400.9-105,] **400.9-105A,** 400.9-106 [or]
9 400.9-107, **or 400.9-107A.**

10 (b) A security interest in [deposit accounts,
11 electronic chattel paper, or letter-of-credit rights]
12 **controllable accounts, controllable electronic records,**
13 **controllable payment intangibles, deposit accounts,**
14 **electronic documents, electronic money, or letter-of-credit**
15 **rights** is perfected by control under section **400.7-106,**

16 400.9-104, [400.9-105 or] **400.9-105A**, 400.9-107 [when], or
17 **400.9-107A not earlier than the time** the secured party
18 obtains control and remains perfected by control only while
19 the secured party retains control.

20 (c) A security interest in investment property is
21 perfected by control under section 400.9-106 [from] **not**
22 **earlier than** the time the secured party obtains control and
23 remains perfected by control until:

24 (1) The secured party does not have control; and

25 (2) One of the following occurs:

26 (A) If the collateral is a certificated security, the
27 debtor has or acquires possession of the security
28 certificate;

29 (B) If the collateral is an uncertificated security,
30 the issuer has registered or registers the debtor as the
31 registered owner; or

32 (C) If the collateral is a security entitlement, the
33 debtor is or becomes the entitlement holder.

400.9-314A. (a) A secured party may perfect a
2 **security interest in chattel paper by taking possession of**
3 **each authoritative tangible copy of the record evidencing**
4 **the chattel paper and obtaining control of each**
5 **authoritative electronic copy of the electronic record**
6 **evidencing the chattel paper.**

7 (b) A security interest is perfected under subsection
8 (a) **not earlier than the time the secured party takes**
9 **possession and obtains control and remains perfected under**
10 **subsection (a) only while the secured party retains**
11 **possession and control.**

12 (c) Section 400.9-313(c) and (f) through (i) applies
13 to perfection by possession of an authoritative tangible
14 copy of a record evidencing chattel paper.

400.9-316. (a) A security interest perfected pursuant
2 to the law of the jurisdiction designated in section 400.9-
3 301(1) [or], 400.9-305(c), **400.9-306A(d)**, or **400.9-306B(b)**
4 remains perfected until the earliest of:

5 (1) The time perfection would have ceased under the
6 law of that jurisdiction;

7 (2) The expiration of four months after a change of
8 the debtor's location to another jurisdiction; or

9 (3) The expiration of one year after a transfer of
10 collateral to a person that thereby becomes a debtor and is
11 located in another jurisdiction.

12 (b) If a security interest described in subsection (a)
13 becomes perfected under the law of the other jurisdiction
14 before the earliest time or event described in that
15 subsection, it remains perfected thereafter. If the
16 security interest does not become perfected under the law of
17 the other jurisdiction before the earliest time or event, it
18 becomes unperfected and is deemed never to have been
19 perfected as against a purchaser of the collateral for value.

20 (c) A possessory security interest in collateral,
21 other than goods covered by a certificate of title and as-
22 extracted collateral consisting of goods, remains
23 continuously perfected if:

24 (1) The collateral is located in one jurisdiction and
25 subject to a security interest perfected under the law of
26 that jurisdiction;

27 (2) Thereafter the collateral is brought into another
28 jurisdiction; and

29 (3) Upon entry into the other jurisdiction, the
30 security interest is perfected under the law of the other
31 jurisdiction.

32 (d) Except as otherwise provided in subsection (e), a
33 security interest in goods covered by a certificate of title
34 which is perfected by any method under the law of another
35 jurisdiction when the goods become covered by a certificate
36 of title from this state remains perfected until the
37 security interest would have become unperfected under the
38 law of the other jurisdiction had the goods not become so
39 covered.

40 (e) A security interest described in subsection (d)
41 becomes unperfected as against a purchaser of the goods for
42 value and is deemed never to have been perfected as against
43 a purchaser of the goods for value if the applicable
44 requirements for perfection under section 400.9-311(b) or
45 400.9-313 are not satisfied before the earlier of:

46 (1) The time the security interest would have become
47 unperfected under the law of the other jurisdiction had the
48 goods not become covered by a certificate of title from this
49 state; or

50 (2) The expiration of four months after the goods had
51 become so covered.

52 (f) A security interest in **chattel paper, controllable**
53 **accounts, controllable electronic records, controllable**
54 **payment intangibles**, deposit accounts, letter-of-credit
55 rights, or investment property which is perfected under the
56 law of the **chattel paper's jurisdiction, the controllable**
57 **electronic record's jurisdiction, the bank's jurisdiction,**
58 the issuer's jurisdiction, a nominated person's
59 jurisdiction, the securities intermediary's jurisdiction, or
60 the commodity intermediary's jurisdiction, as applicable,
61 remains perfected until the earlier of:

62 (1) The time the security interest would have become
63 unperfected under the law of that jurisdiction; or

64 (2) The expiration of four months after a change of
65 the applicable jurisdiction to another jurisdiction.

66 (g) If a security interest described in subsection (f)
67 becomes perfected under the law of the other jurisdiction
68 before the earlier of the time or the end of the period
69 described in that subsection, it remains perfected
70 thereafter. If the security interest does not become
71 perfected under the law of the other jurisdiction before the
72 earlier of that time or the end of that period, it becomes
73 unperfected and is deemed never to have been perfected as
74 against a purchaser of the collateral for value.

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

78 (1) A financing statement filed before the change
79 pursuant to the law of the jurisdiction designated in
80 section 400.9-301(1) or 400.9-305(c) is effective to perfect
81 a security interest in the collateral if the financing
82 statement would have been effective to perfect a security
83 interest in the collateral had the debtor not changed its
84 location.

85 (2) If a security interest perfected by a financing
86 statement that is effective under paragraph (1) becomes
87 perfected under the law of the other jurisdiction before the
88 earlier of the time the financing statement would have
89 become ineffective under the law of the jurisdiction
90 designated in section 400.9-301(1) or 400.9-305(c) or the
91 expiration of the four-month period, it remains perfected
92 thereafter. If the security interest does not become
93 perfected under the law of the other jurisdiction before the
94 earlier time or event, it becomes unperfected and is deemed

95 never to have been perfected as against a purchaser of the
96 collateral for value.

97 (i) If a financing statement naming an original debtor
98 is filed pursuant to the law of the jurisdiction designated
99 in section 400.9-301(1) or 400.9-305(c) and the new debtor
100 is located in another jurisdiction, the following rules
101 apply:

102 (1) The financing statement is effective to perfect a
103 security interest in collateral acquired by the new debtor
104 before, and within four months after, the new debtor becomes
105 bound under section 400.9-203(d), if the financing statement
106 would have been effective to perfect a security interest in
107 the collateral had the collateral been acquired by the
108 original debtor.

109 (2) A security interest perfected by the financing
110 statement and which becomes perfected under the law of the
111 other jurisdiction before the earlier of the time the
112 financing statement would have become ineffective under the
113 law of the jurisdiction designated in section 400.9-301(1)
114 or 400.9-305(c) or the expiration of the four-month period
115 remains perfected thereafter. A security interest that is
116 perfected by the financing statement but that does not
117 become perfected under the law of the other jurisdiction
118 before the earlier time or event becomes unperfected and is
119 deemed never to have been perfected as against a purchaser
120 of the collateral for value.

400.9-317. (a) A security interest or agricultural
2 lien is subordinate to the rights of:

3 (1) A person entitled to priority under section 400.9-
4 322; and

5 (2) Except as otherwise provided in subsection (e), a
6 person that becomes a lien creditor before the earlier of
7 the time:

8 (A) The security interest or agricultural lien is
9 perfected; or

10 (B) One of the conditions specified in section 400.9-
11 203(b)(3) is met and a financing statement covering the
12 collateral is filed.

13 (b) Except as otherwise provided in subsection (e), a
14 buyer, other than a secured party, [of tangible chattel
15 paper, documents,] **of goods, instruments, tangible**
16 **documents**, or a [certificated] security **certificate** takes
17 free of a security interest or agricultural lien if the
18 buyer gives value and receives delivery of the collateral
19 without knowledge of the security interest or agricultural
20 lien and before it is perfected.

21 (c) Except as otherwise provided in subsection (e), a
22 lessee of goods takes free of a security interest or
23 agricultural lien if the lessee gives value and receives
24 delivery of the collateral without knowledge of the security
25 interest or agricultural lien and before it is perfected.

26 (d) **Subject to subsections (f) through (i)**, a licensee
27 of a general intangible or a buyer, other than a secured
28 party, of collateral other than [tangible chattel paper,
29 tangible documents,] **electronic money**, goods, instruments,
30 **tangible documents**, or a certificated security takes free of
31 a security interest if the licensee or buyer gives value
32 without knowledge of the security interest and before it is
33 perfected.

34 (e) Except as otherwise provided in sections 400.9-320
35 and 400.9-321, if a person files a financing statement with
36 respect to a purchase-money security interest before or

37 within twenty days after the debtor receives delivery of the
38 collateral, the security interest takes priority over the
39 rights of a buyer, lessee, or lien creditor which arise
40 between the time the security interest attaches and the time
41 of filing.

42 (f) A buyer, other than a secured party, of chattel
43 paper takes free of a security interest if, without
44 knowledge of the security interest and before it is
45 perfected, the buyer gives value and:

46 (1) Receives delivery of each authoritative tangible
47 copy of the record evidencing the chattel paper; and

48 (2) If each authoritative electronic copy of the
49 record evidencing the chattel paper can be subjected to
50 control under section 400.9-105, obtains control of each
51 authoritative electronic copy.

52 (g) A buyer of an electronic document takes free of a
53 security interest if, without knowledge of the security
54 interest and before it is perfected, the buyer gives value
55 and, if each authoritative electronic copy of the document
56 can be subjected to control under section 400.7-106, obtains
57 control of each authoritative electronic copy.

58 (h) A buyer of a controllable electronic record takes
59 free of a security interest if, without knowledge of the
60 security interest and before it is perfected, the buyer
61 gives value and obtains control of the controllable
62 electronic record.

63 (i) A buyer, other than a secured party, of a
64 controllable account or a controllable payment intangible
65 takes free of a security interest if, without knowledge of
66 the security interest and before it is perfected, the buyer
67 gives value and obtains control of the controllable account
68 or controllable payment intangible.

400.9-323. (a) Except as otherwise provided in
2 subsection (c), for purposes of determining the priority of
3 a perfected security interest under section 400.9-322(a)(1),
4 perfection of the security interest dates from the time an
5 advance is made to the extent that the security interest
6 secures an advance that:

7 (1) Is made while the security interest is perfected
8 only:

9 (A) Under section 400.9-309 when it attaches; or

10 (B) Temporarily under section 400.9-312(e), (f), or
11 (g); and

12 (2) Is not made pursuant to a commitment entered into
13 before or while the security interest is perfected by a
14 method other than under section 400.9-309 or 400.9-312(e),
15 (f), or (g).

16 (b) Except as otherwise provided in subsection (c), a
17 security interest is subordinate to the rights of a person
18 that becomes a lien creditor to the extent that the security
19 interest secures an advance made more than forty-five days
20 after the person becomes a lien creditor unless the advance
21 is made:

22 (1) Without knowledge of the lien; or

23 (2) Pursuant to a commitment entered into without
24 knowledge of the lien.

25 (c) Subsections (a) and (b) do not apply to a security
26 interest held by a secured party that is a buyer of
27 accounts, chattel paper, payment intangibles, or promissory
28 notes or a consignor.

29 (d) Except as otherwise provided in subsection (e), a
30 buyer of goods [other than a buyer in ordinary course of
31 business] takes free of a security interest to the extent
32 that it secures advances made after the earlier of:

33 (1) The time the secured party acquires knowledge of
34 the buyer's purchase; or

35 (2) Forty-five days after the purchase.

36 (e) Subsection (d) does not apply if the advance is
37 made pursuant to a commitment entered into without knowledge
38 of the buyer's purchase and before the expiration of the
39 forty-five-day period.

40 (f) Except as otherwise provided in subsection (g), a
41 lessee of goods[, other than a lessee in ordinary course of
42 business,] takes the leasehold interest free of a security
43 interest to the extent that it secures advances made after
44 the earlier of:

45 (1) The time the secured party acquires knowledge of
46 the lease; or

47 (2) Forty-five days after the lease contract becomes
48 enforceable.

49 (g) Subsection (f) does not apply if the advance is
50 made pursuant to a commitment entered into without knowledge
51 of the lease and before the expiration of the forty-five-day
52 period.

400.9-324. (a) Except as otherwise provided in
2 subsection (g), a perfected purchase-money security interest
3 in goods other than inventory or livestock has priority over
4 a conflicting security interest in the same goods, and,
5 except as otherwise provided in section 400.9-327, a
6 perfected security interest in its identifiable proceeds
7 also has priority, if the purchase-money security interest
8 is perfected when the debtor receives possession of the
9 collateral or within twenty days thereafter.

10 (b) Subject to subsection (c) and except as otherwise
11 provided in subsection (g), a perfected purchase-money
12 security interest in inventory has priority over a

13 conflicting security interest in the same inventory, has
14 priority over a conflicting security interest in chattel
15 paper or an instrument constituting proceeds of the
16 inventory and in proceeds of the chattel paper, if so
17 provided in section 400.9-330, and, except as otherwise
18 provided in section 400.9-327, also has priority in
19 identifiable cash proceeds of the inventory to the extent
20 the identifiable cash proceeds are received on or before the
21 delivery of the inventory to a buyer, if:

22 (1) The purchase-money security interest is perfected
23 when the debtor receives possession of the inventory;

24 (2) The purchase-money secured party sends [an
25 authenticated] a **signed** notification to the holder of the
26 conflicting security interest;

27 (3) The holder of the conflicting security interest
28 receives the notification within five years before the
29 debtor receives possession of the inventory; and

30 (4) The notification states that the person sending
31 the notification has or expects to acquire a purchase-money
32 security interest in inventory of the debtor and describes
33 the inventory.

34 (c) Subsections (b)(2) through (4) apply only if the
35 holder of the conflicting security interest had filed a
36 financing statement covering the same types of inventory:

37 (1) If the purchase-money security interest is
38 perfected by filing, before the date of the filing; or

39 (2) If the purchase-money security interest is
40 temporarily perfected without filing or possession under
41 section 400.9-312(f), before the beginning of the twenty-day
42 period thereunder.

43 (d) Subject to subsection (e) and except as otherwise
44 provided in subsection (g), a perfected purchase-money

45 security interest in livestock that are farm products has
46 priority over a conflicting security interest in the same
47 livestock, and, except as otherwise provided in section
48 400.9-327, a perfected security interest in their
49 identifiable proceeds and identifiable products in their
50 unmanufactured states also has priority, if:

51 (1) The purchase-money security interest is perfected
52 when the debtor receives possession of the livestock;

53 (2) The purchase-money secured party sends [an
54 authenticated] a **signed** notification to the holder of the
55 conflicting security interest;

56 (3) The holder of the conflicting security interest
57 receives the notification within six months before the
58 debtor receives possession of the livestock; and

59 (4) The notification states that the person sending
60 the notification has or expects to acquire a purchase-money
61 security interest in livestock of the debtor and describes
62 the livestock.

63 (e) Subsections (d)(2) through (4) apply only if the
64 holder of the conflicting security interest had filed a
65 financing statement covering the same types of livestock:

66 (1) If the purchase-money security interest is
67 perfected by filing, before the date of the filing; or

68 (2) If the purchase-money security interest is
69 temporarily perfected without filing or possession under
70 section 400.9-312(f), before the beginning of the twenty-day
71 period thereunder.

72 (f) Except as otherwise provided in subsection (g), a
73 perfected purchase-money security interest in software has
74 priority over a conflicting security interest in the same
75 collateral, and, except as otherwise provided in section
76 400.9-327, a perfected security interest in its identifiable

77 proceeds also has priority, to the extent that the purchase-
78 money security interest in the goods in which the software
79 was acquired for use has priority in the goods and proceeds
80 of the goods under this section.

81 (g) If more than one security interest qualifies for
82 priority in the same collateral under subsection (a), (b),
83 (d), or (f):

84 (1) A security interest securing an obligation
85 incurred as all or part of the price of the collateral has
86 priority over a security interest securing an obligation
87 incurred for value given to enable the debtor to acquire
88 rights in or the use of collateral; and

89 (2) In all other cases, section 400.9-322(a) applies
90 to the qualifying security interests.

**400.9-326A. A security interest in a controllable
2 account, controllable electronic record, or controllable
3 payment intangible held by a secured party having control of
4 the account, electronic record, or payment intangible has
5 priority over a conflicting security interest held by a
6 secured party that does not have control.**

400.9-330. (a) A purchaser of chattel paper has
2 priority over a security interest in the chattel paper which
3 is claimed merely as proceeds of inventory subject to a
4 security interest if:

5 (1) In good faith and in the ordinary course of the
6 purchaser's business, the purchaser gives new value [and],
7 takes possession of **each authoritative tangible copy of the
8 record evidencing** the chattel paper [or], and obtains
9 control [of] **under section 400.9-105 of each authoritative
10 electronic copy of the record evidencing** the chattel paper
11 [under section 400.9-105]; and

12 (2) The [chattel paper does] **authoritative copies of**
13 **the record evidencing the chattel paper do** not indicate that
14 **[it] the chattel paper** has been assigned to an identified
15 assignee other than the purchaser.

16 (b) A purchaser of chattel paper has priority over a
17 security interest in the chattel paper which is claimed
18 other than merely as proceeds of inventory subject to a
19 security interest if the purchaser gives new value [and],
20 takes possession of **each authoritative tangible copy of the**
21 **record evidencing** the chattel paper [or], and obtains
22 control [of] **under section 400.9-105 of each authoritative**
23 **electronic copy of the record evidencing** the chattel paper
24 [under section 400.9-105] in good faith, in the ordinary
25 course of the purchaser's business, and without knowledge
26 that the purchase violates the rights of the secured party.

27 (c) Except as otherwise provided in section 400.9-327,
28 a purchaser having priority in chattel paper under
29 subsection (a) or (b) also has priority in proceeds of the
30 chattel paper to the extent that:

31 (1) Section 400.9-322 provides for priority in the
32 proceeds; or

33 (2) The proceeds consist of the specific goods covered
34 by the chattel paper or cash proceeds of the specific goods,
35 even if the purchaser's security interest in the proceeds is
36 unperfected.

37 (d) Except as otherwise provided in section 400.9-
38 331(a), a purchaser of an instrument has priority over a
39 security interest in the instrument perfected by a method
40 other than possession if the purchaser gives value and takes
41 possession of the instrument in good faith and without
42 knowledge that the purchase violates the rights of the
43 secured party.

44 (e) For purposes of subsections (a) and (b), the
45 holder of a purchase-money security interest in inventory
46 gives new value for chattel paper constituting proceeds of
47 the inventory.

48 (f) For purposes of subsections (b) and (d), if **the**
49 **authoritative copies of the record evidencing** chattel paper
50 or an instrument **[indicates] indicate** that **[it] the chattel**
51 **paper or instrument** has been assigned to an identified
52 secured party other than the purchaser, a purchaser of the
53 chattel paper or instrument has knowledge that the purchase
54 violates the rights of the secured party.

400.9-331. (a) This article does not limit the rights
2 of a holder in due course of a negotiable instrument, a
3 holder to which a negotiable document of title has been duly
4 negotiated, **[or] a protected purchaser of a security, or a**
5 **qualifying purchaser of a controllable account, controllable**
6 **electronic record, or controllable payment intangible.**
7 These holders or purchasers take priority over an earlier
8 security interest, even if perfected, to the extent provided
9 in articles 3, 7, **[and] 8, and 12.**

10 (b) This article does not limit the rights of or
11 impose liability on a person to the extent that the person
12 is protected against the assertion of an adverse claim under
13 article 8 **or 12.**

14 (c) Filing under this article does not constitute
15 notice of a claim or defense to the holders, or purchasers,
16 or persons described in subsections (a) and (b).

400.9-332. (a) A transferee of **tangible** money takes
2 the money free of a security interest **[unless the transferee**
3 **acts] if the transferee receives possession of the money**
4 **without acting** in collusion with the debtor in violating the
5 rights of the secured party.

6 (b) A transferee of funds from a deposit account takes
7 the funds free of a security interest in the deposit account
8 **[unless the transferee acts] if the transferee receives the**
9 **funds without acting** in collusion with the debtor in
10 violating the rights of the secured party.

11 (c) **A transferee of electronic money takes the money**
12 **free of a security interest if the transferee obtains**
13 **control of the money without acting in collusion with the**
14 **debtor in violating the rights of the secured party.**

400.9-334. (a) A security interest under this article
2 may be created in goods that are fixtures or may continue in
3 goods that become fixtures. A security interest does not
4 exist under this article in ordinary building materials
5 incorporated into an improvement on land.

6 (b) This article does not prevent creation of an
7 encumbrance upon fixtures under real property law.

8 (c) In cases not governed by subsections (d) through
9 (h), a security interest in fixtures is subordinate to a
10 conflicting interest of an encumbrancer or owner of the
11 related real property other than the debtor.

12 (d) Except as otherwise provided in subsection (h), a
13 perfected security interest in fixtures has priority over a
14 conflicting interest of an encumbrancer or owner of the real
15 property if the debtor has an interest of record in or is in
16 possession of the real property and:

17 (1) The security interest is a purchase-money security
18 interest;

19 (2) The interest of the encumbrancer or owner arises
20 before the goods become fixtures; and

21 (3) The security interest is perfected by a fixture
22 filing before the goods become fixtures or within twenty
23 days thereafter.

24 (e) A perfected security interest in fixtures has
25 priority over a conflicting interest of an encumbrancer or
26 owner of the real property if:

27 (1) The debtor has an interest of record in the real
28 property or is in possession of the real property and the
29 security interest:

30 (A) Is perfected by a fixture filing before the
31 interest of the encumbrancer or owner is of record; and

32 (B) Has priority over any conflicting interest of a
33 predecessor in title of the encumbrancer or owner;

34 (2) Before the goods become fixtures, the security
35 interest is perfected by any method permitted by this
36 article and the fixtures are readily removable:

37 (A) Factory or office machines;

38 (B) Equipment that is not primarily used or leased for
39 use in the operation of the real property; or

40 (C) Replacements of domestic appliances that are
41 consumer goods;

42 (3) The conflicting interest is a lien on the real
43 property obtained by legal or equitable proceedings after
44 the security interest was perfected by any method permitted
45 by this article; or

46 (4) The security interest is:

47 (A) Created in a manufactured home in a manufactured-
48 home transaction; and

49 (B) Perfected pursuant to a statute described in
50 section 400.9-311(a)(2).

51 (f) A security interest in fixtures, whether or not
52 perfected, has priority over a conflicting interest of an
53 encumbrancer or owner of the real property if:

54 (1) The encumbrancer or owner has, in [an
55 **authenticated**] **a signed** record, consented to the security

56 interest or disclaimed an interest in the goods as fixtures;
57 or

58 (2) The debtor has a right to remove the goods as
59 against the encumbrancer or owner.

60 (g) The priority of the security interest under
61 subsection (f) continues for a reasonable time if the
62 debtor's right to remove the goods as against the
63 encumbrancer or owner terminates.

64 (h) A mortgage is a construction mortgage to the
65 extent that it secures an obligation incurred for the
66 construction of an improvement on land, including the
67 acquisition cost of the land, if a recorded record of the
68 mortgage so indicates. Except as otherwise provided in
69 subsections (e) and (f), a security interest in fixtures is
70 subordinate to a construction mortgage if a record of the
71 mortgage is recorded before the goods become fixtures and
72 the goods become fixtures before the completion of the
73 construction. A mortgage has this priority to the same
74 extent as a construction mortgage to the extent that it is
75 given to refinance a construction mortgage.

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

81 (j) Subsection (i) prevails over any inconsistent
82 provisions of other statutes.

400.9-341. Except as otherwise provided in section
2 400.9-340(c), and unless the bank otherwise agrees in [an
3 authenticated] a signed record, a bank's rights and duties
4 with respect to a deposit account maintained with the bank
5 are not terminated, suspended, or modified by:

6 (1) The creation, attachment, or perfection of a
7 security interest in the deposit account;

8 (2) The bank's knowledge of the security interest; or

9 (3) The bank's receipt of instructions from the
10 secured party.

400.9-404. (a) Unless an account debtor has made an
2 enforceable agreement not to assert defenses or claims, and
3 subject to subsections (b) through (e), the rights of an
4 assignee are subject to:

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

9 (2) Any other defense or claim of the account debtor
10 against the assignor which accrues before the account debtor
11 receives a notification of the assignment **[authenticated]**
12 **signed** by the assignor or the assignee.

13 (b) Subject to subsection (c) and except as otherwise
14 provided in subsection (d), the claim of an account debtor
15 against an assignor may be asserted against an assignee
16 under subsection (a) only to reduce the amount the account
17 debtor owes.

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

22 (d) In a consumer transaction, if a record evidences
23 the account debtor's obligation, law other than this article
24 requires that the record include a statement to the effect
25 that the account debtor's recovery against an assignee with
26 respect to claims and defenses against the assignor may not
27 exceed amounts paid by the account debtor under the record,

28 and the record does not include such a statement, the extent
29 to which a claim of an account debtor against the assignor
30 may be asserted against an assignee is determined as if the
31 record included such a statement.

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

400.9-406. (a) Subject to subsections (b) through (i)
2 **and (k)**, an account debtor on an account, chattel paper, or
3 a payment intangible may discharge its obligation by paying
4 the assignor until, but not after, the account debtor
5 receives a notification, **[authenticated] signed** by the
6 assignor or the assignee, that the amount due or to become
7 due has been assigned and that payment is to be made to the
8 assignee. After receipt of the notification, the account
9 debtor may discharge its obligation by paying the assignee
10 and may not discharge the obligation by paying the assignor.

11 (b) Subject to **[subsection] subsections (h) and (k)**,
12 notification is ineffective under subsection (a):

13 (1) If it does not reasonably identify the rights
14 assigned;

15 (2) To the extent that an agreement between an account
16 debtor and a seller of a payment intangible limits the
17 account debtor's duty to pay a person other than the seller
18 and the limitation is effective under law other than this
19 article; or

20 (3) At the option of an account debtor, if the
21 notification notifies the account debtor to make less than
22 the full amount of any installment or other periodic payment
23 to the assignee, even if:

24 (A) Only a portion of the account, chattel paper, or
25 general intangible has been assigned to that assignee;

26 (B) A portion has been assigned to another assignee; or

27 (C) The account debtor knows that the assignment to
28 that assignee is limited.

29 (c) Subject to **[subsection] subsections (h) and (k)**,
30 if requested by the account debtor, an assignee shall
31 seasonably furnish reasonable proof that the assignment has
32 been made. Unless the assignee complies, the account debtor
33 may discharge its obligation by paying the assignor, even if
34 the account debtor has received a notification under
35 subsection (a).

36 (d) **In this subsection, "promissory note" includes a**
37 **negotiable instrument that evidences chattel paper.** Except
38 as otherwise provided in subsection (e) and sections 400.2A-
39 303 and 400.9-407, and subject to subsection (h), a term in
40 an agreement between an account debtor and an assignor or in
41 a promissory note is ineffective to the extent that it:

42 (1) Prohibits, restricts, or requires the consent of
43 the account debtor or person obligated on the promissory
44 note to the assignment or transfer of, or the creation,
45 attachment, perfection, or enforcement of a security
46 interest in, the account, chattel paper, payment intangible,
47 or promissory note; or

48 (2) Provides that the assignment or transfer or the
49 creation, attachment, perfection, or enforcement of the
50 security interest may give rise to a default, breach, right
51 of recoupment, claim, defense, termination, right of
52 termination, or remedy under the account, chattel paper,
53 payment intangible, or promissory note.

54 (e) Subsection (d) does not apply to the sale of a
55 payment intangible or promissory note, other than a sale
56 pursuant to a disposition under section 400.9-610 or an
57 acceptance of collateral under section 400.9-620.

58 (f) Except as otherwise provided in sections 400.2A-
59 303 and 400.9-407, and subject to subsections (h) and (i), a
60 rule of law, statute, or regulation, that prohibits,
61 restricts, or requires the consent of a government,
62 governmental body or official, or account debtor to the
63 assignment or transfer of, or creation of a security
64 interest in, an account or chattel paper is ineffective to
65 the extent that the rule of law, statute, or regulation:

66 (1) Prohibits, restricts, or requires the consent of
67 the government, governmental body or official, or account
68 debtor to the assignment or transfer of, or the creation,
69 attachment, perfection, or enforcement of a security
70 interest in, the account or chattel paper; or

71 (2) Provides that the assignment or transfer or the
72 creation, attachment, perfection, or enforcement of the
73 security interest may give rise to a default, breach, right
74 of recoupment, claim, defense, termination, right of
75 termination, or remedy under the account or chattel paper.

76 (g) Subject to [subsection] **subsections (h) and (k)**,
77 an account debtor may not waive or vary its option under
78 subsection (b)(3).

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

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

85 (j) This section prevails over any inconsistent
86 provisions of any statutes, rules, and regulations.

87 **(k) Subsections (a), (b), (c), and (g) do not apply to**
88 **a controllable account or controllable payment intangible.**

400.9-408. (a) Except as otherwise provided in
2 subsection (b), a term in a promissory note or in an
3 agreement between an account debtor and a debtor which
4 relates to a health-care-insurance receivable or a general
5 intangible, including a contract, permit, license, or
6 franchise, and which term prohibits, restricts, or requires
7 the consent of the person obligated on the promissory note
8 or the account debtor to, the assignment or transfer of, or
9 creation, attachment, or perfection of a security interest
10 in, the promissory note, health-care-insurance receivable,
11 or general intangible, is ineffective to the extent that the
12 term:

13 (1) Would impair the creation, attachment, or
14 perfection of a security interest; or

15 (2) Provides that the assignment or transfer or the
16 creation, attachment, or perfection of the security interest
17 may give rise to a default, breach, right of recoupment,
18 claim, defense, termination, right of termination, or remedy
19 under the promissory note, health-care-insurance receivable,
20 or general intangible.

21 (b) Subsection (a) applies to a security interest in a
22 payment intangible or promissory note only if the security
23 interest arises out of a sale of the payment intangible or
24 promissory note, other than a sale pursuant to a disposition
25 under section 400.9-610 or an acceptance of collateral under
26 section 400.9-620.

27 (c) A rule of law, statute, or regulation that
28 prohibits, restricts, or requires the consent of a
29 government, governmental body or official, person obligated
30 on a promissory note, or account debtor to the assignment or
31 transfer of, or creation of a security interest in, a
32 promissory note, health-care-insurance receivable, or

33 general intangible, including a contract, permit, license,
34 or franchise between an account debtor and a debtor, is
35 ineffective to the extent that the rule of law, statute, or
36 regulation:

37 (1) Would impair the creation, attachment, or
38 perfection of a security interest; or

39 (2) Provides that the assignment or transfer or the
40 creation, attachment, or perfection of the security interest
41 may give rise to a default, breach, right of recoupment,
42 claim, defense, termination, right of termination, or remedy
43 under the promissory note, health-care-insurance receivable,
44 or general intangible.

45 (d) To the extent that a term in a promissory note or
46 in an agreement between an account debtor and a debtor which
47 relates to a health-care-insurance receivable or general
48 intangible or a rule of law, statute, or regulation
49 described in subsection (c) would be effective under law
50 other than this article but is ineffective under subsection
51 (a) or (c), the creation, attachment, or perfection of a
52 security interest in the promissory note, health-care-
53 insurance receivable, or general intangible:

54 (1) Is not enforceable against the person obligated on
55 the promissory note or the account debtor;

56 (2) Does not impose a duty or obligation on the person
57 obligated on the promissory note or the account debtor;

58 (3) Does not require the person obligated on the
59 promissory note or the account debtor to recognize the
60 security interest, pay or render performance to the secured
61 party, or accept payment or performance from the secured
62 party;

63 (4) Does not entitle the secured party to use or
64 assign the debtor's rights under the promissory note, health-

65 care-insurance receivable, or general intangible, including
66 any related information or materials furnished to the debtor
67 in the transaction giving rise to the promissory note,
68 health-care-insurance receivable, or general intangible;

69 (5) Does not entitle the secured party to use, assign,
70 possess, or have access to any trade secrets or confidential
71 information of the person obligated on the promissory note
72 or the account debtor; and

73 (6) Does not entitle the secured party to enforce the
74 security interest in the promissory note, health-care-
75 insurance receivable, or general intangible.

76 (e) This section prevails over any inconsistent
77 provisions of any statutes, rules, and regulations.

78 **(f) In this section, "promissory note" includes a**
79 **negotiable instrument that evidences chattel paper.**

400.9-509. (a) A person may file an initial financing
2 statement, amendment that adds collateral covered by a
3 financing statement, or amendment that adds a debtor to a
4 financing statement only if:

5 (1) The debtor authorizes the filing in [an
6 authenticated] **a signed** record or pursuant to subsection (b)
7 or (c); or

8 (2) The person holds an agricultural lien that has
9 become effective at the time of filing and the financing
10 statement covers only collateral in which the person holds
11 an agricultural lien.

12 (b) By [authenticating] **signing** or becoming bound as
13 debtor by a security agreement, a debtor or new debtor
14 authorizes the filing of an initial financing statement, and
15 an amendment, covering:

16 (1) The collateral described in the security
17 agreement; and

18 (2) Property that becomes collateral under section
19 400.9-315(a)(2), whether or not the security agreement
20 expressly covers proceeds.

21 (c) By acquiring collateral in which a security
22 interest or agricultural lien continues under section 400.9-
23 315(a)(1), a debtor authorizes the filing of an initial
24 financing statement, and an amendment, covering the
25 collateral and property that becomes collateral under
26 section 400.9-315(a)(2).

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

31 (1) The secured party of record authorizes the filing;
32 or

33 (2) The amendment is a termination statement for a
34 financing statement as to which the secured party of record
35 has failed to file or send a termination statement as
36 required by section 400.9-513(a) or (c), the debtor
37 authorizes the filing, and the termination statement
38 indicates that the debtor authorized it to be filed.

39 (e) If there is more than one secured party of record
40 for a financing statement, each secured party of record may
41 authorize the filing of an amendment under subsection (d).

400.9-513. (a) A secured party shall cause the
2 secured party of record for a financing statement to file a
3 termination statement for the financing statement if the
4 financing statement covers consumer goods and:

5 (1) There is no obligation secured by the collateral
6 covered by the financing statement and no commitment to make
7 an advance, incur an obligation, or otherwise give value; or

8 (2) The debtor did not authorize the filing of the
9 initial financing statement.

10 (b) To comply with subsection (a), a secured party
11 shall cause the secured party of record to file the
12 termination statement:

13 (1) Within one month after there is no obligation
14 secured by the collateral covered by the financing statement
15 and no commitment to make an advance, incur an obligation,
16 or otherwise give value; or

17 (2) If earlier, within twenty days after the secured
18 party receives [an authenticated] **a signed** demand from a
19 debtor.

20 (c) In cases not governed by subsection (a), within
21 twenty days after a secured party receives [an
22 authenticated] **a signed** demand from a debtor, the secured
23 party shall cause the secured party of record for a
24 financing statement to send to the debtor a termination
25 statement for the financing statement or file the
26 termination statement in the filing office if:

27 (1) Except in the case of a financing statement
28 covering accounts or chattel paper that has been sold or
29 goods that are the subject of a consignment, there is no
30 obligation secured by the collateral covered by the
31 financing statement and no commitment to make an advance,
32 incur an obligation, or otherwise give value;

33 (2) The financing statement covers accounts or chattel
34 paper that has been sold but as to which the account debtor
35 or other person obligated has discharged its obligation;

36 (3) The financing statement covers goods that were the
37 subject of a consignment to the debtor but are not in the
38 debtor's possession; or

39 (4) The debtor did not authorize the filing of the
40 initial financing statement.

41 (d) Except as otherwise provided in section 400.9-510,
42 upon the filing of a termination statement with the filing
43 office, the financing statement to which the termination
44 statement relates ceases to be effective. Except as
45 otherwise provided in section 400.9-510, for purposes of
46 sections 400.9-519(g), 400.9-522(a), and 400.9-523(c), the
47 filing with the filing office of a termination statement
48 relating to a financing statement that indicates that the
49 debtor is a transmitting utility also causes the
50 effectiveness of the financing statement to lapse.

 400.9-601. (a) After default, a secured party has the
2 rights provided in this part and, except as otherwise
3 provided in section 400.9-602, those provided by agreement
4 of the parties. A secured party:

5 (1) May reduce a claim to judgment, foreclose, or
6 otherwise enforce the claim, security interest, or
7 agricultural lien by any available judicial procedure; and

8 (2) If the collateral is documents, may proceed either
9 as to the documents or as to the goods they cover.

10 (b) A secured party in possession of collateral or
11 control of collateral under section 400.9-104, 400.9-105,
12 **400.9-105A**, 400.9-106 [**or**], 400.9-107, **or 400.9-107A** has the
13 rights and duties provided in section 400.9-207.

14 (c) The rights under subsections (a) and (b) are
15 cumulative and may be exercised simultaneously.

16 (d) Except as otherwise provided in subsection (g) and
17 section 400.9-605, after default, a debtor and an obligor
18 have the rights provided in this part and by agreement of
19 the parties.

20 (e) If a secured party has reduced its claim to
21 judgment, the lien of any levy that may be made upon the
22 collateral by virtue of an execution based upon the judgment
23 relates back to the earliest of:

24 (1) The date of perfection of the security interest or
25 agricultural lien in the collateral; or

26 (2) The date of filing a financing statement covering
27 the collateral;

28 (3) Any date specified in a statute under which the
29 agricultural lien was created.

30 (f) A sale pursuant to an execution is a foreclosure
31 of the security interest or agricultural lien by judicial
32 procedure within the meaning of this section. A secured
33 party may purchase at the sale and thereafter hold the
34 collateral free of any other requirements of this article.

35 (g) Except as otherwise provided in section 400.9-
36 607(c), this part imposes no duties upon a secured party
37 that is a consignor or is a buyer of accounts, chattel
38 paper, payment intangibles, or promissory notes.

400.9-605. **(a) Except as provided in subsection (b),**
2 a secured party does not owe a duty based on its status as
3 secured party:

4 (1) To a person that is a debtor or obligor, unless
5 the secured party knows:

6 (A) That the person is a debtor or obligor;

7 (B) The identity of the person; and

8 (C) How to communicate with the person; or

9 (2) To a secured party or lienholder that has filed a
10 financing statement against a person, unless the secured
11 party knows:

12 (A) That the person is a debtor; and

13 (B) The identity of the person.

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

20 (1) The person is a debtor or obligor; and

21 (2) The secured party knows that the information in
22 subsection (a) (1) (A), (B), or (C) relating to the person is
23 not provided by the collateral, a record attached to or
24 logically associated with the collateral, or the system in
25 which the collateral is recorded.

400.9-608. (a) If a security interest or agricultural
2 lien secures payment or performance of an obligation, the
3 following rules apply:

4 (1) A secured party shall apply or pay over for
5 application the cash proceeds of collection or enforcement
6 under section 400.9-607 in the following order to:

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

11 (B) The satisfaction of obligations secured by the
12 security interest or agricultural lien under which the
13 collection or enforcement is made; and

14 (C) The satisfaction of obligations secured by any
15 subordinate security interest in or other lien on the
16 collateral subject to the security interest or agricultural
17 lien under which the collection or enforcement is made if
18 the secured party receives [an authenticated] a signed
19 demand for proceeds before distribution of the proceeds is
20 completed;

21 (2) If requested by a secured party, a holder of a
22 subordinate security interest or other lien shall furnish
23 reasonable proof of the interest or lien within a reasonable
24 time. Unless the holder complies, the secured party need
25 not comply with the holder's demand under paragraph (1) (C);

26 (3) A secured party need not apply or pay over for
27 application noncash proceeds of collection and enforcement
28 under section 400.9-607 unless the failure to do so would be
29 commercially unreasonable. A secured party that applies or
30 pays over for application noncash proceeds shall do so in a
31 commercially reasonable manner;

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

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

 400.9-611. (a) In this section, "notification date"
2 means the earlier of the date on which:

3 (1) A secured party sends to the debtor and any
4 secondary obligor [an authenticated] a **signed** notification
5 of disposition; or

6 (2) The debtor and any secondary obligor waive the
7 right to notification.

8 (b) Except as otherwise provided in subsection (d), a
9 secured party that disposes of collateral under section
10 400.9-610 shall send to the persons specified in subsection
11 (c) a reasonable [authenticated] **signed** notification of
12 disposition.

13 (c) To comply with subsection (b), the secured party
14 shall send [an authenticated] a **signed** notification of
15 disposition to:

16 (1) The debtor;

17 (2) Any secondary obligor; and

18 (3) If the collateral is other than consumer goods:

19 (A) Any other person from which the secured party has
20 received, before the notification date, [an authenticated] a
21 **signed** notification of a claim of an interest in the
22 collateral;

23 (B) Any other secured party or lienholder that, ten
24 days before the notification date, held a security interest
25 in or other lien on the collateral perfected by the filing
26 of a financing statement that:

27 (i) Identified the collateral;

28 (ii) Was indexed under the debtor's name as of that
29 date; and

30 (iii) Was filed in the office in which to file a
31 financing statement against the debtor covering the
32 collateral as of that date; and

33 (C) Any other secured party that, ten days before the
34 notification date, held a security interest in the
35 collateral perfected by compliance with a statute,
36 regulation, or treaty described in section 400.9-311(a).

37 (d) Subsection (b) does not apply if the collateral is
38 perishable or threatens to decline speedily in value or is
39 of a type customarily sold on a recognized market.

40 (e) A secured party complies with the requirement for
41 notification prescribed by subsection (c) (3) (B) if:

42 (1) Not later than twenty days or earlier than thirty
43 days before the notification date, the secured party
44 requests, in a commercially reasonable manner, information

45 concerning financing statements indexed under the debtor's
46 name in the office indicated in subsection (c) (3) (B); and

47 (2) Before the notification date, the secured party:

48 (A) Did not receive a response to the request for
49 information; or

50 (B) Received a response to the request for information
51 and sent [an authenticated] **a signed** notification of
52 disposition to each secured party or other lienholder named
53 in that response whose financing statement covered the
54 collateral.

400.9-613. (a) Except in a consumer-goods
2 transaction, the following rules apply:

3 (1) The contents of a notification of disposition are
4 sufficient if the notification:

5 (A) Describes the debtor and the secured party;

6 (B) Describes the collateral that is the subject of
7 the intended disposition;

8 (C) States the method of intended disposition;

9 (D) States that the debtor is entitled to an
10 accounting of the unpaid indebtedness and states the charge,
11 if any, for an accounting; and

12 (E) States the time and place of a public disposition
13 or the time after which any other disposition is to be made;

14 (2) Whether the contents of a notification that lacks
15 any of the information specified in paragraph (1) are
16 nevertheless sufficient is a question of fact;

17 (3) The contents of a notification providing
18 substantially the information specified in paragraph (1) are
19 sufficient, even if the notification includes:

20 (A) Information not specified by that paragraph; or

21 (B) Minor errors that are not seriously misleading;

22 (4) A particular phrasing of the notification is not
23 required;

24 (5) The following form of notification and the form
25 appearing in section [400.9-614(3)], when completed in
26 accordance with the instructions in subsection (b) and
27 section 9-614(b), each provides sufficient information:

28 [NOTIFICATION OF DISPOSITION OF COLLATERAL

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

32 From: (Name, address, and telephone number
33 of secured party)

34 Name of (Include only if debtor(s) are not
35 Debtor(s): an addressee)

36 (For a public disposition:)

37 We will sell (or lease or license, as applicable)
38 the (describe collateral) (to the highest
39 qualified bidder) in public as follows:

40 Day and Date: _____

41 Time: _____

42 Place: _____

43 (For a private disposition:)

44 We will sell (or lease or license, as applicable)
45 the (describe collateral) privately sometime after
46 (day and date).

47 You are entitled to an accounting of the unpaid
48 indebtedness secured by the property that we
49 intend to sell (or lease or license, as
50 applicable) (for a charge of \$). You may request
51 an accounting by calling us at (telephone number).

52 (End of Form)

53 NOTIFICATION OF DISPOSITION OF COLLATERAL

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

56 From: (Name, address, and telephone number of
57 secured party)

58 (1) Name of any debtor that is not an addressee:
59 (Name of each debtor)

60 (2) We will sell (describe collateral) (to the
61 highest qualified bidder) at public sale. A sale
62 could include a lease or license. The sale will
63 be held as follows:

64 (Date)

65 (Time)

66 (Place)

67 (3) We will sell (describe collateral) at private
68 sale sometime after (date). A sale could include
69 a lease or license.

70 (4) You are entitled to an accounting of the
71 unpaid indebtedness secured by the property that
72 we intend to sell or, as applicable, lease or
73 license.

74 (5) If you request an accounting you must pay a
75 charge of \$ (amount).

76 (6) You may request an accounting by calling us
77 at (telephone number).

78 (End of Form)

79 (b) The following instructions apply to the form of
80 notification in subsection (a) (5):

81 (1) The instructions in this subsection refer to the
82 numbers in braces before items in the form of notification
83 in subsection (a) (5). Do not include the numbers or braces
84 in the notification. The numbers and braces are used only
85 for the purpose of these instructions.

86 (2) Include and complete item (1) only if there is a
87 debtor that is not an addressee of the notification and list
88 the name or names.

89 (3) Include and complete either item (2), if the
90 notification relates to a public disposition of the
91 collateral, or item (3), if the notification relates to a
92 private disposition of the collateral. If item (2) is
93 included, include the words "to the highest qualified
94 bidder" only if applicable.

95 (4) Include and complete items (4) and (6).

96 (5) Include and complete item (5) only if the sender
97 will charge the recipient for an accounting.

 400.9-614. (a) In a consumer-goods transaction, the
2 following rules apply:

3 (1) A notification of disposition must provide the
4 following information:

5 (A) The information specified in section [400.9-
6 613(1)] **400.9-613(a)(1)**;

7 (B) A description of any liability for a deficiency of
8 the person to which the notification is sent;

9 (C) A telephone number from which the amount that must
10 be paid to the secured party to redeem the collateral under
11 section 400.9-623 is available; and

12 (D) A telephone number or mailing address from which
13 additional information concerning the disposition and the
14 obligation secured is available;

15 (2) A particular phrasing of the notification is not
16 required;

17 (3) The following form of notification, when completed
18 **in accordance with the instructions in subsection (b)**,
19 provides sufficient information:

20 [(Name and address of secured party)

21 (Date)

22 NOTICE OF OUR PLAN TO SELL PROPERTY

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

25 Subject: (Identification of Transaction)

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

28 (For a public disposition:)

29 We will sell (describe collateral) at public sale.

30 A sale could include a lease or license. The sale
31 will be held as follows:

32 Date:

33 Time:

34 Place:

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

37 (For a private disposition:)

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

41 The money that we get from the sale (after paying
42 our costs) will reduce the amount you owe. If we
43 get less money than you owe, you (will or will
44 not, as applicable) still owe us the difference.
45 If we get more money than you owe, you will get
46 the extra money, unless we must pay it to someone
47 else.

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

53 If you want us to explain to you in writing how we
54 have figured the amount that you owe us, you may
55 call us at (telephone number) (or write us at
56 (secured party's address)) and request a written
57 explanation. (We will charge you \$ for the
58 explanation if we sent you another written
59 explanation of the amount you owe us within the
60 last six months.)

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

64 We are sending this notice to the following other
65 people who have an interest in (describe
66 collateral) or who owe money under your agreement:

67 (Names of all other debtors and obligors, if
68 any)

69 (End of Form)

1

70 (Name and address of secured party)

71 (Date)

72 **NOTICE OF OUR PLAN TO SELL PROPERTY**

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

75 Subject: (Identify transaction)

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

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

81 (Date)

82 (Time)

83 (Place)

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

86 (2) We will sell (describe collateral) at private
87 sale sometime after (date). A sale could include
88 a lease or license.

89 (3) The money that we get from the sale, after
90 paying our costs, will reduce the amount you owe.
91 If we get less money than you owe, you (will or
92 will not, as applicable) still owe us the
93 difference. If we get more money than you owe,
94 you will get the extra money, unless we must pay
95 it to someone else.

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

101 (5) If you want us to explain to you in (writing)
102 (writing or in (description of electronic record))
103 (description of electronic record) how we have
104 figured the amount that you owe us, (6) call us at
105 (telephone number) (or) (write us at (secured
106 party's address)) (or contact us by (description
107 of electronic communication method)) (7) and
108 request (a written explanation) (a written
109 explanation or an explanation in (description of
110 electronic record)) (an explanation in
111 (description of electronic record)).

112 (8) We will charge you \$ (amount) for the
113 explanation if we sent you another written
114 explanation of the amount you owe us within the
115 last six months.

116 (9) If you need more information about the sale
117 (call us at (telephone number)) (or) (write us at
118 (secured party's address)) (or contact us by
119 (description of electronic communication method)).

120 (10) We are sending this notice to the following
121 other people who have an interest in (describe
122 collateral) or who owe money under your agreement:

123 (Names of all other debtors and obligors, if any)

124

(End of Form)

125 (4) A notification in the form of paragraph (3) is
126 sufficient, even if additional information appears at the
127 end of the form;

128 (5) A notification in the form of paragraph (3) is
129 sufficient, even if it includes errors in information not
130 required by paragraph (1), unless the error is misleading
131 with respect to rights arising under this article;

132 (6) If a notification under this section is not in the
133 form of paragraph (3), law other than this article
134 determines the effect of including information not required
135 by paragraph (1).

136 **(b) The following instructions apply to the form of**
137 **notification in subsection (a) (3):**

138 **(1) The instructions in this subsection refer to the**
139 **numbers in braces before items in the form of notification**
140 **in subsection (a) (3). Do not include the numbers or braces**
141 **in the notification. The numbers and braces are used only**
142 **for the purpose of these instructions.**

143 **(2) Include and complete either item {1}, if the**
144 **notification relates to a public disposition of the**
145 **collateral, or item {2}, if the notification relates to a**
146 **private disposition of the collateral.**

147 **(3) Include and complete items {3}, {4}, {5}, {6}, and**
148 **{7}.**

149 **(4) In item {5}, include and complete any one of the**
150 **three alternative methods for the explanation—writing,**
151 **writing or electronic record, or electronic record.**

152 **(5) In item {6}, include the telephone number. In**
153 **addition, the sender may include and complete either or both**
154 **of the two additional alternative methods of**
155 **communication—writing or electronic communication—for the**
156 **recipient of the notification to communicate with the**

157 sender. Neither of the two additional methods of
158 communication is required to be included.

159 (6) In item {7}, include and complete the method or
160 methods for the explanation—writing, writing or electronic
161 record, or electronic record—included in item {5}.

162 (7) Include and complete item {8} only if a written
163 explanation is included in item {5} as a method for
164 communicating the explanation and the sender will charge the
165 recipient for another written explanation.

166 (8) In item {9}, include either the telephone number
167 or the address or both the telephone number and the
168 address. In addition, the sender may include and complete
169 the additional method of communication—electronic
170 communication—for the recipient of the notification to
171 communicate with the sender. The additional method of
172 electronic communication is not required to be included.

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

400.9-615. (a) A secured party shall apply or pay
2 over for application the cash proceeds of disposition under
3 section 400.9-610 in the following order to:

4 (1) The reasonable expenses of retaking, holding,
5 preparing for disposition, processing, and disposing, and,
6 to the extent provided for by agreement and not prohibited
7 by law, reasonable attorney's fees and legal expenses
8 incurred by the secured party;

9 (2) The satisfaction of obligations secured by the
10 security interest or agricultural lien under which the
11 disposition is made;

12 (3) The satisfaction of obligations secured by any
13 subordinate security interest in or other subordinate lien
14 on the collateral if:

15 (A) The secured party receives from the holder of the
16 subordinate security interest or other lien [an
17 authenticated] **a signed** demand for proceeds before
18 distribution of the proceeds is completed; and

19 (B) In a case in which a consignor has an interest in
20 the collateral, the subordinate security interest or other
21 lien is senior to the interest of the consignor; and

22 (4) A secured party that is a consignor of the
23 collateral if the secured party receives from the consignor
24 [an authenticated] **a signed** demand for proceeds before
25 distribution of the proceeds is completed.

26 (b) If requested by a secured party, a holder of a
27 subordinate security interest or other lien shall furnish
28 reasonable proof of the interest or lien within a reasonable
29 time. Unless the holder does so, the secured party need not
30 comply with the holder's demand under subsection (a) (3).

31 (c) A secured party need not apply or pay over for
32 application noncash proceeds of disposition under section
33 400.9-610 unless the failure to do so would be commercially
34 unreasonable. A secured party that applies or pays over for
35 application noncash proceeds shall do so in a commercially
36 reasonable manner.

37 (d) If the security interest under which a disposition
38 is made secures payment or performance of an obligation,
39 after making the payments and applications required by
40 subsection (a) and permitted by subsection (c):

41 (1) Unless subsection (a) (4) requires the secured
42 party to apply or pay over cash proceeds to a consignor, the
43 secured party shall account to and pay a debtor for any
44 surplus; and

45 (2) The obligor is liable for any deficiency.

46 (e) If the underlying transaction is a sale of
47 accounts, chattel paper, payment intangibles, or promissory
48 notes:

49 (1) The debtor is not entitled to any surplus; and

50 (2) The obligor is not liable for any deficiency.

51 (f) The surplus or deficiency following a disposition
52 is calculated based on the amount of proceeds that would
53 have been realized in a disposition complying with this part
54 to a transferee other than the secured party, a person
55 related to the secured party, or a secondary obligor if:

56 (1) The transferee in the disposition is the secured
57 party, a person related to the secured party, or a secondary
58 obligor; and

59 (2) The amount of proceeds of the disposition is
60 significantly below the range of proceeds that a complying
61 disposition to a person other than the secured party, a
62 person related to the secured party, or a secondary obligor
63 would have brought.

64 (g) A secured party that receives cash proceeds of a
65 disposition in good faith and without notice that the
66 receipt violates the rights of the holder of a security
67 interest or other lien that is not subordinate to the
68 security interest under which the disposition is made:

69 (1) Takes the cash proceeds free of the security
70 interest or other lien;

71 (2) Is not obligated to apply the proceeds of the
72 disposition to the satisfaction of obligations secured by
73 the security interest or other lien; and

74 (3) Is not obligated to account to or pay the holder
75 of the security interest or other lien for any surplus.

400.9-616. (a) In this section:

2 (1) "Explanation" means a **[writing]** **record** that:

3 (A) States the amount of the surplus or deficiency;

4 (B) Provides an explanation in accordance with
5 subsection (c) of how the secured party calculated the
6 surplus or deficiency;

7 (C) States, if applicable, that future debits,
8 credits, charges, including additional credit service
9 charges or interest, rebates, and expenses may affect the
10 amount of the surplus or deficiency; and

11 (D) Provides a telephone number or mailing address
12 from which additional information concerning the transaction
13 is available.

14 (2) "Request" means a record:

15 (A) **[Authenticated] Signed** by a debtor or consumer
16 obligor;

17 (B) Requesting that the recipient provide an
18 explanation; and

19 (C) Sent after disposition of the collateral under
20 section 400.9-610.

21 (b) In a consumer-goods transaction in which the
22 debtor is entitled to a surplus or a consumer obligor is
23 liable for a deficiency under section 400.9-615, the secured
24 party shall:

25 (1) Send an explanation to the debtor or consumer
26 obligor, as applicable, after the disposition and:

27 (A) Before or when the secured party accounts to the
28 debtor and pays any surplus or first makes **[written]** demand
29 **in a record** on the consumer obligor after the disposition
30 for payment of the deficiency; and

31 (B) Within fourteen days after receipt of a request; or

32 (2) In the case of a consumer obligor who is liable
33 for a deficiency, within fourteen days after receipt of a

34 request, send to the consumer obligor a record waiving the
35 secured party's right to a deficiency.

36 (c) To comply with subsection (a)(1)(B), [a writing]
37 **an explanation** must provide the following information in the
38 following order:

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

44 (A) If the secured party takes or receives possession
45 of the collateral after default, not more than thirty-five
46 days before the secured party takes or receives possession;
47 or

48 (B) If the secured party takes or receives possession
49 of the collateral before default or does not take possession
50 of the collateral, not more than thirty-five days before the
51 disposition;

52 (2) The amount of proceeds of the disposition;

53 (3) The aggregate amount of the obligations after
54 deducting the amount of proceeds;

55 (4) The amount, in the aggregate or by type, and types
56 of expenses, including expenses of retaking, holding,
57 preparing for disposition, processing, and disposing of the
58 collateral, and attorney's fees secured by the collateral
59 which are known to the secured party and relate to the
60 current disposition;

61 (5) The amount, in the aggregate or by type, and types
62 of credits, including rebates of interest or credit service
63 charges, to which the obligor is known to be entitled and
64 which are not reflected in the amount in paragraph (1); and

65 (6) The amount of the surplus or deficiency.

66 (d) A particular phrasing of the explanation is not
67 required. An explanation complying substantially with the
68 requirements of subsection (a) is sufficient, even if it
69 includes minor errors that are not seriously misleading.

70 (e) A debtor or consumer obligor is entitled without
71 charge to one response to a request under this section
72 during any six-month period in which the secured party did
73 not send to the debtor or consumer obligor an explanation
74 pursuant to subsection (b)(1). The secured party may
75 require payment of a charge not exceeding twenty-five
76 dollars for each additional response.

400.9-619. (a) In this section, "transfer statement"
2 means a record [authenticated] **signed** by a secured party
3 stating:

4 (1) That the debtor has defaulted in connection with
5 an obligation secured by specified collateral;

6 (2) That the secured party has exercised its post-
7 default remedies with respect to the collateral;

8 (3) That, by reason of the exercise, a transferee has
9 acquired the rights of the debtor in the collateral; and

10 (4) The name and mailing address of the secured party,
11 debtor, and transferee.

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

20 (1) Accept the transfer statement;

21 (2) Promptly amend its records to reflect the
22 transfer; and

23 (3) If applicable, issue a new appropriate certificate
24 of title in the name of the transferee.

25 (c) A transfer of the record or legal title to
26 collateral to a secured party under subsection (b) or
27 otherwise is not of itself a disposition of collateral under
28 this article and does not of itself relieve the secured
29 party of its duties under this article.

400.9-620. (a) Except as otherwise provided in
2 subsection (g), a secured party may accept collateral in
3 full or partial satisfaction of the obligation it secures
4 only if:

5 (1) The debtor consents to the acceptance under
6 subsection (c);

7 (2) The secured party does not receive, within the
8 time set forth in subsection (d), a notification of
9 objection to the proposal [authenticated] **signed** by:

10 (A) A person to which the secured party was required
11 to send a proposal under section 400.9-621; or

12 (B) Any other person, other than the debtor, holding
13 an interest in the collateral subordinate to the security
14 interest that is the subject of the proposal;

15 (3) If the collateral is consumer goods, the
16 collateral is not in the possession of the debtor when the
17 debtor consents to the acceptance; and

18 (4) Subsection (e) does not require the secured party
19 to dispose of the collateral or the debtor waives the
20 requirement pursuant to section 400.9-624.

21 (b) A purported or apparent acceptance of collateral
22 under this section is ineffective unless:

23 (1) The secured party consents to the acceptance in
24 **[an authenticated] a signed** record or sends a proposal to
25 the debtor; and

26 (2) The conditions of subsection (a) are met.

27 (c) For purposes of this section:

28 (1) A debtor consents to an acceptance of collateral
29 in partial satisfaction of the obligation it secures only if
30 the debtor agrees to the terms of the acceptance in a record
31 **[authenticated] signed** after default; and

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

36 (A) Sends to the debtor after default a proposal that
37 is unconditional or subject only to a condition that
38 collateral not in the possession of the secured party be
39 preserved or maintained;

40 (B) In the proposal, proposes to accept collateral in
41 full satisfaction of the obligation it secures; and

42 (C) Does not receive a notification of objection
43 **[authenticated] signed** by the debtor within twenty days
44 after the proposal is sent.

45 (d) To be effective under subsection (a)(2), a
46 notification of objection must be received by the secured
47 party:

48 (1) In the case of a person to which the proposal was
49 sent pursuant to section 400.9-621, within twenty days after
50 notification was sent to that person; and

51 (2) In other cases:

52 (A) Within twenty days after the last notification was
53 sent pursuant to section 400.9-621; or

54 (B) If a notification was not sent, before the debtor
55 consents to the acceptance under subsection (c).

56 (e) A secured party that has taken possession of
57 collateral shall dispose of the collateral pursuant to
58 section 400.9-610 within the time specified in subsection
59 (f) if:

60 (1) Sixty percent of the cash price has been paid in
61 the case of a purchase-money security interest in consumer
62 goods; or

63 (2) Sixty percent of the principal amount of the
64 obligation secured has been paid in the case of a non-
65 purchase-money security interest in consumer goods.

66 (f) To comply with subsection (e), the secured party
67 shall dispose of the collateral:

68 (1) Within ninety days after taking possession; or

69 (2) Within any longer period to which the debtor and
70 all secondary obligors have agreed in an agreement to that
71 effect entered into and **[authenticated]** **signed** after default.

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

400.9-621. (a) A secured party that desires to accept
2 collateral in full or partial satisfaction of the obligation
3 it secures shall send its proposal to:

4 (1) Any person from which the secured party has
5 received, before the debtor consented to the acceptance, **[an**
6 **authenticated]** **a signed** notification of a claim of an
7 interest in the collateral;

8 (2) Any other secured party or lienholder that, ten
9 days before the debtor consented to the acceptance, held a
10 security interest in or other lien on the collateral
11 perfected by the filing of a financing statement that:

12 (A) Identified the collateral;

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

15 (C) Was filed in the office or offices in which to
16 file a financing statement against the debtor covering the
17 collateral as of that date; and

18 (3) Any other secured party that, ten days before the
19 debtor consented to the acceptance, held a security interest
20 in the collateral perfected by compliance with a statute,
21 regulation, or treaty described in section 400.9-311(a).

22 (b) A secured party that desires to accept collateral
23 in partial satisfaction of the obligation it secures shall
24 send its proposal to any secondary obligor in addition to
25 the persons described in subsection (a).

400.9-624. (a) A debtor or secondary obligor may
2 waive the right to notification of disposition of collateral
3 under section 400.9-611 only by an agreement to that effect
4 entered into and [authenticated] **signed** after default.

5 (b) A debtor may waive the right to require
6 disposition of collateral under section 400.9-620(e) only by
7 an agreement to that effect entered into and [authenticated]
8 **signed** after default.

9 (c) Except in a consumer-goods transaction, a debtor
10 or secondary obligor may waive the right to redeem
11 collateral under section 400.9-623 only by an agreement to
12 that effect entered into and [authenticated] **signed** after
13 default.

400.9-628. (a) **Subject to subsection (e)**, unless a
2 secured party knows that a person is a debtor or obligor,
3 knows the identity of the person, and knows how to
4 communicate with the person:

5 (1) The secured party is not liable to the person, or
6 to a secured party or lienholder that has filed a financing
7 statement against the person, for failure to comply with
8 this article; and

9 (2) The secured party's failure to comply with this
10 article does not affect the liability of the person for a
11 deficiency.

12 (b) **Subject to subsection (e)**, a secured party is not
13 liable because of its status as secured party:

14 (1) To a person that is a debtor or obligor, unless
15 the secured party knows:

16 (A) That the person is a debtor or obligor;

17 (B) The identity of the person; and

18 (C) How to communicate with the person; or

19 (2) To a secured party or lienholder that has filed a
20 financing statement against a person, unless the secured
21 party knows:

22 (A) That the person is a debtor; and

23 (B) The identity of the person.

24 (c) A secured party is not liable to any person, and a
25 person's liability for a deficiency is not affected, because
26 of any act or omission arising out of the secured party's
27 reasonable belief that a transaction is not a consumer-goods
28 transaction or a consumer transaction or that goods are not
29 consumer goods, if the secured party's belief is based on
30 its reasonable reliance on:

31 (1) A debtor's representation concerning the purpose
32 for which collateral was to be used, acquired, or held; or

33 (2) An obligor's representation concerning the purpose
34 for which a secured obligation was incurred.

35 (d) A secured party is not liable under section 400.9-
36 625(c) (2) more than once with respect to any one secured
37 obligation.

38 (e) Subsections (a) and (b) do not apply to limit the
39 liability of a secured party to a person if, at the time the
40 secured party obtains control of collateral that is a
41 controllable account, controllable electronic record, or
42 controllable payment intangible or at the time the security
43 interest attaches to the collateral, whichever is later:

44 (1) The person is a debtor or obligor; and

45 (2) The secured party knows that the information in
46 subsection (b) (1) (A), (B), or (C) relating to the person is
47 not provided by the collateral, a record attached to or
48 logically associated with the collateral, or the system in
49 which the collateral is recorded.

400.12-101. This article may be cited as Uniform
2 Commercial Code—Controllable Electronic Records.

400.12-102. (a) In this article:

2 (1) "Controllable electronic record" means a record
3 stored in an electronic medium that can be subjected to
4 control under section 400.12-105. The term does not include
5 a controllable account, a controllable payment intangible, a
6 deposit account, an electronic copy of a record evidencing
7 chattel paper, an electronic document of title, electronic
8 money, investment property, or a transferable record.

9 (2) "Qualifying purchaser" means a purchaser of a
10 controllable electronic record or an interest in a
11 controllable electronic record that obtains control of the
12 controllable electronic record for value, in good faith, and
13 without notice of a claim of a property right in the
14 controllable electronic record.

15 (3) "Transferable record" has the meaning provided for
16 that term in Section 201(a)(1) of the Electronic Signatures
17 in Global and National Commerce Act, 15 U.S.C. Section
18 7021(a)(1), as amended.

19 (4) "Value" has the meaning provided in section 400.3-
20 303(a), as if references in that subsection to an
21 "instrument" were references to a controllable account,
22 controllable electronic record, or controllable payment
23 intangible.

24 (b) The definitions in Article 9 of "account debtor",
25 "controllable account", "controllable payment intangible",
26 "chattel paper", "deposit account", "electronic money", and
27 "investment property" apply to this article.

28 (c) Article 1 contains general definitions and
29 principles of construction and interpretation applicable
30 throughout this article.

 400.12-103. (a) If there is conflict between this
2 article and Article 9, Article 9 governs.

3 (b) A transaction subject to this article is subject
4 to any applicable rule of law that establishes a different
5 rule for consumers.

 400.12-104. (a) This section applies to the
2 acquisition and purchase of rights in a controllable account
3 or controllable payment intangible, including the rights and
4 benefits under subsections (c), (d), (e), (g), and (h) of a
5 purchaser and qualifying purchaser, in the same manner this
6 section applies to a controllable electronic record.

7 (b) To determine whether a purchaser of a controllable
8 account or a controllable payment intangible is a qualifying
9 purchaser, the purchaser obtains control of the account or
10 payment intangible if it obtains control of the controllable

11 electronic record that evidences the account or payment
12 intangible.

13 (c) Except as provided in this section, law other than
14 this article determines whether a person acquires a right in
15 a controllable electronic record and the right the person
16 acquires.

17 (d) A purchaser of a controllable electronic record
18 acquires all rights in the controllable electronic record
19 that the transferor had or had power to transfer, except
20 that a purchaser of a limited interest in a controllable
21 electronic record acquires rights only to the extent of the
22 interest purchased.

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

26 (f) Except as provided in subsections (a) and (e) for
27 a controllable account and a controllable payment intangible
28 or law other than this article, a qualifying purchaser takes
29 a right to payment, right to performance, or other interest
30 in property evidenced by the controllable electronic record
31 subject to a claim of a property right in the right to
32 payment, right to performance, or other interest in property.

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

39 (h) Filing of a financing statement under Article 9 is
40 not notice of a claim of a property right in a controllable
41 electronic record.

400.12-105. (a) A person has control of a
2 controllable electronic record if the electronic record, a
3 record attached to or logically associated with the
4 electronic record, or a system in which the electronic
5 record is recorded:

6 (1) Gives the person:

7 (A) Power to avail itself of substantially all the
8 benefit from the electronic record; and

9 (B) Exclusive power, subject to subsection (b), to:

10 (i) Prevent others from availing themselves of
11 substantially all the benefit from the electronic record; and

12 (ii) Transfer control of the electronic record to
13 another person or cause another person to obtain control of
14 another controllable electronic record as a result of the
15 transfer of the electronic record; and

16 (2) Enables the person readily to identify itself in
17 any way, including by name, identifying number,
18 cryptographic key, office, or account number, as having the
19 powers specified in paragraph (1).

20 (b) Subject to subsection (c), a power is exclusive
21 under subsection (a) (1) (B) (i) and (ii) even if:

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

29 (2) The power is shared with another person.

30 (c) A power of a person is not shared with another
31 person under subsection (b) (2) and the person's power is not
32 exclusive if:

33 (1) The person can exercise the power only if the
34 power also is exercised by the other person; and

35 (2) The other person:

36 (A) Can exercise the power without exercise of the
37 power by the person; or

38 (B) Is the transferor to the person of an interest in
39 the controllable electronic record or a controllable account
40 or controllable payment intangible evidenced by the
41 controllable electronic record.

42 (d) If a person has the powers specified in subsection
43 (a) (1) (B) (i) and (ii), the powers are presumed to be
44 exclusive.

45 (e) A person has control of a controllable electronic
46 record if another person, other than the transferor to the
47 person of an interest in the controllable electronic record
48 or a controllable account or controllable payment intangible
49 evidenced by the controllable electronic record:

50 (1) Has control of the electronic record and
51 acknowledges that it has control on behalf of the person; or

52 (2) Obtains control of the electronic record after
53 having acknowledged that it will obtain control of the
54 electronic record on behalf of the person.

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

58 (g) If a person acknowledges that it has or will
59 obtain control on behalf of another person, unless the
60 person otherwise agrees or law other than this article or
61 Article 9 otherwise provides, the person does not owe any
62 duty to the other person and is not required to confirm the
63 acknowledgment to any other person.

400.12-106. (a) An account debtor on a controllable
2 account or controllable payment intangible may discharge its
3 obligation by paying:

4 (1) The person having control of the controllable
5 electronic record that evidences the controllable account or
6 controllable payment intangible; or

7 (2) Except as provided in subsection (b), a person
8 that formerly had control of the controllable electronic
9 record.

10 (b) Subject to subsection (d), the account debtor may
11 not discharge its obligation by paying a person that
12 formerly had control of the controllable electronic record
13 if the account debtor receives a notification that:

14 (1) Is signed by a person that formerly had control or
15 the person to which control was transferred;

16 (2) Reasonably identifies the controllable account or
17 controllable payment intangible;

18 (3) Notifies the account debtor that control of the
19 controllable electronic record that evidences the
20 controllable account or controllable payment intangible was
21 transferred;

22 (4) Identifies the transferee, in any reasonable way,
23 including by name, identifying number, cryptographic key,
24 office, or account number; and

25 (5) Provides a commercially reasonable method by which
26 the account debtor is to pay the transferee.

27 (c) After receipt of a notification that complies with
28 subsection (b), the account debtor may discharge its
29 obligation by paying in accordance with the notification and
30 may not discharge the obligation by paying a person that
31 formerly had control.

32 (d) Subject to subsection (h), notification is
33 ineffective under subsection (b):

34 (1) Unless, before the notification is sent, the
35 account debtor and the person that, at that time, had
36 control of the controllable electronic record that evidences
37 the controllable account or controllable payment intangible
38 agree in a signed record to a commercially reasonable method
39 by which a person may furnish reasonable proof that control
40 has been transferred;

41 (2) To the extent an agreement between the account
42 debtor and seller of a payment intangible limits the account
43 debtor's duty to pay a person other than the seller and the
44 limitation is effective under law other than this article; or

45 (3) At the option of the account debtor, if the
46 notification notifies the account debtor to:

47 (A) Divide a payment;

48 (B) Make less than the full amount of an installment
49 or other periodic payment; or

50 (C) pay any part of a payment by more than one method
51 or to more than one person.

52 (e) Subject to subsection (h), if requested by the
53 account debtor, the person giving the notification under
54 subsection (b) seasonably shall furnish reasonable proof,
55 using the method in the agreement referred to in subsection
56 (d)(1), that control of the controllable electronic record
57 has been transferred. Unless the person complies with the
58 request, the account debtor may discharge its obligation by
59 paying a person that formerly had control, even if the
60 account debtor has received a notification under subsection
61 (b).

62 (f) A person furnishes reasonable proof under
63 subsection (e) that control has been transferred if the

64 person demonstrates, using the method in the agreement
65 referred to in subsection (d)(1), that the transferee has
66 the power to:

67 (1) Avail itself of substantially all the benefit from
68 the controllable electronic record;

69 (2) Prevent others from availing themselves of
70 substantially all the benefit from the controllable
71 electronic record; and

72 (3) Transfer the powers specified in paragraphs (1)
73 and (2) to another person.

74 (g) Subject to subsection (h), an account debtor may
75 not waive or vary its rights under subsections (d)(1) and
76 (e) or its option under subsection (d)(3).

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

400.12-107. (a) Except as provided in subsection (b),
2 the local law of a controllable electronic record's
3 jurisdiction governs a matter covered by this article.

4 (b) For a controllable electronic record that
5 evidences a controllable account or controllable payment
6 intangible, the local law of the controllable electronic
7 record's jurisdiction governs a matter covered by section
8 400.12-106 unless an effective agreement determines that the
9 local law of another jurisdiction governs.

10 (c) The following rules determine a controllable
11 electronic record's jurisdiction under this section:

12 (1) If the controllable electronic record, or a record
13 attached to or logically associated with the controllable
14 electronic record and readily available for review,
15 expressly provides that a particular jurisdiction is the

16 controllable electronic record's jurisdiction for purposes
17 of this article or this chapter, that jurisdiction is the
18 controllable electronic record's jurisdiction.

19 (2) If paragraph (1) does not apply and the rules of
20 the system in which the controllable electronic record is
21 recorded are readily available for review and expressly
22 provide that a particular jurisdiction is the controllable
23 electronic record's jurisdiction for purposes of this
24 article or this chapter, that jurisdiction is the
25 controllable electronic record's jurisdiction.

26 (3) If paragraphs (1) and (2) do not apply and the
27 controllable electronic record, or a record attached to or
28 logically associated with the controllable electronic record
29 and readily available for review, expressly provides that
30 the controllable electronic record is governed by the law of
31 a particular jurisdiction, that jurisdiction is the
32 controllable electronic record's jurisdiction.

33 (4) If paragraphs (1), (2), and (3) do not apply and
34 the rules of the system in which the controllable electronic
35 record is recorded are readily available for review and
36 expressly provide that the controllable electronic record or
37 the system is governed by the law of a particular
38 jurisdiction, that jurisdiction is the controllable
39 electronic record's jurisdiction.

40 (5) If paragraphs (1) through (4) do not apply, the
41 controllable electronic record's jurisdiction is the
42 District of Columbia.

43 (d) If subsection (c) (5) applies and Article 12 is not
44 in effect in the District of Columbia without material
45 modification, the governing law for a matter covered by this
46 article is the law of the District of Columbia as though
47 Article 12 were in effect in the District of Columbia

48 without material modification. In this subsection, "Article
49 12" means Article 12 of Uniform Commercial Code Amendments
50 (2022).

51 (e) To the extent subsections (a) and (b) provide that
52 the local law of the controllable electronic record's
53 jurisdiction governs a matter covered by this article, that
54 law governs even if the matter or a transaction to which the
55 matter relates does not bear any relation to the
56 controllable electronic record's jurisdiction.

57 (f) The rights acquired under Section 400.12-104 by a
58 purchaser or qualifying purchaser are governed by the law
59 applicable under this section at the time of purchase.

400.199-101. This article may be cited as Transitional
2 Provisions for Uniform Commercial Code Amendments (2022).

400.199-102. (a) In this article:

2 (1) "Adjustment date" means July 1, 2025.

3 (2) "Article 12" means Article 12 of this chapter.

4 (3) "Article 12 property" means a controllable
5 account, controllable electronic record, or controllable
6 payment intangible.

7 (b) The following definitions in other articles of
8 this chapter apply to this article.

9 "Controllable account". Section 400.9-102.

10 "Controllable electronic record". Section 400.12-102.

11 "Controllable payment intangible". Section 400.9-102.

12 "Electronic money". Section 400.9-102.

13 "Financing statement". Section 400.9-102.

14 (c) Article 1 contains general definitions and
15 principles of construction and interpretation applicable
16 throughout this article.

400.199-201. Except as provided in sections 400.199-
2 301, 400.199-302, 400.199-303, 400.199-304, 400.199-305, and

3 400.199-306, a transaction validly entered into before
4 August 28, 2024, and the rights, duties, and interests
5 flowing from the transaction remain valid thereafter and may
6 be terminated, completed, consummated, or enforced as
7 required or permitted by law other than this chapter or, if
8 applicable, this chapter, as though this act had not taken
9 effect.

400.199-301. (a) Except as provided in sections
2 400.199-301, 400.199-302, 400.199-303, 400.199-304, 400.199-
3 305, and 400.199-306, Article 9 as amended by this act and
4 Article 12 apply to a transaction, lien, or other interest
5 in property, even if the transaction, lien, or interest was
6 entered into, created, or acquired before August 28, 2024.

7 (b) Except as provided in subsection (c) and sections
8 400.199-302 through 400.199-306:

9 (1) A transaction, lien, or interest in property that
10 was validly entered into, created, or transferred before
11 August 28, 2024 and was not governed by this chapter, but
12 would be subject to Article 9 as amended by this act or
13 Article 12 if it had been entered into, created, or
14 transferred on or after August 28, 2024, including the
15 rights, duties, and interests flowing from the transaction,
16 lien, or interest, remains valid on and after August 28,
17 2024; and

18 (2) The transaction, lien, or interest may be
19 terminated, completed, consummated, and enforced as required
20 or permitted by this act or by the law that would apply if
21 this act had not taken effect.

22 (c) This act does not affect an action, case, or
23 proceeding commenced before August 28, 2024.

400.199-302. (a) A security interest that is
2 enforceable and perfected immediately before August 28, 2024

3 is a perfected security interest under this act if, on
4 August 28, 2024, the requirements for enforceability and
5 perfection under this act are satisfied without further
6 action.

7 (b) If a security interest is enforceable and
8 perfected immediately before August 28, 2024, but the
9 requirements for enforceability or perfection under this act
10 are not satisfied on August 28, 2024, the security interest:

11 (1) Is a perfected security interest until the earlier
12 of the time perfection would have ceased under the law in
13 effect immediately before August 28, 2024, or the adjustment
14 date;

15 (2) Remains enforceable thereafter only if the
16 security interest satisfies the requirements for
17 enforceability under section 400.9-203, as amended by this
18 act, before the adjustment date; and

19 (3) Remains perfected thereafter only if the
20 requirements for perfection under this act are satisfied
21 before the time specified in paragraph (1).

400.199-303. A security interest that is enforceable
2 immediately before August 28, 2024, but is unperfected at
3 that time:

4 (1) Remains an enforceable security interest until the
5 adjustment date;

6 (2) Remains enforceable thereafter if the security
7 interest becomes enforceable under section 400.9-203, as
8 amended by this act, on August 28, 2024, or before the
9 adjustment date; and

10 (3) Becomes perfected:

11 (A) Without further action, on August 28, 2024, if the
12 requirements for perfection under this act are satisfied
13 before or at that time; or

14 (B) When the requirements for perfection are satisfied
15 if the requirements are satisfied after that time.

400.199-304. (a) If action, other than the filing of
2 a financing statement, is taken before August 28, 2024, and
3 the action would have resulted in perfection of the security
4 interest had the security interest become enforceable before
5 August 28, 2024, the action is effective to perfect a
6 security interest that attaches under this act before the
7 adjustment date. An attached security interest becomes
8 unperfected on the adjustment date unless the security
9 interest becomes a perfected security interest under this
10 act before the adjustment date.

11 (b) The filing of a financing statement before August
12 28, 2024, is effective to perfect a security interest on
13 August 28, 2024, to the extent the filing would satisfy the
14 requirements for perfection under this act.

15 (c) The taking of an action before August 28, 2024, is
16 sufficient for the enforceability of a security interest on
17 August 28, 2024, if the action would satisfy the
18 requirements for enforceability under this act.

400.199-305. (a) Subject to subsections (b) and (c),
2 this act determines the priority of conflicting claims to
3 collateral.

4 (b) Subject to subsection (c), if the priorities of
5 claims to collateral were established before August 28,
6 2024, Article 9 as in effect before August 28, 2024,
7 determines priority.

8 (c) On the adjustment date, to the extent the
9 priorities determined by Article 9 as amended by this act
10 modify the priorities established before August 28, 2024,
11 the priorities of claims to Article 12 property and

12 electronic money established before August 28, 2024, cease
13 to apply.

400.199-306. (a) Subject to subsections (b) and (c),
2 Article 12 determines the priority of conflicting claims to
3 Article 12 property when the priority rules of Article 9 as
4 amended by this act do not apply.

5 (b) Subject to subsection (c), when the priority rules
6 of Article 9 as amended by this act do not apply and the
7 priorities of claims to Article 12 property were established
8 before August 28, 2024, law other than Article 12 determines
9 priority.

10 (c) When the priority rules of Article 9 as amended by
11 this act do not apply, to the extent the priorities
12 determined by this act modify the priorities established
13 before August 28, 2024, the priorities of claims to Article
14 12 property established before August 28, 2024, cease to
15 apply on the adjustment date.

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