

The House Committee on Judiciary offered the following substitute to HB 191:

A BILL TO BE ENTITLED

AN ACT

1 To revise provisions of the Official Code of Georgia Annotated relating to secured
2 transactions and financial institutions; to amend Title 11 of the Official Code of Georgia
3 Annotated, the "Uniform Commercial Code," so as to enact a new Article 9 relating to
4 secured transactions; to strike former Article 9 in its entirety and replace it with a new article;
5 to define terms; to provide for general matters relating to secured transactions; to provide for
6 effectiveness of security agreements and attachments of security interests; to provide for the
7 rights of parties to a security agreement; to provide for perfection and priority of security
8 interests; to provide for rights of third parties; to provide for filing of security instruments;
9 to provide for default on and enforcement of secured obligations; to provide for transitional
10 provisions; to amend other articles of the Uniform Commercial Code so as to provide for
11 conforming amendments; to amend Chapter 3 of Title 1 of the Official Code of Georgia
12 Annotated, relating to laws and statutes, Title 7 of the Official Code of Georgia Annotated,
13 relating to banking and finance, Title 9 of the Official Code of Georgia Annotated, relating
14 to civil practice, Title 10 of the Official Code of Georgia Annotated, relating to commerce
15 and trade, Title 15 of the Official Code of Georgia Annotated, relating to courts, Title 16 of
16 the Official Code of Georgia Annotated, relating to crimes and offenses, Title 40 of the
17 Official Code of Georgia Annotated, relating to motor vehicles, Title 44 of the Official Code
18 of Georgia Annotated, relating to property, and Title 49 of the Official Code of Georgia
19 Annotated, relating to social services, so as to correct cross-references and otherwise
20 conform to the new Article 9; to amend Chapter 14 of Title 44 of the Official Code of
21 Georgia Annotated, relating to mortgages, conveyances to secure debt, and liens, so as to
22 prohibit certain practices with regard to loans secured by single-family residential property;
23 to amend Title 7 of the Official Code of Georgia Annotated, relating to banking and finance,
24 so as to provide for enforcement of such prohibitions; to amend Article 1 of Chapter 2 of
25 Title 29 of the Official Code of Georgia Annotated, relating to powers and duties of
26 guardians, so as to provide for investments in certain credit unions under certain
27 circumstances; to provide for related matters; to provide an effective date; to repeal
28 conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 11 of the Official Code of Georgia Annotated, the "Uniform Commercial Code," is amended by striking in its entirety existing Article 9, relating to secured transactions, and inserting in its place a new Article 9 to read as follows:

"ARTICLE 9

SECURED TRANSACTIONS

Part 1

General Provisions

Subpart 1

Short Title, Definitions, and General Concepts

11-9-101. Short title.

This article may be cited as 'Uniform Commercial Code—Secured Transactions.'

11-9-102. Definitions and index of definitions.

(a) *Article 9 definitions.* As used in this article, the term:

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

(2) 'Account,' except as used in 'account for,' means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter of credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

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

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

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

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

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

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

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

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

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

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

(6) 'As-extracted collateral' means:

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

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

(ii) Attaches to the minerals as extracted; or

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

(7) 'Authenticate' means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) 'Authority' means the Georgia Superior Court Clerks' Cooperative Authority.

(9) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(10) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(11) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a

1 condition or result of the security interest's obtaining priority over the rights of a lien
2 creditor with respect to the collateral.

3 (12) 'Chattel paper' means a record or records that evidence both a monetary obligation
4 and a security interest in specific goods, a security interest in specific goods and software
5 used in the goods, a lease of specific goods, or a lease of specific goods and license of
6 software used in the goods. As used in this paragraph, 'monetary obligation' means a
7 monetary obligation secured by the goods or owed under a lease of the goods and
8 includes a monetary obligation with respect to software used in the goods. The term does
9 not include:

10 (A) Charters or other contracts involving the use or hire of a vessel; or

11 (B) Records that evidence a right to payment arising out of the use of a credit or charge
12 card or information contained on or for use with the card.

13 If a transaction is evidenced by records that include an instrument or series of
14 instruments, the group of records taken together constitutes chattel paper.

15 (13) 'Collateral' means the property subject to a security interest or agricultural lien. The
16 term includes:

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

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

20 (C) Goods that are the subject of a consignment.

21 (14) 'Commercial tort claim' means a claim arising in tort with respect to which:

22 (A) The claimant is an organization; or

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

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

25 (ii) Does not include damages arising out of personal injury to or the death of an
26 individual.

27 (15) 'Commodity account' means an account maintained by a commodity intermediary
28 in which a commodity contract is carried for a commodity customer.

29 (16) 'Commodity contract' means a commodity futures contract, an option on a
30 commodity futures contract, a commodity option, or another contract if the contract or
31 option is:

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

34 (B) Traded on a foreign commodity board of trade, exchange, or market and is carried
35 on the books of a commodity intermediary for a commodity customer.

36 (17) 'Commodity customer' means a person for which a commodity intermediary carries
37 a commodity contract on its books.

1 (18) 'Commodity intermediary' means a person that:

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

3 (B) In the ordinary course of its business provides clearance or settlement services for
4 a board of trade that has been designated as a contract market pursuant to federal
5 commodities law.

6 (19) 'Communicate' means:

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

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

10 (C) In the case of transmission of a record to or by a filing office or the authority, to
11 transmit a record by any means prescribed by filing office rule.

12 (20) 'Consignee' means a merchant to which goods are delivered in a consignment.

13 (21) 'Consignment' means a transaction, regardless of its form, in which a person delivers
14 goods to a merchant for the purpose of sale and:

15 (A) The merchant:

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

18 (ii) Is not an auctioneer; and

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

21 (B) With respect to each delivery, the aggregate value of the goods is \$1,000.00 or
22 more at the time of delivery;

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

24 (D) The transaction does not create a security interest that secures an obligation.

25 (22) 'Consignor' means a person that delivers goods to a consignee in a consignment.

26 (23) 'Consumer debtor' means a debtor in a consumer transaction.

27 (24) 'Consumer goods' means goods that are used or bought for use primarily for
28 personal, family, or household purposes.

29 (25) 'Consumer goods transaction' means a consumer transaction in which:

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

32 (B) A security interest in consumer goods secures the obligation.

33 (26) 'Consumer obligor' means an obligor who is an individual and who incurred the
34 obligation as part of a transaction entered into primarily for personal, family, or
35 household purposes.

36 (27) 'Consumer transaction' means a transaction in which (i) an individual incurs an
37 obligation primarily for personal, family, or household purposes, (ii) a security interest

1 secures the obligation, and (iii) the collateral is held or acquired primarily for personal,
2 family, or household purposes. The term includes consumer goods transactions.

3 (28) 'Continuation statement' means an amendment of a financing statement which:

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

5 (B) Indicates that it is a continuation statement for, or that it is filed to continue the
6 effectiveness of, the identified financing statement.

7 (29) 'Debtor' means:

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

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

11 (C) A consignee.

12 (30) 'Deposit account' means a demand, time, savings, passbook, or similar account
13 maintained with a bank. The term does not include investment property or accounts
14 evidenced by an instrument.

15 (31) 'Document' means a document of title or a receipt of the type described in
16 subsection (2) of Code Section 11-7-201.

17 (32) 'Electronic chattel paper' means chattel paper evidenced by a record or records
18 consisting of information stored in an electronic medium.

19 (33) 'Encumbrance' means a right, other than an ownership interest, in real property. The
20 term includes mortgages and other liens on real property.

21 (34) 'Equipment' means goods other than inventory, farm products, or consumer goods.

22 (35) 'Farm products' means goods, other than standing timber, with respect to which the
23 debtor is engaged in a farming operation and which are:

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

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

26 (ii) Aquatic goods produced in aquacultural operations;

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

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

30 (D) Products of crops or livestock in their unmanufactured states.

31 (36) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or
32 any other farming, livestock, or aquacultural operation.

33 (37) 'File number' means the number assigned to an initial financing statement pursuant
34 to subsection (a) of Code Section 11-9-519.

35 (38) 'Filing office' means an office designated in Code Section 11-9-501 as the place to
36 file a financing statement.

37 (39) 'Filing office rule' means a rule adopted pursuant to Code Section 11-9-526.

1 (40) 'Financing statement' means a record or records composed of an initial financing
2 statement and any filed record relating to the initial financing statement.

3 (41) 'Fixture filing' means the filing of a financing statement covering goods that are or
4 are to become fixtures and satisfying subsections (a) and (b) of Code Section 11-9-502.
5 The term includes the filing of a financing statement covering goods of a transmitting
6 utility which are or are to become fixtures.

7 (42) 'Fixtures' means goods that have become so related to particular real property that
8 an interest in them arises under real property law.

9 (43) 'General intangible' means any personal property, including things in action, other
10 than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods,
11 instruments, investment property, letter of credit rights, letters of credit, money, and oil,
12 gas, or other minerals before extraction. The term includes payment intangibles and
13 software.

14 (44) 'Good faith' means honesty in fact and the observance of reasonable commercial
15 standards of fair dealing.

16 (45) 'Goods' means all things that are movable when a security interest attaches. The
17 term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a
18 conveyance or contract for sale, (iii) the unborn young of animals, and (iv) crops grown,
19 growing, or to be grown, even if the crops are produced on trees, vines, or bushes. The
20 term also includes a computer program embedded in goods and any supporting
21 information provided in connection with a transaction relating to the program if (i) the
22 program is associated with the goods in such a manner that it customarily is considered
23 part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right
24 to use the program in connection with the goods. The term does not include a computer
25 program embedded in goods that consist solely of the medium in which the program is
26 embedded. The term also does not include accounts, chattel paper, commercial tort
27 claims, deposit accounts, documents, general intangibles, instruments, investment
28 property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals
29 before extraction.

30 (46) 'Governmental unit' means a subdivision, agency, department, county, parish,
31 municipality, or other unit of the government of the United States, a state, or a foreign
32 country. The term includes an organization having a separate corporate existence if the
33 organization is eligible to issue debt on which interest is exempt from income taxation
34 under the laws of the United States.

35 (47) 'Health care insurance receivable' means an interest in or claim under a policy of
36 insurance which is a right to payment of a monetary obligation for health care goods or
37 services provided.

(48) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(49) 'Inventory' means goods, other than farm products, which:

(A) Are leased by a person as lessor;

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

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

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

(50) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(51) 'Jurisdiction of organization,' with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(52) 'Letter of credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(53) 'Lien creditor' means:

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

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

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

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

(54) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation. The term includes a deed to secure debt.

(55) 'New debtor' means a person that becomes bound as debtor under subsection (d) of Code Section 11-9-203 by a security agreement previously entered into by another person.

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

(57) 'Noncash proceeds' means proceeds other than cash proceeds.

(58) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(59) 'Original debtor,' except as used in subsection (c) of Code Section 11-9-310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of Code Section 11-9-203.

(60) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(61) 'Person related to,' with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(62) 'Person related to,' with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;
- (D) The spouse of an individual described in subparagraph (A), (B), or (C) of this paragraph; or
- (E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) of this paragraph and shares the same home with the individual.

(63) 'Proceeds,' except as used in subsection (d) of Code Section 11-9-609, means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;

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

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the collateral.

(64) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(65) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Code Sections 11-9-620, 11-9-621, and 11-9-622.

(66) 'Public finance transaction' means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least five years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(67) 'Pursuant to commitment,' with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(68) 'Record,' except as used in 'for record,' 'of record,' 'record or legal title,' and 'record owner,' means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(69) 'Registered organization' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(70) 'Secondary obligor' means an obligor to the extent that:

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

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

(71) 'Secured party' means:

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

(B) A person that holds an agricultural lien;

(C) A consignor;

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

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

(F) A person that holds a security interest arising under Code Section 11-2-401, 11-2-505, or subsection (3) of Code Section 11-2-711, subsection (5) of Code Section 11-2A-508, Code Section 11-4-210, or 11-5-118.

(72) 'Security agreement' means an agreement that creates or provides for a security interest.

(73) 'Send,' in connection with a record or notification, means:

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

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(74) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(75) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(76) 'Supporting obligation' means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(77) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(78) 'Termination statement' means an amendment of a financing statement which:

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

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(79) 'Transmitting utility' means a person primarily engaged in the business of:

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

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

(C) Transmitting goods by pipeline or sewer; or

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

1 (b) *Definitions in other articles.* Other definitions applying to this article and the Code
2 sections in which they appear are:

3 'Applicant.' Code Section 11-5-102.

4 'Beneficiary.' Code Section 11-5-102.

5 'Broker.' Code Section 11-8-102.

6 'Certificated security.' Code Section 11-8-102.

7 'Check.' Code Section 11-3-104.

8 'Clearing corporation.' Code Section 11-8-102.

9 'Contract for sale.' Code Section 11-2-106.

10 'Customer.' Code Section 11-4-104.

11 'Entitlement holder.' Code Section 11-8-102.

12 'Financial asset.' Code Section 11-8-102.

13 'Holder in due course.' Code Section 11-3-302.

14 'Issuer' (with respect to a letter of credit or letter of credit right). Code Section 11-5-102.

15 'Issuer' (with respect to a security). Code Section 11-8-201.

16 'Lease.' Code Section 11-2A-103.

17 'Lease agreement.' Code Section 11-2A-103.

18 'Lease contract.' Code Section 11-2A-103.

19 'Leasehold interest.' Code Section 11-2A-103.

20 'Lessee.' Code Section 11-2A-103.

21 'Lessee in ordinary course of business.' Code Section 11-2A-103.

22 'Lessor.' Code Section 11-2A-103.

23 'Lessor's residual interest.' Code Section 11-2A-103.

24 'Letter of credit.' Code Section 11-5-102.

25 'Merchant.' Code Section 11-2-104.

26 'Negotiable instrument.' Code Section 11-3-104.

27 'Nominated person.' Code Section 11-5-102.

28 'Note.' Code Section 11-3-104.

29 'Proceeds of a letter of credit.' Code Section 11-5-114.

30 'Prove.' Code Section 11-3-103.

31 'Sale.' Code Section 11-2-106.

32 'Securities account.' Code Section 11-8-501.

33 'Securities intermediary.' Code Section 11-8-102.

34 'Security.' Code Section 11-8-102.

35 'Security certificate.' Code Section 11-8-102.

36 'Security entitlement.' Code Section 11-8-102.

37 'Uncertificated security.' Code Section 11-8-102.

(c) *Article 1 definitions and principles.* Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

11-9-103. Purchase money security interest; application of payments; burden of establishing.

(a) *Definitions.* As used in this Code section, the term:

(1) 'Purchase money collateral' means goods or software that secures a purchase money obligation incurred with respect to that collateral.

(2) 'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) *Purchase money security interest in goods.* A security interest in goods is a purchase money security interest:

(1) To the extent that the goods are purchase money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase money collateral, also to the extent that the security interest secures a purchase money obligation incurred with respect to other inventory in which the secured party holds or held a purchase money security interest; and

(3) Also to the extent that the security interest secures a purchase money obligation incurred with respect to software in which the secured party holds or held a purchase money security interest.

(c) *Purchase money security interest in software.* A security interest in software is a purchase money security interest to the extent that the security interest also secures a purchase money obligation incurred with respect to goods in which the secured party holds or held a purchase money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) *Consignor's inventory purchase money security interest.* The security interest of a consignor in goods that are the subject of a consignment is a purchase money security interest in inventory.

(e) *Application of payment in nonconsumer goods transaction.* In a transaction other than a consumer goods transaction, if the extent to which a security interest is a purchase money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase money security interests in the order in which those obligations were incurred.

(f) *No loss of status of purchase money security interest in nonconsumer goods transaction.* In a transaction other than a consumer goods transaction, a purchase money security interest does not lose its status as such, even if:

(1) The purchase money collateral also secures an obligation that is not a purchase money obligation;

(2) Collateral that is not purchase money collateral also secures the purchase money obligation; or

(3) The purchase money obligation has been renewed, refinanced, consolidated, or restructured.

(g) *Burden of proof in nonconsumer goods transaction.* In a transaction other than a consumer goods transaction, a secured party claiming a purchase money security interest has the burden of establishing the extent to which the security interest is a purchase money security interest.

(h) *Nonconsumer goods transactions; no inference.* The limitation of the rules in subsections (e), (f), and (g) of this Code section to transactions other than consumer goods transactions is intended to leave to the court the determination of the applicable rules in consumer goods transactions. The court may not infer from that limitation the nature of the applicable rule in consumer goods transactions and may continue to apply established approaches.

11-9-104. **Control of deposit account.**

(a) *Requirements for control.* A secured party has control of a deposit account if:

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

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

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

1 (b) *Debtor's right to direct disposition.* A secured party that has satisfied subsection (a)
2 of this Code section has control, even if the debtor retains the right to direct the disposition
3 of funds from the deposit account.

4 **11-9-105. Control of electronic chattel paper.**

5 A secured party has control of electronic chattel paper if the record or records comprising
6 the chattel paper are created, stored, and assigned in such a manner that:

7 (1) A single authoritative copy of the record or records exists which is unique,
8 identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this Code
9 section, unalterable;

10 (2) The authoritative copy identifies the secured party as the assignee of the record or
11 records;

12 (3) The authoritative copy is communicated to and maintained by the secured party or
13 its designated custodian;

14 (4) Copies or revisions that add or change an identified assignee of the authoritative copy
15 can be made only with the participation of the secured party;

16 (5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as
17 a copy that is not the authoritative copy; and

18 (6) Any revision of the authoritative copy is readily identifiable as an authorized or
19 unauthorized revision.

20 **11-9-106. Control of investment property.**

21 (a) *Control under Code Section 11-8-106.* A person has control of a certificated security,
22 uncertificated security, or security entitlement as provided in Code Section 11-8-106.

23 (b) *Control of commodity contract.* A secured party has control of a commodity contract
24 if:

25 (1) The secured party is the commodity intermediary with which the commodity contract
26 is carried; or

27 (2) The commodity customer, secured party, and commodity intermediary have agreed
28 that the commodity intermediary will apply any value distributed on account of the
29 commodity contract as directed by the secured party without further consent by the
30 commodity customer.

31 (c) *Effect of control of securities account or commodity account.* A secured party having
32 control of all security entitlements or commodity contracts carried in a securities account
33 or commodity account has control over the securities account or commodity account.

1 11-9-107. **Control of letter of credit right.**

2 A secured party has control of a letter of credit right to the extent of any right to payment
3 or performance by the issuer or any nominated person if the issuer or nominated person has
4 consented to an assignment of proceeds of the letter of credit under subsection (c) of Code
5 Section 11-5-114 or otherwise applicable law or practice.

6 11-9-108. **Sufficiency of description.**

7 (a) *Sufficiency of description.* Except as otherwise provided in subsections (c), (d), and
8 (e) of this Code section, a description of personal or real property is sufficient, whether or
9 not it is specific, if it reasonably identifies what is described.

10 (b) *Examples of reasonable identification.* Except as otherwise provided in subsection (d)
11 of this Code section, a description of collateral reasonably identifies the collateral if it
12 identifies the collateral by:

13 (1) Specific listing;

14 (2) Category;

15 (3) Except as otherwise provided in subsection (e) of this Code section, a type of
16 collateral defined in this title;

17 (4) Quantity;

18 (5) Computational or allocational formula or procedure; or

19 (6) Except as otherwise provided in subsection (c) of this Code section, any other
20 method, if the identity of the collateral is objectively determinable.

21 (c) *Supergeneric description not sufficient.* A description of collateral as 'all the debtor's
22 assets' or 'all the debtor's personal property' or using words of similar import does not
23 reasonably identify the collateral.

24 (d) *Investment property.* Except as otherwise provided in subsection (e) of this Code
25 section, a description of a security entitlement, securities account, or commodity account
26 is sufficient if it describes:

27 (1) The collateral by those terms or as investment property; or

28 (2) The underlying financial asset or commodity contract.

29 (e) *When description by type insufficient.* A description only by type of collateral defined
30 in this title is an insufficient description of:

31 (1) A commercial tort claim; or

32 (2) In a consumer transaction, consumer goods, a security entitlement, a securities
33 account, or a commodity account.

Subpart 2

Applicability of Article

11-9-109. **Scope.**

(a) *General scope of article.* Except as otherwise provided in subsections (c) and (d) of this Code section, this article applies to:

- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) An agricultural lien;
- (3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
- (4) A consignment;
- (5) A security interest arising under Code Section 11-2-401, Code Section 11-2-505, subsection (3) of Code Section 11-2-711, or subsection (5) of Code Section 11-2A-508, as provided in Code Section 11-9-110; and
- (6) A security interest arising under Code Section 11-4-210 or 11-5-118.

(b) *Security interest in secured obligation.* The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) *Extent to which article does not apply.* This article does not apply to the extent that:

- (1) A statute, regulation, or treaty of the United States preempts this article;
- (2) Another statute of this state expressly governs the creation, perfection, or priority;
- (3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
- (4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Code Section 11-5-114.

(d) *Inapplicability of article.* This article does not apply to:

- (1) A landlord's lien, other than an agricultural lien;
- (2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Code Section 11-9-333 applies with respect to priority of the lien;
- (3) An assignment of a claim for wages, salary, or other compensation of an employee;
- (4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

- (6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but Code Sections 11-9-315 and 11-9-322 apply with respect to proceeds and priorities in proceeds;
- (9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (10) A right of recoupment or setoff, but:
- (A) Code Section 11-9-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and
 - (B) Code Section 11-9-404 applies with respect to defenses or claims of an account debtor;
- (11) The creation or transfer of an interest in or lien on real property, including a lease or usufruct or rents thereunder, except to the extent that provision is made for:
- (A) Liens on real property in Code Sections 11-9-203 and 11-9-308;
 - (B) Fixtures in Code Section 11-9-334;
 - (C) Fixture filings in Code Sections 11-9-501, 11-9-502, 11-9-512, 11-9-516, and 11-9-519; and
 - (D) Security agreements covering personal and real property in Code Section 11-9-604;
- (12) An assignment of a claim arising in tort, other than a commercial tort claim, but Code Sections 11-9-315 and 11-9-322 apply with respect to proceeds and priorities in proceeds;
- (13) An assignment of a deposit account in a consumer transaction, but Code Sections 11-9-315 and 11-9-322 apply with respect to proceeds and priorities in proceeds;
- (14) An assignment of a lottery prize payable by this state or any instrumentality of this state;
- (15) An assignment of a claim or right to receive payment as described in and to the extent limited by the provisions of Code Section 34-9-84 or by Article 4 of Chapter 12 of Title 51; or
- (16) A security interest created by or affecting property of this state or any governmental unit of this state in any public finance transaction, other than a security interest created by:

- (A) An authority activated under Chapter 62 of Title 36, the 'Development Authorities Law'; or
- (B) A local authority having as its principal function the stimulation of industrial growth and the reduction of unemployment.

11-9-110. Security interests arising under Article 2 or 2A of this title.

A security interest arising under Code Section 11-2-401 or 11-2-505, subsection (3) of Code Section 11-2-711, or subsection (5) of Code Section 11-2A-508 is subject to this article. However, until the debtor obtains possession of the goods:

- (1) The security interest is enforceable, even if paragraph (3) of subsection (b) of Code Section 11-9-203 has not been satisfied;
- (2) Filing is not required to perfect the security interest;
- (3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A of this title; and
- (4) The security interest has priority over a conflicting security interest created by the debtor.

11-9-111. Applicability of bulk transfer laws.

The creation of a security interest is not a bulk transfer under Article 6 of this title (see Code Section 11-6-103).

Part 2

Effectiveness of Security Agreement;

Attachment of Security Interest;

Rights of Parties to Security Agreement

Subpart 1

Effectiveness and Attachment

11-9-201. General effectiveness of security agreement.

(a) *General effectiveness.* Except as otherwise provided in this title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) *Applicable consumer laws and other law.* A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers and is subject to Chapter 3 of Title 7; Chapter 4 of Title 7; and Article 1 of Chapter 1 of Title 10.

(c) *Other applicable law controls.* In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b) of this Code section, the rule of law,

statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this Code section has only the effect the statute or regulation specifies.

(d) *Further deference to other applicable law.* This article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this Code section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

11-9-202. **Title to collateral immaterial.**

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

11-9-203. **Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.**

(a) *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) *Enforceability.* Except as otherwise provided in subsections (c) through (i) of this Code section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

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

(3) One of the following conditions is met:

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

(B) The collateral is not a certificated security and is in the possession of the secured party under Code Section 11-9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Code Section 11-8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter of credit rights, and the secured party has control under Code Section 11-9-104, 11-9-105, 11-9-106, or 11-9-107 pursuant to the debtor's security agreement.

1 (c) *Other provisions of this title.* Subsection (b) of this Code section is subject to Code
2 Section 11-4-210 on the security interest of a collecting bank, Code Section 11-5-118 on
3 the security interest of a letter of credit issuer or nominated person, Code Section 11-9-110
4 on a security interest arising under Article 2 or 2A of this title, and Code Section 11-9-206
5 on security interests in investment property.

6 (d) *When person becomes bound by another person's security agreement.* A person
7 becomes bound as debtor by a security agreement entered into by another person if, by
8 operation of law other than this article or by contract:

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

11 (2) The person becomes generally obligated for the obligations of the other person,
12 including the obligation secured under the security agreement, and acquires or succeeds
13 to all or substantially all of the assets of the other person.

14 (e) *Effect of new debtor becoming bound.* If a new debtor becomes bound as debtor by a
15 security agreement entered into by another person:

16 (1) The agreement satisfies paragraph (3) of subsection (b) of this Code section with
17 respect to existing or after acquired property of the new debtor to the extent the property
18 is described in the agreement; and

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

21 (f) *Proceeds and supporting obligations.* The attachment of a security interest in collateral
22 gives the secured party the rights to proceeds provided by Code Section 11-9-315 and is
23 also attachment of a security interest in a supporting obligation for the collateral.

24 (g) *Lien securing right to payment.* The attachment of a security interest in a right to
25 payment or performance secured by a security interest or other lien on personal or real
26 property is also attachment of a security interest in the security interest, mortgage, or other
27 lien.

28 (h) *Security entitlement carried in securities account.* The attachment of a security interest
29 in a securities account is also attachment of a security interest in the security entitlements
30 carried in the securities account.

31 (i) *Commodity contracts carried in commodity account.* The attachment of a security
32 interest in a commodity account is also attachment of a security interest in the commodity
33 contract carried in the commodity account.

11-9-204. **After acquired property; future advances.**

(a) *After acquired collateral.* Except as otherwise provided in subsection (b) of this Code section, a security agreement may create or provide for a security interest in after acquired collateral.

(b) *When after acquired property clause not effective.* A security interest does not attach under a term constituting an after acquired property clause to:

- (1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or
- (2) A commercial tort claim.

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

11-9-205. **Use or disposition of collateral permissible.**

(a) *When security interest not invalid or fraudulent.* A security interest is not invalid or fraudulent against creditors solely because:

- (1) The debtor has the right or ability to:
 - (A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (B) Collect, compromise, enforce, or otherwise deal with collateral;
 - (C) Accept the return of collateral or make repossessions; or
 - (D) Use, commingle, or dispose of proceeds; or
- (2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) *Requirements of possession not relaxed.* This Code section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

11-9-206. **Security interest arising in purchase or delivery of financial asset.**

(a) *Security interest when person buys through securities intermediary.* A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

- (1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
- (2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

1 (b) *Security interest secures obligation to pay for financial asset.* The security interest
2 described in subsection (a) of this Code section secures the person's obligation to pay for
3 the financial asset.

4 (c) *Security interest in payment against delivery transaction.* A security interest in favor
5 of a person that delivers a certificated security or other financial asset represented by a
6 writing attaches to the security or other financial asset if:

7 (1) The security or other financial asset:

8 (A) In the ordinary course of business is transferred by delivery with any necessary
9 indorsement or assignment; and

10 (B) Is delivered under an agreement between persons in the business of dealing with
11 such securities or financial assets; and

12 (2) The agreement calls for delivery against payment.

13 (d) *Security interest secures obligation to pay for delivery.* The security interest described
14 in subsection (c) of this Code section secures the obligation to make payment for the
15 delivery.

16 Subpart 2

17 Rights and Duties

18 11-9-207. **Rights and duties of secured party having possession or control of**
19 **collateral.**

20 (a) *Duty of care when secured party in possession.* Except as otherwise provided in
21 subsection (d) of this Code section, a secured party shall use reasonable care in the custody
22 and preservation of collateral in the secured party's possession. In the case of chattel paper
23 or an instrument, reasonable care includes taking necessary steps to preserve rights against
24 prior parties unless otherwise agreed.

25 (b) *Expenses, risks, duties, and rights when secured party in possession.* Except as
26 otherwise provided in subsection (d) of this Code section, if a secured party has possession
27 of collateral:

28 (1) Reasonable expenses, including the cost of insurance and payment of taxes or other
29 charges, incurred in the custody, preservation, use, or operation of the collateral are
30 chargeable to the debtor and are secured by the collateral;

31 (2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in
32 any effective insurance coverage;

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

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

- 1 (A) For the purpose of preserving the collateral or its value;
2 (B) As permitted by an order of a court having competent jurisdiction; or
3 (C) Except in the case of consumer goods, in the manner and to the extent agreed by
4 the debtor.

5 (c) *Duties and rights when secured party in possession or control.* Except as otherwise
6 provided in subsection (d) of this Code section, a secured party having possession of
7 collateral or control of collateral under Code Section 11-9-104, 11-9-105, 11-9-106, or
8 11-9-107:

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

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

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

14 (d) *Buyer of certain rights to payment.* If the secured party is a buyer of accounts, chattel
15 paper, payment intangibles, or promissory notes or a consignor:

16 (1) Subsection (a) of this Code section does not apply unless the secured party is entitled
17 under an agreement:

18 (A) To charge back uncollected collateral; or

19 (B) Otherwise to full or limited recourse against the debtor or a secondary obligor
20 based on the nonpayment or other default of an account debtor or other obligor on the
21 collateral; and

22 (2) Subsections (b) and (c) of this Code section do not apply.

23 **11-9-208. Additional duties of secured party having control of collateral.**

24 (a) *Applicability of Code section.* This Code section applies to cases in which there is no
25 outstanding secured obligation and the secured party is not committed to make advances,
26 incur obligations, or otherwise give value.

27 (b) *Duties of secured party after receiving demand from debtor.* Within ten days after
28 receiving an authenticated demand by the debtor:

29 (1) A secured party having control of a deposit account under paragraph (2) of
30 subsection (a) of Code Section 11-9-104 shall send to the bank with which the deposit
31 account is maintained an authenticated statement that releases the bank from any further
32 obligation to comply with instructions originated by the secured party;

33 (2) A secured party having control of a deposit account under paragraph (3) of
34 subsection (a) of Code Section 11-9-104 shall:

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

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

(3) A secured party, other than a buyer, having control of electronic chattel paper under Code Section 11-9-105 shall:

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

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

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

(4) A secured party having control of investment property under paragraph (2) of subsection (d) of Code Section 11-8-106 or subsection (b) of Code Section 11-9-106 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter of credit right under Code Section 11-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

11-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) *Applicability of Code section.* Except as otherwise provided in subsection (c) of this Code section, this Code section applies if:

(1) There is no outstanding secured obligation; and

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

(b) *Duties of secured party after receiving demand from debtor.* Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under subsection (a) of Code Section 11-9-406 an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) *Inapplicability to sales.* This Code section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

11-9-210. **Request for accounting; request regarding list of collateral or statement of account.**

(a) *Definitions.* As used in this Code section, the term:

(1) 'Request' means a record of a type described in paragraph (2), (3), or (4) of this subsection.

(2) 'Request for an accounting' means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) 'Request regarding a list of collateral' means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) 'Request regarding a statement of account' means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) *Duty to respond to requests.* Subject to subsections (c), (d), (e), and (f) of this Code section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) *Request regarding list of collateral; statement concerning type of collateral.* A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) *Request regarding list of collateral; no interest claimed.* A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

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

(e) *Request for accounting or regarding a statement of account; no interest in obligation claimed.* A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

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

(f) *Charges for responses.* A debtor is entitled without charge to one response to a request under this Code section during any six-month period. The secured party may require payment of a charge not exceeding \$10.00 for each additional response.

Part 3

Perfection and Priority

Subpart 1

Law Governing Perfection and Priority

11-9-301. **Law governing perfection and priority of security interests.**

Except as otherwise provided in Code Sections 11-9-303 through 11-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

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

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

(3) Except as otherwise provided in paragraph (4) of this Code section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

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

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

(C) Perfection of a security interest in crops; and

(D) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral; and

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

11-9-302. Law governing perfection and priority of agricultural liens.

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

11-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) *Applicability of Code section.* This Code section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) *When goods covered by certificate of title.* Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) *Applicable law.* The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

11-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) *Law of bank's jurisdiction governs.* The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) *Bank's jurisdiction.* The following rules determine a bank's jurisdiction for purposes of this part:

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

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

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

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

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

11-9-305. Law governing perfection and priority of security interests in investment property.

(a) *Governing law; general rules.* Except as otherwise provided in subsection (c) of this Code section, the following rules apply:

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

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

(3) The local law of the securities intermediary's jurisdiction as specified in subsection (e) of Code Section 11-8-110 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account; and

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

(b) *Commodity intermediary's jurisdiction.* The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

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

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

(3) If neither paragraph (1) nor (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction;

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

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

(c) *When perfection governed by law of jurisdiction where debtor located.* The local law of the jurisdiction in which the debtor is located governs:

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

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

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

11-9-306. Law governing perfection and priority of security interests in letter of credit rights.

(a) *Governing law; issuer's or nominated person's jurisdiction.* Subject to subsection (c) of this Code section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter of credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) *Issuer's or nominated person's jurisdiction.* For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter of credit right as provided in Code Section 11-5-116.

(c) *When Code section not applicable.* This Code section does not apply to a security interest that is perfected only under subsection (d) of Code Section 11-9-308.

11-9-307. **Location of debtor.**

(a) *'Place of business.'* As used in this Code section, the term 'place of business' means a place where a debtor conducts its affairs.

(b) *Debtor's location; general rules.* Except as otherwise provided in this Code section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence;

(2) A debtor that is an organization and has only one place of business is located at its place of business; and

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) *Limitation of applicability of subsection (b) of this Code section.* Subsection (b) of this Code section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this Code section does not apply, the debtor is located in the District of Columbia.

(d) *Continuation of location; cessation of existence, etc.* A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this Code section.

(e) *Location of registered organization organized under state law.* A registered organization that is organized under the law of a state is located in that state.

(f) *Location of registered organization organized under federal law; bank branches and agencies.* Except as otherwise provided in subsection (i) of this Code section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither paragraph (1) nor (2) of this subsection applies.

(g) *Continuation of location; change in status of registered organization.* A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this Code section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) *Location of United States.* The United States is located in the District of Columbia.

(i) *Location of foreign bank branch or agency if licensed in only one state.* A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) *Location of foreign air carrier.* A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) *Code section applies only to this part.* This Code section applies only for purposes of this part.

Subpart 2

Perfection

11-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) *Perfection of security interest.* Except as otherwise provided in this Code section and Code Section 11-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Code Sections 11-9-310 through 11-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) *Perfection of agricultural lien.* An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Code Section 11-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) *Continuous perfection; perfection by different methods.* A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) *Supporting obligation.* Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

1 (e) *Lien securing right to payment.* Perfection of a security interest in a right to payment
2 or performance also perfects a security interest in a security interest, mortgage, or other lien
3 on personal or real property securing the right.

4 (f) *Security entitlement carried in securities account.* Perfection of a security interest in
5 a securities account also perfects a security interest in the security entitlements carried in
6 the securities account.

7 (g) *Commodity contract carried in commodity account.* Perfection of a security interest
8 in a commodity account also perfects a security interest in the commodity contracts carried
9 in the commodity account.

10 **11-9-309. Security interest perfected upon attachment.**

11 The following security interests are perfected when they attach:

12 (1) A purchase money security interest in consumer goods, except as otherwise provided
13 in subsection (b) of Code Section 11-9-311 with respect to consumer goods that are
14 subject to a statute or treaty described in subsection (a) of Code Section 11-9-311;

15 (2) An assignment of accounts or payment intangibles which does not by itself or in
16 conjunction with other assignments to the same assignee transfer a significant part of the
17 assignor's outstanding accounts or payment intangibles;

18 (3) A sale of a payment intangible;

19 (4) A sale of a promissory note;

20 (5) A security interest created by the assignment of a health care insurance receivable to
21 the provider of the health care goods or services;

22 (6) A security interest arising under Code Section 11-2-401 or 11-2-505, subsection (3)
23 of Code Section 11-2-711, or subsection (5) of Code Section 11-2A-508, until the debtor
24 obtains possession of the collateral;

25 (7) A security interest of a collecting bank arising under Code Section 11-4-210;

26 (8) A security interest of an issuer or nominated person arising under Code Section
27 11-5-118;

28 (9) A security interest arising in the delivery of a financial asset under subsection (c) of
29 Code Section 11-9-206;

30 (10) A security interest in investment property created by a broker or securities
31 intermediary;

32 (11) A security interest in a commodity contract or a commodity account created by a
33 commodity intermediary;

34 (12) An assignment for the benefit of all creditors of the transferor and subsequent
35 transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

11-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) *General rule; perfection by filing.* Except as otherwise provided in subsection (b) of this Code section and subsection (b) of Code Section 11-9-312, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) *Exceptions; filing not necessary.* The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under subsection (d), (e), (f), or (g) of Code Section 11-9-308;

(2) That is perfected under Code Section 11-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in subsection (a) of Code Section 11-9-311;

(4) In goods in possession of a bailee which is perfected under paragraph (1) or (2) of subsection (d) of Code Section 11-9-312;

(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under subsection (e), (f), or (g) of Code Section 11-9-312;

(6) In collateral in the secured party's possession under Code Section 11-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under Code Section 11-9-313;

(8) In deposit accounts, electronic chattel paper, investment property, or letter of credit rights which is perfected by control under Code Section 11-9-314;

(9) In proceeds which is perfected under Code Section 11-9-315; or

(10) That is perfected under Code Section 11-9-316.

(c) *Assignment of perfected security interest.* If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

11-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) *Security interest subject to other law.* Except as otherwise provided in subsection (d) of this Code section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection (a) of Code Section 11-9-310;

(2) Chapter 3 of Title 40; or

(3) A certificate of title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) *Compliance with other law.* Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this Code section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) of this Code section, in Code Section 11-9-313, and in subsections (d) and (e) of Code Section 11-9-316 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this Code section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) *Duration and renewal of perfection.* Except as otherwise provided in subsection (d) of this Code section and subsections (d) and (e) of Code Section 11-9-316, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this Code section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) *Inapplicability to certain inventory.* During any period in which collateral subject to a statute specified in paragraph (2) of subsection (a) of this Code section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this Code section does not apply to a security interest in that collateral created by that person.

11-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter of credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) *Perfection by filing permitted.* A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) *Control or possession of certain collateral.* Except as otherwise provided in subsections (c) and (d) of Code Section 11-9-315 for proceeds:

(1) A security interest in a deposit account may be perfected only by control under Code Section 11-9-314;

(2) Except as otherwise provided in subsection (d) of Code Section 11-9-308, a security interest in a letter of credit right may be perfected only by control under Code Section 11-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under Code Section 11-9-313.

(c) *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) *Temporary perfection; new value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) *Temporary perfection; goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) *Temporary perfection; delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

1 (h) *Expiration of temporary perfection.* After the 20 day period specified in subsection (e),
2 (f), or (g) of this Code section expires, perfection depends upon compliance with this
3 article.

4 **11-9-313. When possession by or delivery to secured party perfects security interest**
5 **without filing.**

6 (a) *Perfection by possession or delivery.* Except as otherwise provided in subsection (b)
7 of this Code section, a secured party may perfect a security interest in negotiable
8 documents, goods, instruments, money, or tangible chattel paper by taking possession of
9 the collateral. A secured party may perfect a security interest in certificated securities by
10 taking delivery of the certificated securities under Code Section 11-8-301.

11 (b) *Goods covered by certificate of title.* With respect to goods covered by a certificate of
12 title issued by this state, a secured party may perfect a security interest in the goods by
13 taking possession of the goods only in the circumstances described in subsection (d) of
14 Code Section 11-9-316.

15 (c) *Collateral in possession of person other than debtor.* With respect to collateral other
16 than certificated securities and goods covered by a document, a secured party takes
17 possession of collateral in the possession of a person other than the debtor, the secured
18 party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's
19 business, when:

20 (1) The person in possession authenticates a record acknowledging that it holds
21 possession of the collateral for the secured party's benefit; or

22 (2) The person takes possession of the collateral after having authenticated a record
23 acknowledging that it will hold possession of collateral for the secured party's benefit.

24 (d) *Time of perfection by possession; continuation of perfection.* If perfection of a security
25 interest depends upon possession of the collateral by a secured party, perfection occurs no
26 earlier than the time the secured party takes possession and continues only while the
27 secured party retains possession.

28 (e) *Time of perfection by delivery; continuation of perfection.* A security interest in a
29 certificated security in registered form is perfected by delivery when delivery of the
30 certificated security occurs under Code Section 11-8-301 and remains perfected by delivery
31 until the debtor obtains possession of the security certificate.

32 (f) *Acknowledgment not required.* A person in possession of collateral is not required to
33 acknowledge that it holds possession for a secured party's benefit.

34 (g) *Effectiveness of acknowledgment; no duties or confirmation.* If a person acknowledges
35 that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this Code section or subsection (a) of Code Section 11-8-301, even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) *Secured party's delivery to person other than debtor.* A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) *Effect of delivery under subsection (h) of this Code section; no duties or confirmation.*

A secured party does not relinquish possession, even if a delivery under subsection (h) of this Code section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this Code section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

11-9-314. **Perfection by control.**

(a) *Perfection by control.* A security interest in investment property, deposit accounts, letter of credit rights, or electronic chattel paper may be perfected by control of the collateral under Code Section 11-9-104, 11-9-105, 11-9-106, or 11-9-107.

(b) *Specified collateral; time of perfection by control; continuation of perfection.* A security interest in deposit accounts, electronic chattel paper, or letter of credit rights is perfected by control under Code Section 11-9-104, 11-9-105, or 11-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) *Investment property; time of perfection by control; continuation of perfection.* A security interest in investment property is perfected by control under Code Section 11-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

- 1 (B) If the collateral is an uncertificated security, the issuer has registered or registers
2 the debtor as the registered owner; or
3 (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement
4 holder.

5 **11-9-315. Secured party's rights on disposition of collateral and in proceeds.**

6 (a) *Disposition of collateral; continuation of security interest or agricultural lien;*
7 *proceeds.* Except as otherwise provided in this article and in subsection (2) of Code
8 Section 11-2-403:

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

12 (2) A security interest attaches to any identifiable proceeds of collateral.

13 (b) *When commingled proceeds identifiable.* Proceeds that are commingled with other
14 property are identifiable proceeds:

15 (1) If the proceeds are goods, to the extent provided by Code Section 11-9-336; and

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

20 (c) *Perfection of security interest in proceeds.* A security interest in proceeds is a
21 perfected security interest if the security interest in the original collateral was perfected.

22 (d) *Continuation of perfection.* A perfected security interest in proceeds becomes
23 unperfected on the twenty-first day after the security interest attaches to the proceeds
24 unless:

25 (1) The following conditions are satisfied:

26 (A) A filed financing statement covers the original collateral;

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

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

30 (2) The proceeds are identifiable cash proceeds; or

31 (3) The security interest in the proceeds is perfected other than under subsection (c) of
32 this Code section when the security interest attaches to the proceeds or within 20 days
33 thereafter.

34 (e) *When perfected security interest in proceeds becomes unperfected.* If a filed financing
35 statement covers the original collateral, a security interest in proceeds which remains

perfected under paragraph (1) of subsection (d) of this Code section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under Code Section 11-9-515 or is terminated under Code Section 11-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

11-9-316. Continued perfection of security interest following change in governing law.

(a) *General rule; effect on perfection of change in governing law.* A security interest perfected pursuant to the law of the jurisdiction designated in paragraph (1) of Code Section 11-9-301 or subsection (c) of Code Section 11-9-305 remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) *Security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection (a) of this Code section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) *Possessory security interest in collateral moved to new jurisdiction.* A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) *Goods covered by certificate of title from this state.* Except as otherwise provided in subsection (e) of this Code section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) *When subsection (d) of this Code section security interest becomes unperfected against purchasers.* A security interest described in subsection (d) of this Code section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subsection (b) of Code Section 11-9-311 or Code Section 11-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) *Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.* A security interest in deposit accounts, letter of credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) *Subsection (f) of this Code section security interest perfected or unperfected under law of new jurisdiction.* If a security interest described in subsection (f) of this Code section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Subpart 3

Priority

11-9-317. **Interests that take priority over or take free of security interest or agricultural lien.**

(a) *Conflicting security interests and rights of lien creditors.* A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under Code Section 11-9-322; and

(2) Except as otherwise provided in subsection (e) of this Code section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) A financing statement covering the collateral is filed.

(b) *Buyers that receive delivery.* Except as otherwise provided in subsection (e) of this Code section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) *Lessees that receive delivery.* Except as otherwise provided in subsection (e) of this Code section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) *Licensees and buyers of certain collateral.* A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) *Purchase money security interest.* Except as otherwise provided in Code Sections 11-9-320 and 11-9-321, if a person files a financing statement with respect to a purchase money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

11-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) *Seller retains no interest.* A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) *Deemed rights of debtor if buyer's security interest unperfected.* For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

11-9-319. **Rights and title of consignee with respect to creditors and purchasers.**

(a) *Consignee has consignor's rights.* Except as otherwise provided in subsection (b) of this Code section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) *Applicability of other law.* For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

11-9-320. **Buyer of goods.**

(a) *Buyer in ordinary course of business.* Except as otherwise provided in subsection (e) of this Code section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) *Buyer of consumer goods.* Except as otherwise provided in subsection (e) of this Code section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) Without knowledge of the security interest;
- (2) For value;
- (3) Primarily for the buyer's personal, family, or household purposes; and
- (4) Before the filing of a financing statement covering the goods.

(c) *Effectiveness of filing for subsection (b) of this Code section.* To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this Code section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by subsections (a) and (b) of Code Section 11-9-316.

(d) *Buyer in ordinary course of business at wellhead or minehead.* A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) *Possessory security interest not affected.* Subsections (a) and (b) of this Code section do not affect a security interest in goods in the possession of the secured party under Code Section 11-9-313.

11-9-321. **Licensee of general intangible and lessee of goods in ordinary course of business.**

(a) *'Licensee in ordinary course of business.'* As used in this Code section, the term 'licensee in ordinary course of business' means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) *Rights of licensee in ordinary course of business.* A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) *Rights of lessee in ordinary course of business.* A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

11-9-322. **Priorities among conflicting security interests in and agricultural liens on same collateral.**

(a) *General priority rules.* Except as otherwise provided in this Code section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection;

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien; and

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) *Time of perfection: proceeds and supporting obligations.* For the purposes paragraph (1) of subsection (a) of this Code section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) *Special priority rules: proceeds and supporting obligations.* Except as otherwise provided in subsection (f) of this Code section, a security interest in collateral which qualifies for priority over a conflicting security interest under Code Section 11-9-327, 11-9-328, 11-9-329, 11-9-330, or 11-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) *First to file priority rule for certain collateral.* Subject to subsection (e) of this Code section and except as otherwise provided in subsection (f) of this Code section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter of credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) *Applicability of subsection (d) of this Code section.* Subsection (d) of this Code section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter of credit rights.

(f) *Limitations on subsections (a) through (e) of this Code section.* Subsections (a) through (e) of this Code section are subject to:

(1) Subsection (g) of this Code section and the other provisions of this part;

(2) Code Section 11-4-210 with respect to a security interest of a collecting bank;

(3) Code Section 11-5-118 with respect to a security interest of an issuer or nominated person; and

(4) Code Section 11-9-110 with respect to a security interest arising under Article 2 or 2A of this title.

(g) *Priority under agricultural lien statute.* A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

11-9-322.1. **Crops produced with new value.**

A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations incurred more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

11-9-323. **Future advances.**

(a) *When priority based on time of advance.* Except as otherwise provided in subsection (b) of this Code section, for purposes of determining the priority of a perfected security interest under paragraph (1) of subsection (a) of Code Section 11-9-322, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under Code Section 11-9-309 when it attaches; or

(B) Temporarily under subsection (e), (f), or (g) of Code Section 11-9-312; and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Code Section 11-9-309 or subsection (e), (f), or (g) of Code Section 11-9-312.

(b) *Buyer of receivables.* Subsection (a) of this Code section does not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(c) *Buyer of goods.* Except as otherwise provided in subsection (d) of this Code section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

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

(2) Forty-five days after the purchase.

(d) *Advances made pursuant to commitment; priority of buyer of goods.* Subsection (c) of this Code section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45 day period.

(e) *Lessee of goods.* Except as otherwise provided in subsection (f) of this Code section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

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

2 (2) Forty-five days after the lease contract becomes enforceable.

3 (f) *Advances made pursuant to commitment; priority of lessee of goods.* Subsection (e)
4 of this Code section does not apply if the advance is made pursuant to a commitment
5 entered into without knowledge of the lease and before the expiration of the 45 day period.

6 **11-9-324. Priority of purchase money security interests.**

7 (a) *General rule; purchase money priority.* Except as otherwise provided in subsection
8 (g) of this Code section, a perfected purchase money security interest in goods other than
9 inventory or livestock has priority over a conflicting security interest in the same goods,
10 and, except as otherwise provided in Code Section 11-9-327, a perfected security interest
11 in its identifiable proceeds also has priority if the purchase money security interest is
12 perfected when the debtor receives possession of the collateral or within 20 days thereafter.

13 (b) *Inventory purchase money priority.* Subject to subsection (c) of this Code section and
14 except as otherwise provided in subsection (g) of this Code section, a perfected purchase
15 money security interest in inventory has priority over a conflicting security interest in the
16 same inventory, has priority over a conflicting security interest in chattel paper or an
17 instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if
18 so provided in Code Section 11-9-330, and, except as otherwise provided in Code Section
19 11-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the
20 identifiable cash proceeds are received on or before the delivery of the inventory to a
21 buyer, if:

22 (1) The purchase money security interest is perfected when the debtor receives
23 possession of the inventory;

24 (2) The purchase money secured party sends an authenticated notification to the holder
25 of the conflicting security interest;

26 (3) The holder of the conflicting security interest receives the notification within five
27 years before the debtor receives possession of the inventory; and

28 (4) The notification states that the person sending the notification has or expects to
29 acquire a purchase money security interest in inventory of the debtor and describes the
30 inventory.

31 (c) *Holders of conflicting inventory security interests to be notified.* Paragraphs (2)
32 through (4) of subsection (b) of this Code section apply only if the holder of the conflicting
33 security interest had filed a financing statement covering the same types of inventory:

34 (1) If the purchase money security interest is perfected by filing, before the date of the
35 filing; or

(2) If the purchase money security interest is temporarily perfected without filing or possession under subsection (f) of Code Section 11-9-312, before the beginning of the 20 day period thereunder.

(d) *Livestock purchase money priority.* Subject to subsection (e) of this Code section and except as otherwise provided in subsection (g) of this Code section, a perfected purchase money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Code Section 11-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase money security interest in livestock of the debtor and describes the livestock.

(e) *Holders of conflicting livestock security interests to be notified.* Paragraphs (2) through (4) of subsection (d) of this Code section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase money security interest is temporarily perfected without filing or possession under subsection (f) of Code Section 11-9-312, before the beginning of the 20 day period thereunder.

(f) *Software purchase money priority.* Except as otherwise provided in subsection (g) of this Code section, a perfected purchase money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Code Section 11-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this Code section.

(g) *Conflicting purchase money security interests.* If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this Code section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, subsection (a) of Code Section 11-9-322 applies to the qualifying security interests.

11-9-325. Priority of security interests in transferred collateral.

(a) *Subordination of security interest in transferred collateral.* Except as otherwise provided in subsection (b) of this Code section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) *Limitation of subsection (a) of this Code section subordination.* Subsection (a) of this Code section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under subsection (a) of Code Section 11-9-322 or Code Section 11-9-324; or

(2) Arose solely under subsection (3) of Code Section 11-2-711 or subsection (5) of Code Section 11-2A-508.

11-9-326. Priority of security interests created by new debtor.

(a) *Subordination of security interest created by new debtor.* Subject to subsection (b) of this Code section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Code Section 11-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Code Section 11-9-508.

(b) *Priority under other provisions; multiple original debtors.* The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Code Section 11-9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

11-9-327. **Priority of security interests in deposit account.**

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Code Section 11-9-104 has priority over a conflicting security interest held by a secured party that does not have control;

(2) Except as otherwise provided in paragraphs (3) and (4) of this Code section, security interests perfected by control under Code Section 11-9-314 rank according to priority in time of obtaining control;

(3) Except as otherwise provided in paragraph (4) of this Code section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party; and

(4) A security interest perfected by control under paragraph (3) of subsection (a) of Code Section 11-9-104 has priority over a security interest held by the bank with which the deposit account is maintained.

11-9-328. **Priority of security interests in investment property.**

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Code Section 11-9-106 has priority over a security interest held by a secured party that does not have control of the investment property;

(2) Except as otherwise provided in paragraphs (3) and (4) of this Code section, conflicting security interests held by secured parties each of which has control under Code Section 11-9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under paragraph (1) of subsection (d) of Code Section 11-8-106, the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under paragraph (2) of subsection (d) of Code Section 11-8-106, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under paragraph (3) of subsection (d) of Code Section 11-8-106, the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in paragraph (2) of subsection (b) of Code Section 11-9-106 with respect to commodity contracts carried or to be carried with the commodity intermediary;

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party;

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party;

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under subsection (a) of Code Section 11-9-313 and not by control under Code Section 11-9-314 has priority over a conflicting security interest perfected by a method other than control;

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Code Section 11-9-106 rank equally; and

(7) In all other cases, priority among conflicting security interests in investment property is governed by Code Sections 11-9-322 and 11-9-323.

11-9-329. Priority of security interests in letter of credit right.

The following rules govern priority among conflicting security interests in the same letter of credit right:

(1) A security interest held by a secured party having control of the letter of credit right under Code Section 11-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control; and

(2) Security interests perfected by control under Code Section 11-9-314 rank according to priority in time of obtaining control.

11-9-330. Priority of purchaser of chattel paper or instrument.

(a) *Purchaser's priority; security interest claimed merely as proceeds.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Code Section 11-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) *Purchaser's priority; other security interests.* A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Code Section 11-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) *Chattel paper purchaser's priority in proceeds.* Except as otherwise provided in Code Section 11-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this Code section also has priority in proceeds of the chattel paper to the extent that:

(1) Code Section 11-9-322 provides for priority in the proceeds; or

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

(d) *Instrument purchaser's priority.* Except as otherwise provided in subsection (a) of Code Section 11-9-331, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) *Holder of purchase money security interest gives new value.* For purposes of subsections (a) and (b) of this Code section, the holder of a purchase money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) *Indication of assignment gives knowledge.* For purposes of subsections (b) and (d) of this Code section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

11-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8 of this title.

(a) *Rights under Articles 3, 7, and 8 of this title not limited.* This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of this title.

1 (b) *Protection under Article 8 of this title.* This article does not limit the rights of or
2 impose liability on a person to the extent that the person is protected against the assertion
3 of a claim under Article 8 of this title.

4 (c) *Filing not notice.* Filing under this article does not constitute notice of a claim or
5 defense to the holders or purchasers or persons described in subsections (a) and (b) of this
6 Code section.

7 **11-9-332. Transfer of money; transfer of funds from deposit account.**

8 (a) *Transferee of money.* A transferee of money takes the money free of a security interest
9 unless the transferee acts in collusion with the debtor in violating the rights of the secured
10 party.

11 (b) *Transferee of funds from deposit account.* A transferee of funds from a deposit account
12 takes the funds free of a security interest in the deposit account unless the transferee acts
13 in collusion with the debtor in violating the rights of the secured party.

14 **11-9-333. Priority of certain liens.**

15 (a) *Year's support; property taxes; other state taxes; other taxes or judgments.* Except as
16 is expressly provided to the contrary elsewhere in this article and in subsection (b) of this
17 Code section, a perfected security interest in collateral takes priority over each and all of
18 the liens, claims, and rights described in Code Section 44-14-320, relating to the
19 establishment of certain liens, as now or hereafter amended, and Code Section 53-7-91 of
20 the 'Pre-1998 Probate Code,' if applicable, or Code Section 53-7-40 of the 'Revised Probate
21 Code of 1998,' relating to the priority of debts against the estate of a decedent, as now or
22 hereafter amended, provided, nevertheless, that:

23 (1) Year's support to the family, duly set apart in the collateral prior to the perfection of
24 the subject security interest, takes priority over such security interest;

25 (2) A lien for property taxes duly assessed upon the subject collateral, either prior or
26 subsequent to the perfection of the subject security interest, takes priority over security
27 interest;

28 (3) A lien for all other state taxes takes priority over such security interest, except where
29 such security interest is perfected by filing a financing statement relative thereto prior to
30 such time as the execution for such state taxes shall be entered on the execution docket
31 in the place and in the manner provided by law; provided, nevertheless, that, with respect
32 to priority rights between such tax liens and security interests where under this article the
33 same are perfected other than by filing a financing statement, the same shall be
34 determined as provided by law prior to January 1, 1964; and

(4) A lien for other unpaid taxes or a duly rendered judgment of a court having jurisdiction shall have the same priority with regard to a security interest as it would have if the tax lien or judgment were a conflicting security interest within the meaning of Code Section 11-9-322 or an encumbrance within the meaning of Code Section 11-9-334, which conflicting security interest was perfected by filing or which encumbrance arose at the time the tax lien or judgment was duly recorded in the place designated by statute applicable thereto.

(b) *Mechanics' liens on farm machinery.* A mechanics' lien on farm machinery or equipment arising on or after July 1, 1985, shall have priority over any perfected security interest in such farm machinery or equipment unless a financing statement has been filed as provided in Code Section 11-9-501 and unless the financing statement describes the particular piece of farm machinery or equipment to which the perfected security interest applies. Such description may include the make, model, and serial number of the piece of farm machinery or equipment. However, such description shall be sufficient whether or not it is specific if it reasonably identifies what is described and a mistake in such description shall not invalidate the description if it provides a key to identifying the farm machinery or equipment.

11-9-334. Priority of security interests in fixtures and crops.

(a) *Security interest in fixtures under this article.* A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) *Security interest in fixtures under real property law.* This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) *General rule; subordination of security interest in fixtures.* In cases not governed by subsections (d) through (h) of this Code section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) *Fixtures purchase money priority.* Except as otherwise provided in subsection (h) of this Code section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures;

and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) *Priority of security interest in fixtures over interests in real property.* A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods; or

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article.

(f) *Priority based on consent, disclaimer, or right to remove.* A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

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

(g) *Continuation of subsection (f) of this Code section priority.* The priority of the security interest under paragraph (2) of subsection (f) of this Code section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) *Priority of construction mortgage.* A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this Code section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the

1 completion of the construction. A mortgage has this priority to the same extent as a
2 construction mortgage to the extent that it is given to refinance a construction mortgage.

3 (i) *Priority of security interest in crops.* A perfected security interest in or agricultural lien
4 upon crops growing on real property has priority over a conflicting interest of an
5 encumbrancer or owner of the real property if the debtor has an interest of record in or is
6 in possession of the real property.

7 **11-9-335. Accessions.**

8 (a) *Creation of security interest in accession.* A security interest may be created in an
9 accession and continues in collateral that becomes an accession.

10 (b) *Perfection of security interest.* If a security interest is perfected when the collateral
11 becomes an accession, the security interest remains perfected in the collateral.

12 (c) *Priority of security interest.* Except as otherwise provided in subsection (d) of this
13 Code section, the other provisions of this part determine the priority of a security interest
14 in an accession.

15 (d) *Compliance with certificate of title statute.* A security interest in an accession is
16 subordinate to a security interest in the whole which is perfected by compliance with the
17 requirements of a certificate of title statute under subsection (b) of Code Section 11-9-311.

18 (e) *Removal of accession after default.* After default, subject to Part 6 of this article, a
19 secured party may remove an accession from other goods if the security interest in the
20 accession has priority over the claims of every person having an interest in the whole.

21 (f) *Reimbursement following removal.* A secured party that removes an accession from
22 other goods under subsection (e) of this Code section shall promptly reimburse any holder
23 of a security interest or other lien on, or owner of, the whole or of the other goods, other
24 than the debtor, for the cost of repair of any physical injury to the whole or the other goods.
25 The secured party need not reimburse the holder or owner for any diminution in value of
26 the whole or the other goods caused by the absence of the accession removed or by any
27 necessity for replacing it. A person entitled to reimbursement may refuse permission to
28 remove until the secured party gives adequate assurance for the performance of the
29 obligation to reimburse.

30 **11-9-336. Commingled goods.**

31 (a) *'Commingled goods.'* As used in this Code section, the term 'commingled goods' means
32 goods that are physically united with other goods in such a manner that their identity is lost
33 in a product or mass.

1 (b) *No security interest in commingled goods as such.* A security interest does not exist
2 in commingled goods as such. However, a security interest may attach to a product or
3 mass that results when goods become commingled goods.

4 (c) *Attachment of security interest to product or mass.* If collateral becomes commingled
5 goods, a security interest attaches to the product or mass.

6 (d) *Perfection of security interest.* If a security interest in collateral is perfected before the
7 collateral becomes commingled goods, the security interest that attaches to the product or
8 mass under subsection (c) of this Code section is perfected.

9 (e) *Priority of security interest.* Except as otherwise provided in subsection (f) of this
10 Code section, the other provisions of this part determine the priority of a security interest
11 that attaches to the product or mass under subsection (c) of this Code section.

12 (f) *Conflicting security interests in product or mass.* If more than one security interest
13 attaches to the product or mass under subsection (c) of this Code section, the following
14 rules determine priority:

15 (1) A security interest that is perfected under subsection (d) of this Code section has
16 priority over a security interest that is unperfected at the time the collateral becomes
17 commingled goods; and

18 (2) If more than one security interest is perfected under subsection (d) of this Code
19 section, the security interests rank equally in proportion to the value of the collateral at
20 the time it became commingled goods.

21 **11-9-337. Priority of security interests in goods covered by certificate of title.**

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

26 (1) A buyer of the goods, other than a person in the business of selling goods of that
27 kind, takes free of the security interest if the buyer gives value and receives delivery of
28 the goods after issuance of the certificate and without knowledge of the security interest;
29 and

30 (2) The security interest is subordinate to a conflicting security interest in the goods that
31 attaches and is perfected under subsection (b) of Code Section 11-9-311, after issuance
32 of the certificate and without the conflicting secured party's knowledge of the security
33 interest.

11-9-338. **Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in paragraph (5) of subsection (b) of Code Section 11-9-516 which is incorrect at the time the financing statement is filed:

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

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

11-9-339. **Priority subject to subordination.**

This article does not preclude subordination by agreement by a person entitled to priority.

Subpart 4

Rights of Bank

11-9-340. **Effectiveness of right of recoupment or set-off against deposit account.**

(a) *Exercise of recoupment or set-off.* Except as otherwise provided in subsection (c) of this Code section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) *Recoupment or set-off not affected by security interest.* Except as otherwise provided in subsection (c) of this Code section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) *When set-off ineffective.* The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under paragraph (3) of subsection (a) of Code Section 11-9-104, if the set-off is based on a claim against the debtor.

11-9-341. **Bank's rights and duties with respect to deposit account.**

Except as otherwise provided in subsection (c) of Code Section 11-9-340, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect

to a deposit account maintained with the bank are not terminated, suspended, or modified by:

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

11-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the kind described in paragraph (2) of subsection (a) of Code Section 11-9-104, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Part 4

Rights of Third Parties

11-9-401. Alienability of debtor's rights.

(a) *Other law governs alienability; exceptions.* Except as otherwise provided in subsection (b) of this Code section and Code Sections 11-9-406, 11-9-407, 11-9-408, and 11-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) *Agreement does not prevent transfer.* An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

11-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

11-9-403. Agreement not to assert defenses against assignee.

(a) *'Value.'* As used in this Code section, the term 'value' has the meaning provided in subsection (a) of Code Section 11-3-303.

(b) *Agreement not to assert claim or defense.* Except as otherwise provided in this Code section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- 1 (1) For value;
- 2 (2) In good faith;
- 3 (3) Without notice of a claim of a property or possessory right to the property assigned;
- 4 and
- 5 (4) Without notice of a defense or claim in recoupment of the type that may be asserted
- 6 against a person entitled to enforce a negotiable instrument under subsection (a) of Code
- 7 Section 11-3-305.

8 (c) *When subsection (b) of this Code section not applicable.* Subsection (b) of this Code
9 section does not apply to defenses of a type that may be asserted against a holder in due
10 course of a negotiable instrument under subsection (b) of Code Section 11-3-305.

11 (d) *Omission of required statement in consumer transaction.* In a consumer transaction,
12 if a record evidences the account debtor's obligation, law other than this article requires
13 that the record include a statement to the effect that the rights of an assignee are subject to
14 claims or defenses that the account debtor could assert against the original obligee, and the
15 record does not include such a statement:

- 16 (1) The record has the same effect as if the record included such a statement; and
- 17 (2) The account debtor may assert against an assignee those claims and defenses that
- 18 would have been available if the record included such a statement.

19 (e) *Rule for individual under other law.* This Code section is subject to law other than this
20 article which establishes a different rule for an account debtor who is an individual and
21 who incurred the obligation primarily for personal, family, or household purposes.

22 (f) *Other law not displaced.* Except as otherwise provided in subsection (d) of this Code
23 section, this Code section does not displace law other than this article which gives effect
24 to an agreement by an account debtor not to assert a claim or defense against an assignee.

25 **11-9-404. Rights acquired by assignee; claims and defenses against assignee.**

26 (a) *Assignee's rights subject to terms, claims, and defenses; exceptions.* Unless an account
27 debtor has made an enforceable agreement not to assert defenses or claims and subject to
28 subsections (b) through (e) of this Code section, the rights of an assignee are subject to:

- 29 (1) All terms of the agreement between the account debtor and assignor and any defense
- 30 or claim in recoupment arising from the transaction that gave rise to the contract; and
- 31 (2) Any other defense or claim of the account debtor against the assignor which accrues
- 32 before the account debtor receives a notification of the assignment authenticated by the
- 33 assignor or the assignee.

34 (b) *Account debtor's claim reduces amount owed to assignee.* Subject to subsection (c)
35 of this Code section and except as otherwise provided in subsection (d) of this Code
36 section, the claim of an account debtor against an assignor may be asserted against an

1 assignee under subsection (a) of this Code section only to reduce the amount the account
2 debtor owes.

3 (c) *Rule for individual under other law.* This Code section is subject to law other than this
4 article which establishes a different rule for an account debtor who is an individual and
5 who incurred the obligation primarily for personal, family, or household purposes.

6 (d) *Omission of required statement in consumer transaction.* In a consumer transaction,
7 if a record evidences the account debtor's obligation, law other than this article requires
8 that the record include a statement to the effect that the account debtor's recovery against
9 an assignee with respect to claims and defenses against the assignor may not exceed
10 amounts paid by the account debtor under the record, and the record does not include such
11 a statement, the extent to which a claim of an account debtor against the assignor may be
12 asserted against an assignee is determined as if the record included such a statement.

13 (e) *Inapplicability to health care insurance receivable.* This Code section does not apply
14 to an assignment of a health care insurance receivable.

15 **11-9-405. Modification of assigned contract.**

16 (a) *Effect of modification on assignee.* A modification of or substitution for an assigned
17 contract is effective against an assignee if made in good faith. The assignee acquires
18 corresponding rights under the modified or substituted contract. The assignment may
19 provide that the modification or substitution is a breach of contract by the assignor. This
20 subsection is subject to subsections (b) through (d) of this Code section.

21 (b) *Applicability of subsection (a) of this Code section.* Subsection (a) of this Code section
22 applies to the extent that:

23 (1) The right to payment or a part thereof under an assigned contract has not been fully
24 earned by performance; or

25 (2) The right to payment or a part thereof has been fully earned by performance and the
26 account debtor has not received notification of the assignment under subsection (a) of
27 Code Section 11-9-406.

28 (c) *Rule for individual under other law.* This Code section is subject to law other than this
29 article which establishes a different rule for an account debtor who is an individual and
30 who incurred the obligation primarily for personal, family, or household purposes.

31 (d) *Inapplicability to health care insurance receivable.* This Code section does not apply
32 to an assignment of a health care insurance receivable.

11-9-406. **Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.**

(a) *Discharge of account debtor; effect of notification.* Subject to subsections (b) through (i) of this Code section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) *When notification ineffective.* Subject to subsection (h) of this Code section, notification is ineffective under subsection (a) of this Code section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) *Proof of assignment.* Subject to subsection (h) of this Code section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this Code section.

(d) *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection (e) of this Code section and Code Sections 11-2A-303, 11-9-407, and 53-12-28 and subject to subsection (h) of this Code section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) *Inapplicability of subsection (d) of this Code section to certain sales.* Subsection (d) of this Code section does not apply to the sale of a payment intangible or promissory note.

(f) *Legal restrictions on assignment generally ineffective.* Except as otherwise provided in Code Sections 11-2A-303 and 11-9-407 and subject to subsections (h) and (i) of this Code section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest, in the account or chattel paper; or

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) *Paragraph (3) of subsection (b) not waivable.* Subject to subsection (h) of this Code section, an account debtor may not waive or vary its option under paragraph (3) of subsection (b) of this Code section.

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

(i) *Inapplicability to health care insurance receivable.* This Code section does not apply to an assignment of a health care insurance receivable.

11-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection (b) of this Code section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment, transfer, creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) *Effectiveness of certain terms.* Except as otherwise provided in subsection (7) of Code Section 11-2A-303, a term described in paragraph (2) of subsection (a) of this Code section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) *Security interest not material impairment.* The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection (4) of Code Section 11-2A-303 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

11-9-408. Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

(a) *Term restricting assignment generally ineffective.* Except as otherwise provided in subsection (b) of this Code section or in Code Section 53-12-28, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

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

(b) *Applicability of subsection (a) of this Code section to sales of certain rights to payment.* Subsection (a) of this Code section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

1 (c) *Legal restrictions on assignment generally ineffective.* Except as otherwise provided
2 in Code Section 53-12-28, a rule of law, statute, or regulation that prohibits, restricts, or
3 requires the consent of a government, governmental body or official, person obligated on
4 a promissory note, or account debtor to the assignment or transfer of, or creation of a
5 security interest in, a promissory note, health care insurance receivable, or general
6 intangible, including a contract, permit, license, or franchise between an account debtor and
7 a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

8 (1) Would impair the assignment, transfer, creation, attachment, or perfection of a
9 security interest; or

10 (2) Provides that the creation, attachment, or perfection of the security interest may give
11 rise to a default, breach, right of recoupment, claim, defense, termination, right of
12 termination, or remedy under the promissory note, health care insurance receivable, or
13 general intangible.

14 (d) *Limitation on ineffectiveness under subsections (a) and (c) of this Code section.* To
15 the extent that a term in a promissory note or in an agreement between an account debtor
16 and a debtor which relates to a health care insurance receivable or general intangible or a
17 rule of law, statute, or regulation described in subsection (c) of this Code section would be
18 effective under law other than this article but is ineffective under subsection (a) or (c) of
19 this Code section, the creation, attachment, or perfection of a security interest in the
20 promissory note, health care insurance receivable, or general intangible:

21 (1) Is not enforceable against the person obligated on the promissory note or the account
22 debtor;

23 (2) Does not impose a duty or obligation on the person obligated on the promissory note
24 or the account debtor;

25 (3) Does not require the person obligated on the promissory note or the account debtor
26 to recognize the security interest, pay or render performance to the secured party, or
27 accept payment or performance from the secured party;

28 (4) Does not entitle the secured party to use or assign the debtor's rights under the
29 promissory note, health care insurance receivable, or general intangible, including any
30 related information or materials furnished to the debtor in the transaction giving rise to
31 the promissory note, health care insurance receivable, or general intangible;

32 (5) Does not entitle the secured party to use, assign, possess, or have access to any trade
33 secrets or confidential information of the person obligated on the promissory note or the
34 account debtor; and

35 (6) Does not entitle the secured party to enforce the security interest in the promissory
36 note, health care insurance receivable, or general intangible.

11-9-409. **Restrictions on assignment of letter of credit rights ineffective.**

(a) *Term or law restricting assignment generally ineffective.* A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter of credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter of credit right; or

(2) Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter of credit right.

(b) *Limitation on ineffectiveness under subsection (a) of this Code section.* To the extent that a term in a letter of credit is ineffective under subsection (a) of this Code section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter of credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

Part 5

Filing

Subpart 1

Filing Office; Contents and
Effectiveness of Financing Statement

11-9-501. **Filing office.**

(a) *Filing offices.* Except as otherwise provided in subsection (b) of this Code section, if the law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral, crops, or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the clerk of the superior court of any county of this state, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) *Filing office for transmitting utilities.* The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the clerk of the superior court of any county of this state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

11-9-502. Contents of financing statement; real estate mortgages as fixture filings; time of filing financing statement.

(a) *Sufficiency of financing statement.* Subject to subsection (b) of this Code section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party;

(3) Indicates the collateral covered by the financing statement; and

(4) Where both (A) the collateral described consists only of consumer goods as defined in paragraph (24) of subsection (a) of Code Section 11-9-102 and (B) the secured obligation is originally \$5,000.00 or less, gives the maturity date of the secured obligation or specifies that such obligation is not subject to a maturity date.

(b) *Real property related financing statements.* Except as otherwise provided in subsection (b) of Code Section 11-9-501, to be sufficient, a financing statement that covers as-extracted collateral, crops, or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this Code section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) *Real estate mortgages as fixture filings.* A real estate mortgage may not be filed as a fixture filing, but one filed prior to January 1, 1995, which was effective as a fixture filing when filed, remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(d) *Filing before security agreement or attachment.* A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

11-9-503. **Name of debtor and secured party.**

(a) *Sufficiency of debtor's name.* A financing statement sufficiently provides the name of the debtor:

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

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

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

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

(4) In other cases:

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

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

(b) *Additional debtor related information.* A financing statement that provides the name of the debtor in accordance with subsection (a) of this Code section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subparagraph (a)(4)(B) of this Code section, names of partners, members, associates, or other persons comprising the debtor.

(c) *Debtor's trade name insufficient.* A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

1 (d) *Representative capacity.* Failure to indicate the representative capacity of a secured
2 party or representative of a secured party does not affect the sufficiency of a financing
3 statement.

4 (e) *Multiple debtors and secured parties.* A financing statement may provide the name of
5 more than one debtor and the name of more than one secured party.

6 **11-9-504. Indication of collateral.**

7 A financing statement sufficiently indicates the collateral that it covers if the financing
8 statement provides:

9 (1) A description of the collateral pursuant to Code Section 11-9-108; or

10 (2) An indication that the financing statement covers all assets or all personal property.

11 **11-9-505. Filing and compliance with other statutes and treaties for consignments,**
12 **leases, other bailments, and other transactions.**

13 (a) *Use of terms other than 'debtor' and 'secured party.'* A consignor, lessor, or other
14 bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file
15 a financing statement, or may comply with a statute or treaty described in subsection (a)
16 of Code Section 11-9-311, using the terms 'consignor,' 'consignee,' 'lessor,' 'lessee,' 'bailor,'
17 'bailee,' 'licensor,' 'licensee,' 'owner,' 'registered owner,' 'buyer,' 'seller,' or words of similar
18 import, instead of the terms 'secured party' and 'debtor'.

19 (b) *Effect of financing statement under subsection (a) of this Code section.* This part
20 applies to the filing of a financing statement under subsection (a) of this Code section and,
21 as appropriate, to compliance that is equivalent to filing a financing statement under
22 subsection (b) of Code Section 11-9-311, but the filing or compliance is not of itself a
23 factor in determining whether the collateral secures an obligation. If it is determined for
24 another reason that the collateral secures an obligation, a security interest held by the
25 consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is
26 perfected by the filing or compliance.

27 **11-9-506. Effect of errors or omissions.**

28 (a) *Minor errors and omissions.* A financing statement substantially satisfying the
29 requirements of this part is effective, even if it has minor errors or omissions, unless the
30 errors or omissions make the financing statement seriously misleading.

31 (b) *Financing statement seriously misleading.* Except as otherwise provided in subsection
32 (c) of this Code section, a financing statement that fails sufficiently to provide the name of
33 the debtor in accordance with subsection (a) of Code Section 11-9-503 is seriously
34 misleading.

1 (c) *Financing statement not seriously misleading.* If a search of the records of the filing
2 office under the debtor's correct name, using the filing office's standard search logic, if
3 any, would disclose a financing statement that fails sufficiently to provide the name of the
4 debtor in accordance with subsection (a) of Code Section 11-9-503, the name provided
5 does not make the financing statement seriously misleading.

6 (d) *'Debtor's correct name.'* For purposes of subsection (b) of Code Section 11-9-508, the
7 'debtor's correct name' as used in subsection (c) of this Code section means the correct
8 name of the new debtor.

9 **11-9-507. Effect of certain events on effectiveness of financing statement.**

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

14 (b) *Information becoming seriously misleading.* Except as otherwise provided in
15 subsection (c) of this Code section and Code Section 11-9-508, a financing statement is not
16 rendered ineffective if, after the financing statement is filed, the information provided in
17 the financing statement becomes seriously misleading under Code Section 11-9-506.

18 (c) *Change in debtor's name.* If a debtor so changes its name that a filed financing
19 statement becomes seriously misleading under Code Section 11-9-506:

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

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

26 **11-9-508. Effectiveness of financing statement if new debtor becomes bound by**
27 **security agreement.**

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

33 (b) *Financing statement becoming seriously misleading.* If the difference between the
34 name of the original debtor and that of the new debtor causes a filed financing statement

1 that is effective under subsection (a) of this Code section to be seriously misleading under
2 Code Section 11-9-506:

3 (1) The financing statement is effective to perfect a security interest in collateral acquired
4 by the new debtor before, and within four months after, the new debtor becomes bound
5 under subsection (d) of Code Section 11-9-203; and

6 (2) The financing statement is not effective to perfect a security interest in collateral
7 acquired by the new debtor more than four months after the new debtor becomes bound
8 under subsection (d) of Code Section 11-9-203 unless an initial financing statement
9 providing the name of the new debtor is filed before the expiration of that time.

10 (c) *When Code section not applicable.* This Code section does not apply to collateral as
11 to which a filed financing statement remains effective against the new debtor under
12 subsection (a) of Code Section 11-9-507.

13 **11-9-509. Persons entitled to file a record.**

14 (a) *Person entitled to file record.* A person may file an initial financing statement,
15 amendment that adds collateral covered by a financing statement, or amendment that adds
16 a debtor to a financing statement only if:

17 (1) The debtor authorizes the filing in an authenticated record or pursuant to subsection

18 (b) or (c) of this Code section; or

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

22 (b) *Security agreement as authorization.* By authenticating or becoming bound as debtor
23 by a security agreement, a debtor or new debtor authorizes the filing of an initial financing
24 statement, and an amendment, covering:

25 (1) The collateral described in the security agreement; and

26 (2) Property that becomes collateral under paragraph (2) of subsection (a) of Code
27 Section 11-9-315, whether or not the security agreement expressly covers proceeds.

28 (c) *Acquisition of collateral as authorization.* By acquiring collateral in which a security
29 interest or agricultural lien continues under paragraph (1) of subsection (a) of Code Section
30 11-9-315, a debtor authorizes the filing of an initial financing statement, and an
31 amendment, covering the collateral and property that becomes collateral under paragraph
32 (2) of subsection (a) of Code Section 11-9-315.

33 (d) *Person entitled to file certain amendments.* A person may file an amendment other
34 than an amendment that adds collateral covered by a financing statement or an amendment
35 that adds a debtor to a financing statement only if:

36 (1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by subsection (a) or (c) of Code Section 11-9-513, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) *Multiple secured parties of record.* If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this Code section.

11-9-510. **Effectiveness of filed record.**

(a) *Filed record effective if authorized.* A filed record is effective only to the extent that it was filed by a person that may file it under Code Section 11-9-509.

(b) *Authorization by one secured party of record.* A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) *Continuation statement not timely filed.* A continuation statement that is not filed within the six-month period prescribed by subsection (c) of Code Section 11-9-515 is ineffective.

11-9-511. **Secured party of record.**

(a) *Secured party of record.* A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under subsection (a) of Code Section 11-9-514, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) *Amendment naming secured party of record.* If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under subsection (b) of Code Section 11-9-514, the assignee named in the amendment is a secured party of record.

(c) *Amendment deleting secured party of record.* A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

11-9-512. **Amendment of financing statement.**

(a) *Amendment of information in financing statement.* Subject to Code Section 11-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness

1 of, or, subject to subsection (e) of this Code section, otherwise amend the information
2 provided in a financing statement by filing an amendment that:

3 (1) Identifies, by its file number, the initial financing statement to which the amendment
4 relates; and

5 (2) If the amendment relates to an initial financing statement filed or recorded in a filing
6 office described in paragraph (1) of subsection (a) of Code Section 11-9-501, provides
7 the information specified in subsection (b) of Code Section 11-9-502.

8 (b) *Period of effectiveness not affected.* Except as otherwise provided in Code Section
9 11-9-515, the filing of an amendment does not extend the period of effectiveness of the
10 financing statement.

11 (c) *Effectiveness of amendment adding collateral.* A financing statement that is amended
12 by an amendment that adds collateral is effective as to the added collateral only from the
13 date of the filing of the amendment.

14 (d) *Effectiveness of amendment adding debtor.* A financing statement that is amended by
15 an amendment that adds a debtor is effective as to the added debtor only from the date of
16 the filing of the amendment.

17 (e) *Certain amendments ineffective.* An amendment is ineffective to the extent it:

18 (1) Purports to delete all debtors and fails to provide the name of a debtor to be covered
19 by the financing statement; or

20 (2) Purports to delete all secured parties of record and fails to provide the name of a new
21 secured party of record.

22 **11-9-513. Termination statement.**

23 (a) *Consumer goods.* A secured party shall cause the secured party of record for a
24 financing statement to file a termination statement for the financing statement if the
25 financing statement covers consumer goods and:

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

28 (2) The debtor did not authorize the filing of the initial financing statement.

29 (b) *Time for compliance with subsection (a) of this Code section.* To comply with
30 subsection (a) of this Code section, a secured party shall cause the secured party of record
31 to file the termination statement:

32 (1) Within one month after there is no obligation secured by the collateral covered by the
33 financing statement and no commitment to make an advance, incur an obligation, or
34 otherwise give value; or

35 (2) If earlier, within 20 days after the secured party receives an authenticated demand
36 from a debtor.

1 (c) *Other collateral.* In cases not governed by subsection (a) of this Code section, within
2 90 days after there is no obligation secured by the collateral covered by or described in the
3 financing statement and no commitment to make an advance, incur an obligation, or
4 otherwise give value or, if earlier, within 20 days after a secured party receives an
5 authenticated demand from a debtor, the secured party shall cause the secured party of
6 record for a financing statement to send to the debtor a termination statement for the
7 financing statement or file the termination statement in the filing office if:

8 (1) Except in the case of a financing statement covering accounts or chattel paper that
9 has been sold or goods that are the subject of a consignment, there is no obligation
10 secured by the collateral covered by the financing statement and no commitment to make
11 an advance, incur an obligation, or otherwise give value;

12 (2) The financing statement covers accounts or chattel paper that has been sold but as to
13 which the account debtor or other person obligated has discharged its obligation;

14 (3) The financing statement covers goods that were the subject of a consignment to the
15 debtor but are not in the debtor's possession; or

16 (4) The debtor did not authorize the filing of the initial financing statement.

17 (d) *Effect of filing termination statement.* Except as otherwise provided in Code Section
18 11-9-510, upon the filing of a termination statement with the filing office, the financing
19 statement to which the termination statement relates ceases to be effective.

20 **11-9-514. Assignment of powers of secured party of record.**

21 (a) *Assignment reflected on initial financing statement.* An initial financing statement may
22 reflect an assignment of all of the secured party's power to authorize an amendment to the
23 financing statement by providing the name and mailing address of the assignee as the name
24 and address of the secured party.

25 (b) *Assignment of filed financing statement.* A secured party of record may assign of
26 record all or part of its power to authorize an amendment to a financing statement by filing
27 in the filing office an amendment of the financing statement which:

28 (1) Identifies, by its file number, the initial financing statement to which it relates;

29 (2) Provides the name of the assignor; and

30 (3) Provides the name and mailing address of the assignee.

31 **11-9-515. Duration and effectiveness of financing statement; effect of lapsed financing**
32 **statement.**

33 (a) *Five-year effectiveness.* Except as otherwise provided in subsection (d) of this Code
34 section, a filed financing statement is effective for a period of five years after the date of

1 filing or until the twentieth day after any earlier maturity date required to be specified on
2 the filed financing statement.

3 (b) *Lapse and continuation of financing statement.* The effectiveness of a filed financing
4 statement lapses on the expiration of the period of its effectiveness unless before the lapse
5 a continuation statement is filed pursuant to subsection (c) of this Code section. Upon
6 lapse, a financing statement ceases to be effective and any security interest or agricultural
7 lien that was perfected by the financing statement becomes unperfected, unless the security
8 interest is perfected otherwise. If the security interest or agricultural lien becomes
9 unperfected upon lapse, it is deemed never to have been perfected as against a purchaser
10 of the collateral for value.

11 (c) *When continuation statement may be filed.* A continuation statement may be filed only
12 within six months before the expiration of the five-year period specified in subsection (a)
13 of this Code section or the occurrence of any earlier maturity date required to be specified
14 on a filed financing statement.

15 (d) *Effect of filing continuation statement.* Except as otherwise provided in Code Section
16 11-9-510, upon timely filing of a continuation statement, the effectiveness of the initial
17 financing statement continues for a period of five years commencing on the day on which
18 the financing statement would have become ineffective in the absence of the filing or,
19 where both (1) the collateral described consists only of consumer goods as defined in
20 paragraph (24) of subsection (a) of Code Section 11-9-102 and (2) the secured obligation
21 is originally \$5,000.00 or less, any earlier maturity date of the secured obligation specified
22 on such continuation statement. Upon the expiration of the five-year period or the earlier
23 occurrence of a required specified maturity date, the financing statement lapses in the same
24 manner as provided in subsection (b) of this Code section, unless, before the lapse, another
25 continuation statement is filed pursuant to subsection (c) of this Code section. Succeeding
26 continuation statements may be filed in the same manner to continue the effectiveness of
27 the initial financing statement.

28 **11-9-516. What constitutes filing; effectiveness of filing.**

29 (a) *What constitutes filing.* Except as otherwise provided in subsection (b) of this Code
30 section, communication of a record to a filing office and tender of the filing fee or
31 acceptance of the record by the filing office constitutes filing.

32 (b) *Refusal to accept record; filing does not occur.* Filing does not occur with respect to
33 a record that a filing office refuses to accept because:

- 34 (1) The record is not communicated by a method or medium of communication
35 authorized by the filing office;
36 (2) An amount equal to or greater than the applicable filing fee is not tendered;

1 (3) The authority is unable to index the record because:

2 (A) In the case of an initial financing statement, the record does not provide a name for
3 the debtor;

4 (B) In the case of an amendment or correction statement, the record:

5 (i) Does not identify the initial financing statement as required by Code Section
6 11-9-512 or 11-9-518, as applicable;

7 (ii) Identifies an initial financing statement whose effectiveness has lapsed under
8 Code Section 11-9-515;

9 (iii) Identifies more than one initial financing statement; or

10 (iv) Indicates that it is presented to accomplish more than one action, such as
11 amendment and continuation;

12 (C) In the case of an initial financing statement that provides the name of a debtor
13 identified as an individual or an amendment that provides a name of a debtor identified
14 as an individual which was not previously provided in the financing statement to which
15 the record relates, the record does not identify the debtor's last name; or

16 (D) In the case of a record filed or recorded in the filing office described in paragraph
17 (1) of subsection (a) of Code Section 11-9-501, the record does not provide a sufficient
18 description of the real property to which it relates;

19 (4) In the case of an initial financing statement or an amendment that adds a secured
20 party of record, the record does not provide a name and mailing address for the secured
21 party of record;

22 (5) In the case of an initial financing statement or an amendment that provides a name
23 of a debtor which was not previously provided in the financing statement to which the
24 amendment relates, the record does not:

25 (A) Provide a mailing address for the debtor;

26 (B) Indicate whether the debtor is an individual or an organization; or

27 (C) If the financing statement indicates that the debtor is an organization, provide:

28 (i) A type of organization for the debtor; or

29 (ii) A jurisdiction of organization for the debtor; or

30 (6) In the case of an assignment reflected in an initial financing statement under
31 subsection (a) of Code Section 11-9-514 or an amendment filed under subsection (b) of
32 Code Section 11-9-514, the record does not provide a name and mailing address for the
33 assignee.

34 (c) *Rules applicable to subsection (b) of this Code section.* For purposes of subsection (b)
35 of this Code section:

36 (1) A record does not provide information if the filing office is unable to read or decipher
37 the information; and

(2) A record that does not indicate that it is an amendment or accurately identify an initial financing statement to which it relates, as required by Code Section 11-9-512, 11-9-514, or 11-9-518, is an initial financing statement.

(d) *Refusal to accept record; record effective as filed record.* A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this Code section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

11-9-517. **Effect of indexing errors.**

The failure of the filing office or authority to index a record correctly does not affect the effectiveness of the filed record.

11-9-518. **Inaccurate or wrongfully filed record.**

(a) *Correction statement.* A person may file a correction statement with respect to a record indexed under the person's name if the person believes that the record is inaccurate or was wrongfully filed. The correction statement shall be filed in the filing office of the county where the record was filed.

(b) *Sufficiency of correction statement.* A correction statement must:

- (1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (2) Indicate that it is a correction statement; and
- (3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) *Record not affected by correction statement.* The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Subpart 2

Duties and Operation of Filing Office
and Central Indexing System

11-9-519. **Numbering, maintaining, and indexing records; communicating information provided in records.**

(a) *Filing office duties.* For each record filed in a filing office, the filing office shall:

- (1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record or a microfilm or other photostatic, microphotographic, photographic copy, or optical image of the filed record for public inspection;

(4) Transmit each record to the authority in such form and manner as may be required by the authority within 24 hours of filing. Weekends and holidays shall not be included in the calculation of the 24 hour period; and

(5) Promptly upon discovering any discrepancy between a filed record and the information as it appears in the central indexing system, retransmit such record to the authority with a notation as to the discrepancy and a request for correction of the central indexing system information.

(b) *Central indexing system.*

(1) The authority shall administer, maintain, and modify a central indexing system which shall contain the records transmitted to it by filing offices pursuant to paragraph (4) of subsection (a) of this Code section. The authority shall, within 24 hours after receipt of each record, include the record in the central filing system and make such information available to the public through the central index. Weekends and holidays shall not be included in the calculation of the 24 hour period.

(2) The authority may designate one or more agents who will be responsible for any or all of the duties and functions of the authority set out in this Code section.

(c) *Indexing; general.* The authority shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) *Indexing; real property related financing statement.* If a financing statement is filed as a fixture filing or covers as-extracted collateral, crops, or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured

1 party were the mortgagee thereunder, or, if indexing is by description, as if the financing
2 statement were a record of a mortgage of the real property described.

3 (e) *Indexing; real property related assignment.* If a financing statement is filed as a fixture
4 filing or covers as-extracted collateral, crops, or timber to be cut, the filing office shall
5 index an assignment filed under subsection (a) of Code Section 11-9-514 or an amendment
6 filed under subsection (b) of Code Section 11-9-514:

7 (1) Under the name of the assignor as grantor; and

8 (2) To the extent that the law of this state provides for indexing a record of the
9 assignment of a mortgage under the name of the assignee, under the name of the assignee.

10 (f) *Retrieval and association capability.* The authority and each filing office shall
11 maintain a capability with respect to the records they are required to index:

12 (1) To retrieve a record by the name of the debtor and by the file number assigned to the
13 initial financing statement to which the record relates; and

14 (2) To associate and retrieve with one another an initial financing statement and each
15 filed record relating to the initial financing statement.

16 (g) *Removal of debtor's name.* The authority may not remove a debtor's name from the
17 central index until one year after the effectiveness of a financing statement naming the
18 debtor lapses under Code Section 11-9-515 with respect to all secured parties of record.

19 **11-9-520. Acceptance and refusal to accept record.**

20 (a) *Refusal to accept record.* A filing office may refuse to accept a record for filing only
21 for a reason set forth in subsection (b) of Code Section 11-9-516.

22 (b) *Communication concerning refusal.* If a filing office refuses to accept a record for
23 filing, it shall communicate to the person that presented the record the fact of and reason
24 for the refusal and the date and time the record would have been filed had the filing office
25 accepted it. The communication must be made at the time and in the manner prescribed
26 by filing office rule but in no event more than two business days after the filing office
27 receives the record.

28 (c) *When filed financing statement effective.* A filed financing statement satisfying
29 subsections (a) and (b) of Code Section 11-9-502 is effective, even if the filing office
30 refuses to accept it for filing under subsection (a) of this Code section. However, Code
31 Section 11-9-338 applies to a filed financing statement providing information described in
32 paragraph (5) of subsection (b) of Code Section 11-9-516 which is incorrect at the time the
33 financing statement is filed.

34 (d) *Separate application to multiple debtors.* If a record communicated to a filing office
35 provides information that relates to more than one debtor, this part applies as to each debtor
36 separately.

11-9-521. **Uniform form of written financing statement and amendment; authority may prescribe forms.**

(a) *Initial financing statement form.* Except for a reason set forth in subsection (b) of Code Section 11-9-516, a filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format set out in Section 9-521(a) of the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and such form and format are incorporated into this subsection by reference.

(b) *Amendment form.* Except for a reason set forth in subsection (b) of Code Section 11-9-516, a filing office that accepts written records may not refuse to accept a written record amending an initial financing statement if such record is in the form and format set out in Section 9-521(b) of the Official Text of Revised Article 9, 2000 Revision, of the Uniform Commercial Code promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and such form and format are incorporated into this subsection by reference.

(c) The authority may prescribe forms for initial financing statements and amendments. Subject to the provisions of subsections (a) and (b) of this Code section, all written financing statements and amendments must be presented for filing on forms prescribed by the authority.

11-9-522. **Maintenance and destruction of records.**

(a) *Postlapse maintenance and retrieval of information.* The authority shall maintain a record of the information provided in a filed record for at least one year after the effectiveness of such record or the initial financing statement to which such record relates has lapsed under Code Section 11-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) *Destruction of written records.* Except to the extent that an applicable statute governing disposition of public records provides otherwise, the filing office or the authority immediately may destroy any written record evidencing a financing statement. However, if the filing office or the authority destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this Code section.

11-9-523. **Information from filing office and central indexing system; sale or license of records.**

(a) *Acknowledgment of filing written record.* If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to paragraph (1) of subsection (a) of Code Section 11-9-519 and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to paragraph (1) of subsection (a) of Code Section 11-9-519 and the date and time of the filing of the record;

and

(2) Send the copy to the person.

(b) *Acknowledgment of filing other record.* If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to paragraph (1) of subsection (a) of Code Section 11-9-519; and

(3) The date and time of the filing of the record.

(c) *Communication of requested information.* Upon payment of a fee therefor established from time to time by the authority, the authority shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the authority, but not a date earlier than three business days before the authority receives the request, any financing statement that:

(A) Designates a particular debtor (or, if the request so states, designates a particular debtor at the address specified in the request);

(B) Has not lapsed under Code Section 11-9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under Code Section 11-9-515 and a record of which is maintained by the authority under subsection (a) of Code Section 11-9-522;

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) *Medium for communicating information.* In complying with its duty under subsection (c) of this Code section, the authority may communicate information in any medium. However, if requested, the authority shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(e) *Timeliness of performance.* The filing office shall perform the acts required by subsections (a) and (b) of this Code section and the authority shall perform the acts required by subsections (c) and (d) of this Code section at the time and in the manner prescribed by filing office rule but not later than two business days after the filing office or the authority, as the case may be, receives the request.

(f) *Public availability of records.* At least weekly, the authority shall offer to sell or license to the public on a nonexclusive basis, upon payment of the fee therefor established from time to time by the authority, in bulk, copies of all records transmitted to it under this part, in every medium from time to time available to the authority.

11-9-524. Delay by filing office or authority.

Delay by the filing office or authority beyond a time limit prescribed by this part is excused if:

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

11-9-525. Fees.

(a) *Initial financing statement; general.* Except as otherwise provided in subsection (b) of this Code section, the fees for filing a record under this part are the amounts specified in Article 2 of Chapter 6 of Title 15.

(b) *Fees of the Georgia Superior Court Clerks' Cooperative Authority.* The Georgia Superior Court Clerks' Cooperative Authority is authorized to set and collect fees for incidental services and information provided by the authority or its designated agent with respect to the central indexing system if such fees are not otherwise prescribed by law.

11-9-526. Rules.

(a) *Adoption of filing office rules.* The authority shall adopt and publish rules to implement this article, including rules to administer, maintain, and modify the central indexing system. The filing office rules must be consistent with this article.

(b) *Harmonization of rules.* To keep the filing office rules, practices of the filing offices, and practices of the authority in harmony with the rules and practices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing offices and the authority compatible with the technology used in other jurisdictions that enact substantially this part, the authority, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing office rules, shall:

- (1) Consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and
- (3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

(c) *Notification system for farm products.* The authority shall not be authorized to adopt rules to implement a notification system for farm products in conformity with the requirements of Section 1324 of the federal Food Security Act of 1985, P.L. 99-198, as now in effect or as hereafter amended, and shall not be authorized to request certification of such notification system by the secretary of the United States Department of Agriculture.

Part 6

Default

Subpart 1

Default and Enforcement of Security Interest

11-9-601. **Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

(a) *Rights of secured party after default.* After default, a secured party has the rights provided in this part and, except as otherwise provided in Code Section 11-9-602, those provided by agreement of the parties. A secured party:

- (1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- (2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under Code Section 11-9-104, 11-9-105, 11-9-106, or 11-9-107 has the rights and duties provided in Code Section 11-9-207.

(c) *Rights cumulative; simultaneous exercise.* The rights under subsections (a) and (b) of this Code section are cumulative and may be exercised simultaneously.

(d) *Rights of debtor and obligor.* Except as otherwise provided in subsection (g) of this Code section and Code Section 11-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) *Lien of levy after judgment.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) *Execution sale.* A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this Code section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) *Consignor or buyer of certain rights to payment.* Except as otherwise provided in subsection (c) of Code Section 11-9-607, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

11-9-602. Waiver and variance of rights and duties.

Except as otherwise provided in Code Section 11-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Subparagraph (b)(4)(C) of Code Section 11-9-207, which deals with use and operation of the collateral by the secured party;

(2) Code Section 11-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Subsection (c) of Code Section 11-9-607, which deals with collection and enforcement of collateral;

(4) Subsection (a) of Code Section 11-9-608 and subsection (c) of Code Section 11-9-615 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Subsection (a) of Code Section 11-9-608 and subsection (d) of Code Section 11-9-615 to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Code Section 11-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Subsection (b) of Code Section 11-9-610 and Code Sections 11-9-611, 11-9-613, and 11-9-614, which deal with disposition of collateral;

(8) Subsection (f) of Code Section 11-9-615, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Code Section 11-9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Code Sections 11-9-620, 11-9-621, and 11-9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Code Section 11-9-623, which deals with redemption of collateral;

(12) Code Section 11-9-624, which deals with permissible waivers; and

(13) Code Sections 11-9-625 and 11-9-626, which deal with the secured party's liability for failure to comply with this article.

11-9-603. Agreement on standards concerning rights and duties.

(a) *Agreed standards.* The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Code Section 11-9-602 if the standards are not manifestly unreasonable.

(b) *Agreed standards inapplicable to breach of peace.* Subsection (a) of this Code section does not apply to the duty under Code Section 11-9-609 to refrain from breaching the peace.

11-9-604. Procedure if security agreement covers real property or fixtures.

(a) *Enforcement; personal and real property.* If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) *Enforcement; fixtures.* Subject to subsection (c) of this Code section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) *Removal of fixtures.* Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) *Injury caused by removal.* A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A

1 person entitled to reimbursement may refuse permission to remove until the secured party
2 gives adequate assurance for the performance of the obligation to reimburse.

3 **11-9-605. Unknown debtor or secondary obligor.**

4 A secured party does not owe a duty based on its status as secured party:

5 (1) To a person that is a debtor or obligor, unless 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 financing statement against a person,
10 unless the secured party knows:

11 (A) That the person is a debtor; and

12 (B) The identity of the person.

13 **11-9-606. Time of default for agricultural lien.**

14 For purposes of this part, a default occurs in connection with an agricultural lien at the time
15 the secured party becomes entitled to enforce the lien in accordance with the statute under
16 which it was created.

17 **11-9-607. Collection and enforcement by secured party.**

18 (a) *Collection and enforcement generally.* If so agreed, and in any event after default, a
19 secured party:

20 (1) May notify an account debtor or other person obligated on collateral to make
21 payment or otherwise render performance to or for the benefit of the secured party;

22 (2) May take any proceeds to which the secured party is entitled under Code Section
23 11-9-315;

24 (3) May enforce the obligations of an account debtor or other person obligated on
25 collateral and exercise the rights of the debtor with respect to the obligation of the
26 account debtor or other person obligated on collateral to make payment or otherwise
27 render performance to the debtor and with respect to any property that secures the
28 obligations of the account debtor or other person obligated on the collateral;

29 (4) If it holds a security interest in a deposit account perfected by control under
30 paragraph (1) of subsection (a) of Code Section 11-9-104, may apply the balance of the
31 deposit account to the obligation secured by the deposit account; and

32 (5) If it holds a security interest in a deposit account perfected by control under
33 paragraph (2) or (3) of subsection (a) of Code Section 11-9-104, may instruct the bank
34 to pay the balance of the deposit account to or for the benefit of the secured party.

1 (b) *Nonjudicial enforcement of mortgage.* If necessary to enable a secured party to
2 exercise under paragraph (3) of subsection (a) of this Code section the right of a debtor to
3 enforce a mortgage nonjudicially, the secured party may record in the office in which a
4 record of the mortgage is recorded:

5 (1) A copy of the security agreement that creates or provides for a security interest in the
6 obligation secured by the mortgage; and

7 (2) The secured party's sworn affidavit in recordable form stating that:

8 (A) A default has occurred; and

9 (B) The secured party is entitled to enforce the mortgage nonjudicially.

10 (c) *Commercially reasonable collection and enforcement.* A secured party shall proceed
11 in a commercially reasonable manner if the secured party:

12 (1) Undertakes to collect from or enforce an obligation of an account debtor or other
13 person obligated on collateral; and

14 (2) Is entitled to charge back uncollected collateral or otherwise to full or limited
15 recourse against the debtor or a secondary obligor.

16 (d) *Expenses of collection and enforcement.* A secured party may deduct from the
17 collections made pursuant to subsection (c) of this Code section reasonable expenses of
18 collection and enforcement, including reasonable attorney's fees and legal expenses
19 incurred by the secured party.

20 (e) *Duties to secured party not affected.* This Code section does not determine whether
21 an account debtor, bank, or other person obligated on collateral owes a duty to a secured
22 party.

23 **11-9-608. Application of proceeds of collection or enforcement; liability for deficiency**
24 **and right to surplus.**

25 (a) *Application of proceeds, surplus, and deficiency if obligation secured.* If a security
26 interest or agricultural lien secures payment or performance of an obligation, the following
27 rules apply:

28 (1) A secured party shall apply or pay over for application the cash proceeds of
29 collection or enforcement under Code Section 11-9-607 in the following order to:

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

33 (B) The satisfaction of obligations secured by the security interest or agricultural lien
34 under which the collection or enforcement is made; and

35 (C) The satisfaction of obligations secured by any subordinate security interest in or
36 other lien on the collateral subject to the security interest or agricultural lien under

1 which the collection or enforcement is made if the secured party receives an
2 authenticated demand for proceeds before distribution of the proceeds is completed;

3 (2) If requested by a secured party, a holder of a subordinate security interest or other
4 lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless
5 the holder complies, the secured party need not comply with the holder's demand under
6 subparagraph (C) of paragraph (1) of this subsection.

7 (3) A secured party need not apply or pay over for application noncash proceeds of
8 collection and enforcement under Code Section 11-9-607 unless the failure to do so
9 would be commercially unreasonable. A secured party that applies or pays over for
10 application noncash proceeds shall do so in a commercially reasonable manner; and

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

13 (b) *No surplus or deficiency in sales of certain rights to payment.* If the underlying
14 transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes,
15 the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

16 **11-9-609. Secured party's right to take possession after default.**

17 (a) *Possession; rendering equipment unusable; disposition on debtor's premises.* After
18 default, a secured party:

19 (1) May take possession of the collateral; and

20 (2) Without removal, may render equipment unusable and dispose of collateral on a
21 debtor's premises under Code Section 11-9-610.

22 (b) *Judicial and nonjudicial process.* A secured party may proceed under subsection (a)
23 of this Code section:

24 (1) Pursuant to judicial process; or

25 (2) Without judicial process, if it proceeds without breach of the peace.

26 (c) *Assembly of collateral.* If so agreed, and in any event after default, a secured party may
27 require the debtor to assemble the collateral and make it available to the secured party at
28 a place to be designated by the secured party which is reasonably convenient to both
29 parties.

30 **11-9-610. Disposition of collateral after default.**

31 (a) *Disposition after default.* After default, a secured party may sell, lease, license, or
32 otherwise dispose of any or all of the collateral in its present condition or following any
33 commercially reasonable preparation or processing.

34 (b) *Commercially reasonable disposition.* Every aspect of a disposition of collateral,
35 including the method, manner, time, place, and other terms, must be commercially

1 reasonable. If commercially reasonable, a secured party may dispose of collateral by
2 public or private proceedings, by one or more contracts, as a unit or in parcels, and at any
3 time and place and on any terms.

4 (c) *Purchase by secured party.* A secured party may purchase collateral:

5 (1) At a public disposition; or

6 (2) At a private disposition only if the collateral is of a kind that is customarily sold on
7 a recognized market or the subject of widely distributed standard price quotations.

8 (d) *Warranties on disposition.* A contract for sale, lease, license, or other disposition
9 includes the warranties relating to title, possession, quiet enjoyment, and the like which by
10 operation of law accompany a voluntary disposition of property of the kind subject to the
11 contract.

12 (e) *Disclaimer of warranties.* A secured party may disclaim or modify warranties under
13 subsection (d) of this Code section:

14 (1) In a manner that would be effective to disclaim or modify the warranties in a
15 voluntary disposition of property of the kind subject to the contract of disposition; or

16 (2) By communicating to the purchaser a record evidencing the contract for disposition
17 and including an express disclaimer or modification of the warranties.

18 (f) *Record sufficient to disclaim warranties.* A record is sufficient to disclaim warranties
19 under subsection (e) of this Code section if it indicates 'There is no warranty relating to
20 title, possession, quiet enjoyment, or the like in this disposition' or uses words of similar
21 import.

22 **11-9-611. Notification before disposition of collateral.**

23 (a) *'Notification date.'* As used in this Code section, the term 'notification date' means the
24 earlier of the date on which:

25 (1) A secured party sends to the debtor and any secondary obligor an authenticated
26 notification of disposition; or

27 (2) The debtor and any secondary obligor waive the right to notification.

28 (b) *Notification of disposition required.* Except as otherwise provided in subsection (d)
29 of this Code section, a secured party that disposes of collateral under Code Section
30 11-9-610 shall send to the persons specified in subsection (c) of this Code section a
31 reasonable authenticated notification of disposition.

32 (c) *Persons to be notified.* To comply with subsection (b) of this Code section, the secured
33 party shall send an authenticated notification of disposition to:

34 (1) The debtor;

35 (2) Any secondary obligor; and

36 (3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

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

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

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

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection (a) of Code Section 11-9-311.

(d) *Subsection (b) of this Code section inapplicable; perishable collateral; recognized market.* Subsection (b) of this Code section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) *Compliance with subparagraph (c)(3)(B) of this Code section.* A secured party complies with the requirement for notification prescribed by subparagraph (c)(3)(B) of this Code section if:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subparagraph (c)(3)(B) of this Code section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

11-9-612. Timeliness of notification before disposition of collateral.

(a) *Reasonable time is question of fact.* Except as otherwise provided in subsection (b) of this Code section, whether a notification is sent within a reasonable time is a question of fact.

(b) *Ten-day period sufficient in nonconsumer transaction.* In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

11-9-613. **Contents and form of notification before disposition of collateral; general.**

Except in a consumer goods transaction, the following rules apply:

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

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made;

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) of this Code section are nevertheless sufficient is a question of fact;

(3) The contents of a notification providing substantially the information specified in paragraph (1) of this Code section are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading;

(4) A particular phrasing of the notification is not required; and

(5) The following form of notification and the form appearing in paragraph (3) of Code Section 11-9-614, when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

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

From: (Name, address, and telephone number of secured party)

Name of Debtor(s): (Include only if debtor(s) is (are) not an addressee)

(For a public disposition:)

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

Day and date: _____

Time: _____

Place: _____

(For a private disposition:)

We will sell (or lease or license, as applicable) the (describe collateral) privately sometime after (day and date).

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell (or lease or license, as applicable) (for a charge of \$_____).

You may request an accounting by calling us at (telephone number).

**11-9-614. Contents and form of notification before disposition of collateral;
consumer goods transaction.**

In a consumer goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in paragraph (1) of Code Section 11-9-613;

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under Code Section 11-9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available;

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

(3) The following form of notification, when completed, provides sufficient information:

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

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

Subject: (Identification of transaction)

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

(For a public disposition:)

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

The sale will be held as follows:

Date: _____

Time: _____

Place: _____

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

(For a private disposition:)

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

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

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

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

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

We are sending this notice to the following other people who have an interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any);

(4) A notification in the form of paragraph (3) of this Code section is sufficient, even if additional information appears at the end of the form;

(5) A notification in the form of paragraph (3) of this Code section is sufficient, even if it includes errors in information not required by paragraph (1) of this Code section, unless the error is misleading with respect to rights arising under this article; and

(6) If a notification under this Code section is not in the form of paragraph (3) of this Code section, law other than this article determines the effect of including information not required by paragraph (1) of this Code section.

11-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) *Application of proceeds.* A secured party shall apply or pay over for application the cash proceeds of a disposition under Code Section 11-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

1 (A) The secured party receives from the holder of the subordinate security interest or
2 other lien an authenticated demand for proceeds before distribution of the proceeds is
3 completed; and

4 (B) In a case in which a consignor has an interest in the collateral, the subordinate
5 security interest or other lien is senior to the interest of the consignor; and

6 (4) A secured party that is a consignor of the collateral if the secured party receives from
7 the consignor an authenticated demand for proceeds before distribution of the proceeds
8 is completed.

9 (b) *Proof of subordinate interest.* If requested by a secured party, a holder of a subordinate
10 security interest or other lien shall furnish reasonable proof of the interest or lien within a
11 reasonable time. Unless the holder does so, the secured party need not comply with the
12 holder's demand under paragraph (3) of subsection (a) of this Code section.

13 (c) *Application of noncash proceeds.* A secured party need not apply or pay over for
14 application noncash proceeds of a disposition under Code Section 11-9-610 unless the
15 failure to do so would be commercially unreasonable. A secured party that applies or pays
16 over for application noncash proceeds shall do so in a commercially reasonable manner.

17 (d) *Surplus or deficiency if obligation secured.* If the security interest under which a
18 disposition is made secures payment or performance of an obligation, after making the
19 payments and applications required by subsection (a) of this Code section and permitted
20 by subsection (c) of this Code section:

21 (1) Unless paragraph (4) of subsection (a) of this Code section requires the secured party
22 to apply or pay over cash proceeds to a consignor, the secured party shall account to and
23 pay a debtor for any surplus; and

24 (2) The obligor is liable for any deficiency.

25 (e) *No surplus or deficiency in sales of certain rights to payment.* If the underlying
26 transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

27 (1) The debtor is not entitled to any surplus; and

28 (2) The obligor is not liable for any deficiency.

29 (f) *Calculation of surplus or deficiency in disposition to person related to secured party.*
30 The surplus or deficiency following a disposition is calculated based on the amount of
31 proceeds that would have been realized in a disposition complying with this part to a
32 transferee other than the secured party, a person related to the secured party, or a secondary
33 obligor if:

34 (1) The transferee in the disposition is the secured party, a person related to the secured
35 party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) *Cash proceeds received by junior secured party.* A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

11-9-616. Explanation of calculation of surplus or deficiency.

(a) *Definitions.* As used in this Code section, the term:

(1) 'Explanation' means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of this Code section of how the secured party calculated the surplus or deficiency;

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

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

(2) 'Request' means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under Code Section 11-9-610.

(b) *Explanation of calculation.* In a consumer goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Code Section 11-9-615, the secured party shall:

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

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within 14 days after receipt of a request; or

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

(c) *Required information.* To comply with subparagraph (a)(1)(B) of this Code section, a writing must provide the following information in the following order:

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

(A) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) *Substantial compliance.* A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this Code section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) *Charges for responses.* A debtor or consumer obligor is entitled without charge to one response to a request under this Code section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to paragraph (1) of subsection (b) of this Code section. The secured party may require payment of a charge not exceeding \$10.00 for each additional response.

11-9-617. **Rights of transferee of collateral.**

(a) *Effects of disposition.* A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

1 (b) *Rights of good faith transferee.* A transferee that acts in good faith takes free of the
2 rights and interests described in subsection (a) of this Code section, even if the secured
3 party fails to comply with this article or the requirements of any judicial proceeding.

4 (c) *Rights of other transferee.* If a transferee does not take free of the rights and interests
5 described in subsection (a) of this Code section, the transferee takes the collateral subject
6 to:

- 7 (1) The debtor's rights in the collateral;
- 8 (2) The security interest or agricultural lien under which the disposition is made; and
- 9 (3) Any other security interest or other lien.

10 **11-9-618. Rights and duties of certain secondary obligors.**

11 (a) *Rights and duties of secondary obligor.* A secondary obligor acquires the rights and
12 becomes obligated to perform the duties of the secured party after the secondary obligor:

- 13 (1) Receives an assignment of a secured obligation from the secured party;
- 14 (2) Receives a transfer of collateral from the secured party and agrees to accept the rights
15 and assume the duties of the secured party; or
- 16 (3) Is subrogated to the rights of a secured party with respect to collateral.

17 (b) *Effect of assignment, transfer, or subrogation.* An assignment, transfer, or subrogation
18 described in subsection (a) of this Code section:

- 19 (1) Is not a disposition of collateral under Code Section 11-9-610; and
- 20 (2) Relieves the secured party of further duties under this article.

21 **11-9-619. Transfer of record or legal title.**

22 (a) *'Transfer statement.'* As used in this Code section, the term 'transfer statement' means
23 a record authenticated by a secured party stating:

- 24 (1) That the debtor has defaulted in connection with an obligation secured by specified
25 collateral;
- 26 (2) That the secured party has exercised its postdefault remedies with respect to the
27 collateral;
- 28 (3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in
29 the collateral; and
- 30 (4) The name and mailing address of the secured party, debtor, and transferee.

31 (b) *Effect of transfer statement.* A transfer statement entitles the transferee to the transfer
32 of record of all rights of the debtor in the collateral specified in the statement in any official
33 filing, recording, registration, or certificate of title system covering the collateral. If a
34 transfer statement is presented with the applicable fee and request form to the official or
35 office responsible for maintaining the system, the official or office shall:

1 (1) Accept the transfer statement;

2 (2) Promptly amend its records to reflect the transfer; and

3 (3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

4 (c) *Transfer not a disposition; no relief of secured party's duties.* A transfer of the record
5 or legal title to collateral to a secured party under subsection (b) of this Code section or
6 otherwise is not of itself a disposition of collateral under this article and does not of itself
7 relieve the secured party of its duties under this article.

8 **11-9-620. Acceptance of collateral in full or partial satisfaction of obligation;**
9 **compulsory disposition of collateral.**

10 (a) *Conditions to acceptance in satisfaction.* Except as otherwise provided in subsection
11 (g) of this Code section, a secured party may accept collateral in full or partial satisfaction
12 of the obligation it secures only if:

13 (1) The debtor consents to the acceptance under subsection (c) of this Code section;

14 (2) The secured party does not receive, within the time set forth in subsection (d) of this
15 Code section, a notification of objection to the proposal authenticated by:

16 (A) A person to which the secured party was required to send a proposal under Code
17 Section 11-9-621; or

18 (B) Any other person, other than the debtor, holding an interest in the collateral
19 subordinate to the security interest that is the subject of the proposal;

20 (3) If the collateral is consumer goods, the collateral is not in the possession of the debtor
21 when the debtor consents to the acceptance; and

22 (4) Subsection (e) of this Code section does not require the secured party to dispose of
23 the collateral or the debtor waives the requirement pursuant to Code Section 11-9-624.

24 (b) *Purported acceptance ineffective.* A purported or apparent acceptance of collateral
25 under this Code section is ineffective unless:

26 (1) The secured party consents to the acceptance in an authenticated record or sends a
27 proposal to the debtor; and

28 (2) The conditions of subsection (a) of this Code section are met.

29 (c) *Debtor's consent.* For purposes of this Code section:

30 (1) A debtor consents to an acceptance of collateral in partial satisfaction of the
31 obligation it secures only if the debtor agrees to the terms of the acceptance in a record
32 authenticated after default; and

33 (2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation
34 it secures only if the debtor agrees to the terms of the acceptance in a record authenticated
35 after default or the secured party:

1 (A) Sends to the debtor after default a proposal that is unconditional or subject only to
2 a condition that collateral not in the possession of the secured party be preserved or
3 maintained;

4 (B) In the proposal, proposes to accept collateral in full satisfaction of the obligation
5 it secures; and

6 (C) Does not receive a notification of objection authenticated by the debtor within 20
7 days after the proposal is sent.

8 (d) *Effectiveness of notification.* To be effective under paragraph (2) of subsection (a) of
9 this Code section, a notification of objection must be received by the secured party:

10 (1) In the case of a person to which the proposal was sent pursuant to Code Section
11 11-9-621, within 20 days after notification was sent to that person; and

12 (2) In other cases:

13 (A) Within 20 days after the last notification was sent pursuant to Code Section
14 11-9-621; or

15 (B) If a notification was not sent, before the debtor consents to the acceptance under
16 subsection (c) of this Code section.

17 (e) *Mandatory disposition of consumer goods.* A secured party that has taken possession
18 of collateral shall dispose of the collateral pursuant to Code Section 11-9-610 within the
19 time specified in subsection (f) of this Code section if:

20 (1) Sixty percent of the cash price has been paid in the case of a purchase money security
21 interest in consumer goods; or

22 (2) Sixty percent of the principal amount of the obligation secured has been paid in the
23 case of a nonpurchase money security interest in consumer goods.

24 (f) *Compliance with mandatory disposition requirement.* To comply with subsection (e)
25 of this Code section, the secured party shall dispose of the collateral:

26 (1) Within 90 days after taking possession; or

27 (2) Within any longer period to which the debtor and all secondary obligors have agreed
28 in an agreement to that effect entered into and authenticated after default.

29 (g) *No partial satisfaction in consumer transaction.* In a consumer transaction, a secured
30 party may not accept collateral in partial satisfaction of the obligation it secures.

31 **11-9-621. Notification of proposal to accept collateral.**

32 (a) *Persons to which proposal to be sent.* A secured party that desires to accept collateral
33 in full or partial satisfaction of the obligation it secures shall send its proposal to:

34 (1) Any person from which the secured party has received, before the debtor consented
35 to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

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

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

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection (a) of Code Section 11-9-311.

(b) *Proposal to be sent to secondary obligor in partial satisfaction.* A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this Code section.

11-9-622. **Effect of acceptance of collateral.**

(a) *Effect of acceptance.* A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) *Discharge of subordinate interest notwithstanding noncompliance.* A subordinate interest is discharged or terminated under subsection (a) of this Code section, even if the secured party fails to comply with this article.

11-9-623. **Right to redeem collateral.**

(a) *Persons that may redeem.* A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) *Requirements for redemption.* To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in paragraph (1) of subsection (a) of Code Section 11-9-615.

(c) *When redemption may occur.* A redemption may occur at any time before a secured party:

(1) Has collected collateral under Code Section 11-9-607;

- 1 (2) Has disposed of collateral or entered into a contract for its disposition under Code
2 Section 11-9-610; or
3 (3) Has accepted collateral in full or partial satisfaction of the obligation it secures under
4 Code Section 11-9-622.

5 11-9-624. **Waiver.**

6 (a) *Waiver of disposition notification.* A debtor or secondary obligor may waive the right
7 to notification of disposition of collateral under Code Section 11-9-611 only by an
8 agreement to that effect entered into and authenticated after default.

9 (b) *Waiver of mandatory disposition.* A debtor may waive the right to require disposition
10 of collateral under subsection (e) of Code Section 11-9-620 only by an agreement to that
11 effect entered into and authenticated after default.

12 (c) *Waiver of redemption right.* Except in a consumer goods transaction, a debtor or
13 secondary obligor may waive the right to redeem collateral under Code Section 11-9-623
14 only by an agreement to that effect entered into and authenticated after default.

15 Subpart 2

16 Noncompliance with Article

17 11-9-625. **Remedies for secured party's failure to comply with article.**

18 (a) *Judicial orders concerning noncompliance.* If it is established that a secured party is
19 not proceeding in accordance with this article, a court may order or restrain collection,
20 enforcement, or disposition of collateral on appropriate terms and conditions.

21 (b) *Damages for noncompliance.* Subject to subsections (c), (d), and (f) of this Code
22 section, a person is liable for damages in the amount of any loss caused by a failure to
23 comply with this article. Loss caused by a failure to comply may include loss resulting
24 from the debtor's inability to obtain, or increased costs of, alternative financing.

25 (c) *Persons entitled to recover damages; statutory damages in consumer goods*
26 *transaction.* Except as otherwise provided in Code Section 11-9-628:

27 (1) A person that, at the time of the failure, was a debtor, was an obligor, or held a
28 security interest in or other lien on the collateral may recover damages under subsection
29 (b) of this Code section for its loss; and

30 (2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor
31 at the time a secured party failed to comply with this part may recover for that failure in
32 any event an amount not less than the credit service charge plus 10 percent of the
33 principal amount of the obligation or the time price differential plus 10 percent of the
34 cash price.

1 (d) *Recovery when deficiency eliminated or reduced.* A debtor whose deficiency is
2 eliminated under Code Section 11-9-626 may recover damages for the loss of any surplus.
3 However, a debtor or secondary obligor whose deficiency is eliminated or reduced under
4 Code Section 11-9-626 may not otherwise recover under subsection (b) of this Code
5 section for noncompliance with the provisions of this part relating to collection,
6 enforcement, disposition, or acceptance.

7 (e) *Statutory damages; noncompliance with specified provisions.* In addition to any
8 damages recoverable under subsection (b) of this Code section, the debtor, consumer
9 obligor, or person named as a debtor in a filed record, as applicable, may recover \$250.00
10 in each case from a person that:

11 (1) Fails to comply with Code Section 11-9-208;

12 (2) Fails to comply with Code Section 11-9-209;

13 (3) Files a record that the person is not entitled to file under subsection (a) of Code
14 Section 11-9-509;

15 (4) Fails to cause the secured party of record to file or send a termination statement as
16 required by subsection (a) or (c) of Code Section 11-9-513;

17 (5) Fails to comply with paragraph (1) of subsection (b) of Code Section 11-9-616 and
18 whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

19 (6) Fails to comply with paragraph (2) of subsection (b) of Code Section 11-9-616.

20 (f) *Statutory damages; noncompliance with Code Section 11-9-210.* A debtor or consumer
21 obligor may recover damages under subsection (b) of this Code section and, in addition,
22 \$250.00 in each case from a person that, without reasonable cause, fails to comply with a
23 request under Code Section 11-9-210. A recipient of a request under Code Section
24 11-9-210 which never claimed an interest in the collateral or obligations that are the subject
25 of a request under that Code section has a reasonable excuse for failure to comply with the
26 request within the meaning of this subsection.

27 (g) *Limitation of security interest; noncompliance with Code Section 11-9-210.* If a
28 secured party fails to comply with a request regarding a list of collateral or a statement of
29 account under Code Section 11-9-210, the secured party may claim a security interest only
30 as shown in the list or statement included in the request as against a person that is
31 reasonably misled by the failure.

32 **11-9-626. Action in which deficiency or surplus is in issue.**

33 (a) *Applicable rules if amount of deficiency or surplus in issue.* In an action arising from
34 a transaction, other than a consumer transaction, in which the amount of a deficiency or
35 surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue;

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part;

(3) Except as otherwise provided in Code Section 11-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance;

(4) For purposes of subparagraph (B) of paragraph (3) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum;

(5) If a deficiency or surplus is calculated under subsection (f) of Code Section 11-9-615, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) *Nonconsumer transactions; no inference.* The limitation of the rules in subsection (a) of this Code section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

11-9-627. Determination of whether conduct was commercially reasonable.

(a) *Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.* The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party

1 from establishing that the collection, enforcement, disposition, or acceptance was made in
2 a commercially reasonable manner.

3 (b) *Dispositions that are commercially reasonable.* A disposition of collateral is made in
4 a commercially reasonable manner if the disposition is made:

- 5 (1) In the usual manner on any recognized market;
- 6 (2) At the price current in any recognized market at the time of the disposition; or
- 7 (3) Otherwise in conformity with reasonable commercial practices among dealers in the
8 type of property that was the subject of the disposition.

9 (c) *Approval by court or on behalf of creditors.* A collection, enforcement, disposition,
10 or acceptance is commercially reasonable if it has been approved:

- 11 (1) In a judicial proceeding;
- 12 (2) By a bona fide creditors' committee;
- 13 (3) By a representative of creditors; or
- 14 (4) By an assignee for the benefit of creditors.

15 (d) *Approval under subsection (c) of this Code section not necessary; absence of approval*
16 *has no effect.* Approval under subsection (c) of this Code section need not be obtained, and
17 lack of approval does not mean that the collection, enforcement, disposition, or acceptance
18 is not commercially reasonable.

19 **11-9-628. Nonliability and limitation on liability of secured party; liability of**
20 **secondary obligor.**

21 (a) *Limitation of liability of secured party for noncompliance with article.* Unless a
22 secured party knows that a person is a debtor or obligor, knows the identity of the person,
23 and knows how to communicate with the person:

- 24 (1) The secured party is not liable to the person, or to a secured party or lienholder that
25 has filed a financing statement against the person, for failure to comply with this article;
26 and
- 27 (2) The secured party's failure to comply with this article does not affect the liability of
28 the person for a deficiency.

29 (b) *Limitation of liability based on status as secured party.* A secured party is not liable
30 because of its status as secured party:

- 31 (1) To a person that is a debtor or obligor, unless the secured party knows:
 - 32 (A) That the person is a debtor or obligor;
 - 33 (B) The identity of the person; and
 - 34 (C) How to communicate with the person; or
- 35 (2) To a secured party or lienholder that has filed a financing statement against a person,
36 unless the secured party knows:

1 (A) That the person is a debtor; and

2 (B) The identity of the person.

3 (c) *Limitation of liability if reasonable belief that transaction not a consumer goods*
4 *transaction or consumer transaction.* A secured party is not liable to any person, and a
5 person's liability for a deficiency is not affected, because of any act or omission arising out
6 of the secured party's reasonable belief that a transaction is not a consumer goods
7 transaction or a consumer transaction or that goods are not consumer goods, if the secured
8 party's belief is based on its reasonable reliance on:

9 (1) A debtor's representation concerning the purpose for which collateral was to be used,
10 acquired, or held; or

11 (2) An obligor's representation concerning the purpose for which a secured obligation
12 was incurred.

13 (d) *Limitation of liability for statutory damages.* A secured party is not liable to any
14 person under paragraph (2) of subsection (c) of Code Section 11-9-625 for its failure to
15 comply with Code Section 11-9-616.

16 (e) *Limitation of multiple liability for statutory damages.* A secured party is not liable
17 under paragraph (2) of subsection (c) of Code Section 11-9-625 more than once with
18 respect to any one secured obligation.

19 Part 7

20 Transition

21 11-9-701. **Effective date.**

22 This article takes effect on July 1, 2001.

23 11-9-702. **Savings clause.**

24 (a) *Pre-effective date transactions or liens.* Except as otherwise provided in this part, this
25 article applies to a transaction or lien within its scope, even if the transaction or lien was
26 entered into or created before July 1, 2001.

27 (b) *Continuing validity.* Except as otherwise provided in subsection (c) of this Code
28 section and Code Sections 11-9-703 through 11-9-709:

29 (1) Transactions and liens that were not governed by former Article 9 of this title, were
30 validly entered into or created before July 1, 2001, and would be subject to this article if
31 they had been entered into or created on or after July 1, 2001, and the rights, duties, and
32 interests flowing from those transactions and liens remain valid on or after July 1, 2001;
33 and

(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law, as amended and in effect from time to time, that otherwise would apply before July 1, 2001.

(c) *Pre-effective date proceedings.* This article and amendments to other Code sections which amendments were enacted in conjunction with this article do not affect an action, case, or proceeding commenced before July 1, 2001.

11-9-703. Security interest perfected before effective date.

(a) *Continuing priority over lien creditor; perfection requirements satisfied.* A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, on July 1, 2001, the applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) *Continuing priority over lien creditor; perfection requirements not satisfied.* Except as otherwise provided in Code Section 11-9-705, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this article are not satisfied on July 1, 2001, the security interest:

- (1) Is a perfected security interest on and for one year after July 1, 2001;
- (2) Remains enforceable thereafter only if the security interest becomes enforceable under Code Section 11-9-203 before the year expires; and
- (3) Remains perfected thereafter only if the applicable requirements for perfection under this article are satisfied before the year expires.

11-9-704. Security interest unperfected before effective date.

A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) Remains an enforceable security interest on and for one year after July 1, 2001;
- (2) Remains enforceable thereafter if the security interest becomes enforceable under Code Section 11-9-203 on July 1, 2001, or within one year thereafter; and
- (3) Becomes perfected:
 - (A) Without further action, on July 1, 2001, if the applicable requirements for perfection under this article are satisfied before or at that time; or
 - (B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

11-9-705. **Effectiveness of action taken before effective date.**

(a) *Pre-effective date action; one-year perfection period unless reperfected.* If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this article within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) *Pre-effective date filing.* The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) *Pre-effective date filing in jurisdiction formerly governing perfection.* This article and amendments to other Code sections which amendments were enacted in conjunction with this article do not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Code Section 11-9-103. However, except as otherwise provided in subsections (d) and (e) of this Code section and Code Section 11-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) *Continuation statement.* The filing of a continuation statement on or after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement on or after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this article, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) *Application of paragraph (2) of subsection (c) of this Code section to transmitting utility financing statement.* Paragraph (2) of subsection (c) of this Code section applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Code Section 11-9-103 only to the extent that Part 3 of this article provides that the law of a jurisdiction other than jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) *Application of Part 5 of this article.* A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective only to the extent that it satisfies the requirements of Part 5 of this article for an initial financing statement.

11-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) *Initial financing statement in lieu of continuation statement.* The filing of an initial financing statement in the office specified in Code Section 11-9-501 continues the effectiveness of a financing statement filed before July 1, 2001, if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;

(2) The pre-effective date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this Code section.

(b) *Period of continued effectiveness.* The filing of an initial financing statement under subsection (a) of this Code section continues the effectiveness of the pre-effective date financing statement:

(1) If the initial financing statement is filed before July 1, 2001, for the period provided in former Code Section 11-9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed on or after July 1, 2001, for the period provided in Code Section 11-9-515 with respect to an initial financing statement.

(c) *Requirements for initial financing statement under subsection (a) of this Code section.*

To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Part 5 of this article for an initial financing statement;

(2) Identify the pre-effective date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective date financing statement remains effective.

11-9-707. Amendment of pre-effective date financing statement.

(a) *'Pre-effective date financing statement.'* In this Code section, 'pre-effective date financing statement' means a financing statement filed before July 1, 2001.

(b) *Applicable law.* On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective date financing statement only in accordance with the law of the

jurisdiction governing perfection as provided in Part 3 of this article. However, the effectiveness of a pre-effective date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) *Method of amending: general rule.* Except as otherwise provided in subsection (d) of this Code section, if the law of this state governs perfection of a security interest, the information in a pre-effective date financing statement may be amended on or after July 1, 2001, only if:

(1) The pre-effective date financing statement and an amendment are filed in the office specified in Code Section 11-9-501;

(2) An amendment is filed in the office specified in Code Section 11-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies subsection (c) of Code Section 11-9-706; or

(3) An initial financing statement that provides the information as amended and satisfies subsection (c) of Code Section 11-9-706 is filed in the office specified in Code Section 11-9-501.

(d) *Method of amending: continuation.* If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective date financing statement may be continued only under subsections (d) and (f) of Code Section 11-9-705 or Code Section 11-9-706.

(e) *Method of amending: additional termination rule.* Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective date financing statement filed in this state may be terminated on and after July 1, 2001, by filing a termination statement in the office in which the pre-effective date financing statement is filed, unless an initial financing statement that satisfies subsection (c) of Code Section 11-9-706 has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 of this article as the office in which to file a financing statement.

11-9-708. Persons entitled to file initial financing statement or continuation statement.
A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before July 1, 2001;

or

(B) To perfect or continue the perfection of a security interest.

11-9-709. **Priority.**

(a) *Law governing priority.* This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2001, former Article 9 of this title determines priority.

(b) *Priority if security interest becomes enforceable under Code Section 11-9-203.* For purposes of subsection (a) of Code Section 11-9-322, the priority of a security interest that becomes enforceable under Code Section 11-9-203 dates from July 1, 2001, if the security interest is perfected under this article by the filing of a financing statement before July 1, 2001, which would not have been effective to perfect the security interest under former Article 9 of this title. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

11-9-710. **Exculpation.**

From July 1, 2001, until July 1, 2006, any search company shall not be liable to its customer as a result of failing to disclose the existence of a filed financing statement in any filing office or index maintained by the authority searched in good faith by such search company to the extent such failure is attributable either to the failure of such filing office or the authority, as the case may be, to have properly indexed such filed financing statement or to the failure of the search logic used by such filing office or the authority, as the case may be, to disclose such filed financing statement in response to a search in the appropriate records of such filing office or of such index in the name provided to such search company by its customer. As used in this Code section, 'search company' shall mean any person engaged in the business of conducting or arranging searches of public records of filed financing statements. On and after July 1, 2006, the liability of a search company shall be determined by law other than this article."

SECTION 2.

Said title is further amended by striking in its entirety Code Section 11-1-105, relating to the title's territorial application and the parties' power to choose applicable law, and inserting in lieu thereof the following:

"11-1-105. Territorial application of the title; parties' power to choose applicable law.

(1) Except as provided hereafter in this Code section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Code Section 11-2-402.

Applicability of the article of this title on leases (Article 2A of this title). Code Sections 11-2A-105 and 11-2A-106.

Applicability of the article of this title on bank deposits and collections (Article 4 of this title). Code Section 11-4-102.

Bulk transfers subject to the article of this title on bulk transfers (Article 6 of this title). Code Section 11-6-102.

Applicability of the article of this title on investment securities (Article 8 of this title). Code Section 11-8-110.

~~Perfection provisions of the article of this title on secured transactions (Article 9 of this title). Code Section 11-9-103.~~ Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Code Sections 11-9-301 through 11-9-307.

Governing law in the article on funds transfers (Article 4A of this title). Code Section 11-4A-507."

SECTION 3.

Said title is further amended in Code Section 11-1-201, relating to general definitions, by striking in their entirety subsections (9), (32), and (37), and inserting in lieu thereof the following:

"(9) 'Buyer in ordinary course of business' means a person ~~who~~ that buys goods in good faith ~~and without knowledge that the sale to him is in violation of~~ violates the ownership rights ~~or security interest of a third party of another person~~ in the goods, and buys in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind ~~but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. 'Buying' A buyer in the ordinary course of business may ~~be~~ buy for cash, ~~or by exchange of other property,~~ or on secured or unsecured credit and includes receiving may acquire goods or documents of title under a preexisting contract for sale ~~but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~ Only

1 a buyer that takes possession of the goods or has a right to recover the goods from the seller
2 under Article 2 of this title may be a buyer in ordinary course of business. A person that
3 acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a
4 money debt is not a buyer in ordinary course of business."

5 "(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien,
6 security interest, issue or reissue, gift, or any other voluntary transaction creating an
7 interest in property."

8 "(37) 'Security interest' means an interest in personal property or fixtures which secures
9 payment or performance of an obligation. ~~The retention or reservation of title by a seller~~
10 ~~of goods notwithstanding shipment or delivery to the buyer (Code Section 11-2-401) is~~
11 ~~limited in effect to a reservation of a 'security interest.'~~ The term also includes any interest
12 of a consignor and a buyer of accounts, or chattel paper which, a payment intangible, or a
13 promissory note in a transaction that is subject to Article 9 of this title. The special
14 property interest of a buyer of goods on identification of those goods to a contract for sale
15 under Code Section 11-2-401 is not a 'security interest,' but a buyer may also acquire a
16 'security interest' by complying with Article 9 of this title. ~~Unless a consignment is~~
17 ~~intended as security, reservation of title thereunder is not a 'security interest,' but a~~
18 ~~consignment in any event is subject to the provisions on consignment sales (Code Section~~
19 ~~11-2-326).~~ Except as otherwise provided in Code Section 11-2-505, the right of a seller
20 or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the
21 goods is not a 'security interest,' but a seller or lessor may also acquire a 'security interest'
22 by complying with Article 9 of this title. The retention or reservation of title by a seller of
23 goods notwithstanding shipment or delivery to the buyer (Code Section 11-2-401) is
24 limited in effect to a reservation of a 'security interest.'

25 Whether a transaction creates a lease or security interest is determined by the facts of each
26 case; however, a transaction creates a security interest if the consideration the lessee is to
27 pay the lessor for the right to possession and use of the goods is an obligation for the term
28 of the lease not subject to termination by the lessee, and

- 29 (a) The original term of the lease is equal to or greater than the remaining economic life
30 of the goods,
31 (b) The lessee is bound to renew the lease for the remaining economic life of the goods
32 or is bound to become the owner of the goods,
33 (c) The lessee has an option to renew the lease for the remaining economic life of the
34 goods for no additional consideration or nominal additional consideration upon
35 compliance with the lease agreement, or

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

4 A transaction does not create a security interest merely because it provides that

5 (a) The present value of the consideration the lessee is obligated to pay the lessor for the
6 right to possession and use of the goods is substantially equal to or is greater than the fair
7 market value of the goods at the time the lease is entered into,

8 (b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing,
9 recording, or registration fees, or service or maintenance costs with respect to the goods,

10 (c) The lessee has an option to renew the lease or to become the owner of the goods,

11 (d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater
12 than the reasonably predictable fair market rent for the use of the goods for the term of
13 the renewal at the time the option is to be performed, or

14 (e) The lessee has an option to become the owner of the goods for a fixed price that is
15 equal to or greater than the reasonably predictable fair market value of the goods at the
16 time the option is to be performed.

17 For purposes of this subsection (37):

18 (x) Additional consideration is not nominal if (i) when the option to renew the lease is
19 granted to the lessee the rent is stated to be the fair market rent for the use of the goods
20 for the term of the renewal determined at the time the option is to be performed, or (ii)
21 when the option to become the owner of the goods is granted to the lessee the price is
22 stated to be the fair market value of the goods determined at the time the option is to be
23 performed. Additional consideration is nominal if it is less than the lessee's reasonably

24 predictable cost of performing under the lease agreement if the option is not exercised;
25 (y) 'Reasonably predictable' and 'remaining economic life of the goods' are to be
26 determined with reference to the facts and circumstances at the time the transaction is
27 entered into; and

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

SECTION 4.

Said title is further amended in Code Section 11-2-103, relating to definitions and an index of definitions, by striking in its entirety subsection (3) and inserting in lieu thereof the following:

"(3) The following definitions in other articles of this title apply to this article:

'Check.' Code Section 11-3-104.

'Consignee.' Code Section 11-7-102.

'Consignor.' Code Section 11-7-102.

'Consumer goods.' Code Section ~~11-9-109~~ 11-9-102.

'Dishonor.' Code Section ~~11-3-507~~ 11-3-502.

'Draft.' Code Section 11-3-104."

SECTION 5.

Said title is further amended in Code Section 11-2-210, relating to delegation of performance and assignment of rights, by striking in its entirety subsection (2), inserting a new subsection (2) and a new subsection (3), and by renumbering subsections (3), (4), and (5) as subsections (4), (5), and (6), respectively, so that subsections (2) through (6) read as follows:

"(2) Except as otherwise provided in Code Section 11-9-406, unless ~~Unless~~ otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on ~~him~~ the other party by ~~his~~ the contract, or impair materially ~~his~~ the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of ~~his~~ the assignor's entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this Code section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(3)(4) Unless the circumstances indicate the contrary a prohibition of assignment of 'the contract' is to be construed as barring only the delegation to the assignee of the assignor's performance.

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

(5)(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his or her rights against the assignor demand assurances from the assignee (Code Section 11-2-609)."

SECTION 6.

Said title is further amended by striking in its entirety Code Section 11-2-326, relating to sale on approval and sale or return, consignment sales, and rights of creditors, and inserting in lieu thereof the following:

"11-2-326. **Sale on approval and sale or return; ~~consignment sales and rights of~~ creditors.**

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

(a) A 'sale on approval' if the goods are delivered primarily for use; and

(b) A 'sale or return' if the goods are delivered primarily for resale.

(2) Goods ~~Except as provided in subsection (3) of this Code section,~~ goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

~~(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as 'on consignment' or 'on memorandum.' However, this subsection is not applicable if the person making delivery:~~

~~(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or~~

~~(b) Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or~~

(c) ~~Complies with the filing provisions of the article on secured transactions (Article 9 of this title).~~

~~(4)~~(3) Any 'or return' term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (Code Section 11-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (Code Section 11-2-202)."

SECTION 7.

Said title is further amended by striking in its entirety Code Section 11-2-502, relating to the buyer's right to goods on the seller's insolvency, and inserting in lieu thereof the following:

"11-2-502. **Buyer's right to goods on seller's insolvency.**

(1) Subject to ~~subsection~~ subsections (2) and (3) of this Code section and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which ~~he~~ the buyer has a special property under the provisions of Code Section 11-2-501 may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if: ~~the seller becomes insolvent within ten days after receipt of the first installment on their price.~~

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under paragraph (a) of subsection (1) of this Code section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

~~(2)~~(3) If the identification creating ~~his~~ the buyer's special property has been made by the buyer ~~he~~ or she acquires the right to recover the goods only if they conform to the contract for sale."

SECTION 8.

Said title is further amended in Code Section 11-2-716, relating to the buyer's right to specific performance or replevin, by striking in its entirety subsection (3) and inserting in lieu thereof the following:

"(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort ~~he~~ the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of

replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

SECTION 9.

Said title is further amended by striking in its entirety subsection (3) of Code Section 11-2A-103, relating to definitions and index of definitions, and inserting in lieu thereof the following:

"(3) The following definitions in other articles of this title apply to this article:

'Account.' Code Section ~~11-9-106~~ 11-9-102(a).

'Between merchants.' Code Section 11-2-104(3).

'Buyer.' Code Section 11-2-103(1)(a).

'Chattel paper.' Code Section ~~11-9-105(1)(b)~~ 11-9-102(a).

'Consumer goods.' Code Section ~~11-9-109(1)~~ 11-9-102(a).

'Document.' Code Section ~~11-9-105(1)(f)~~ 11-9-102(a).

'Entrusting.' Code Section 11-2-403(3).

'General ~~intangibles~~ intangible.' Code Section ~~11-9-106~~ 11-9-102(a).

'Good faith.' Code Section 11-2-103(1)(b).

'Instrument.' Code Section ~~11-9-105(1)(i)~~ 11-9-102(a).

'Merchant.' Code Section 11-2-104(1).

'Mortgage.' Code Section ~~11-9-105(1)(j)~~ 11-9-102(a).

'Pursuant to commitment.' Code Section ~~11-9-105(1)(k)~~ 11-9-102(a).

'Receipt.' Code Section 11-2-103(1)(c).

'Sale.' Code Section 11-2-106(1).

'Sale on approval.' Code Section 11-2-326.

'Sale or return.' Code Section 11-2-326.

'Seller.' Code Section 11-2-103(1)(d)."

SECTION 10.

Said title is further amended by striking in its entirety Code Section 11-2A-303, relating to the alienability of a party's interest under a lease contract of the lessor's residual interest in goods, delegation of performance, and transfer of rights, and inserting in lieu thereof the following:

"11-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.

(1) As used in this Code section, 'creation of a security interest' includes the sale of a lease contract that is subject to Article 9 of this title, Secured Transactions, by reason of paragraph (3) of subsection (a) of Code Section 11-9-102(1)(b) 11-9-109.

(2) Except as provided in ~~subsections~~ subsection (3) and (4), of this Code section and in Code Section 11-9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection ~~(5)~~ (4) of this Code section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

~~(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor. For purposes of this subsection: (a) a party's 'performance' includes its rights as well as its duties; and (b) a party creating or enforcing (or seeking to create or enforce) a security interest that the lease contract prohibits or makes an event of default has the burden of proving that such a transfer does not involve an actual delegation of a material performance.~~

~~(4)~~(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection ~~(5)~~ (4) of this Code section.

~~(5)~~(4) Subject to ~~subsections~~ subsection (3) of this Code section and (4) to Code Section 11-9-407:

(a) If if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (2) of Code Section 11-2A-501(2) 11-2A-501;

(b) If ~~if~~ paragraph (a) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (x) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (y) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer. For purposes of ~~clause (b)(2)~~ determining the extent of liability for damages under this paragraph, the transferor has the burden of proving that any of the damages caused by the transfer could reasonably be or have been prevented by the party not making the transfer, and of proving the extent that they could reasonably be or have been so prevented.

~~(6)~~(5) A transfer of 'the lease' or of 'all my rights under the lease', or a transfer in similar general terms, is a transfer of rights, and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

~~(7)~~(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

~~(8)~~(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

SECTION 11.

Said title is further amended by striking in its entirety Code Section 11-2A-307, relating to the priority of liens arising by attachment or levy on, security interests in, and other claims to goods, and inserting in lieu thereof the following:

"11-2A-307. **Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

(1) Except as otherwise provided in Code Section 11-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in ~~subsections~~ subsection (3) of this Code section and
~~(4) and in Code Sections 11-2A-306 and 11-2A-308,~~ a creditor of a lessor takes subject to
the lease contract unless:

(a) ~~The~~ the creditor holds a lien that attached to the goods before the lease contract
became enforceable;

(b) ~~The creditor holds a security interest in the goods and the lessee did not give value
and receive delivery of the goods without knowledge of the security interest, or~~

(c) ~~The creditor holds a security interest in the goods which was perfected (Code Section
11-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security
interest in the goods created by the lessor even though the security interest is perfected
(Code Section 11-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold
interest free of a security interest to the extent that it secures future advances made after the
secured party acquires knowledge of the lease or more than 45 days after the lease contract
becomes enforceable, whichever first occurs, unless the future advances are made pursuant
to a commitment entered into without knowledge of the lease and before the expiration of
the 45-day period.~~

(3) Except as otherwise provided in Code Sections 11-9-317, 11-9-321, and 11-9-323, a
lessee takes a leasehold interest subject to a security interest held by a creditor of the
lessor."

SECTION 12.

Said title is further amended in Code Section 11-2A-309, relating to the lessor's and lessee's
rights when goods become fixtures, by striking in its entirety paragraph (b) of subsection (1)
and inserting in lieu thereof the following:

"(b) A 'fixture filing' is the filing, in the office where a record of a mortgage on the real
estate would be filed or recorded, of a financing statement covering goods that are or are
to become fixtures and conforming to the requirements of ~~Code Section 11-9-402(5)~~
subsections (a) and (b) of Code Section 11-9-502;".

SECTION 13.

Said title is further amended in Code Section 11-4-210, relating to the security interest of the
collecting bank in items, accompanying documents, and proceeds, by striking in its entirety
paragraph (1) of subsection (c) and inserting in lieu thereof the following:

(1) No security agreement is necessary to make the security interest enforceable ~~(paragraph (a) of subsection (1) of Code Section 11-9-203)~~ (subparagraph (b)(3)(A) of Code Section 11-9-203);”.

SECTION 14.

Said title is further amended in Article 5, relating to letters of credit, by inserting a new Code section to be designated Code Section 11-5-118 to read as follows:

"11-5-118. Security interest of issuer or nominated person.

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

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this Code section, the security interest continues and is subject to Article 9 of this title, but:

(1) A security agreement is not necessary to make the security interest enforceable under paragraph (3) of subsection (b) of Code Section 11-9-203;

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.”

SECTION 15.

Said title is further amended in Article 6, relating to bulk transfers, by amending Code Section 11-6-102, relating to defining bulk transfers, transfers of equipment, and enterprises and bulk transfers subject to Article 6, by striking in their entirety paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) A 'bulk transfer' is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise, or other inventory (Code Section ~~11-9-109~~ 11-9-102) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment (Code Section ~~11-9-109~~ 11-9-102) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise."

SECTION 16.

Said title is further amended in Code Section 11-7-503, relating to defeat of the document of title to goods in certain cases, by striking in its entirety subsection (1) and inserting in lieu thereof the following:

"(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or ~~his~~ the bailor's nominee with actual or apparent authority to ship, store, or sell or with power to obtain delivery under this article (Code Section 11-7-403) or with power of disposition under this title (Code Sections 11-2-403 and ~~11-9-307~~ 11-9-320) or other statute or rule of law; nor

(b) Acquiesced in the procurement by the bailor or ~~his~~ the bailor's nominee of any document of title."

SECTION 17.

Said title is further amended in Code Section 11-8-103, relating to rules for determining whether certain obligations and interests are securities or financial assets, by striking in its entirety subsection (f) and inserting in lieu thereof the following:

"(f) A commodity contract, as defined in subsection (a) of Code Section ~~11-9-115~~ 11-9-102, is not a security or a financial asset."

SECTION 18.

Said title is further amended in Code Section 11-8-106, relating to control, by striking subsections (d) and (f) and inserting in lieu thereof the following:

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

(1) The purchaser becomes the entitlement holder; ~~or~~

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

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser."

"(f) A purchaser who has satisfied the requirements of ~~paragraph (2) of~~ subsection (c) of this Code section or ~~paragraph (2) of subsection~~ or (d) of this Code section has control, even if the registered owner in the case of ~~paragraph (2) of~~ subsection (c) of this Code section or the entitlement holder in the case of ~~paragraph (2) of~~ subsection (d) of this Code section retains the right to make substitutions for the uncertificated security or security

entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement."

SECTION 19.

Said title is further amended in Code Section 11-8-110, relating to applicability and choice of law, by striking in its entirety subsection (e) and inserting in lieu thereof the following:

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

(1) If an agreement between the securities intermediary and its entitlement holder ~~specifies that it is governed by the law of a particular jurisdiction governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or Article 9 of this title,~~ that jurisdiction is the securities intermediary's jurisdiction;

~~(2) If paragraph (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction,~~ that jurisdiction is the securities intermediary's jurisdiction;

~~(2)(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1) of this subsection, but governing the securities account expressly specifies provides~~ that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction;

~~(3)(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) none of the preceding paragraphs of this subsection applies,~~ the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account: is located; and

~~(4)(5) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3) none of the preceding paragraphs of this subsection applies,~~ the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary is located."

SECTION 20.

Said title is further amended in Code Section 11-8-301, relating to delivery, by striking in its entirety subsection (a) and inserting in lieu thereof the following:

"(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank."

SECTION 21.

Said title is further amended by striking in its entirety subsection (a) of Code Section 11-8-302, relating to rights of the purchaser, and inserting in lieu thereof the following:

"(a) Except as otherwise provided in subsections (b) and (c) of this Code section, ~~upon delivery a purchaser~~ of a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer."

SECTION 22.

Said title is further amended by striking in its entirety Code Section 11-8-510, relating to the rights of a purchaser of security entitlement from the entitlement holder, and inserting in lieu thereof the following:

"11-8-510. **Rights of purchaser of security entitlement from entitlement holder.**

(a) In a case not covered by the priority rules in Article 9 of this title or the rules stated in subsection (c) of this Code section, an An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Code Section 11-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in Article 9 of this title, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a

1 purchaser of a security entitlement, or an interest therein, who does not obtain control.
 2 ~~Purchasers~~ Except as otherwise provided in subsection (d) of this Code section, purchasers
 3 who have control rank equally, except that a securities according to priority in time of:

4 (1) The purchaser's becoming the person for whom the securities account, in which the
 5 security entitlement is carried, is maintained, if the purchaser obtained control under
 6 paragraph (1) of subsection (d) of Code Section 11-8-106;

7 (2) The securities intermediary's agreement to comply with the purchaser's entitlement
 8 orders with respect to security entitlements carried or to be carried in the securities
 9 account in which the security entitlement is carried, if the purchaser obtained control
 10 under paragraph (2) of subsection (d) of Code Section 11-8-106; or

11 (3) If the purchaser obtained control through another person under paragraph (3) of
 12 subsection (d) of Code Section 11-8-106, the time on which priority would be based
 13 under this subsection if the other person were the secured party.

14 (d) A securities intermediary as purchaser has priority over a conflicting purchaser who
 15 has control unless otherwise agreed by the securities intermediary."

16 SECTION 23.

17 Chapter 3 of Title 1 of the Official Code of Georgia Annotated, relating to laws and statutes,
 18 is amended in Code Section 1-3-3, relating to definitions, by striking paragraph (4.1) in its
 19 entirety and inserting in lieu thereof the following:

20 "(4.1) 'Agriculture,' 'agricultural operations,' or 'agricultural or farm products' means
 21 raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or
 22 poultry; producing or storing feed for use in the production of livestock, including, but
 23 not limited to, cattle, calves, swine, hogs, goats, sheep, ratites, and rabbits, or for use in
 24 the production of poultry, including, but not limited to, chickens, hens, and turkeys;
 25 producing plants, trees, fowl, or animals; or the production of aquacultural, horticultural,
 26 dairy, livestock, poultry, eggs, and apiarian products. If the term 'agriculture,'
 27 'agricultural operations,' or 'agricultural or farm products' is defined in Title 2, Title 4, or
 28 Title 10, or Title 11 or in any chapter, article, part, subpart, or Code section of such titles,
 29 such specific definition shall control for such purposes over the definition contained in
 30 this paragraph. Agricultural or farm products are considered grown in this state if such
 31 products are grown, produced, or processed in this state, whether or not such products are
 32 composed of constituent products grown or produced outside this state."

SECTION 24.

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended in Code Section 7-1-4, relating to definitions relative to financial institutions, by striking in its entirety paragraph (2) and inserting in lieu thereof the following:

"(2) 'Agreement for the payment of money' means a consensual monetary obligation not in the form of an evidence of indebtedness or an investment security and includes an account or general intangible as defined in Code Section ~~11-9-106~~ 11-9-102."

SECTION 25.

Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended in Code Section 9-9-2, relating to the applicability of the "Georgia Arbitration Code," Part 1 of Chapter 9 of Title 9 of the Official Code of Georgia Annotated, and the exclusive method of arbitration, by striking in its entirety subsection (c) and inserting in lieu thereof the following:

"(c) This part shall apply to all disputes in which the parties thereto have agreed in writing to arbitrate and shall provide the exclusive means by which agreements to arbitrate disputes can be enforced, except the following, to which this part shall not apply:

(1) Agreements coming within the purview of Article 2 of this chapter, relating to arbitration of medical malpractice claims;

(2) Any collective bargaining agreements between employers and labor unions representing employees of such employers;

(3) Any contract of insurance, as defined in paragraph (1) of Code Section 33-1-2; provided, however, that nothing in this paragraph shall impair or prohibit the enforcement of or in any way invalidate an arbitration clause or provision in a contract between insurance companies;

(4) Any other subject matters currently covered by an arbitration statute;

(5) Any loan agreement or consumer financing agreement in which the amount of indebtedness is \$25,000.00 or less at the time of execution;

(6) Any contract for the purchase of consumer goods, as defined in Title 11, the 'Uniform Commercial Code,' under subsection (1) of Code Section 11-2-105 and subsection ~~(1)~~ (a) of Code Section ~~11-9-109~~ 11-9-102;

(7) Any contract involving consumer acts or practices or involving consumer transactions as such terms are defined in paragraphs (2) and (3) of subsection (a) of Code Section 10-1-392, relating to definitions in the 'Fair Business Practices Act of 1975';

(8) Any sales agreement or loan agreement for the purchase or financing of residential real estate unless the clause agreeing to arbitrate is initialed by all signatories at the time

of the execution of the agreement. This exception shall not restrict agreements between or among real estate brokers or agents;

(9) Any contract relating to terms and conditions of employment unless the clause agreeing to arbitrate is initialed by all signatories at the time of the execution of the agreement;

(10) Any agreement to arbitrate future claims arising out of personal bodily injury or wrongful death based on tort."

SECTION 26.

Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is amended in Code Section 10-1-731, relating to definitions relative to multiline heavy equipment dealers, by striking in its entirety paragraph (2) and inserting in lieu thereof the following:

"(2) 'Heavy equipment' means self-propelled, self-powered, or pull-type equipment and machinery, including diesel engines, weighing 5,000 pounds or more and primarily employed for construction, industrial, maritime, mining, or forestry uses. The term 'heavy equipment' shall not include:

(A) Motor vehicles requiring registration and certificates of title;

(B) Farm machinery, equipment, and implements; or

(C) Equipment that is 'consumer goods' within the meaning of Code Section ~~11-9-109~~ 11-9-102."

SECTION 27.

Title 15 of the Official Code of Georgia Annotated, relating to the courts, is amended in Code Section 15-6-77, relating to fees of superior court clerks, by striking subsection (f) in its entirety and inserting in lieu thereof the following:

"(f) Sums for filing documents, instruments, etc., pertaining to real estate or personal property, such sums to include recording and returning where applicable:

(1)(A)(i) Filing all instruments pertaining to real estate including deeds,	
deeds of trust, affidavits, releases, notices and certificates, and cancellation	
of deeds, first page	\$ 9.50
Each page, after the first	2.00

(ii) Filing all instruments pertaining to real estate and personal property including liens on real estate and personal property, notice filings for Uniform Commercial Code related real estate, tax liens, hospital liens, writs of fieri facias, notices of lis pendens, written information on utilities, cancellations of liens, and writs of fieri facias, first page	4.50
Each page, after the first	2.00
(B) Filing and indexing financing statements, amendments to financing statements, continuation statements, termination statements, release of collateral, or other filing pursuant to Part 4 of Article 9 of Title 11, first page	10.00
Each page, after the first	2.00
(2) Filing maps or plats, each page	7.50
(3) For processing an assignment of a security deed, for each deed assigned	4.50"

SECTION 28.

Said title is further amended in Code Section 15-6-77.3, relating to fees in counties with populations of 350,000 or more in unincorporated areas, by striking subsection (c) in its entirety and inserting in lieu thereof the following:

"(c) In lieu of the fees specified by Code Section 15-6-77 for the clerk's services listed below, the clerk of the superior court of counties described in subsection (a) of this Code section shall be entitled to charge and collect the following fees for official duties performed by the clerk in providing such services:

(1) Recording and returning to sender all instruments pertaining to real estate and deeds of trust or amendments thereto, in accordance with Code Section 53-12-52, each page \$ 5.00

(2) Recording maps or plats 10.00

The fee for recording maps or plats shall include the fee required by Code Section 47-14-51.

(3) Filing and indexing financing statements and for stamping a copy furnished by the second party to show the date and place of filing for an original or a continuation statement, as provided in ~~Code Section 11-9-403~~ Article 9 of Title 11, first page 5.00

Each page, after the first50

- 1 (4) Issuing certificates of appointment and reappointment to notaries public, as
 2 provided by Code Section 45-17-4 8.00
 3 (5) Registering and filing trade names pursuant to Code Section 10-1-490 . . . 25.00
 4 (6) Entering writ of fieri facias on general execution docket 5.00"

5 **SECTION 29.**

6 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 7 amended in Code Section 16-6-13.2, relating to forfeiture and seizure of motor vehicles
 8 operated by certain persons who have been convicted of or have pleaded nolo contendere to
 9 pandering, by striking in its entirety paragraph (4) of subsection (a) and inserting in lieu
 10 thereof the following:

11 "(4) 'Interest holder' means a secured party within the meaning of Code Section ~~11-9-105~~
 12 11-9-102 or the beneficiary of a perfected encumbrance pertaining to an interest in a
 13 motor vehicle."

14 **SECTION 30.**

15 Said title is further amended in Code Section 16-13-49, relating to forfeiture of certain
 16 contraband and property involved in violations of law relating to controlled substances, by
 17 striking in its entirety paragraph (6) of subsection (a) and inserting in lieu thereof the
 18 following:

19 "(6) 'Interest holder' means a secured party within the meaning of Code Section ~~11-9-105~~
 20 11-9-102 or the beneficiary of a perfected encumbrance pertaining to an interest in
 21 property."

22 **SECTION 31.**

23 Article 1 of Chapter 2 of Title 29 of the Official Code of Georgia Annotated, relating to
 24 powers and duties of guardians, is amended in Code Section 29-2-13, relating to investments,
 25 by striking in its entirety subsection (c) and inserting in lieu thereof the following:

26 "(c) The deposit by a guardian of the funds of his or her ward which are in ~~his~~ the
 27 guardian's hands, at interest, in any ~~bank~~ financial institution which is insured by the
 28 Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund
 29 shall be deemed an investment and is authorized to the extent that the deposit is insured by
 30 the corporation or the fund, as applicable."

SECTION 32.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles, is amended in Code Section 40-3-50, relating to perfection of security interests, by striking subsection (a) in its entirety and inserting in lieu thereof the following:

"(a) Except as provided in Code ~~Section 11-9-103, relating to accounts, contract rights, general intangibles, and equipment governed by the laws of another jurisdiction, and incoming goods already subject to a security interest~~ Sections 11-9-303, 11-9-316, and 11-9-337, the security interest in a vehicle of the type for which a certificate of title is required shall be perfected and shall be valid against subsequent creditors of the owner, subsequent transferees, and the holders of security interests and liens on the vehicle by compliance with this chapter."

SECTION 33.

Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by striking in its entirety Code Section 44-12-24, relating to assignment of rights of action, and inserting in lieu thereof the following:

"44-12-24.

Except for those situations governed by Code Sections 11-2-210 and ~~11-9-402~~ 11-9-406, a right of action is assignable if it involves, directly or indirectly, a right of property. A right of action for personal torts or for injuries arising from fraud to the assignor may not be assigned."

SECTION 34.

Said title is further amended in Code Section 44-14-36, relating to security agreements and security interests relative to real property, fixtures, and personal property of public utility corporations, by striking subsection (b) in its entirety and inserting in lieu thereof the following:

"(b) A security interest relating to fixtures and personal property of such a corporation shall be perfected as provided in Code Sections ~~11-9-401 through 11-9-403~~ 11-9-501 through 11-9-504. Any such prior filing or recording that has been entered on the Uniform Commercial Code index for secured transactions, where no notice of conflict of lien or notice of creditor priority has been given, shall be valid and any such instruments need not otherwise be refiled, rerecorded, or reindexed."

SECTION 35.

Said title is further amended by striking in their entirety Code Sections 44-14-100, relating to crops, growing crops, agricultural pursuits, and farming, and 44-14-101, relating to crops as personal property, and inserting in lieu thereof the following:

"44-14-100.

~~(a) As used in laws relating to security agreements with respect to personal property, the terms 'crops' and 'growing crops' means the fruits and products of all annual or perennial plants, trees, and shrubs and shall also mean crude gum, oleoresin, from a living tree.~~

~~(b)~~(a) The planting, growing, cultivating, harvesting, and marketing of trees and the fruits and products thereof shall be considered and treated under the laws of this state as an agricultural pursuit.

~~(c)~~(b) Every original producer or manufacturer of crude gum, oleoresin, from which is derived or may be derived gum spirits of turpentine and gum resin, and his or her employees are declared to be, for all intents and purposes, farmers insofar as any law of this state relates to farming and farmers.

44-14-101.

~~(a) As used in this Code section, the term 'crops' means the fruits and products of all annual and perennial plants, trees, and shrubs and the crude gum, oleoresin, from a living tree.~~

~~(b)~~ All matured or unmatured crops are declared to be personalty."

SECTION 36.

Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended in Code Section 49-4-146.3, relating to the forfeiture of property and proceeds obtained through Medicaid fraud, by striking in its entirety paragraph (3) of subsection (a) and inserting in lieu thereof the following:

"(3) 'Interest holder' means a secured party within the meaning of Code Section ~~11-9-105~~ 11-9-102 or the beneficiary of a perfected encumbrance pertaining to an interest in property."

SECTION 37.

This Act shall become effective July 1, 2001.

SECTION 38.

All laws and parts of laws in conflict with this Act are repealed.